

## CHAPTER 2—S.F.No. 1

*An act relating to crimes; driving while impaired; creating a zero-tolerance alcohol concentration standard for school bus drivers; advancing criminal penalties and administrative sanctions for committing a DWI crime while having an alcohol concentration of 0.20 or more; expanding DWI laws to include snowmobiles, all-terrain vehicles, and motorboats and repealing the separate DWI laws relating to those recreational vehicles; authorizing the imposition of a penalty assessment of up to \$1,000 for persons driving motor vehicles with an alcohol concentration of 0.20 or more; creating an enhanced gross misdemeanor-level DWI crime and restructuring criminal penalties for DWI, including the provision of mandatory minimum periods of incarceration and home detention for repeat DWI offenders; mandating pretrial and posttrial electronic alcohol monitoring for certain offenders; advancing license plate impoundment and motor vehicle forfeiture by one offense; providing an administrative process for forfeiture and permitting it to be based on license revocation; authorizing peace officers to stop vehicles bearing special series license plates; enhancing criminal penalties for repeat violations involving commercial motor vehicles; authorizing the use of preliminary breath tests results for prosecuting certain driving offenses; making technical changes; providing enhanced criminal penalties and civil sanctions; appropriating money; amending Minnesota Statutes 1996, sections 84.83, subdivision 5; 84.91, subdivision 1; 84.911, subdivision 7; 84.927, subdivision 1; 86B.331, subdivision 1; 86B.705, subdivision 2; 97A.065, subdivision 2; 97B.066, subdivision 5, and by adding subdivisions; 168.042, subdivisions 1, as amended, 2, 4, 9, 11, and by adding a subdivision; 169.01, subdivision 75, and by adding subdivisions; 169.121, subdivisions 1, 1c, 2, 3, 3b, 3c, 4, as amended, 6, 11, and by adding subdivisions; 169.1211, subdivision 1, and by adding subdivisions; 169.1217, as amended; 169.1218; 169.123, subdivisions 1, 4, 5c, and 6; 169.126, subdivision 1; 169.1261; 169.129; 171.07, by adding a subdivision; 171.12, by adding a subdivision; 171.19, as amended; 171.20, subdivision 4; 171.30, by adding a subdivision; 340A.503, subdivision 2; 364.09, as amended; 609.02, subdivision 2, and by adding a subdivision; 609.105; 609.135, subdivision 2, as amended; 609.15, subdivision 2; 609.487, by adding a subdivision; and 634.15, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 168; repealing Minnesota Statutes 1996, sections 84.873; 84.91, subdivisions 2, 3, 4, 5, 5a, 6, 7, and 8; 84.911, subdivisions 1, 2, 3, 4, 5, and 6; 84.912; 84.9254; 86B.331, subdivisions 2, 3, 4, 5, 5a, 6, 7, and 8; 86B.335, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; 86B.337; 97B.066, subdivision 6; and 169.121, subdivision 3a.*

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 84.83, subdivision 5, is amended to read:

Subd. 5. **FINES AND FORFEITED BAIL.** The disposition of fines and forfeited bail collected from prosecutions of violations of sections 84.81 to 84.91, and violations of section 169.121 that involve off-road recreational vehicles, as defined in section 169.01, subdivision 86, are governed by section 97A.065.

Sec. 2. Minnesota Statutes 1996, section 84.91, subdivision 1, is amended to read:

Subdivision 1. **ACTS PROHIBITED.** (a) No person shall operate or be in physical control of any snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state:

(1) when the person is under the influence of alcohol;

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(2) when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;

(3) when the person is under the influence of a combination of any two or more of the elements named in clauses (1), (2), and (6);

(4) when the person's alcohol concentration is 0.10 or more;

(5) when the person's alcohol concentration as measured within two hours of the time of operating is 0.10 or more; or

(6) when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate the snowmobile or all-terrain vehicle.

(b) No owner or other person having charge or control of any snowmobile or all-terrain vehicle shall authorize or permit any individual the person knows or has reason to believe is under the influence of alcohol or a controlled substance or other substance, as provided under paragraph (a), to operate the snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state.

(e) (b) No owner or other person having charge or control of any snowmobile or all-terrain vehicle shall knowingly authorize or permit any person, who by reason of any physical or mental disability is incapable of operating the vehicle, to operate the snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state.

(c) A person who operates or is in physical control of a snowmobile or all-terrain vehicle anywhere in this state or on the ice of any boundary water of this state is subject to sections 169.121 to 169.1218 and 169.123 to 169.129. In addition to the applicable sanctions under chapter 169, a person who is convicted of violating section 169.121 while operating a snowmobile or all-terrain vehicle, or who refuses to comply with a lawful request to submit to testing under section 169.123, shall be prohibited from operating the snowmobile or all-terrain vehicle for a period of one year. The commissioner shall notify the convicted person of the period during which the person is prohibited from operating a snowmobile or all-terrain vehicle.

(d) Administrative and judicial review of the operating privileges prohibition is governed by section 97B.066, subdivisions 7 to 9, if the person does not have a prior impaired driving conviction or prior license revocation, as defined in section 169.121, subdivision 3. Otherwise, administrative and judicial review of the prohibition is governed by section 169.123.

(e) The court shall promptly forward to the commissioner and the department of public safety copies of all convictions and criminal and civil sanctions imposed under this section and chapter 169 relating to snowmobiles and all-terrain vehicles.

(f) A person who violates paragraph (a) or (b), or an ordinance in conformity with either of them, is guilty of a misdemeanor.

Sec. 3. Minnesota Statutes 1996, section 84.911, subdivision 7, is amended to read:

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Subd. 7. **CORONER TO REPORT DEATH.** Every coroner or medical examiner shall report in writing to the department of natural resources the death of any person within the jurisdiction of the coroner or medical examiner as the result of an accident involving a an off-road recreational motor vehicle, as defined in section 84.90, ~~subdivision 1~~ 169.01, subdivision 86, and the circumstances of the accident. The report shall be made within 15 days after the death.

In the case of drivers killed in off-road recreational motor vehicle accidents and of the death of passengers 14 years of age or older, who die within four hours after accident, the coroner or medical examiner shall examine the body and shall make tests as are necessary to determine the presence and percentage concentration of alcohol, and drugs if feasible, in the blood of the victim. This information shall be included in each report submitted pursuant to the provisions of this subdivision and shall be tabulated by the department of natural resources. Periodically, the commissioner of natural resources must transmit a summary of the reports to the commissioner of public safety.

Sec. 4. Minnesota Statutes 1996, section 84.927, subdivision 1, is amended to read:

Subdivision 1. **REGISTRATION REVENUE.** Fees from the registration of all-terrain vehicles and the unrefunded gasoline tax attributable to all-terrain vehicle use under section 296.16, as well as the net proceeds from the sale of all-terrain vehicles forfeited pursuant to section 84.912 169.1217, shall be deposited in the state treasury and credited to the all-terrain vehicle account in the natural resources fund.

Sec. 5. Minnesota Statutes 1996, section 86B.331, subdivision 1, is amended to read:

Subdivision 1. **ACTS PROHIBITED.** (a) ~~A person may not operate or be in physical control of a motorboat in operation on the waters of this state:~~

- (1) ~~when the person is under the influence of alcohol;~~
- (2) ~~when the person is under the influence of a controlled substance, as defined in section 152.01, subdivision 4;~~
- (3) ~~when the person is under the influence of a combination of any two or more of the elements named in clauses (1), (2), and (6);~~
- (4) ~~when the person's alcohol concentration is 0.10 or more;~~
- (5) ~~when the person's alcohol concentration as measured within two hours of the time of operating is 0.10 or more; or~~
- (6) ~~when the person is knowingly under the influence of any chemical compound or combination of chemical compounds that is listed as a hazardous substance in rules adopted under section 182.655 and that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to operate the motorboat.~~

(b) An owner or other person having charge or control of a motorboat may not authorize or allow an individual the person knows or has reason to believe is under the influence of alcohol or a controlled or other substance, as provided under paragraph (a), to operate the motorboat in operation on the waters of this state.

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(e) (b) An owner or other person having charge or control of a motorboat may not knowingly authorize or allow a person, who by reason of a physical or mental disability is incapable of operating the motorboat, to operate the motorboat in operation on the waters of this state.

(c) A person who operates or is in physical control of a motorboat on the waters of this state is subject to sections 169.121 to 169.1218 and 169.123 to 169.129. In addition to the applicable sanctions under chapter 169, a person who is convicted of violating section 169.121 while operating a motorboat, shall be prohibited from operating the motorboat on the waters of this state for a period of 90 days between May 1 and October 31, extending over two consecutive years if necessary. If the person operating the motorboat refuses to comply with a lawful demand to submit to testing under section 169.123, the person shall be prohibited from operating the motorboat for a period of one year. The commissioner shall notify the convicted person of the period during which the person is prohibited from operating a motorboat.

(d) Administrative and judicial review of the operating privileges prohibition is governed by section 97B.066, subdivision 7 to 9, if the person does not have a prior impaired driving conviction or prior license revocation, as defined in section 169.121, subdivision 3. Otherwise, administrative and judicial review of the prohibition is governed by section 169.123.

(e) The court shall promptly forward to the commissioner and the department of public safety copies of all convictions and criminal and civil sanctions imposed under this section and chapter 169 relating to motorboats.

(f) A person who violates paragraph (a) or (b), or an ordinance in conformity with either of them, is guilty of a misdemeanor.

(d) (g) For purposes of this subdivision, a motorboat "in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring, or a motorboat that is being rowed or propelled by other than mechanical means.

Sec. 6. Minnesota Statutes 1996, section 86B.705, subdivision 2, is amended to read:

Subd. 2. **FINES AND BAIL MONEY.** (a) All fines, installment payments, and forfeited bail money collected from persons convicted of violations of this chapter, or of a violation of section 169.121 involving a motorboat, shall be paid to the county treasurer of the county where the violation occurred by the court administrator or other person collecting the money within 15 days after the last day of the month the money was collected.

(b) One-half of the receipts shall be credited to the general revenue fund of the county. The other one-half of the receipts shall be transmitted by the county treasurer to the commissioner of natural resources to be deposited in the state treasury and credited to the water recreation account for the purpose of boat and water safety.

Sec. 7. Minnesota Statutes 1996, section 97A.065, subdivision 2, is amended to read:

Subd. 2. **FINES AND FORFEITED BAIL.** (a) Fines and forfeited bail collected from prosecutions of violations of: the game and fish laws; sections 84.091 to 84.15; and;

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sections 84.81 to 84.88; section 169.121, when the violation involved an off-road recreational vehicle as defined in section 169.01, subdivision 86; chapter 348; and any other law relating to wild animals, and or aquatic vegetation, must be paid to the treasurer of the county where the violation is prosecuted. The county treasurer shall submit one-half of the receipts to the commissioner and credit the balance to the county general revenue fund except as provided in paragraphs (b), (c), and (d).

(b) The commissioner must reimburse a county, from the game and fish fund, for the cost of keeping prisoners prosecuted for violations under this section if the county board, by resolution, directs: (1) the county treasurer to submit all fines and forfeited bail to the commissioner; and (2) the county auditor to certify and submit monthly itemized statements to the commissioner.

(c) The county treasurer shall indicate the amount of the receipts that are assessments or surcharges imposed under section 609.101 and shall submit all of those receipts to the commissioner. The receipts must be credited to the game and fish fund to provide peace officer training for persons employed by the commissioner who are licensed under section 626.84, subdivision 1, clause (c), and who possess peace officer authority for the purpose of enforcing game and fish laws.

(d) The county treasurer shall submit one-half of the receipts collected under paragraph (a) from prosecutions of violations of sections 84.81 to 84.91, and 169.121, including receipts that are assessments or surcharges imposed under section 609.101, to the commissioner and credit the balance to the county general fund. The commissioner shall credit these receipts to the snowmobile trails and enforcement account in the natural resources fund.

Sec. 8. Minnesota Statutes 1996, section 97B.066, subdivision 5, is amended to read:

Subd. 5. **CHEMICAL TESTS.** Chemical tests administered under this section are governed by section ~~86B.335~~, subdivisions 8, 9, and 10 169.123, subdivisions 2b, 2c, and 3.

Sec. 9. Minnesota Statutes 1996, section 97B.066, is amended by adding a subdivision to read:

Subd. 7. **ADMINISTRATIVE REVIEW.** (a) At any time during the period of prohibition or revocation imposed under this section, the person may request in writing a review of the order imposing sanctions under this section. If the person makes a request for administrative review within 30 days following receipt of a notice and order imposing sanctions, the request shall stay imposition of the civil penalty. Upon receiving the request for review, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and other material information brought to the attention of the commissioner and determine whether sufficient cause exists to sustain the order.

(b) Within 15 days after receiving the request, the commissioner shall issue a written report ordering that the prohibition, revocation, or civil penalty be either sustained or rescinded. The review provided in this subdivision is not subject to the contested case provisions of the Administrative Procedure Act under chapter 14. The availability of admin-

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istrative review does not have an effect upon the availability of judicial review under this section.

Sec. 10. Minnesota Statutes 1996, section 97B.066, is amended by adding a subdivision to read:

Subd. 8. JUDICIAL REVIEW. (a) Within 30 days following receipt of a notice and order imposing sanctions under this section, a person may petition the court for review. The petition must be filed with the district court administrator in the county where the incident occurred giving rise to the test demand and refusal, together with proof of service of a copy on the commissioner and the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred. A responsive pleading is not required of the commissioner of natural resources, and court fees may not be charged for the appearance of the representative of the commissioner in the matter.

(b) The petition must be captioned in the name of the person making the petition as petitioner and the commissioner as respondent. The petition must state specifically the grounds upon which the petitioner seeks rescission of the order imposing sanctions.

(c) The filing of the petition does not stay the revocation or prohibition against hunting. However, the filing of a petition stays imposition of the civil penalty. The judicial review shall be conducted according to the rules of civil procedure.

Sec. 11. Minnesota Statutes 1996, section 97B.066, is amended by adding a subdivision to read:

Subd. 9. HEARING. (a) A hearing under this section must be before a district court judge in the county where the incident occurred which gave rise to the test demand and refusal. The hearing must be to the court and may be conducted at the same time as hearings upon pretrial motions in the criminal prosecution under section 97B.065. The hearing must be recorded. The commissioner must be represented by the prosecuting authority for misdemeanor offenses for the jurisdiction in which the incident occurred which gave rise to the test demand and refusal.

(b) The hearing must be held at the earliest practicable date and in any event no later than 60 days following the filing of the petition for review. The reviewing court may order a temporary stay of the balance of the prohibition or revocation if the hearing has not been conducted within 60 days after filing of the petition, upon the application of the petitioner and upon terms the court deems proper.

(c) The scope of the hearing must be limited to the issues of:

(1) whether the officer had probable cause to believe that the person violated section 97B.065;

(2) whether one of the conditions in subdivision 1 existed;

(3) whether the person was informed as prescribed in subdivision 3; and

(4) whether the person refused to submit to testing.

(d) It is an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

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(e) The court shall order that the prohibition or revocation be either sustained or rescinded and shall either sustain or rescind the civil penalty. The court shall forward a copy of the order to the commissioner.

Sec. 12. Minnesota Statutes 1996, section 97B.066, is amended by adding a subdivision to read:

**Subd. 10. PAYMENT OF CIVIL PENALTY.** The civil penalty imposed under subdivision 2 must be paid to the political subdivision that represents the commissioner on the petition for judicial review or, in the event that a petition is not filed, to the political subdivision that would have represented the commissioner had a petition been filed. If a person does not pay the civil penalty, the prohibition against hunting is automatically extended until the political subdivision reports to the commissioner in writing that the penalty has been paid.

Sec. 13. Minnesota Statutes 1996, section 97B.066, is amended by adding a subdivision to read:

**Subd. 11. ENFORCEMENT OF CIVIL PENALTY.** (a) If a person does not pay the civil penalty imposed under subdivision 2 within 30 days of the date it was imposed, the prosecuting authority representing the commissioner may petition the district court in the county where the incident occurred to file the order imposing the civil penalty as an order of the court.

(b) Once entered, the order may be enforced in the same manner as a final judgment of the court. In addition to the penalty, attorney fees, costs, and interest may be assessed against any person who fails to pay the civil penalty.

Sec. 14. Minnesota Statutes 1996, section 168.042, subdivision 1, as amended by Laws 1997, chapter 12, article 3, section 4, is amended to read:

Subdivision 1. **DEFINITIONS.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Violator" means a person who was driving, operating, or in physical control of the motor vehicle when the violation occurred.

(c) "Violation" means:

(1) a violation of section 169.123 or an impaired driving conviction as defined in section 169.121, subdivision 3, that results in the revocation of a person's driver's license or driving privileges, and also includes an alcohol-related license revocation from another state;

(2) a violation of section 169.129; and

(3) a violation of section 171.24 by a person whose driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (9); includes:

(1) a violation of section 169.121, subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h); 169.121, subdivision 1a; or 169.123; or a conforming ordinance from this state or a conforming statute or ordinance from another state; that results in the revocation of a person's driver's license or driving privileges;

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(i) within five years of a prior impaired driving conviction or a prior license revocation; or

(ii) within 15 years of two or more prior impaired driving convictions, two or more prior license revocations, or a prior impaired driving conviction and a prior license revocation, based on separate incidents;

(2) a violation of section 169.121, subdivision 1, clause (f), or section 169.121, subdivision 3, paragraph (c), clause (4);

(3) a violation of section 169.129; and

(4) a violation of section 171.24 by a person whose driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (9).

(d) "Prior impaired driving conviction" has the meaning given it in section 169.121, subdivision 3.

(e) "Prior license revocation" has the meaning given it in section 169.121, subdivision 3.

Sec. 15. Minnesota Statutes 1996, section 168.042, subdivision 2, is amended to read:

Subd. 2. **VIOLATION; ISSUANCE OF IMPOUNDMENT ORDER.** The commissioner shall issue a registration plate impoundment order when:

(1) a person's driver's license or driving privileges are revoked for a third violation, as defined in subdivision 1, paragraph (c), clause (1), within five years of a fourth or subsequent violation, as defined in subdivision 1, paragraph (c), clause (1), within 15 years; or

(2) a person's driver's license or driving privileges are revoked for a violation of section 169.121, subdivision 3, paragraph (c), clause (4), within five years of one previous violation or within 15 years of two or more previous violations, as defined in subdivision 1, paragraph (c), clause (1); or

(3) a person is arrested for or charged with a violation described in subdivision 1, paragraph (c), clause (2) or (3) or (4).

The order shall require the impoundment of the registration plates of the self-propelled motor vehicle involved in the violation and all self-propelled motor vehicles owned by, registered, or leased in the name of the violator, including self-propelled motor vehicles registered jointly or leased in the name of the violator and another. An impoundment order shall not be issued for the registration plates of a rental vehicle as defined in section 168.041, subdivision 10, or a vehicle registered in another state.

Sec. 16. Minnesota Statutes 1996, section 168.042, subdivision 4, is amended to read:

Subd. 4. **PEACE OFFICER AS AGENT FOR NOTICE OF IMPOUNDMENT.** On behalf of the commissioner, a peace officer issuing a notice of intent to revoke and of revocation under section ~~169.123~~ 169.123 for a violation shall also serve a notice of intent to impound and an order of impoundment ~~if the violation is the third violation, as defined in~~

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subdivision 1, paragraph (c), clause (1), within five years or the fourth or subsequent violation, as defined in subdivision 1, paragraph (c), clause (1), within 15 years. On behalf of the commissioner, a peace officer who is arresting a person for or charging a person with a violation described in subdivision 1, paragraph (c), clause (2) or (3) or (4), shall also serve a notice of intent to impound and an order of impoundment. If the vehicle involved in the violation is accessible to the officer at the time the impoundment order is issued, the officer shall seize the registration plates subject to the impoundment order. The officer shall destroy all plates seized or impounded under this section. The officer shall send to the commissioner copies of the notice of intent to impound and the order of impoundment and a notice that registration plates impounded and seized under this section have been destroyed.

Sec. 17. Minnesota Statutes 1996, section 168.042, subdivision 9, is amended to read:

Subd. 9. **ADMINISTRATIVE REVIEW.** At any time during the effective period of an impoundment order, a person may request in writing a review of the impoundment order by the commissioner. On receiving a request, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. The commissioner shall report in writing the results of the review within 15 days of receiving the request. The review provided in this subdivision is not subject to the contested case provisions of the administrative procedure act in sections 14.01 to 14.69. As a result of this review, the commissioner may authorize the issuance at no cost of new registration plates to the registered owner of the vehicle if the registered owner's license or driving privileges were not revoked under section 169.123 or as a result of an impaired driving conviction as defined in section 169.121, subdivision 3 the violation.

Review under this subdivision shall take place, if possible, at the same time as any administrative review of the person's license revocation under section 169.123, subdivision 5b.

Sec. 18. Minnesota Statutes 1996, section 168.042, subdivision 11, is amended to read:

Subd. 11. **RESCISSION OF REVOCATION; DISMISSAL OF CHARGES OR ACQUITTAL; ISSUANCE OF NEW PLATES.** If:

- (1) the driver's license revocation that is the basis for an impoundment order is rescinded;
- (2) the charges for the violation have been dismissed with prejudice; or
- (3) the violator has been acquitted of the violation;

then the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order rescinding the driver's license revocation, the order dismissing the charges, or the judgment of acquittal. ~~If the impoundment order was based on a violation described in subdivision 1, paragraph (c), clause (2) or (3), and the charges have been dismissed with prejudice or the~~

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~~violator has been acquitted of the violation, the registrar of motor vehicles shall issue new registration plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order dismissing the charges or a copy of the judgment of acquittal.~~

Sec. 19. Minnesota Statutes 1996, section 168.042, is amended by adding a subdivision to read:

Subd. 11a. **CHARGE FOR REINSTATEMENT OF REGISTRATION PLATES IN CERTAIN SITUATIONS.** When the registrar of motor vehicles reinstates a person's registration plates after impoundment for reasons other than those described in subdivision 11, the registrar shall charge the person \$25. Money raised under this subdivision must be paid into the state treasury and credited to the highway user tax distribution fund.

Sec. 20. [168.0422] **STOPS OF VEHICLES BEARING SPECIAL SERIES PLATES.**

A peace officer who observes the operation of a motor vehicle within this state bearing special series registration plates issued under section 168.041, subdivision 6, or 168.042, subdivision 12, may stop the vehicle for the purpose of determining whether the driver is operating the vehicle lawfully under a valid driver's license.

Sec. 21. Minnesota Statutes 1996, section 169.01, subdivision 75, is amended to read:

Subd. 75. **COMMERCIAL MOTOR VEHICLE.** (a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

- (1) has a gross vehicle weight of more than 26,000 pounds;
- (2) has a towed unit with a gross vehicle weight of more than 10,000 pounds and the combination of vehicles has a combined gross vehicle weight of more than 26,000 pounds;
- (3) is a bus;
- (4) is of any size and is used in the transportation of hazardous materials, except for those vehicles having a gross vehicle weight of 26,000 pounds or less while carrying in bulk tanks a total of not more than 200 gallons of petroleum products and liquid fertilizer; or
- (5) is outwardly equipped and identified as a school bus, except for school buses defined in subdivision 6, paragraph (c).

(b) For purposes of sections 169.1211, 169.1215, and 169.123, subdivisions 2 and 4:

(1) a commercial motor vehicle does not include a farm truck, firefighting equipment, or recreational equipment being operated by a person within the scope of section 171.02, subdivision 2, paragraph (a); and

(2) a commercial motor vehicle includes a vehicle capable of or designed to meet the standards described in paragraph (a), clause (2), whether or not the towed unit is attached to the truck-tractor at the time of the violation or stop.

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Sec. 22. Minnesota Statutes 1996, section 169.01, is amended by adding a subdivision to read:

Subd. 86. **OFF-ROAD RECREATIONAL VEHICLE.** “Off-road recreational vehicle” means an off-highway motorcycle as defined in section 84.787, subdivision 7; off-road vehicle as defined in section 84.797, subdivision 7; snowmobile as defined in section 84.81, subdivision 3; and all-terrain vehicle as defined in section 84.92, subdivision 8.

Sec. 23. Minnesota Statutes 1996, section 169.01, is amended by adding a subdivision to read:

Subd. 87. **MOTORBOAT.** “Motorboat” means a watercraft propelled in any manner by machinery, including watercraft temporarily equipped with detachable motors.

Sec. 24. Minnesota Statutes 1996, section 169.01, is amended by adding a subdivision to read:

Subd. 88. **DRUG RECOGNITION EVALUATION.** “Drug recognition evaluation” means the systematic, standardized, investigative procedure defined by the National Highway Traffic Safety Administration that is used to determine whether a driver is impaired, whether the impairment relates to drugs or a medical condition and, if drug-related, the categories of drugs likely to have caused the impairment.

Sec. 25. Minnesota Statutes 1996, section 169.01, is amended by adding a subdivision to read:

Subd. 89. **DRUG RECOGNITION EXPERT.** “Drug recognition expert” means a peace officer who is certified by the International Association of Chiefs of Police to conduct drug recognition evaluations.

Sec. 26. Minnesota Statutes 1996, section 169.121, subdivision 1, is amended to read:

Subdivision 1. **CRIME; ACTS PROHIBITED.** It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or upon the ice of any boundary water of this state under any of the following circumstances:

- (a) when the person is under the influence of alcohol;
- (b) when the person is under the influence of a controlled substance;
- (c) when the person is under the influence of a combination of any two or more of the elements named in clauses (a), (b), and ~~(f)~~ (g);
- (d) when the person’s alcohol concentration is 0.10 or more but less than 0.20;
- (e) when the person’s alcohol concentration as measured within two hours of the time of driving, operating, or being in physical control of the motor vehicle is 0.10 or more but less than 0.20;
- (f) when the person’s alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.20 or more;

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(g) when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle; or

(g) (h) when the person's body contains any amount of a controlled substance listed in schedule I or II other than marijuana or tetrahydrocannabinols.

Sec. 27. Minnesota Statutes 1996, section 169.121, subdivision 1c, is amended to read:

Subd. 1c. **CONDITIONAL RELEASE.** (a) Unless maximum bail is imposed under section 629.471, subdivision 2, a person charged with a crime listed in this paragraph may be released from detention only if the person agrees to abstain from alcohol and submit to a program of electronic alcohol monitoring involving at least daily measurements of the person's alcohol concentration pending resolution of the charge. This paragraph applies only when electronic alcohol monitoring equipment is available to the court and only when a person is charged with:

(1) a violation of subdivision 1 or 1a within five years of two prior impaired driving convictions, or within ten years of three or more prior impaired driving convictions;

(2) a second or subsequent violation of subdivision 1 or 1a, if the person is under the age of 19 years;

(3) a violation of subdivision 1 or 1a, while the person's driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (9);

(4) a violation of subdivision 1, clause (f); or

(5) a violation of section 169.129.

If the defendant is convicted of the charged offense, the court shall require partial or total reimbursement from the person for the cost of the electronic alcohol monitoring, to the extent the defendant is able to pay.

(b) Unless maximum bail is imposed under section 629.471, subdivision 2, a person charged with violating subdivision 1 or 1a within ten years of the first of three prior impaired driving convictions or within the person's lifetime after four or more prior impaired driving convictions may be released from detention only if the following conditions are imposed in addition to the condition imposed in paragraph (a), if applicable, and any other conditions of release ordered by the court:

(1) the impoundment of the registration plates of the vehicle used to commit the violation, unless already impounded;

(2) if the vehicle used to commit the violation was an off-road recreational vehicle or a motorboat, the impoundment of the off-road recreational vehicle or motorboat;

(3) a requirement that the alleged violator report weekly to a probation agent;

(3) (4) a requirement that the alleged violator abstain from consumption of alcohol and controlled substances and submit to random, weekly alcohol tests or urine analyses at least weekly; and

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(4) (5) a requirement that, if convicted, the alleged violator reimburse the court or county for the total cost of these services.

Sec. 28. Minnesota Statutes 1996, section 169.121, is amended by adding a subdivision to read:

Subd. 1d. **FIRST-TIME VIOLATORS; OFF-ROAD RECREATIONAL VEHICLES AND MOTORBOATS.** A person who violates this section while using an off-road recreational vehicle or motorboat and who does not have a prior impaired driving conviction or prior license revocation is subject only to the criminal penalty provided in subdivision 3 and loss of operating privileges as provided in section 84.91, subdivision 1, or 86B.331, subdivision 1, whichever is applicable. The person is not subject to the provisions of subdivision 1c, 3b, 3f, 4, 5b, or 8, the license revocation sanctions of section 169.123, or the plate impoundment provisions of section 168.042.

Sec. 29. Minnesota Statutes 1996, section 169.121, subdivision 2, is amended to read:

Subd. 2. **EVIDENCE.** (a) Upon the trial of any prosecution arising out of acts alleged to have been committed by any person arrested for driving, operating, or being in physical control of a motor vehicle in violation of subdivision 1, the court may admit evidence of the presence or amount of alcohol, controlled substances, or hazardous substances in the person's blood, breath, or urine as shown by an analysis of those items.

(b) For the purposes of this subdivision, evidence that there was at the time an alcohol concentration of 0.04 or more is relevant evidence in indicating whether or not the person was under the influence of alcohol.

(c) Evidence of the refusal to take a test is admissible into evidence in a prosecution under this section or an ordinance in conformity with it.

(d) If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of subdivision 1, clause (e) or (f), that the defendant consumed a sufficient quantity of alcohol after the time of actual driving, operating, or being in physical control of a motor vehicle and before the administration of the evidentiary test to cause the defendant's alcohol concentration to exceed ~~0.10~~ the level specified in the applicable clause. Evidence that the defendant consumed alcohol after the time of actual driving, operating, or being in physical control of a motor vehicle may not be admitted in defense to any alleged violation of this section unless notice is given to the prosecution prior to the omnibus or pretrial hearing in the matter.

(e) If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of subdivision 1, clause ~~(g)~~ (h), that the defendant used the controlled substance according to the terms of a prescription issued for the defendant in accordance with sections 152.11 and 152.12.

(f) The preceding provisions do not limit the introduction of any other competent evidence bearing upon the question of whether the person violated this section, including tests obtained more than two hours after the alleged violation and results obtained from partial tests on an infrared breath-testing instrument. A result from a partial test is the measurement obtained by analyzing one adequate breath sample, as defined in section 169.123, subdivision 2b, paragraph (b).

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Sec. 30. Minnesota Statutes 1996, section 169.121, subdivision 3, is amended to read:

Subd. 3. **CRIMINAL PENALTIES.** (a) As used in this subdivision section:

(1) "Prior impaired driving conviction" means a prior conviction under:

(i) this section; Minnesota Statutes 1996, section 84.91, subdivision 1, paragraph (a); or 86B.331, subdivision 1, paragraph (a); section 169.1211; section 169.129; or section 360.0752;

(ii) section 609.21, subdivision 1, clauses (2) to (6); 609.21, subdivision 2, clauses (2) to (6); 609.21, subdivision 2a, clauses (2) to (6); 609.21, subdivision 2b, clauses (2) to (6); 609.21, subdivision 3, clauses (2) to (6); 609.21, or subdivision 4, clauses (2) to (6); or

(iii) an ordinance from this state, or a statute or ordinance from another state, in conformity with any of them provision listed in item (i) or (ii).

A prior impaired driving conviction also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult; and.

(2) "Prior license revocation" means a driver's license suspension, revocation, or cancellation, denial, or disqualification under:

(i) this section; or section 169.1211, 169.123; 171.04; 171.14; 171.16; 171.165, 171.17; or 171.18 because of an alcohol-related incident;

(ii) section 609.21, subdivision 1, clauses (2) to (6); 609.21, subdivision 2, clauses (2) to (6); 609.21, subdivision 2a, clauses (2) to (6); 609.21, subdivision 2b, clauses (2) to (6); 609.21, subdivision 3, clauses (2) to (6); or 609.21, subdivision 4, clauses (2) to (6); or

(iii) an ordinance from this state, or a statute or ordinance from another state, in conformity with any of them provision listed in item (i) or (ii).

"Prior license revocation" also means the revocation of snowmobile or all-terrain vehicle operating privileges under section 84.911, or motorboat operating privileges under section 86B.335, for violations that occurred on or after August 1, 1995.

(b) A person who violates subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), or subdivision 1a, or an ordinance in conformity with either any of them, is guilty of a misdemeanor.

(c) A person is guilty of a gross misdemeanor under any of the following circumstances:

(1) the person violates subdivision 1, clause (f);

(2) the person violates subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), or subdivision 1a, within five years of a prior impaired driving conviction, or within ten years of the first of two or more prior impaired driving convictions;

(2) the person violates subdivision 1a within five years of or a prior license revocation, or within ten years of the first of two or more prior license revocations;

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(3) the person violates section 169.26 while in violation of subdivision 1; or

(4) the person violates subdivision 1 or 1a while a child under the age of 16 is in the vehicle, if the child is more than 36 months younger than the violator.

A person convicted of a gross misdemeanor under this paragraph is subject to the mandatory penalties provided in subdivision 3d.

(d) A person is guilty of an enhanced gross misdemeanor under any of the following circumstances:

(1) the person violates subdivision 1, clause (f), or commits a violation described in paragraph (c), clause (3) or (4), within ten years of one or more prior impaired driving convictions or prior license revocations;

(2) the person violates subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), or subdivision 1a, within ten years of the first of two or more prior impaired driving convictions, two or more prior license revocations, or any combination of two or more prior impaired driving convictions and prior license revocations, based on separate incidents.

A person convicted of an enhanced gross misdemeanor under this paragraph may be sentenced to imprisonment in a local correctional facility for not more than two years or to payment of a fine of not more than \$3,000, or both. Additionally, the person is subject to the applicable mandatory penalties provided in subdivision 3e.

(e) The court shall notify a person convicted of violating subdivision 1 or 1a that the registration plates of the person's motor vehicle may be impounded under section 168.042 and the vehicle may be subject to forfeiture under section 169.1217 upon a subsequent conviction for violating this section, section 169.129, or section 171.24, or a subsequent license revocation under section 169.123. The notice must describe the conduct and the time periods within which the conduct must occur in order to result in plate impoundment or forfeiture. The failure of the court to provide this information does not affect the applicability of the plate impoundment or the forfeiture provision to that person.

(d) (f) The attorney in the jurisdiction in which the violation occurred who is responsible for prosecution of misdemeanor violations of this section shall also be responsible for prosecution of gross misdemeanor and enhanced gross misdemeanor violations of this section.

(e) (g) The court must impose consecutive sentences when it sentences a person for a violation of this section or section 169.129 arising out of separate behavioral incidents. The court also must impose a consecutive sentence when it sentences a person for a violation of this section or section 169.129 and the person, at the time of sentencing, is on probation for, or serving, an executed sentence for a violation of this section or section 169.129 and the prior sentence involved a separate behavioral incident. The court also may order that the sentence imposed for a violation of this section or section 169.129 shall run consecutively to a previously imposed misdemeanor, gross misdemeanor or felony sentence for a violation other than this section or section 169.129.

(h) When the court stays the sentence of a person convicted under this section, the length of the stay is governed by section 609.135, subdivision 2.

(f) (i) The court may impose consecutive sentences for offenses arising out of a single course of conduct as permitted in section 609.035, subdivision 2.

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(g) (j) When an attorney responsible for prosecuting gross misdemeanors or enhanced gross misdemeanors under this section requests criminal history information relating to prior impaired driving convictions from a court, the court must furnish the information without charge.

(h) (k) A violation of subdivision 1a may be prosecuted either in the jurisdiction where the arresting officer observed the defendant driving, operating, or in control of the motor vehicle or in the jurisdiction where the refusal occurred.

Sec. 31. Minnesota Statutes 1996, section 169.121, subdivision 3b, is amended to read:

Subd. 3b. **HABITUAL OFFENDERS; CHEMICAL USE ASSESSMENT.** The court must order a person to submit to the level of care recommended in the chemical use assessment if a the person has been convicted under of violating:

(1) subdivision 1, subdivision 1a, clause (f); or

(2) subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), subdivision 1a, section 169.129, an ordinance in conformity with any of them, or a statute or ordinance from another state in conformity with any of them, and if the person is then convicted of violating subdivision 1, subdivision 1a, section 169.129, or an ordinance in conformity with any of them (1) once;

(i) within five years of the first a prior impaired driving conviction or (2) two or more times a prior license revocation; or

(ii) within ten years after the first conviction, the court must order the person to submit to the level of care recommended in the chemical use assessment required under section 169.126 of two or more prior impaired driving convictions, two or more prior license revocations, or a prior impaired driving conviction and a prior license revocation, based on separate incidents.

Sec. 32. Minnesota Statutes 1996, section 169.121, subdivision 3c, is amended to read:

Subd. 3c. **NOTICE OF ENHANCED PENALTIES.** When a court sentences a person for a misdemeanor or gross misdemeanor violation of this section, it shall inform the defendant of the statutory provisions that provide for enhancement of criminal penalties for repeat violators. The failure of a court to provide this information to a defendant does not affect the future applicability of these enhanced penalties to that defendant.

Sec. 33. Minnesota Statutes 1996, section 169.121, is amended by adding a subdivision to read:

Subd. 3d. **GROSS MISDEMEANORS; MANDATORY PENALTIES.** (a) The mandatory penalties in this subdivision apply to persons convicted of a gross misdemeanor under subdivision 3, paragraph (c), or section 169.129.

(b) A person who is convicted of a gross misdemeanor under subdivision 3, paragraph (c), or is convicted of a gross misdemeanor violation of section 169.129 within five years of a prior impaired driving conviction or prior license revocation, must be sentenced to a minimum of 30 days imprisonment, at least 48 hours of which must be served

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consecutively, or to eight hours of community work service for each day less than 30 days that the person is ordered to serve in jail. Notwithstanding section 609.135, the above sentence must be executed, unless the court departs from the mandatory minimum sentence under paragraph (c) or (d).

(c) Prior to sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum sentence established by this subdivision. The motion must be accompanied by a statement on the record of the reasons for it. When presented with the prosecutor's motion and if it finds that substantial mitigating factors exist, the court shall sentence the defendant without regard to the mandatory minimum sentence established by this subdivision.

(d) The court may, on its own motion, sentence the defendant without regard to the mandatory minimum sentence established by this subdivision if it finds that substantial mitigating factors exist and if its sentencing departure is accompanied by a statement on the record of the reasons for it. The court also may sentence the defendant without regard to the mandatory minimum sentence established by this subdivision if the defendant is sentenced to probation and ordered to participate in a program established under section 169.1265.

(e) When any portion of the sentence required by this subdivision is not executed, the court should impose a sentence that is proportional to the extent of the offender's prior criminal and moving traffic violation record. Any sentence required under this subdivision must include a mandatory sentence that is not subject to suspension or a stay of imposition or execution, and that includes incarceration for not less than 48 consecutive hours or at least 80 hours of community work service.

Sec. 34. Minnesota Statutes 1996, section 169.121, is amended by adding a subdivision to read:

Subd. 3e. **ENHANCED GROSS MISDEMEANORS; MANDATORY PENALTIES.** (a) The mandatory penalties in this subdivision apply to persons who are convicted of an enhanced gross misdemeanor under subdivision 3, paragraph (d), or section 169.129. Notwithstanding section 609.135, these penalties must be imposed and executed.

(b) A person who is convicted of an enhanced gross misdemeanor under the circumstances described in subdivision 3, paragraph (d), clause (1), shall be sentenced as follows:

(1) if the person has one prior impaired driving conviction within the past ten years, the person must be sentenced to a minimum of 90 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility. The court may order that the person serve not more than 60 days of this minimum penalty on home detention or in an intensive probation program described in section 169.1265;

(2) if the person has two prior impaired driving convictions within the past ten years, the person must be sentenced to a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility. The court may order that the person serve not more than 150 days of this minimum penalty on home detention or in an intensive probation program described in section 169.1265; or

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(3) if the person has three prior impaired driving convictions within the past 15 years, or four or more prior impaired driving convictions within the person's lifetime, the person must be sentenced to a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility. The court may order that the person serve the remainder of this minimum penalty on intensive probation using an electronic monitoring system or, if such a system is unavailable, on home detention.

(c) A person who is convicted of an enhanced gross misdemeanor under the circumstances described in subdivision 3, paragraph (d), clause (2) or (3), or under section 169.129, shall be sentenced as follows:

(1) if the person has two prior impaired driving convictions, two prior license revocations, or a combination of the two, within the past ten years, the person must be sentenced to a minimum of 90 days incarceration, at least 30 days of which must be served consecutively in a local correctional facility. The court may order that the person serve not more than 60 days of this minimum penalty on home detention or in an intensive probation program described in section 169.1265;

(2) if the person has three prior impaired driving convictions, three prior license revocations, or a combination of the two, within the past ten years, the person must be sentenced to a minimum of 180 days of incarceration, at least 30 days of which must be served consecutively in a local correctional facility. The court may order that the person serve not more than 150 days of this minimum penalty on home detention or in an intensive probation program described in section 169.1265; or

(3) if the person has: (i) four prior impaired driving convictions, four prior license revocations, or a combination of the two, within the past 15 years; or (ii) five or more prior impaired driving convictions, five or more prior license revocations, or a combination of the two, within the person's lifetime; then the person must be sentenced to a minimum of one year of incarceration, at least 60 days of which must be served consecutively in a local correctional facility. The court may order that the person serve the remainder of this minimum penalty on intensive probation using an electronic monitoring system or, if such a system is unavailable, on home detention.

Sec. 35. Minnesota Statutes 1996, section 169.121, is amended by adding a subdivision to read:

Subd. 3f. LONG-TERM MONITORING. (a) This subdivision applies to a person convicted of:

(1) a violation of subdivision 1 or 1a within five years of two prior impaired driving convictions, or within ten years of three or more prior impaired driving convictions;

(2) a second or subsequent violation of subdivision 1 or 1a, if the person is under the age of 19 years;

(3) a violation of subdivision 1 or 1a, while the person's driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (9); or

(4) a violation of section 169.129.

(b) When the court sentences a person described in paragraph (a) to a stayed sentence and when electronic monitoring equipment is available to the court, the court shall

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require that the person participate in a program of electronic alcohol monitoring in addition to any other conditions of probation or jail time it imposes. During the first one-third of the person's probationary term, the electronic alcohol monitoring must be continuous and involve measurements of the person's alcohol at least three times a day. During the remainder of the person's probationary term, the electronic alcohol monitoring may be intermittent, as determined by the court. The court shall require partial or total reimbursement from the person for the cost of the electronic alcohol monitoring, to the extent the person is able to pay.

Sec. 36. Minnesota Statutes 1996, section 169.121, subdivision 4, as amended by Laws 1997, chapter 12, article 3, section 5, is amended to read:

Subd. 4. **ADMINISTRATIVE PENALTIES.** (a) The commissioner of public safety shall revoke the driver's license of a person convicted of violating this section or an ordinance in conformity with it as follows:

(1) for an offense under subdivision 1: not less than 30 days;

(2) for an offense under subdivision 1a: not less than 90 days;

(3) for an offense occurring within five years after a prior impaired driving conviction or a prior license revocation, or any time after two or more prior impaired driving convictions or prior license revocations: (i) if the current conviction is for a violation of subdivision 1, not less than 180 days and until the court has certified that treatment or rehabilitation has been successfully completed where prescribed in accordance with section 169.126; or (ii) if the current conviction is for a violation of subdivision 1a, not less than one year and until the court has certified that treatment or rehabilitation has been successfully completed where prescribed in accordance with section 169.126;

(4) for an offense occurring within five years after the first of two prior impaired driving convictions or prior license revocations: not less than one year, together with denial under section 171.04, subdivision 1, clause (9), until rehabilitation is established in accordance with standards established by the commissioner;

(5) for an offense occurring any time after three or more prior impaired driving convictions or prior license revocations: not less than two years, together with denial under section 171.04, subdivision 1, clause (9), until rehabilitation is established in accordance with standards established by the commissioner.

(b) If the person convicted of violating this section is under the age of 21 years, the commissioner of public safety shall revoke the offender's driver's license or operating privileges for a period of six months or for the appropriate period of time under paragraph (a), clauses (1) to (5), for the offense committed, whichever is the greatest period.

(c) For purposes of this subdivision, a juvenile adjudication under this section, section 169.129, an ordinance in conformity with either of them, or a statute or ordinance from another state in conformity with either of them is an offense.

(d) Whenever department records show that the violation involved personal injury or death to any person, not less than 90 additional days shall be added to the base periods provided above.

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(e) If the person is convicted of violating subdivision 1, paragraph (f), the commissioner of public safety shall revoke the person's driver's license for twice the period of time otherwise provided for in this subdivision.

(f) Except for a person whose license has been revoked under paragraph (b), and except for a person who commits a violation described in subdivision 3, paragraph (c), clause (4), (child endangerment), any person whose license has been revoked pursuant to section 169.123 as the result of the same incident, and who does not have a prior impaired driving conviction or prior license revocation within the previous ten years, is subject to the mandatory revocation provisions of paragraph (a), clause (1) or (2), in lieu of the mandatory revocation provisions of section 169.123.

(f) As used in this subdivision, the terms "prior impaired driving conviction" and "prior license revocation" have the meanings given in subdivision 3, paragraph (a).

Sec. 37. Minnesota Statutes 1996, section 169.121, is amended by adding a subdivision to read:

Subd. 5b. PENALTY ASSESSMENT. When a court sentences a person convicted of violating subdivision 1, clause (f), the court may impose a penalty assessment of up to \$1,000. The court may impose this assessment in addition to any other penalties or charges authorized under this section. Money collected under this subdivision must be distributed as follows:

(1) if the arresting officer is an employee of a political subdivision, the assessment must be forwarded to the treasury of the political subdivision for use in enforcement, training, and education activities related to driving while impaired; or

(2) if the arresting officer is an employee of the state, the assessment must be forwarded to the state treasury and credited to the general fund.

Sec. 38. Minnesota Statutes 1996, section 169.121, subdivision 6, is amended to read:

**Subd. 6. PRELIMINARY SCREENING TEST.** (a) When a peace officer has reason to believe from the manner in which a person is driving, operating, controlling, or acting upon departure from a motor vehicle, or has driven, operated, or controlled a motor vehicle, that the driver may be violating or has violated subdivision 1 or section 169.1211, the officer may require the driver to provide a sample of the driver's breath for a preliminary screening test using a device approved by the commissioner of public safety for this purpose.

(b) The results of this preliminary screening test shall be used for the purpose of deciding whether an arrest should be made and whether to require the tests authorized in section 169.123, but shall not be used in any court action except the following:

(1) to prove that a test was properly required of a person pursuant to section 169.123, subdivision 2;

(2) in a civil action arising out of the operation or use of the motor vehicle;

(3) in an action for license reinstatement under section 171.19; or

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(4) in a prosecution or juvenile court proceeding concerning a violation of section 169.1218 or 340A.503, subdivision 1, paragraph (a), clause (2);

(5) in a prosecution under section 169.1211, subdivision 1, paragraph (b), or 171.30;  
or

(6) in a prosecution for a violation of a restriction on a driver's license under section 171.09, which provides that the license holder may not use or consume any amount of alcohol or a controlled substance.

(c) Following the screening test additional tests may be required of the driver pursuant to the provisions of section 169.123.

(d) The driver who refuses to furnish a sample of the driver's breath is subject to the provisions of section 169.123 unless, in compliance with section 169.123, the driver submits to a blood, breath or urine test to determine the presence or amount of alcohol, controlled substances, or hazardous substances.

Sec. 39. Minnesota Statutes 1996, section 169.121, subdivision 11, is amended to read:

Subd. 11. **APPLICABILITY TO RECREATIONAL VEHICLES.** For purposes of this section and section 169.123, "motor vehicle" does not include a snowmobile as defined in section 84.81, or an all-terrain vehicle as defined in section 84.92. ~~This subdivision does not prevent the commissioner of public safety from recording on driving records violations involving snowmobiles and all-terrain vehicles.~~ includes motorboats in operation and off-road recreational vehicles. A "motorboat in operation" does not include a motorboat that is anchored, beached, or securely fastened to a dock or other permanent mooring, or a motorboat that is being rowed or propelled by other than mechanical means.

Sec. 40. Minnesota Statutes 1996, section 169.1211, subdivision 1, is amended to read:

Subdivision 1. **CRIME CRIMES.** (a) It is a ~~misdemeanor~~ crime for any person to drive, operate, or be in physical control of any commercial motor vehicle within this state or upon the ice of any boundary water of this state:

(1) when the person's alcohol concentration is 0.04 or more but less than 0.20; or

(2) when the person's alcohol concentration as measured within two hours of the time of driving, operating, or being in physical control of the commercial motor vehicle is 0.04 or more but less than 0.20; or

(3) when the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the commercial motor vehicle is 0.20 or more.

(b) It is a crime for any person to drive, operate, or be in physical control of any class of school bus or Head Start bus within this state or upon the ice of any boundary water of this state when there is physical evidence present in the person's body of the consumption of any alcohol.

New language is indicated by underline, deletions by strikeout.

Sec. 41. Minnesota Statutes 1996, section 169.1211, is amended by adding a subdivision to read:

**Subd. 5. CRIMINAL PENALTY.** (a) A person who violates subdivision 1, paragraph (a), clause (1) or (2), or paragraph (b), or an ordinance in conformity with any of them, is guilty of a misdemeanor.

(b) A person is guilty of a gross misdemeanor under any of the following circumstances:

(1) the person violates subdivision 1, paragraph (a), clause (3);

(2) the person violates subdivision 1, paragraph (a), clause (1) or (2), or paragraph (b), within five years of a prior impaired driving conviction or a prior license revocation, or within ten years of the first of two or more prior impaired driving convictions, two or more prior license revocations, or a combination of a prior impaired driving conviction and a prior license revocation, based on separate incidents;

(3) the person violates section 169.26 while in violation of subdivision 1; or

(4) the person violates subdivision 1 while a child under the age of 16 is in the vehicle, if the child is more than 36 months younger than the violator.

Sec. 42. Minnesota Statutes 1996, section 169.1211, is amended by adding a subdivision to read:

**Subd. 6. DEFINITIONS.** As used in this section, the terms "prior impaired driving conviction" and "prior license revocation" have the meanings given them in section 169.121, subdivision 3.

Sec. 43. Minnesota Statutes 1996, section 169.1217, as amended by Laws 1997, chapter 12, article 3, section 6, is amended to read:

**169.1217 VEHICLE FORFEITURE FOR COMMISSION OF DESIGNATED OFFENSES AND LICENSE REVOCATIONS.**

**Subdivision 1. DEFINITIONS.** As used in this section, the following terms have the meanings given them:

(a) "Appropriate agency" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense or to require a test under section 169.123.

(b) "Designated license revocation" includes a license revocation under section 169.123:

(1) within five years of two prior impaired driving convictions, two prior license revocations, or a prior impaired driving conviction and a prior license revocation, based on separate incidents; or

(2) within 15 years of the first of three or more prior impaired driving convictions, three or more prior license revocations, or any combination of three or more prior impaired driving convictions and prior license revocations, based on separate incidents.

(c) "Designated offense" includes:

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(1) a violation of section 169.121, subdivision 1, clause (a), (b), (c), (d), (e), (g), or (h), subdivision 1a, an ordinance in conformity with it any of them, or section 169.129:

(1) (i) within five years of three two prior impaired driving convictions or three, or two prior license revocations, or a prior impaired driving conviction and a prior license revocation, based on separate incidents; or

(2) (ii) within 15 years of the first of four three or more prior impaired driving convictions or the first of four, three or more prior license revocations, or any combination of three or more impaired driving convictions and prior license revocations, based on separate incidents;

(2) a violation of section 169.121, subdivision 1, clause (f), or a violation of section 169.121, subdivision 3, paragraph (c), clause (4):

(i) within five years of a prior impaired driving conviction or a prior license revocation; or

(ii) within 15 years of the first of two or more prior impaired driving convictions, two or more prior license revocations, or a prior impaired driving conviction and a prior license revocation, based on separate incidents; or

(3) a violation of section 169.121, an ordinance in conformity with it, or section 169.129:

(i) by a person whose driver's license or driving privileges have been canceled under section 171.04, subdivision 1, clause (9); or

(4) (ii) by a person who is subject to a restriction on the person's driver's license under section 171.09 which provides that the person may not use or consume any amount of alcohol or a controlled substance.

"Designated offense" also includes a violation of section 169.121, subdivision 3, paragraph (e), clause (4):

(1) within five years of two prior impaired driving convictions or two prior license revocations based on separate incidents; or

(2) within 15 years of the first of three or more prior impaired driving convictions or the first of three or more prior license revocations based on separate incidents.

(e) (d) "Motor vehicle" and "vehicle" have the meaning given "motor vehicle" in section 169.121, subdivision 11. The terms do not include a vehicle which is stolen or taken in violation of the law.

(d) (e) "Owner" means the registered owner of the motor vehicle according to records of the department of public safety and includes a lessee of a motor vehicle if the lease agreement has a term of 180 days or more.

(e) (f) "Prior impaired driving conviction" has the meaning given it in section 169.121, subdivision 3. A prior impaired driving conviction also includes a prior juvenile adjudication that would have been a prior impaired driving conviction if committed by an adult.

**New language is indicated by underline, deletions by strikeout.**

~~(f)~~ (g) "Prior license revocation" has the meaning given it in section 169.121, subdivision 3.

(g) ~~(h)~~ "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred who is responsible for prosecuting violations of a designated offense.

Subd. 2. **SEIZURE.** A motor vehicle subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the vehicle. Property may be seized without process if:

- (1) the seizure is incident to a lawful arrest or a lawful search;
- (2) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or
- (3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the vehicle. If property is seized without process under this clause ~~(3)~~, the prosecuting authority must institute a forfeiture action under this section as soon as is reasonably possible.

Subd. 3. **RIGHT TO POSSESSION VESTS IMMEDIATELY; CUSTODY OF SEIZED VEHICLE.** All right, title, and interest in a vehicle subject to forfeiture under this section vests in the appropriate agency upon commission of the conduct resulting in the designated offense or designated license revocation giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When a vehicle is so seized, the appropriate agency may:

- (1) place the vehicle under seal;
- (2) remove the vehicle to a place designated by it;
- (3) place a disabling device on the vehicle; and
- (4) take other steps reasonable and necessary to secure the vehicle and prevent waste.

Subd. 4. **BOND BY OWNER FOR POSSESSION.** If the owner of a vehicle that has been seized under this section seeks possession of the vehicle before the forfeiture action is determined, the owner may, subject to the approval of the appropriate agency, give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized vehicle. On posting the security or bond, the seized vehicle may be returned to the owner only if a disabling device is attached to the vehicle. The forfeiture action shall proceed against the security as if it were the seized vehicle.

Subd. 5. **EVIDENCE.** Certified copies of court records and motor vehicle and driver's license records concerning prior impaired driving convictions and prior license revocations are admissible as substantive evidence where necessary to prove the commission of a designated offense or the occurrence of a designated license revocation.

Subd. 6. **MOTOR VEHICLES SUBJECT TO FORFEITURE.** A motor vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation.

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Subd. 7. **LIMITATIONS ON FORFEITURE OF MOTOR VEHICLES.** (a) A vehicle is subject to forfeiture under this section only if:

(1) the driver is convicted of the designated offense upon which the forfeiture is based; or

(2) the driver fails to appear with respect to the designated offense charge in violation of section 609.49; or

(3) the driver's conduct results in a designated license revocation and the driver either fails to seek administrative or judicial review of the revocation in a timely manner as required by section 169.123, subdivision 5b or 5c, or the revocation is sustained under section 169.123, subdivision 5b or 6.

(b) A vehicle encumbered by a bona fide security interest, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in a vehicle is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor took reasonable steps to terminate use of the vehicle by the offender.

(d) A motor vehicle is subject to forfeiture under this section only if its owner knew or should have known of the unlawful use or intended use.

(e) A vehicle subject to a security interest, based upon a loan or other financing arranged by a financial institution, is subject to the interest of the financial institution.

Subd. 7a. **ADMINISTRATIVE FORFEITURE PROCEDURE.** (a) A motor vehicle used to commit a designated offense or used in conduct resulting in a designated license revocation is subject to administrative forfeiture under this subdivision.

(b) When a motor vehicle is seized under subdivision 2, the appropriate agency shall serve the driver or operator of the vehicle with a notice of the seizure and intent to forfeit the vehicle. Additionally, when a motor vehicle is seized under subdivision 2, or within a reasonable time after that, all persons known to have an ownership or possessory interest in the vehicle must be notified of the seizure and the intent to forfeit the vehicle. Notice mailed by certified mail to the address shown in department of public safety records is sufficient notice to the registered owner of the vehicle. Otherwise, notice may be given in the manner provided by law for service of a summons in a civil action.

(c) The notice must be in writing and contain:

(1) a description of the vehicle seized;

(2) the date of seizure; and

(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review, printed in English, Hmong, and Spanish. Substantially the following language must appear conspicuously: "IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES, SEC-

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TION 169.1217, SUBDIVISION 7a, YOU LOSE THE RIGHT TO A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT YOU MAY HAVE TO THE ABOVE DESCRIBED PROPERTY. YOU MAY NOT HAVE TO PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU ARE UNABLE TO AFFORD THE FEE. YOU DO NOT HAVE TO PAY THE FILING FEE IF THE PROPERTY IS WORTH LESS THAN \$500 AND YOU FILE YOUR CLAIM IN CONCILIATION COURT."

(d) Within 30 days following service of a notice of seizure and forfeiture under this subdivision, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture, and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property is less than \$500, the claimant may file an action in conciliation court for recovery of the seized vehicle without paying the conciliation court filing fee. No responsive pleading is required of the prosecuting authority and no court fees may be charged for the prosecuting authority's appearance in the matter. Except as provided in this section, judicial reviews and hearings are governed by section 169.123, subdivisions 5c and 6, and shall take place at the same time as any judicial review of the person's license revocation under section 169.123. The proceedings may be combined with any hearing on a petition filed under section 169.123, subdivision 5c, and are governed by the rules of civil procedure.

(e) The complaint must be captioned in the name of the claimant as plaintiff and the seized vehicle as defendant, and must state with specificity the grounds on which the claimant alleges the vehicle was improperly seized and the plaintiff's interest in the vehicle seized. Notwithstanding any law to the contrary, an action for the return of a vehicle seized under this section may not be maintained by or on behalf of any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision.

(f) If the claimant makes a timely demand for a judicial determination under this subdivision, the appropriate agency must conduct the forfeiture under subdivision 8.

(g) If a demand for judicial determination of an administrative forfeiture is filed under this subdivision and the court orders the return of the seized vehicle, the court shall order that filing fees be reimbursed to the person who filed the demand. In addition, the court may order the payment of reasonable costs, expenses, and attorney fees under section 549.21, subdivision 2.

**Subd. 8. JUDICIAL FORFEITURE PROCEDURE.** (a) This subdivision governs judicial determinations of the forfeiture of a motor vehicle used to commit a designated offense is subject to forfeiture under this subdivision or used in conduct resulting in a designated license revocation.

(b) A separate complaint shall be filed against the vehicle, describing it, and specifying that it was used in the commission of a designated offense or was used in conduct resulting in a designated license revocation, and specifying the time and place of its unlawful use. If the forfeiture was based on the commission of a designated offense and the

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person charged with a the designated offense appears in court as required and is not convicted of the offense, the court shall dismiss the complaint against the vehicle and order the property returned to the person legally entitled to it. If the forfeiture is based on a designated license revocation, and the designated license revocation is rescinded under section 169.123, subdivision 5a or 6, the court shall dismiss the complaint against the vehicle and order the property returned to the person legally entitled to it. If the lawful ownership of the vehicle used in the commission of a designated offense or used in conduct resulting in a designated license revocation can be determined and it is found the owner was not privy to commission of a designated offense or was not privy to the conduct resulting in the designated license revocation, the vehicle shall be returned immediately.

Subd. 9. **DISPOSITION OF FORFEITED VEHICLES.** (a) If the vehicle is administratively forfeited under subdivision 7a, or if the court finds under subdivision 8 that the vehicle is subject to forfeiture under subdivisions 6 and 7, it shall order the appropriate agency to shall:

(1) sell the vehicle and distribute the proceeds under paragraph (b); or

(2) keep the vehicle for official use. If the agency keeps a forfeited motor vehicle for official use, it shall make reasonable efforts to ensure that the motor vehicle is available for use by the agency's officers who participate in the drug abuse resistance education program.

(b) The proceeds from the sale of forfeited vehicles, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be forwarded to the treasury of the political subdivision that employs the appropriate agency responsible for the forfeiture for use in DWI-related enforcement, training and education. If the appropriate agency is an agency of state government, the net proceeds must be forwarded to the state treasury and credited to the general fund.

(c) The proceeds from the sale of forfeited off-road recreational vehicles and motorboats, after payment of seizure, storage, forfeiture, and sale expenses, and satisfaction of valid liens against the property, must be forwarded to the state treasury and credited to the following funds:

(1) if the forfeited vehicle is a motorboat, the net proceeds must be credited to the water recreation account in the natural resources fund;

(2) if the forfeited vehicle is a snowmobile, the net proceeds must be credited to the snowmobile trails and enforcement account in the natural resources fund;

(3) if the forfeited vehicle is an all-terrain vehicle, the net proceeds must be credited to the all-terrain vehicle account in the natural resources fund;

(4) if the forfeited vehicle is an off-highway motorcycle, the net proceeds must be credited to the off-highway motorcycle account in the natural resources fund;

(5) if the forfeited vehicle is an off-road vehicle, the net proceeds must be credited to the off-road vehicle account in the natural resources fund; and

(6) if otherwise, the net proceeds must be credited to the general fund.

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Sec. 44. Minnesota Statutes 1996, section 169.1218, is amended to read:

**169.1218 UNDERAGE DRINKING AND DRIVING.**

(a) It is a misdemeanor for a person under the age of 21 years to drive or operate a motor vehicle while consuming alcoholic beverages, or after having consumed alcoholic beverages while there is physical evidence of the consumption present in the person's body.

(b) When a person is found to have committed an offense under paragraph (a), the court shall notify the commissioner of public safety of its determination. Upon receipt of the court's determination, the commissioner shall suspend the person's driver's license or operating privileges for 30 days, or for 180 days if the person has previously been found to have violated paragraph (a) or a statute or ordinance in conformity with paragraph (a).

(c) If the person's conduct violates section 169.121, subdivision 1 or 1a, or 169.1211, the penalties and license sanctions in those laws apply instead of the license sanction in paragraph (b).

(d) An offense under paragraph (a) may be prosecuted either in the jurisdiction where consumption occurs or the jurisdiction where evidence of consumption is observed.

Sec. 45. Minnesota Statutes 1996, section 169.123, subdivision 1, is amended to read:

Subdivision 1. **PEACE OFFICER DEFINED.** For purposes of this section, section 169.121, and section 169.1211, the term peace officer means (1) a state patrol officer, (2) University of Minnesota peace officer, (3) a constable as defined in section 367.40, subdivision 3, or (4) police officer of any municipality, including towns having powers under section 368.01, or county, and (5) for purposes of violations of those sections in or on an off-road recreational vehicle or motorboat, a state conservation officer.

Sec. 46. Minnesota Statutes 1996, section 169.123, subdivision 4, is amended to read:

Subd. 4. **REFUSAL; REVOCATION OF LICENSE.** (a) If a person refuses to permit a test, none shall be given, but the peace officer shall report the refusal to the commissioner of public safety and the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred. However, if a peace officer has probable cause to believe that the person has violated section 609.21, a test may be required and obtained despite the person's refusal. A refusal to submit to an alcohol concentration test does not constitute a violation of section 609.50, unless the refusal was accompanied by force or violence or the threat of force or violence.

(b) If a person submits to a test and, the results of that test shall be reported to the commissioner of public safety and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred, if the test results indicate:

(1) an alcohol concentration of 0.10 or more;

(2) an alcohol concentration of 0.04 or more, if the person was driving, operating, or in physical control of a commercial motor vehicle at the time of the violation; or

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(3) ~~the presence of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols, or if a person was driving, operating, or in physical control of a commercial motor vehicle and the test results indicate an alcohol concentration of 0.04 or more, the results of the test shall be reported to the commissioner of public safety and to the authority having responsibility for prosecution of misdemeanor offenses for the jurisdiction in which the acts occurred.~~

(c) Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and that the person refused to submit to a test, the commissioner of public safety shall revoke the person's license or permit to drive, or nonresident operating privilege, for a period of one year even if a test was obtained pursuant to this section after the person refused to submit to testing.

(d) Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a commercial motor vehicle with the presence of any alcohol in violation of section 169.121 or 169.1211, and that the person refused to submit to a test, the commissioner shall disqualify the person from operating a commercial motor vehicle for a period of one year under section 171.165 and shall revoke the person's license or permit to drive or nonresident operating privilege for a period of one year.

(e) Upon certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a motor vehicle in violation of section 169.121 and that the person submitted to a test and the test results indicate an alcohol concentration of 0.10 or more or the presence of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols,

then the commissioner of public safety shall revoke the person's license or permit to drive, or nonresident operating privilege:

- (1) for a period of 90 days; or
- (2) if the person is under the age of 21 years, for a period of six months; or
- (3) for a person with a prior impaired driving conviction or prior license revocation within the past five years, for a period of 180 days; or
- (4) if the test results indicate an alcohol concentration of 0.20 or more, for twice the applicable period in clauses (1) to (3).

(f) On certification by the peace officer that there existed probable cause to believe the person had been driving, operating, or in physical control of a commercial motor vehicle with any presence of alcohol and that the person submitted to a test and the test results indicated an alcohol concentration of 0.04 or more, the commissioner of public safety shall disqualify the person from operating a commercial motor vehicle under section 171.165.

(g) If the person is a resident without a license or permit to operate a motor vehicle in this state, the commissioner of public safety shall deny to the person the issuance of a license or permit for the same period after the date of the alleged violation as provided herein for revocation, subject to review as hereinafter provided.

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(h) As used in this subdivision, the terms "prior impaired driving conviction" and "prior license revocation" have the meanings given in section 169.121, subdivision 3, paragraph (a).

Sec. 47. Minnesota Statutes 1996, section 169.123, subdivision 5c, is amended to read:

Subd. 5c. **PETITION FOR JUDICIAL REVIEW.** (a) Within 30 days following receipt of a notice and order of revocation or disqualification pursuant to this section, a person may petition the court for review. The petition shall be filed with the district court administrator in the county where the alleged offense occurred, together with proof of service of a copy on the commissioner of public safety, and accompanied by the standard filing fee for civil actions. No responsive pleading shall be required of the commissioner of public safety, and no court fees shall be charged for the appearance of the commissioner of public safety in the matter.

(b) The petition shall must:

(1) be captioned in the full name of the person making the petition as petitioner and the commissioner of public safety as respondent. ~~The petition must;~~

(2) include the petitioner's date of birth, driver's license number, and date of the offense. ~~The petition shall;~~ and

(3) state with specificity the grounds upon which the petitioner seeks rescission of the order of revocation, disqualification, or denial and state the facts underlying each claim asserted.

(c) The filing of the petition shall not stay the revocation, disqualification, or denial. The reviewing court may order a stay of the balance of the revocation or disqualification if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper.

(d) Judicial reviews shall be conducted according to the rules of civil procedure except that prehearing discovery is mandatory and is limited to:

(1) the notice of revocation;

(2) the test record, or in the case of blood or urine tests, the certificate of analysis;

(3) the peace officer's certificate and any accompanying documentation submitted by the arresting officer to the commissioner of public safety; and

(4) disclosure of potential witnesses, including experts, and the basis of their testimony.

Other types of discovery are not available.

Sec. 48. Minnesota Statutes 1996, section 169.123, subdivision 6, is amended to read:

Subd. 6. **HEARING.** (a) A hearing under this section shall be before a district judge in any county in the judicial district where the alleged offense occurred. The hearing shall be to the court and may be conducted at the same time and in the same manner as hearings

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upon pretrial motions in the criminal prosecution under section 169.121, if any. The hearing shall be recorded. The commissioner of public safety shall appear and be represented by the attorney general or through the prosecuting authority for the jurisdiction involved. The hearing shall be held at the earliest practicable date, and in any event no later than 60 days following the filing of the petition for review. The judicial district administrator shall establish procedures to ensure efficient compliance with this subdivision. To accomplish this, the administrator may, whenever possible, consolidate and transfer review hearings among the county courts within the judicial district.

(b) The scope of the hearing shall be limited to the issues in clauses (1) to (9) (10):

(1) Did the peace officer have probable cause to believe the person was driving, operating, or in physical control of:

(i) a motor vehicle in violation of section 169.121; or

(ii) a commercial motor vehicle in violation of section 169.1211?

(2) Was the person lawfully placed under arrest for violation of section 169.121 or 169.1211?

(3) Was the person involved in a motor vehicle accident or collision resulting in property damage, personal injury, or death?

(4) Did the person refuse to take a screening test provided for by section 169.121, subdivision 6?

(5) If the screening test was administered, did the test indicate an alcohol concentration of 0.10 or more?

(6) At the time of the request for the test, did the peace officer inform the person of the person's rights and the consequences of taking or refusing the test as required by subdivision 2?

(7) Did the person refuse to permit the test?

(8) If a test was taken:

(i) by a person driving, operating, or in physical control of a motor vehicle, did the test results indicate at the time of testing:

(i) an alcohol concentration of 0.10 or more at the time of testing; or

(ii) the presence of a controlled substance listed in schedule I or II, other than marijuana or tetrahydrocannabinols; ~~or~~?

~~(ii)~~ (9) If a test was taken by a person driving, operating, or in physical control of a commercial motor vehicle, did the test results indicate an alcohol concentration of 0.04 or more at the time of testing?

(9) (10) Was the testing method used valid and reliable and were the test results accurately evaluated?

(c) It shall be an affirmative defense for the petitioner to prove that, at the time of the refusal, the petitioner's refusal to permit the test was based upon reasonable grounds.

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(d) Certified or otherwise authenticated copies of laboratory or medical personnel reports, records, documents, licenses, and certificates shall be admissible as substantive evidence.

(e) The court shall order that the revocation or disqualification be either rescinded or sustained and forward the order to the commissioner of public safety. The court shall file its order within 14 days following the hearing. If the revocation or disqualification is sustained, the court shall also forward the person's driver's license or permit to the commissioner of public safety for further action by the commissioner of public safety if the license or permit is not already in the commissioner's possession.

Sec. 49. Minnesota Statutes 1996, section 169.126, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENT; FORM.** A chemical use assessment shall be conducted and an assessment report submitted to the court and to the department of public safety by the county agency administering the alcohol safety program when:

(a) The defendant is convicted of an offense described in section 169.121 or 169.1211, 169.129, or 360.0752; or

(b) The defendant is arrested for committing an offense described in section 169.121 or 169.129 but is convicted of another offense arising out of the circumstances surrounding the arrest.

Sec. 50. Minnesota Statutes 1996, section 169.1261, is amended to read:

**169.1261 REINSTATEMENT OF DRIVING PRIVILEGES; NOTICE.**

Upon expiration of a period of revocation under section 169.121 or 169.123, the commissioner of public safety shall notify the person of the terms upon which driving privileges can be reinstated, and new registration plates issued, which terms are: (1) successful completion of a driving test an examination and proof of compliance with any terms of alcohol treatment or counseling previously prescribed, if any; and (2) any other requirements imposed by the commissioner and applicable to that particular case. The commissioner shall notify the owner of a motor vehicle subject to an impoundment order under section 168.041 as a result of the violation of the procedures for obtaining new registration plates, if the owner is not the violator. The commissioner shall also notify the person that if driving is resumed without reinstatement of driving privileges or without valid registration plates and registration certificate, the person will be subject to criminal penalties.

Sec. 51. Minnesota Statutes 1996, section 169.129, is amended to read:

**169.129 AGGRAVATED VIOLATIONS; PENALTY.**

Subdivision 1. **CRIME.** It is a crime for any person is guilty of a gross misdemeanor who drives, operates, or is to drive, operate, or be in physical control of a motor vehicle, the operation of which requires a driver's license, within this state or upon the ice of any boundary water of this state in violation of section 169.121 or an ordinance in conformity with it before the person's driver's license or driver's driving privilege has been reinstated following its cancellation, suspension, revocation, disqualification, or denial under any of the following:

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(1) section 169.121, 169.1211, or 169.123;

(2) section 171.04, 171.14, 171.16, 171.17, or 171.18 because of an alcohol-related incident;

(3) section 609.21, subdivision 1, clauses (2) to (6); ~~609.21~~, subdivision 2, clauses (2) to (6); ~~609.21~~, subdivision 2a, clauses (2) to (6); ~~609.21~~, subdivision 2b, clauses (2) to (6); ~~609.21~~, subdivision 3, clauses (2) to (6); or ~~609.21~~, subdivision 4, clauses (2) to (6).

**Subd. 2. PENALTIES.** (a) Except as otherwise provided in paragraph (b), a person who violates subdivision 1 is guilty of a gross misdemeanor.

(b) A person is guilty of an enhanced gross misdemeanor and may be sentenced to imprisonment in a local correctional facility for not more than two years or to payment of a fine of not more than \$3,000, or both, if the person violates subdivision 1 and the person's driver's license or driving privilege has been suspended, revoked, canceled, denied, or disqualified two or more times within the past ten years under any of the statutes listed in subdivision 1. A person convicted of an enhanced gross misdemeanor under this paragraph is subject to the applicable mandatory penalties provided in section 169.121, subdivision 3d.

**Subd. 3. PROSECUTION.** The attorney in the jurisdiction in which the violation of this section occurred who is responsible for prosecution of misdemeanor violations of section 169.121 shall also be responsible for prosecution of violations of this section.

Sec. 52. Minnesota Statutes 1996, section 171.07, is amended by adding a subdivision to read:

**Subd. 12. SNOWMOBILE SAFETY CERTIFICATE.** (a) The department shall maintain in its records information transmitted electronically from the commissioner of natural resources identifying each person whom the commissioner has issued a snowmobile safety certificate.

(b) After receiving information under paragraph (a) that a person has received a snowmobile safety certificate, the department shall include, on all drivers' licenses or Minnesota identification cards subsequently issued to the person, a graphic or written indication that the person has received the certificate.

(c) If a person who has received a snowmobile safety certificate applies for a driver's license or Minnesota identification card before that information has been transmitted to the department, the department may accept a copy of the certificate as proof of its issuance and shall then follow the procedures in paragraph (b).

Sec. 53. Minnesota Statutes 1996, section 171.12, is amended by adding a subdivision to read:

**Subd. 2a. ALCOHOL CONCENTRATION ON DRIVING RECORD.** When a person's driver's license or permit to drive is revoked or suspended pursuant to section 169.123, or when a person is convicted for violating section 169.121, 169.1211, 169.1218, 169.129, 360.0752, or 609.21, and a test of the person's breath, urine, or blood has been made to determine the person's alcohol concentration, the commissioner of public safety shall record the test results on the person's driving record pertaining to that violation. The alcohol concentration is classified as public data on individuals, as defined

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in section 13.02, subdivision 15, and must be kept for the period of time specified in subdivision 3, clause (2).

Sec. 54. Minnesota Statutes 1996, section 171.19, as amended by Laws 1997, chapter 245, article 1, section 2, is amended to read:

**171.19 PETITION FOR LICENSE REINSTATEMENT.**

Any person whose driver's license has been refused, revoked, suspended, or canceled, or disqualified by the commissioner, except where the license is revoked or disqualified under section 169.123 or section 171.186, may file a petition for a hearing in the matter in the district court in the county wherein such person shall reside and, in the case of a nonresident, in the district court in any county, and such court is hereby vested with jurisdiction, and it shall be its duty, to set the matter for hearing upon 15 days' written notice to the commissioner, and thereupon to take testimony and examine into the facts of the case to determine whether the petitioner is entitled to a license or is subject to revocation, suspension, cancellation, disqualification, or refusal of license, and shall render judgment accordingly. The petition shall be heard by the court without a jury and may be heard in or out of term. The commissioner may appear in person, or by agents or representatives, and may present evidence upon the hearing by affidavit personally, by agents, or by representatives. The petitioner may present evidence by affidavit, except that the petitioner must be present in person at such hearing for the purpose of cross-examination. In the event the department shall be sustained in these proceedings, the petitioner shall have no further right to make further petition to any court for the purpose of obtaining a driver's license until after the expiration of one year after the date of such hearing.

Sec. 55. Minnesota Statutes 1996, section 171.20, subdivision 4, is amended to read:

Subd. 4. **REINSTATEMENT FEE.** Before the license is reinstated, a person whose driver's license has been suspended under section 171.16, subdivision 2; 171.18, except subdivision 1, clause (10); or 171.182, or who has been disqualified from holding a commercial driver's license under section 171.165 must pay a \$20 fee before the license is reinstated of \$25 until June 30, 1999, and \$20 thereafter. When this fee is collected by a county-operated office of deputy registrar, a \$3.50 handling charge is imposed. The handling charge must be deposited in the treasury of the place for which the deputy registrar was appointed and the \$20 reinstatement fee must be deposited in an approved state depository as directed under section 168.33, subdivision 2. A suspension may be rescinded without fee for good cause.

Sec. 56. Minnesota Statutes 1996, section 171.30, is amended by adding a subdivision to read:

Subd. 2c. **EXTENDED WAITING PERIOD.** If a person's license or privilege has been revoked or suspended for a violation of section 169.121 or 169.123, or a statute or ordinance from another state in conformity with either of those sections, and the person's alcohol concentration was 0.20 or greater at the time of the violation, a limited license may not be issued for a period of time equal to twice the time period specified in subdivision 2a or 2b.

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Sec. 57. Minnesota Statutes 1996, section 340A.503, subdivision 2, is amended to read:

Subd. 2. **PURCHASING.** It is unlawful for any person:

(1) to sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age;

(2) under the age of 21 years to purchase or attempt to purchase any alcoholic beverage unless under the supervision of a responsible person over the age of 21 for training, education, or research purposes. Prior notification of the licensing authority is required unless the supervised alcohol purchase attempt is for professional research conducted by post-secondary educational institutions or state, county, or local health departments; or

(3) to induce a person under the age of 21 years to purchase or procure any alcoholic beverage, or to lend or knowingly permit the use of the person's driver's license, permit, Minnesota identification card, or other form of identification by a person under the age of 21 years for the purpose of purchasing or attempting to purchase an alcoholic beverage.

If proven by a preponderance of the evidence, it shall be an affirmative defense to a violation of clause (1) that the defendant is the parent or guardian of the person under 21 years of age and that the defendant gave or furnished the alcoholic beverage to that person solely for consumption in the defendant's household.

Sec. 58. Minnesota Statutes 1996, section 364.09, as amended by Laws 1997, chapter 248, section 44, is amended to read:

#### 364.09 EXCEPTIONS.

(a) This chapter does not apply to the licensing process for peace officers; to law enforcement agencies as defined in section 626.84, subdivision 1, paragraph (h); to fire protection agencies; to eligibility for a private detective or protective agent license; to the licensing and background study process under chapter 245A; to eligibility for school bus driver endorsements; or to eligibility for special transportation service endorsements; or to eligibility for a commercial driver training instructor license, which is governed by section 171.35 and rules adopted under that section. This chapter also shall not apply to eligibility for juvenile corrections employment, where the offense involved child physical or sexual abuse or criminal sexual conduct.

(b) This chapter does not apply to a school district or to eligibility for a license issued or renewed by the board of teaching or the state board of education.

(c) Nothing in this section precludes the Minnesota police and peace officers training board or the state fire marshal from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement or fire protection agencies.

(d) This chapter does not apply to a license to practice medicine that has been denied or revoked by the board of medical practice pursuant to section 147.091, subdivision 1a.

Sec. 59. Minnesota Statutes 1996, section 609.02, subdivision 2, is amended to read:

Subd. 2. **FELONY.** "Felony" means a crime, other than an enhanced gross misdemeanor, for which a sentence of imprisonment for more than one year may be imposed.

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Sec. 60. Minnesota Statutes 1996, section 609.02, is amended by adding a subdivision to read:

Subd. 2a. ENHANCED GROSS MISDEMEANOR. "Enhanced gross misdemeanor" means a crime for which a sentence of not more than two years imprisonment in a correctional facility or a fine of not more than \$3,000, or both, may be imposed.

Sec. 61. Minnesota Statutes 1996, section 609.105, is amended to read:

**609.105 SENTENCE OF IMPRISONMENT.**

Subdivision 1. Except as otherwise provided in subdivision 3, a sentence to imprisonment for more than one year shall commit the defendant to the custody of the commissioner of corrections.

Subd. 2. The commissioner of corrections shall determine the place of confinement in a prison, reformatory, or other facility of the department of corrections established by law for the confinement of convicted persons and prescribe reasonable conditions and rules for their employment, conduct, instruction, and discipline within or without the facility.

Subd. 3. A sentence to imprisonment for an enhanced gross misdemeanor or for a period of one year or any lesser period shall be to a workhouse, work farm, county jail, or other place authorized by law.

Sec. 62. Minnesota Statutes 1996, section 609.135, subdivision 2, as amended by Laws 1997, chapter 239, article 5, section 9, is amended to read:

Subd. 2. **STAY OF SENTENCE MAXIMUM PERIODS.** (a) If the conviction is for a felony the stay shall be for not more than four years or the maximum period for which the sentence of imprisonment might have been imposed, whichever is longer.

(b) If the conviction is for an enhanced gross misdemeanor violation of section 169.121 or 169.129, the stay shall be for not more than six years. The court shall provide for unsupervised probation for the last year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last year.

(c) If the conviction is for a gross misdemeanor violation of section 169.121 or 169.129, the stay shall be for not more than four years. The court shall provide for unsupervised probation for the last one year of the stay unless the court finds that the defendant needs supervised probation for all or part of the last one year.

(e) ~~(d)~~ If the conviction is for a gross misdemeanor not specified in paragraph ~~(b)~~ (c), the stay shall be for not more than two years.

~~(d)~~ (e) If the conviction is for any misdemeanor under section 169.121; 609.746, subdivision 1; 609.79; or 617.23; or for a misdemeanor under section 609.2242 or 609.224, subdivision 1, in which the victim of the crime was a family or household member as defined in section 518B.01, the stay shall be for not more than two years. The court shall provide for unsupervised probation for the second year of the stay unless the court finds that the defendant needs supervised probation for all or part of the second year.

New language is indicated by underline, deletions by ~~strikeout~~.

~~(e)~~ (f) If the conviction is for a misdemeanor not specified in paragraph ~~(d)~~ (e), the stay shall be for not more than one year.

~~(f)~~ (g) The defendant shall be discharged six months after the term of the stay expires, unless the stay has been revoked or extended under paragraph (g) or (h), or the defendant has already been discharged.

~~(g)~~ (h) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to ~~(f)~~ (g), a court may extend a defendant's term of probation for up to one year if it finds, at a hearing conducted under subdivision 1a, that:

(1) the defendant has not paid court-ordered restitution or a fine in accordance with the payment schedule or structure; and

(2) the defendant is likely to not pay the restitution or fine the defendant owes before the term of probation expires.

This one-year extension of probation for failure to pay restitution or a fine may be extended by the court for up to one additional year if the court finds, at another hearing conducted under subdivision 1a, that the defendant still has not paid the court-ordered restitution or fine that the defendant owes.

(h) Notwithstanding the maximum periods specified for stays of sentences under paragraphs (a) to ~~(f)~~ (g), a court may extend a defendant's term of probation for up to three years if it finds, at a hearing conducted under subdivision 1c, that:

(1) the defendant has failed to complete court-ordered treatment successfully; and

(2) the defendant is likely not to complete court-ordered treatment before the term of probation expires.

Sec. 63. Minnesota Statutes 1996, section 609.15, subdivision 2, is amended to read:

Subd. 2. **LIMIT ON SENTENCES; MISDEMEANOR AND GROSS MISDEMEANOR.** If the court specifies that the sentence shall run consecutively and all of the sentences are for misdemeanors, the total of the sentences shall not exceed one year. If the sentences are for a gross misdemeanor or enhanced gross misdemeanor and one or more misdemeanors, the total of the sentences shall not exceed two years. If all of the sentences are for gross misdemeanors and enhanced gross misdemeanors, the total of the sentences shall not exceed four years.

Sec. 64. Minnesota Statutes 1996, section 609.487, is amended by adding a subdivision to read:

Subd. 2a. **MOTOR VEHICLE; DEFINITION.** "Motor vehicle" has the meaning given in section 169.01, subdivision 3, and includes off-road recreational vehicles as defined in section 169.01, subdivision 86, and motorboats as defined in section 169.01, subdivision 87.

Sec. 65. Minnesota Statutes 1996, section 634.15, subdivision 2, is amended to read:

New language is indicated by underline, deletions by ~~strikeout~~.

Subd. 2. **TESTIMONY AT TRIAL.** Except in civil proceedings, including proceedings under section 169.123, an accused person or the accused person's attorney may request, by notifying the prosecuting attorney at least ten days before the trial, that the following persons testify in person at the trial on behalf of the state:

(a) A person who performed the laboratory analysis or examination for the report described in subdivision 1, clause (a); or

(b) A person who prepared the blood sample report described in subdivision 1, clause (b).

If a petitioner in a proceeding under section 169.123 subpoenas a person described in paragraph (a) or (b) to testify at the proceeding, the petitioner is not required to pay the person witness fees under section 357.22 in excess of \$100.

#### Sec. 66. **PUBLIC AWARENESS CAMPAIGN.**

The commissioner of public safety shall implement a public awareness campaign to educate the public on the vehicle forfeiture law under Minnesota Statutes, section 169.1217, and the administrative plate impoundment law under Minnesota Statutes, section 168.042.

This campaign must focus on increasing the public's understanding of these laws, specifically the offenses that the laws cover and the time periods in which the offenses must occur to result in impoundment or forfeiture.

The commissioner may conduct the campaign by including information in future editions of the driver's manual and using public service announcements, advertisements, and any other methods deemed appropriate by the commissioner. The commissioner shall attempt to maximize the use of innovative methods to conduct the campaign.

#### Sec. 67. **REVISOR'S INSTRUCTION.**

In each section of Minnesota Statutes referred to in column A, the revisor of statutes shall delete the reference in column B, and insert the reference in column C.

<u>Column A</u>	<u>Column B</u>	<u>Column C</u>
<u>84.83</u>	<u>84.912</u>	<u>169.1217</u>
<u>84.927</u>	<u>84.912</u>	<u>169.1217</u>
<u>86B.305</u>	<u>86B.331</u>	<u>169.121</u>
<u>86B.811</u>	<u>86B.331</u>	<u>169.121</u>
<u>97B.065</u>	<u>86B.331, subd. 4</u>	<u>169.121, subd. 2</u>
<u>97B.066</u>	<u>86B.335, subds.</u>	<u>169.123, subds.</u>
	<u>8, 9, and 10</u>	<u>2b, 2c, and 3</u>

#### Sec. 68. **APPROPRIATIONS.**

Subdivision 1. **PUBLIC SAFETY.** \$65,000 for the fiscal year ending June 30, 1998, and \$38,000 for the fiscal year ending June 30, 1999, is appropriated from the trunk highway fund to the commissioner of public safety for costs associated with this act.

Subd. 2. **ATTORNEY GENERAL.** \$19,000 for the fiscal year ending June 30, 1998 and \$38,000 for the fiscal year ending June 30, 1999 is appropriated from the general fund to the attorney general for costs associated with this act.

New language is indicated by underline, deletions by strikeout.

**Sec. 69. REPEALER.**

Minnesota Statutes 1996, sections 84.873; 84.91, subdivisions 2, 3, 4, 5, 5a, 6, 7, and 8; 84.911, subdivisions 1, 2, 3, 4, 5, and 6; 84.912; 84.9254; 86B.331, subdivisions 2, 3, 4, 5, 5a, 6, 7, and 8; 86B.335, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12; 86B.337; 97B.066, subdivision 6; and 169.121, subdivision 3a, are repealed.

**Sec. 70. EFFECTIVE DATE.**

Section 57 is effective August 1, 1997. Sections 1 to 18, 20 to 54, 56, 58 to 67, and 69 are effective January 1, 1998, and apply to violations occurring on or after that date. However, violations occurring before January 1, 1998, which are listed in Minnesota Statutes, section 169.121, subdivision 3, paragraph (a), are considered prior impaired driving convictions or prior license revocations for purposes of: determining conditional release, long-term monitoring, criminal penalties, sentencing, and administrative licensing sanctions for a person charged for or convicted of a violation occurring on or after January 1, 1998.

Sections 19 and 55 are effective July 1, 1997, and apply to vehicle registrations and driver's license reinstatements, respectively, occurring on or after that date.

Repeal of civil penalty payment and enforcement provisions in Minnesota Statutes, sections 84.911 and 86B.335, applies only to refusals occurring on or after January 1, 1998.

Presented to the governor June 27, 1997

Signed by the governor June 30, 1997, 9:43 a.m.

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**CHAPTER 3—S.F.No. 7**

*An act relating to government data practices; classifying data; making certain welfare and housing data available to law enforcement agencies; classifying data on individuals who receive homeless services; eliminating the requirement that government agencies pay a fee for commissioner's opinions; modifying school immunization and health record provisions; modifying patient consent to release of records for research; requiring notice of investigations to health board licensees; providing for juvenile justice system access to certain education data; providing for disclosure or inspection of certain tax data or return information; limiting disclosure of certain tax data under subpoena; indexing statutes that restrict data access and are located outside chapter 13; providing criminal penalties; amending Minnesota Statutes 1996, sections 13.32, subdivisions 1, 3, and by adding a subdivision; 13.41, subdivision 2; 13.46, subdivision 2; 13.54, by adding a subdivision; 13.99, subdivision 53b, and by adding subdivisions; 53A.081, by adding a subdivision; 123.70, subdivisions 5, 7, and 10; 144.29; 144.335, subdivision 3a; 214.10, subdivision 1; 260.161, by adding a subdivision; 270.66, subdivision 3; 270B.01, subdivision 8, as amended; 270B.03, subdivisions 1, 3, and 4; 270B.08, subdivision 1; 270B.085, subdivision 1; 270B.09; 270B.12, subdivision 7; 270B.14, subdivision 1, and by adding subdivisions; 270B.16; 287.34; and 626.556, subdivision 11; propos-*

**New language is indicated by underline, deletions by ~~strikeout~~.**