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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1995**

March 23, 2009

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The bill was read for the first time and referred to the Committee on Public Safety Policy and Oversight

1.1 A bill for an act
1.2 relating to public safety; driving while impaired; reducing from .04 to .03 the
1.3 per se alcohol concentration limit for commercial driving; amending Minnesota
1.4 Statutes 2008, sections 169A.20, subdivision 1; 169A.52, subdivisions 2, 4, 7;
1.5 169A.53, subdivision 3.

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

1.7 Section 1. Minnesota Statutes 2008, section 169A.20, subdivision 1, is amended to
1.8 read:

1.9 Subdivision 1. **Driving while impaired crime.** It is a crime for any person to
1.10 drive, operate, or be in physical control of any motor vehicle within this state or on any
1.11 boundary water of this state:

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

1.13 (2) when the person is under the influence of a controlled substance;

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

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

1.19 (5) when the person's alcohol concentration at the time, or as measured within
1.20 two hours of the time, of driving, operating, or being in physical control of the motor
1.21 vehicle is 0.08 or more;

1.22 (6) when the vehicle is a commercial motor vehicle and the person's alcohol
1.23 concentration at the time, or as measured within two hours of the time, of driving,
1.24 operating, or being in physical control of the commercial motor vehicle is ~~0.04~~ 0.03 or
1.25 more; or

2.1 (7) when the person's body contains any amount of a controlled substance listed in
2.2 schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.

2.3 Sec. 2. Minnesota Statutes 2008, section 169A.52, subdivision 2, is amended to read:

2.4 Subd. 2. **Reporting test failure.** (a) If a person submits to a test, the results of that
2.5 test must be reported to the commissioner and to the authority having responsibility for
2.6 prosecution of impaired driving offenses for the jurisdiction in which the acts occurred, if
2.7 the test results indicate:

2.8 (1) an alcohol concentration of 0.08 or more;

2.9 (2) an alcohol concentration of ~~0.04~~ 0.03 or more, if the person was driving,
2.10 operating, or in physical control of a commercial motor vehicle at the time of the violation;
2.11 or

2.12 (3) the presence of a controlled substance listed in schedule I or II or its metabolite,
2.13 other than marijuana or tetrahydrocannabinols.

2.14 (b) If a person submits to a test and the test results indicate the presence of a
2.15 hazardous substance, the results of that test must be reported to the authority having
2.16 responsibility for prosecution of impaired driving offenses for the jurisdiction in which the
2.17 acts occurred.

2.18 Sec. 3. Minnesota Statutes 2008, section 169A.52, subdivision 4, is amended to read:

2.19 Subd. 4. **Test failure; license revocation.** (a) Upon certification by the peace
2.20 officer that there existed probable cause to believe the person had been driving, operating,
2.21 or in physical control of a motor vehicle in violation of section 169A.20 (driving
2.22 while impaired) and that the person submitted to a test and the test results indicate an
2.23 alcohol concentration of 0.08 or more or the presence of a controlled substance listed in
2.24 schedule I or II or its metabolite, other than marijuana or tetrahydrocannabinols, then
2.25 the commissioner shall revoke the person's license or permit to drive, or nonresident
2.26 operating privilege:

2.27 (1) for a period of 90 days;

2.28 (2) if the person is under the age of 21 years, for a period of six months;

2.29 (3) for a person with a qualified prior impaired driving incident within the past ten
2.30 years, for a period of 180 days; or

2.31 (4) if the test results indicate an alcohol concentration of 0.20 or more, for twice
2.32 the applicable period in clauses (1) to (3).

2.33 (b) On certification by the peace officer that there existed probable cause to believe
2.34 the person had been driving, operating, or in physical control of a commercial motor

3.1 vehicle with any presence of alcohol and that the person submitted to a test and the test
 3.2 results indicated an alcohol concentration of ~~0.04~~ 0.03 or more, the commissioner shall
 3.3 disqualify the person from operating a commercial motor vehicle under section 171.165
 3.4 (commercial driver's license disqualification).

3.5 (c) If the test is of a person's blood or urine by a laboratory operated by the Bureau
 3.6 of Criminal Apprehension, or authorized by the bureau to conduct the analysis of a blood
 3.7 or urine sample, the laboratory may directly certify to the commissioner the test results,
 3.8 and the peace officer shall certify to the commissioner that there existed probable cause to
 3.9 believe the person had been driving, operating, or in physical control of a motor vehicle
 3.10 in violation of section 169A.20 and that the person submitted to a test. Upon receipt
 3.11 of both certifications, the commissioner shall undertake the license actions described
 3.12 in paragraphs (a) and (b).

3.13 Sec. 4. Minnesota Statutes 2008, section 169A.52, subdivision 7, is amended to read:

3.14 Subd. 7. **Test refusal; driving privilege lost.** (a) On behalf of the commissioner,
 3.15 a peace officer requiring a test or directing the administration of a chemical test shall
 3.16 serve immediate notice of intention to revoke and of revocation on a person who refuses
 3.17 to permit a test or on a person who submits to a test the results of which indicate an
 3.18 alcohol concentration of 0.08 or more.

3.19 (b) On behalf of the commissioner, a peace officer requiring a test or directing the
 3.20 administration of a chemical test of a person driving, operating, or in physical control of a
 3.21 commercial motor vehicle shall serve immediate notice of intention to disqualify and of
 3.22 disqualification on a person who refuses to permit a test, or on a person who submits to a
 3.23 test the results of which indicate an alcohol concentration of ~~0.04~~ 0.03 or more.

3.24 (c) The officer shall:

3.25 (1) invalidate the person's driver's license or permit card by clipping the upper
 3.26 corner of the card in such a way that no identifying information including the photo is
 3.27 destroyed, and immediately return the card to the person;

3.28 (2) issue the person a temporary license effective for only seven days; and

3.29 (3) send the notification of this action to the commissioner along with the certificate
 3.30 required by subdivision 3 or 4.

3.31 Sec. 5. Minnesota Statutes 2008, section 169A.53, subdivision 3, is amended to read:

3.32 Subd. 3. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing
 3.33 under this section must be before a district judge in any county in the judicial district
 3.34 where the alleged offense occurred. The hearing is to the court and may be conducted at

4.1 the same time and in the same manner as hearings upon pretrial motions in the criminal
4.2 prosecution under section 169A.20 (driving while impaired), if any. The hearing must be
4.3 recorded. The commissioner shall appear and be represented by the attorney general or
4.4 through the prosecuting authority for the jurisdiction involved. The hearing must be held
4.5 at the earliest practicable date, and in any event no later than 60 days following the filing
4.6 of the petition for review. The judicial district administrator shall establish procedures to
4.7 ensure efficient compliance with this subdivision. To accomplish this, the administrator
4.8 may, whenever possible, consolidate and transfer review hearings among the locations
4.9 within the judicial district where terms of district court are held.

4.10 (b) The scope of the hearing is limited to the issues in clauses (1) to (10):

4.11 (1) Did the peace officer have probable cause to believe the person was driving,
4.12 operating, or in physical control of a motor vehicle or commercial motor vehicle in
4.13 violation of section 169A.20 (driving while impaired)?

4.14 (2) Was the person lawfully placed under arrest for violation of section 169A.20?

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

4.17 (4) Did the person refuse to take a screening test provided for by section 169A.41
4.18 (preliminary screening test)?

4.19 (5) If the screening test was administered, did the test indicate an alcohol
4.20 concentration of 0.08 or more?

4.21 (6) At the time of the request for the test, did the peace officer inform the person
4.22 of the person's rights and the consequences of taking or refusing the test as required by
4.23 section 169A.51, subdivision 2?

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

4.25 (8) If a test was taken by a person driving, operating, or in physical control of a
4.26 motor vehicle, did the test results indicate at the time of testing:

4.27 (i) an alcohol concentration of 0.08 or more; or

4.28 (ii) the presence of a controlled substance listed in schedule I or II or its metabolite,
4.29 other than marijuana or tetrahydrocannabinols?

4.30 (9) If a test was taken by a person driving, operating, or in physical control of a
4.31 commercial motor vehicle, did the test results indicate an alcohol concentration of ~~0.04~~
4.32 0.03 or more at the time of testing?

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

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

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

5.4 (e) The court shall order that the revocation or disqualification be either rescinded or
5.5 sustained and forward the order to the commissioner. The court shall file its order within
5.6 14 days following the hearing. If the revocation or disqualification is sustained, the court
5.7 shall also forward the person's driver's license or permit to the commissioner for further
5.8 action by the commissioner if the license or permit is not already in the commissioner's
5.9 possession.

5.10 (f) Any party aggrieved by the decision of the reviewing court may appeal the
5.11 decision as provided in the Rules of Appellate Procedure.

5.12 (g) The civil hearing under this section shall not give rise to an estoppel on any
5.13 issues arising from the same set of circumstances in any criminal prosecution.

5.14 Sec. 6. **EFFECTIVE DATE.**

5.15 Sections 1 to 5 are effective August 1, 2009, for driving incidents occurring on or
5.16 after that date.