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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **3479**

March 8, 2010

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

March 15, 2010

Committee Recommendation and Adoption of Report:

To Pass and re-referred to the Committee on State and Local Government Operations Reform, Technology and Elections

1.1 A bill for an act
1.2 relating to public safety; authorizing the Office of Administrative Hearings to
1.3 review driver's license revocation or disqualification and motor vehicle plate
1.4 impoundment resulting from implied consent violations; amending Minnesota
1.5 Statutes 2008, sections 169A.52, subdivision 6; 169A.53; 169A.60, subdivision
1.6 10; proposing coding for new law in Minnesota Statutes, chapter 357.

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

1.8 Section 1. Minnesota Statutes 2008, section 169A.52, subdivision 6, is amended to
1.9 read:

1.10 Subd. 6. **Notice of revocation or disqualification; review.** A revocation under
1.11 this section or a disqualification under section 171.165 (commercial driver's license
1.12 disqualification) becomes effective at the time the commissioner or a peace officer acting
1.13 on behalf of the commissioner notifies the person of the intention to revoke, disqualify, or
1.14 both, and of revocation or disqualification. The notice must advise the person of the right
1.15 to obtain ~~administrative and judicial~~ review by the commissioner and an administrative
1.16 hearing review as provided in section 169A.53 (administrative ~~and judicial~~ review of
1.17 license revocation). If mailed, the notice and order of revocation or disqualification is
1.18 deemed received three days after mailing to the last known address of the person.

1.19 **EFFECTIVE DATE.** This section is effective January 1, 2011.

1.20 Sec. 2. Minnesota Statutes 2008, section 169A.53, is amended to read:

1.21 **169A.53 COMMISSIONER REVIEW AND ADMINISTRATIVE AND**
1.22 **JUDICIAL HEARING REVIEW OF LICENSE REVOCATION; APPEAL.**

2.1 Subdivision 1. ~~Administrative~~ Commissioner review. (a) At any time during a
2.2 period of revocation imposed under section 169A.52 (revocation of license for test failure
2.3 or refusal) or a period of disqualification imposed under section 171.165 (commercial
2.4 driver's license disqualification), a person may request in writing a review of the order
2.5 of revocation or disqualification by the commissioner, unless the person is entitled to
2.6 review under section 171.166 (review of disqualification). Upon receiving a request the
2.7 commissioner or the commissioner's designee shall review the order, the evidence upon
2.8 which the order was based, and any other material information brought to the attention
2.9 of the commissioner, and determine whether sufficient cause exists to sustain the order.
2.10 Within 15 days of receiving the request the commissioner shall report in writing the results
2.11 of the review. The review provided in this subdivision is not subject to the contested case
2.12 provisions of the Administrative Procedure Act in sections 14.001 to 14.69.

2.13 (b) The availability of administrative review for an order of revocation or
2.14 disqualification has no effect upon the availability of ~~judicial~~ an administrative review
2.15 hearing under this section.

2.16 (c) Review under this subdivision must take place, if possible, at the same time as
2.17 any administrative review of the person's impoundment order under section 169A.60,
2.18 subdivision 9.

2.19 Subd. 2. ~~Petition for judicial~~ administrative review hearing. (a) Notwithstanding
2.20 section 14.57 and other law to the contrary, within 30 days following receipt of a notice
2.21 and order of revocation or disqualification pursuant to section 169A.52 (revocation of
2.22 license for test failure or refusal), a person may petition the ~~court~~ Office of Administrative
2.23 Hearings for review. The petition must be filed with the ~~district court administrator in the~~
2.24 ~~county where the alleged offense occurred~~, Office of Administrative Hearings, together
2.25 with proof of service of a copy on the commissioner, and accompanied by the ~~standard~~
2.26 filing fee for civil actions provided under section 357.081. Responsive pleading is not
2.27 required of the commissioner, and ~~court~~ fees must not be charged for the appearance of
2.28 the commissioner in the matter.

2.29 (b) The petition must:

2.30 (1) be captioned in the full name of the person making the petition as petitioner and
2.31 the commissioner as respondent;

2.32 (2) include the petitioner's date of birth, driver's license number, and date of the
2.33 offense; and

2.34 (3) state with specificity the grounds upon which the petitioner seeks rescission of
2.35 the order of revocation, disqualification, or denial.

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

3.5 (d) ~~Judicial~~ Reviews must be conducted according to ~~the Rules of Civil Procedure,~~
3.6 ~~except that~~ sections 14.57 to 14.69 and Minnesota Rules, parts 1400.5010 to 1400.8401,
3.7 unless otherwise provided in this section.

3.8 (e) Prehearing discovery is mandatory and is limited to:

3.9 (1) the notice of revocation;

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

3.11 (3) the peace officer's certificate and any accompanying documentation submitted by
3.12 the arresting officer to the commissioner; and

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

3.15 Other types of discovery are available only upon order of the ~~court~~ administrative
3.16 law judge.

3.17 Subd. 3. **Judicial Administrative review hearing; issues, order, appeal.** (a) ~~A~~
3.18 ~~judicial review hearing under this section must be before a district judge in any county in~~
3.19 ~~the judicial district where the alleged offense occurred. The hearing is to the court and~~
3.20 ~~may be conducted at the same time and in the same manner as hearings upon pretrial~~
3.21 ~~motions in the criminal prosecution under section 169A.20 (driving while impaired), if~~
3.22 ~~any.~~ The hearing must be recorded. The commissioner shall appear and be represented by
3.23 the attorney general ~~or through the prosecuting authority for the jurisdiction involved.~~ The
3.24 hearing must be held at the earliest practicable date, and in any event no later than 60 days
3.25 following the filing of the petition for review. The ~~judicial district administrator~~ Office of
3.26 Administrative Hearings shall establish procedures to ensure efficient compliance with
3.27 this subdivision. To accomplish this, the ~~administrator~~ Office of Administrative Hearings
3.28 may, whenever possible, consolidate and transfer review hearings ~~among the locations~~
3.29 ~~within the judicial district where terms of district court are held~~ and receive testimony and
3.30 argument by means of interactive television.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.32 (f) Any party aggrieved by the decision of the ~~reviewing court~~ hearing officer may
4.33 appeal the decision as provided in ~~the Rules of Appellate Procedure~~ chapter 14.

4.34 (g) The ~~civil~~ administrative review hearing under this section shall not give rise to
4.35 an estoppel on any issues arising from the same set of circumstances in any criminal
4.36 prosecution.

5.1 **EFFECTIVE DATE.** This section is effective January 1, 2011.

5.2 Sec. 3. Minnesota Statutes 2008, section 169A.60, subdivision 10, is amended to read:

5.3 Subd. 10. **Petition for ~~judicial~~ administrative review hearing; appeal.** (a)

5.4 Notwithstanding section 14.57 and other law to the contrary, within 30 days following
5.5 receipt of a notice and order of impoundment under this section, a person may petition
5.6 the ~~court~~ Office of Administrative Hearings for review. The petition must include proof
5.7 of service of a copy of the petition on the commissioner. The petition must include the
5.8 petitioner's date of birth, driver's license number, and date of the plate impoundment
5.9 violation, as well as the name of the violator and the law enforcement agency that issued
5.10 the plate impoundment order. The petition must state with specificity the grounds upon
5.11 which the petitioner seeks rescission of the order for impoundment. The petition may be
5.12 combined with any petition filed under section 169A.53 (administrative ~~and judicial~~
5.13 review of license revocation).

5.14 (b) Except as otherwise provided in this section, the ~~judicial~~ administrative review
5.15 ~~and hearing are~~ is governed by section 169A.53 and must take place at the same time as
5.16 any ~~judicial review~~ administrative review hearing of the person's license revocation under
5.17 section 169A.53. The filing of the petition does not stay the impoundment order. The
5.18 ~~reviewing court~~ hearing officer may order a stay of the balance of the impoundment period
5.19 if the hearing has not been conducted within 60 days after filing of the petition upon terms
5.20 the ~~court~~ hearing officer deems proper. The ~~court~~ hearing officer shall order either that the
5.21 impoundment be rescinded or sustained, and forward the order to the commissioner. The
5.22 ~~court~~ hearing officer shall file its order within 14 days following the hearing.

5.23 (c) In addition to the issues described in section 169A.53, subdivision 3 (~~judicial~~
5.24 administrative review of license revocation), the scope of a hearing under this subdivision
5.25 is limited to:

5.26 (1) if the impoundment is based on a plate impoundment violation described in
5.27 subdivision 1, paragraph (d), clause (3) or (4), whether the peace officer had probable
5.28 cause to believe the violator committed the plate impoundment violation and whether the
5.29 evidence demonstrates that the plate impoundment violation occurred; and

5.30 (2) for all other cases, whether the peace officer had probable cause to believe the
5.31 violator committed the plate impoundment violation.

5.32 (d) In a hearing under this subdivision, the following records are admissible in
5.33 evidence:

5.34 (1) certified copies of the violator's driving record; and

5.35 (2) certified copies of vehicle registration records bearing the violator's name.

6.1 (e) Any party aggrieved by the decision of the hearing officer may appeal the
6.2 decision as provided in chapter 14.

6.3 **EFFECTIVE DATE.** This section is effective January 1, 2011.

6.4 Sec. 4. **[357.081] OFFICE OF ADMINISTRATIVE HEARINGS; FEE.**

6.5 The Office of Administrative Hearings shall charge and collect a filing fee of \$310
6.6 from a person filing a petition for an administrative review of a driver's license revocation
6.7 under section 169A.53, vehicle impoundment under section 169A.60, or combined review.
6.8 Notwithstanding section 14.54, the Office of Administrative Hearings shall transmit the
6.9 fees monthly to the commissioner of management and budget for deposit in the state
6.10 treasury and credit to the general fund.

6.11 **EFFECTIVE DATE.** This section is effective August 1, 2011.

6.12 Sec. 5. **RULEMAKING AUTHORITY.**

6.13 The Office of Administrative Hearings shall adopt rules under Minnesota Statutes,
6.14 chapter 14, to implement sections 1 to 4. The rules must include, at a minimum, the
6.15 procedure for hearings in regional offices, and the use of teleconferencing and highly
6.16 qualified hearing officers. The Office of Administrative Hearings may adopt the initial set
6.17 of these rules as exempt rules under Minnesota Statutes, section 14.386. These rules are
6.18 permanent and effective upon publication in the state register until further amended or
6.19 repealed by the Office of Administrative Hearings.

6.20 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.21 Sec. 6. **REVISOR'S INSTRUCTION.**

6.22 The revisor of statutes shall prepare a bill for introduction in the 2011 regular
6.23 legislative session making any technical and conforming changes to Minnesota Statutes
6.24 made necessary by sections 1 to 5.