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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 391

01/28/2021 Authored by Koznick, Novotny, Robbins, Boe, Garofalo and others
The bill was read for the first time and referred to the Committee on Transportation Finance and Policy

1.1 A bill for an act
1.2 relating to motor vehicles; authorizing third-party programs and third-party testers
1.3 to conduct behind-the-wheel road tests for class D drivers' licenses; specifying
1.4 requirements and criteria for third-party programs and testers; requiring audits;
1.5 allowing appeals of decisions made by the commissioner of public safety; requiring
1.6 record keeping and reporting; amending Minnesota Statutes 2020, section 171.13,
1.7 subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 171.

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

1.9 Section 1. Minnesota Statutes 2020, section 171.13, subdivision 1, is amended to read:

1.10 Subdivision 1. Examination subjects and locations; provisions for color blindness,
1.11 disabled veterans. (a) Each applicant for a driver's license must pass the examination
1.12 required by this section before being issued a driver's license. Except as otherwise provided
1.13 in this section by sections 171.70 to 171.82, the commissioner shall examine each applicant
1.14 for a driver's license by such agency as the commissioner directs must conduct the
1.15 examination. This examination must include:

- 1.16 (1) a test of the applicant's eyesight;
1.17 (2) a test of the applicant's ability to read and understand highway signs regulating,
1.18 warning, and directing traffic;
1.19 (3) a test of the applicant's knowledge of (i) traffic laws; (ii) the effects of alcohol and
1.20 drugs on a driver's ability to operate a motor vehicle safely and legally, and of the legal
1.21 penalties and financial consequences resulting from violations of laws prohibiting the
1.22 operation of a motor vehicle while under the influence of alcohol or drugs; (iii) railroad
1.23 grade crossing safety; (iv) slow-moving vehicle safety; (v) laws relating to pupil
1.24 transportation safety, including the significance of school bus lights, signals, stop arm, and

2.1 passing a school bus; (vi) traffic laws related to bicycles; and (vii) the circumstances and
 2.2 dangers of carbon monoxide poisoning;

2.3 (4) an actual demonstration of ability to exercise ordinary and reasonable control in the
 2.4 operation of a motor vehicle; and

2.5 (5) other physical and mental examinations as the commissioner finds necessary to
 2.6 determine the applicant's fitness to operate a motor vehicle safely upon the highways.

2.7 (b) Notwithstanding paragraph (a), no driver's license may be denied an applicant on
 2.8 the exclusive grounds that the applicant's eyesight is deficient in color perception. War
 2.9 veterans operating motor vehicles especially equipped for disabled persons, if otherwise
 2.10 entitled to a license, must be granted such license.

2.11 (c) The commissioner shall make provision for giving the examinations under this
 2.12 subdivision either in the county where the applicant resides or at a place adjacent thereto
 2.13 reasonably convenient to the applicant.

2.14 (d) The commissioner shall ensure that an applicant is able to obtain an appointment for
 2.15 an examination to demonstrate ability under paragraph (a), clause (4), within 14 days of the
 2.16 applicant's request if, under the applicable statutes and rules of the commissioner, the
 2.17 applicant is eligible to take the examination.

2.18 Sec. 2. [171.70] DEFINITIONS.

2.19 (a) For purposes of sections 171.70 to 171.82, the following terms have the meanings
 2.20 given them.

2.21 (b) "Applicant" means an entity applying for approval to be a third-party testing program.

2.22 (c) "Entity" includes an individual, natural person, and a legal or corporate person,
 2.23 however organized unless otherwise expressly described or limited.

2.24 (d) "Letter of approval" means the document issued by the commissioner to the third-party
 2.25 testing program authorizing the program to administer road tests for class D drivers' licenses.

2.26 (e) "Road test" means the actual physical demonstration of the ability to exercise ordinary
 2.27 and reasonable control in the operation of a motor vehicle as required by section 171.13,
 2.28 subdivision 1, paragraph (a), clause (4).

2.29 (f) "Third-party tester" means an individual who is an employee of a third-party testing
 2.30 program who has qualified for a third-party tester certificate issued by the commissioner
 2.31 granting the individual authorization to conduct road tests for class D drivers' licenses.

3.1 (g) "Third-party tester certificate" means a certificate issued by the commissioner to the
 3.2 third-party tester authorizing the third-party tester to administer road tests for class D drivers'
 3.3 licenses on behalf of a specified third-party testing program.

3.4 (h) "Third-party testing program" means a program authorized by the commissioner to
 3.5 administer to an individual the road test for class D drivers' licenses.

3.6 **Sec. 3. [171.71] THIRD-PARTY TESTER; AUTHORIZATION.**

3.7 The commissioner must allow a third-party tester that complies with the requirements
 3.8 of sections 171.70 to 171.82 to conduct road tests for people applying for class D drivers'
 3.9 licenses.

3.10 **Sec. 4. [171.72] PROGRAM APPLICATION; APPROVAL.**

3.11 Subdivision 1. **Application.** The applicant shall apply to the commissioner for approval
 3.12 to be a third-party testing program authorized to administer road tests for class D drivers'
 3.13 licenses. The applicant must submit the application to the commissioner and provide the
 3.14 information in subdivision 2. A third-party testing program or a third-party tester employed
 3.15 by the program must not conduct road tests until the program is approved by the
 3.16 commissioner.

3.17 Subd. 2. **Application contents.** To apply for approval as a third-party testing program,
 3.18 an applicant must complete an application containing the information specified in this
 3.19 section:

3.20 (1) business name;

3.21 (2) business registration number if a business, or tax identification number if a
 3.22 not-for-profit entity;

3.23 (3) address of the business's administrative office;

3.24 (4) telephone number, fax number, and e-mail address of the administrative office;

3.25 (5) name of an authorized official responsible for the program and application, and the
 3.26 official's title and telephone number;

3.27 (6) a map, drawing, or written description of the test route to be used for road tests;

3.28 (7) the name, birth date, home address, and driver's license number of all individuals
 3.29 the applicant wants to employ as a certified third-party tester;

4.1 (8) attestation that the applicant carries the required insurance, as described in chapter
 4.2 65B, for all vehicles used for testing; and

4.3 (9) attestation by the authorized official that the information submitted is true and
 4.4 accurate.

4.5 Subd. 3. **Location requirement.** To qualify as a third-party testing program, the applicant
 4.6 must be located in the state and must maintain an administrative office in at least one
 4.7 permanent, regularly occupied building with a permanent address.

4.8 Subd. 4. **Employment of certified tester.** The applicant must employ one or more
 4.9 certified third-party testers who meet the qualifications in section 171.75.

4.10 Subd. 5. **Evaluation.** The commissioner shall evaluate the application submitted by the
 4.11 third-party testing program applicant. If the application is satisfactory, the commissioner
 4.12 must approve the application.

4.13 Subd. 6. **Limitation.** The commissioner is prohibited from imposing any criteria or
 4.14 requirements that are not specified by this section.

4.15 Subd. 7. **Commissioner's letter of approval.** Upon approval of an application submitted
 4.16 pursuant to this section, the commissioner shall issue a letter of approval to designate a
 4.17 third-party testing program. The letter of approval constitutes an agreement between the
 4.18 state and the third-party testing program administering road tests for a class D driver's
 4.19 license. A letter of approval to operate a third-party testing program is not transferable.

4.20 Sec. 5. **[171.73] INDEMNIFICATION.**

4.21 An applicant shall agree to indemnify and hold harmless the state and all state officers,
 4.22 employees, and agents of the state from and against all claims, losses, damages, costs, and
 4.23 other proceedings made, sustained, brought, or prosecuted in any manner based on or
 4.24 occasioned by or attributive to any injury, infringement, or damage rising from any act or
 4.25 omission of the third-party testing program or the program's employees in the performance
 4.26 of testing duties.

4.27 Sec. 6. **[171.74] USE OF CERTIFIED THIRD-PARTY TESTERS.**

4.28 The third-party testing program shall allow only individuals who have been certified by
 4.29 the commissioner as third-party testers under sections 171.75 to 171.76 to administer road
 4.30 tests. The program shall maintain, on file in the program's administrative office, a copy of
 4.31 the valid certificate of each third-party tester employed by the program.

5.1 **Sec. 7. [171.75] THIRD-PARTY TESTER QUALIFICATIONS.**

5.2 Subdivision 1. **Generally.** To be certified as a third-party tester, an individual must make
5.3 application to, and be approved by, the commissioner as provided in this section. The
5.4 individual must:

5.5 (1) possess a valid driver's license;

5.6 (2) be at least age 21;

5.7 (3) be a licensed driver in a United States state for the past three years;

5.8 (4) before the date of application, have maintained continuous valid driving privileges
5.9 for the past year;

5.10 (5) successfully pass a prequalifying tester examination;

5.11 (6) be an employee of a third-party testing program;

5.12 (7) successfully complete the test administration training required of state-employed
5.13 examiners; and

5.14 (8) have the class of driver's license and endorsements to operate the type of vehicles
5.15 for which the road tests are administered.

5.16 The examination and training required by clauses (5) and (7) must be identical for
5.17 state-employed examiners and third-party testers.

5.18 Subd. 2. **State employee.** A certified third-party tester must not be an employee of the
5.19 department.

5.20 Subd. 3. **Employment.** A certified third-party tester must have a certificate for each
5.21 third-party testing program that employs the tester. The tester must reapply and be approved
5.22 for a new certificate to conduct tests on behalf of a new third-party testing program. The
5.23 tester may be simultaneously employed by more than one program.

5.24 Subd. 4. **Maintaining certification.** To maintain certification as a third-party tester, an
5.25 individual must:

5.26 (1) conduct at least 12 road tests annually over each 24-month period from the date of
5.27 initial issuance of a third-party tester certificate;

5.28 (2) be evaluated at least annually on the administration of tests and record keeping;

5.29 (3) attend annual in-service training, workshops, or seminars provided by the
5.30 commissioner, provided that the requirements are the same as testers employed by the
5.31 department;

6.1 (4) submit monthly testing reports in a format specified by the commissioner; and

6.2 (5) account for all records of examination issued by the commissioner to a third-party
6.3 tester and submit the record of examination immediately to the commissioner after completing
6.4 a road test.

6.5 Subd. 5. **Limitation.** The commissioner is prohibited from imposing any criteria or
6.6 requirements on third-party testing programs or third-party testers that are not specified by
6.7 this section.

6.8 **Sec. 8. [171.76] CERTIFICATES AND LETTER OF APPROVAL.**

6.9 Subdivision 1. **Tester certificates.** The commissioner shall issue a certificate to each
6.10 approved third-party tester of a third-party testing program. The third-party testing program
6.11 must keep a copy of the certificate of each third-party tester employed by the program on
6.12 file in the office of the program. A third-party tester's certificate is effective on the date of
6.13 issuance by the commissioner and expires four years after issuance. A third-party tester
6.14 may not conduct road tests without a valid third-party tester certificate. A certificate issued
6.15 to a third-party tester is not transferable.

6.16 Subd. 2. **Certificate renewal time frame.** A third-party tester must submit an application
6.17 for renewal of the tester's certificate to the commissioner no less than 30 days before the
6.18 date the previously issued certificate expires.

6.19 **Sec. 9. [171.77] TEST PROOF.**

6.20 The third-party testing program shall provide a record of examination, on a format
6.21 obtained from or approved by the commissioner, to an individual who has passed a road
6.22 test for a class D driver's license. The record of examination, which must be presented at
6.23 the time of application for a class D driver's license, must specify that the individual has
6.24 passed the required test or tests administered by the third-party testing program.

6.25 **Sec. 10. [171.78] AUDITS.**

6.26 Subdivision 1. **Random examinations, inspections, and audits.** A third-party testing
6.27 program shall agree to allow representatives of the commissioner, on behalf of the state, to
6.28 conduct random examinations, inspections, and audits of the testing operation without prior
6.29 notice.

7.1 Subd. 2. **On-site inspections.** A third-party testing program shall permit on-site
 7.2 inspections by agents of the commissioner as necessary to determine compliance with
 7.3 sections 171.70 to 171.82.

7.4 Subd. 3. **Examination of test administration.** On at least an annual basis, agents of the
 7.5 commissioner who are state employees must be permitted to:

7.6 (1) take the tests actually administered by the third-party testing program as if the state
 7.7 employees were test applicants;

7.8 (2) test a sample of drivers who were examined by the third-party testing program to
 7.9 compare passing and failing results; or

7.10 (3) conduct a road test simultaneously with the third-party tester to compare test results.

7.11 Subd. 4. **Notice of test schedule.** Upon request, no less than 48 hours in advance, the
 7.12 third-party testing program shall provide the commissioner with the schedule times and
 7.13 dates that skill tests and road tests are to be given.

7.14 **Sec. 11. [171.79] TEST ADMINISTRATION.**

7.15 Subdivision 1. **Generally.** Road tests conducted by a third-party tester must meet the
 7.16 requirements in Minnesota Rules, parts 7410.4800 to 7410.5380. The commissioner is
 7.17 prohibited from imposing additional test administration criteria or requirements on third-party
 7.18 testers.

7.19 Subd. 2. **Third-party tester restrictions.** A third-party tester shall not:

7.20 (1) delegate any portion of testing to another individual;

7.21 (2) test a person related to the tester by blood, marriage, or adoption;

7.22 (3) test anyone with a physical disability who may need an individualized restriction
 7.23 added to the person's driver's license; or

7.24 (4) test anyone who has not completed all coursework and training before administering
 7.25 a road test.

7.26 **Sec. 12. [171.80] RECORD KEEPING; REPORTING REQUIREMENTS.**

7.27 Subdivision 1. **Records of administered tests.** An approved third-party testing program
 7.28 shall maintain at the program's administrative offices, for a minimum of three years, the
 7.29 tester's copy of the record of examination of any driver for whom the third-party testing

8.1 program conducts a test, whether or not the driver passes or fails the test. Each record of
 8.2 examination must include:

8.3 (1) the full name of the driver;

8.4 (2) the date the driver took the test; and

8.5 (3) the name and certificate number of the third-party tester conducting the test.

8.6 Subd. 2. **Records of third-party testers.** The third-party testing program shall maintain,
 8.7 at the program's administrative offices, a record of each third-party tester in the employ of
 8.8 the third-party testing program at that location. Each record must include:

8.9 (1) a valid and complete tester certificate indicating the third-party tester has met all
 8.10 qualifications;

8.11 (2) a copy of the third-party tester's current driving record, which must be updated
 8.12 annually; and

8.13 (3) evidence that the third-party tester is an employee of the third-party testing program.

8.14 Subd. 3. **Record retention.** The third-party testing program shall retain all third-party
 8.15 tester records for three years after a third-party tester leaves the employ of the third-party
 8.16 testing program.

8.17 Subd. 4. **Reporting requirements.** The third-party testing program shall report the
 8.18 number of road tests administered annually by all third-party testers employed by the
 8.19 program. The report must be in writing or in an electronic format approved by the
 8.20 commissioner and must be received by the commissioner within 45 days of the end of each
 8.21 calendar year.

8.22 Subd. 5. **Data Practices Act.** All third-party testing programs and third-party testers are
 8.23 subject to section 13.05, subdivision 11.

8.24 Sec. 13. **[171.81] NOTIFICATION REQUIREMENTS.**

8.25 Subdivision 1. **In general.** The third-party testing program shall ensure that the
 8.26 commissioner is notified in writing or by electronic means:

8.27 (1) 30 days before any change in the third-party testing program's name or address;

8.28 (2) ten days before any change in the third-party tester employed by the third-party
 8.29 testing program;

8.30 (3) within ten days of a change in a third-party tester's driving status;

9.1 (4) within ten days of the third-party testing program ceasing business operations in
 9.2 Minnesota; or

9.3 (5) within ten days of a third-party tester:

9.4 (i) receiving notice from any state that the tester's driving privileges have been withdrawn;
 9.5 or

9.6 (ii) failing to comply with the third-party testing program or third-party tester
 9.7 requirements in sections 171.70 to 171.82.

9.8 Subd. 2. **Test route change.** Before changing a test route, a third-party testing program
 9.9 must submit a written request and obtain written approval from the commissioner for any
 9.10 proposed change in the road test route. The request may be submitted by facsimile or
 9.11 electronic mail.

9.12 Subd. 3. **Tester change.** A third-party tester shall notify the commissioner within ten
 9.13 days of leaving the employ of a third-party testing program.

9.14 Sec. 14. **[171.82] DENIAL, CANCELLATION, OR SUSPENSION OF PROGRAM**
 9.15 **OR TESTER; APPEAL.**

9.16 Subdivision 1. **Denial.** The commissioner may deny an application for a third-party
 9.17 testing program or tester certificate if the applicant does not qualify for approval or
 9.18 certification under sections 171.70 to 171.81. In addition, a misstatement or misrepresentation
 9.19 is grounds for denying a letter of approval or tester certificate.

9.20 Subd. 2. **Cancellation or suspension.** The commissioner may cancel the approval of a
 9.21 third-party testing program or third-party tester or may suspend a program or tester for:

9.22 (1) failure to comply with or satisfy any provision of sections 171.70 to 171.81;

9.23 (2) falsification of any records or information relating to the third-party testing program;

9.24 (3) performance in a manner that compromises the integrity of the third-party testing
 9.25 program. The commissioner must use the same standards of integrity for state-employed
 9.26 testers and third-party testers; or

9.27 (4) the withdrawal of a third-party tester's driving privileges.

9.28 Subd. 3. **Commissioner's discretion.** (a) The existence of grounds for cancellation or
 9.29 suspension under subdivision 2 is determined at the sole discretion of the commissioner. If
 9.30 the commissioner determines that grounds for cancellation or suspension exist for failure
 9.31 to comply with or satisfy any requirement in sections 171.70 to 171.81, the commissioner

10.1 may immediately cancel or suspend the third-party testing program or third-party tester
10.2 from administering any further tests.

10.3 (b) When an application to be a third-party testing program or third-party tester
10.4 application is denied, or when individual program approval or a tester's certificate is canceled,
10.5 a notice must be mailed to the subject indicating the reasons for the denial or cancellation
10.6 and that the third-party testing program or third-party tester may appeal the decision as
10.7 provided in subdivision 5.

10.8 Subd. 4. **Correction order.** If an audit by the commissioner identifies a situation that
10.9 needs correction but does not merit suspension or cancellation, the commissioner may issue
10.10 a correction order to a third-party tester or program for 30 days to correct a deficiency before
10.11 the program or tester becomes subject to suspension or cancellation. The notice must include
10.12 the basis for requiring the correction. The notice must notify the individual of the ability to
10.13 appeal the correction order as provided in subdivision 5. The third-party testing program
10.14 or third-party tester is permitted 30 days to correct the deficiency without having to reapply.

10.15 Subd. 5. **Notice of denial or cancellation; request for reconsideration and hearing.** (a)
10.16 Within 20 calendar days of receiving a notice of cancellation or denial issued pursuant to
10.17 subdivision 3 or correction order issued pursuant to subdivision 4, the third-party testing
10.18 program or third-party tester may submit a request for reconsideration in writing to the
10.19 commissioner. The commissioner shall review the request for reconsideration and issue a
10.20 decision within 30 days of receipt of the request. Upon receipt of the commissioner's decision,
10.21 the affected party may request a contested case hearing under chapter 14.

10.22 (b) Within 20 calendar days of receiving a notice of cancellation or denial issued pursuant
10.23 to subdivision 3 or a correction order issued pursuant to subdivision 4, the affected party
10.24 may request a contested case hearing.

10.25 (c) If a correction order issued pursuant to subdivision 4 is appealed under paragraph
10.26 (a) or (b), the commissioner must not enforce the correction order until the appeal is complete.

10.27 **Sec. 15. IMPLEMENTATION.**

10.28 The commissioner of public safety must implement the requirements of this act with
10.29 existing resources. The commissioner must not hire additional staff to implement the
10.30 requirements of this act or to conduct audits as required by section 171.78.

10.31 **Sec. 16. EFFECTIVE DATE.**

10.32 This act is effective August 1, 2021.