

This Document can be made available in alternative formats upon request

State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 858

02/25/2013 Authored by Rosenthal

The bill was read for the first time and referred to the Committee on Transportation Policy

1.1 A bill for an act  
1.2 relating to public safety; authorizing a pilot project for the Office of  
1.3 Administrative Hearings to review driver's license revocation or disqualification  
1.4 and motor vehicle plate impoundment resulting from implied consent violations.

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

1.6 Section 1. **DRIVER'S LICENSE REVOCATION; HEARING PILOT PROJECT.**

1.7 The commissioner of public safety may enter into interagency agreements with  
1.8 federal, state, county, or municipal agencies for the purpose of funding, operating, or  
1.9 administering a pilot project on effective driver's license revocation practice. The term  
1.10 of any agreement executed under this section must not exceed June 30, 2016, and shall  
1.11 implement the license revocation procedures of sections 2 to 8.

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

1.13 Sec. 2. **LICENSE REVOCATION.**

1.14 Notwithstanding Minnesota Statutes, sections 169A.52, subdivision 6; 169A.53; and  
1.15 169A.60, subdivision 10, during the term of any pilot project authorized by sections 1  
1.16 to 8, a license revocation under Minnesota Statutes, section 169A.52, subdivision 6, or  
1.17 a disqualification under Minnesota Statutes, section 171.165, issued within a county or  
1.18 municipality covered by the pilot project becomes effective at the time the commissioner  
1.19 or a peace officer acting on behalf of the commissioner notifies the person of the intention  
1.20 to revoke, disqualify, or both, and of revocation or disqualification. The notice must  
1.21 advise the person of the right to obtain administrative review by the commissioner and a  
1.22 contested case review under this section. If mailed, the notice and order of revocation

2.1 or disqualification is deemed received three days after mailing to the last known address  
2.2 of the person.

2.3 **EFFECTIVE DATE.** This section is effective January 2, 2014.

2.4 **Sec. 3. COMMISSIONER REVIEW.**

2.5 (a) At any time during a period of revocation imposed under Minnesota  
2.6 Statutes, section 169A.52, revocation of license for test failure or refusal or a period  
2.7 of disqualification imposed under Minnesota Statutes, section 171.165, (commercial  
2.8 driver's license disqualification), a person may request in writing a review of the order  
2.9 of revocation or disqualification by the commissioner, unless the person is entitled to  
2.10 review under Minnesota Statutes, section 171.166, (review of disqualification). Upon  
2.11 receiving a request, the commissioner or the commissioner's designee shall review the  
2.12 order, the evidence upon which the order was based, and any other material information  
2.13 brought to the attention of the commissioner, and determine whether sufficient cause  
2.14 exists to sustain the order.

2.15 Within 15 days of receiving the request, the commissioner shall report in writing the  
2.16 results of the review. The review provided in this section is not subject to the contested  
2.17 case provisions of the Administrative Procedure Act in Minnesota Statutes, sections  
2.18 14.001 to 14.69.

2.19 (b) The availability of administrative review by the commissioner for an order of  
2.20 revocation or disqualification has no effect upon the availability of a contest case hearing  
2.21 under this section.

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

2.25 **Sec. 4. LICENSE REVOCATION OR DISQUALIFICATION; PETITION FOR**  
2.26 **A CONTESTED CASE HEARING.**

2.27 (a) Notwithstanding Minnesota Statutes, section 14.57, and other law to the contrary,  
2.28 within 30 days following receipt of a notice and order of revocation or disqualification  
2.29 pursuant to Minnesota Statutes, section 169A.52, (revocation of license for test failure  
2.30 or refusal), a person may petition the Office of Administrative Hearings for review. The  
2.31 petition must be filed with the Office of Administrative Hearings, together with proof of  
2.32 service of a copy on the commissioner, and accompanied by the standard filing fee for  
2.33 civil actions provided under Minnesota Statutes, section 357.021. Responsive pleading

3.1 is not required of the commissioner, and fees must not be charged for the appearance of  
3.2 the commissioner in the matter.

3.3 (b) The petition must:

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

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

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

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

3.14 (d) Reviews must be conducted according to Minnesota Statutes, sections 14.57 to  
3.15 14.69, and Minnesota Rules, parts 1400.5010 to 1400.8401, unless otherwise provided  
3.16 in this section.

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

3.18 (1) the notice of revocation;

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

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

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

3.24 Other types of discovery are available only upon order of the hearing officer.

3.25 **Sec. 5. LICENSE REVOCATION OR DISQUALIFICATION; CONTESTED**  
3.26 **CASE REVIEW HEARING; ISSUES, ORDER, APPEAL.**

3.27 (a) The commissioner shall appear and be represented by the attorney general or  
3.28 through the prosecuting authority for the jurisdiction involved. The hearing must be held at  
3.29 the earliest practicable date, and in any event no later than 60 days following the filing of the  
3.30 petition for review. To accomplish this, the administrator of the Office of Administrative  
3.31 Hearings may, whenever possible, consolidate and transfer review hearings and receive  
3.32 testimony and argument by means of interactive television. The hearing must be recorded.

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

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

4.4 (2) Was the person lawfully placed under arrest for violation of Minnesota Statutes,  
4.5 section 169A.20?

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

4.8 (4) Did the person refuse to take a screening test provided for by Minnesota Statutes,  
4.9 section 169A.41, (preliminary screening test)?

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

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

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

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

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

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

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

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

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

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

4.31 (e) The hearing officer shall order that the revocation or disqualification be either  
4.32 rescinded or sustained and forward the order to the commissioner. The hearing officer shall  
4.33 file the order within 14 days following the hearing. If the revocation or disqualification is  
4.34 sustained, the hearing officer shall also forward the person's driver's license or permit to  
4.35 the commissioner for further action by the commissioner if the license or permit is not  
4.36 already in the commissioner's possession.

5.1 (f) Any party aggrieved by the decision of the reviewing hearing officer may appeal  
 5.2 the decision as provided in Minnesota Statutes, chapter 14.

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

5.5 **EFFECTIVE DATE.** This section is effective January 2, 2014.

5.6 **Sec. 6. ORDER OF IMPOUNDMENT; PETITION FOR CONTESTED CASE**  
 5.7 **REVIEW HEARING; APPEAL.**

5.8 (a) Notwithstanding Minnesota Statutes, section 14.57, and other law to the contrary,  
 5.9 within 30 days following receipt of a notice and order of impoundment under this section,  
 5.10 a person may petition the Office of Administrative Hearings for review. The petition  
 5.11 must include proof of service of a copy of the petition on the commissioner. The petition  
 5.12 must include the petitioner's date of birth, driver's license number, and date of the plate  
 5.13 impoundment violation, as well as the name of the violator and the law enforcement  
 5.14 agency that issued the plate impoundment order. The petition must state with specificity  
 5.15 the grounds upon which the petitioner seeks rescission of the order for impoundment.  
 5.16 The petition may be combined with any petition filed under Minnesota Statutes, section  
 5.17 169A.53.

5.18 (b) Except as otherwise provided in this section, the contested case hearing must  
 5.19 take place at the same time as any review hearing of the person's license revocation.  
 5.20 The filing of the petition does not stay the impoundment order. The reviewing hearing  
 5.21 officer may order a stay of the balance of the impoundment period if the hearing has not  
 5.22 been conducted within 60 days after filing of the petition upon terms the hearing officer  
 5.23 deems proper. The hearing officer shall order either that the impoundment be rescinded or  
 5.24 sustained, and forward the order to the commissioner. The hearing officer shall file its  
 5.25 order within 14 days following the hearing.

5.26 (c) In addition to the issues described in Minnesota Statutes, section 169A.53,  
 5.27 subdivision 3, (judicial administrative review of license revocation), the scope of a hearing  
 5.28 under this section is limited to:

5.29 (1) if the impoundment is based on a plate impoundment violation described in  
 5.30 Minnesota Statutes, section 169A.60, subdivision 1, paragraph (d), clause (3) or (4),  
 5.31 whether the peace officer had probable cause to believe the violator committed the  
 5.32 plate impoundment violation and whether the evidence demonstrates that the plate  
 5.33 impoundment violation occurred; and

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

- 6.1 (d) In a hearing under this section, the following records are admissible in evidence:  
6.2 (1) certified copies of the violator's driving record; and  
6.3 (2) certified copies of vehicle registration records bearing the violator's name.  
6.4 (e) Any party aggrieved by the decision of the hearing officer may appeal the  
6.5 decision as provided in Minnesota Statutes, chapter 14.

6.6 **EFFECTIVE DATE.** This section is effective January 2, 2014.

6.7 **Sec. 7. OFFICE OF ADMINISTRATIVE HEARINGS; FEE.**

6.8 The Office of Administrative Hearings shall charge and collect the filing fee from a  
6.9 person filing a petition for an administrative review of a driver's license revocation under  
6.10 Minnesota Statutes, section 169A.53, vehicle impoundment under Minnesota Statutes,  
6.11 section 169A.60, or combined review.

6.12 Notwithstanding Minnesota Statutes, section 14.54, the Office of Administrative  
6.13 Hearings shall transmit the fees monthly to the commissioner of management and budget  
6.14 for deposit in the state treasury and credit to the general fund.

6.15 **EFFECTIVE DATE.** This section is effective August 1, 2013.