

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 2375

(SENATE AUTHORS: LIMMER)

DATE	D-PG	OFFICIAL STATUS
05/04/2017	3378	Introduction and first reading
		Referred to Judiciary and Public Safety Finance and Policy
05/15/2017	4534a	Comm report: To pass as amended
		Joint rule 2.03, referred to Rules and Administration
05/18/2017		Comm report: Adopt previous comm report Joint rule 2.03 Suspended
		Second reading

1.1 A bill for an act

1.2 relating to public safety; requiring a search warrant in DWI and DWI-related cases

1.3 to obtain blood or urine samples; providing for license revocation; establishing

1.4 guidelines for license revocation hearings; amending Minnesota Statutes 2016,

1.5 sections 97B.066, subdivisions 1, 2, 4, 8, 9, by adding a subdivision; 169A.03,

1.6 subdivision 21; 169A.20, subdivision 2; 169A.51, subdivisions 2, 3, 4; 169A.53,

1.7 subdivisions 2, 3; 169A.54, subdivision 6; 169A.60, subdivision 10; 360.0753,

1.8 subdivisions 2, 3, 7, 9, by adding a subdivision; 624.7143, subdivisions 1, 2, 4, by

1.9 adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter

1.10 171.

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

1.12 style="text-align:center">**ARTICLE 1**

1.13 style="text-align:center">**DWI LAW CHANGES**

1.14 Section 1. Minnesota Statutes 2016, section 169A.03, subdivision 21, is amended to read:

1.15 Subd. 21. **Prior impaired driving-related loss of license.** (a) "Prior impaired

1.16 driving-related loss of license" includes a driver's license suspension, revocation, cancellation,

1.17 denial, or disqualification under:

1.18 (1) section 169A.31 (alcohol-related school bus or Head Start bus driving); 169A.50 to

1.19 169A.53 (implied consent law); 169A.54 (impaired driving convictions and adjudications;

1.20 administrative penalties); 171.04 (persons not eligible for drivers' licenses); 171.14

1.21 (cancellation); 171.16 (court may recommend suspension); 171.165 (commercial driver's

1.22 license, disqualification); 171.17 (revocation); 171.177 (revocation; pursuant to search

1.23 warrant); or 171.18 (suspension); because of an alcohol-related incident;

1.24 (2) Minnesota Statutes 2012, section 609.21 (criminal vehicular homicide and injury,

1.25 substance-related offenses), subdivision 1, clauses (2) to (6);

2.1 (3) Minnesota Statutes 1998, section 169.121 (driver under influence of alcohol or
 2.2 controlled substance); 169.1211 (alcohol-related driving by commercial vehicle drivers);
 2.3 or 169.123 (chemical tests for intoxication);

2.4 (4) Minnesota Statutes 2006, section 609.21 (criminal vehicular homicide and injury,
 2.5 substance-related offenses), subdivision 1, clauses (2) to (6); subdivision 2, clauses (2) to
 2.6 (6); subdivision 2a, clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3,
 2.7 clauses (2) to (6); or subdivision 4, clauses (2) to (6);

2.8 (5) section 609.2112, subdivision 1, clauses (2) to (6); 609.2113, subdivision 1, clauses
 2.9 (2) to (6), subdivision 2, clauses (2) to (6), or subdivision 3, clauses (2) to (6); or 609.2114,
 2.10 subdivision 1, clauses (2) to (6), or subdivision 2, clauses (2) to (6); or

2.11 (6) an ordinance from this state, or a statute or ordinance from another state, in conformity
 2.12 with any provision listed in clause (1), (2), (3), (4), or (5).

2.13 (b) "Prior impaired driving-related loss of license" also includes the revocation of
 2.14 snowmobile or all-terrain vehicle operating privileges under section 84.911 (chemical
 2.15 testing), or motorboat operating privileges under section 86B.335 (testing for alcohol and
 2.16 controlled substances), for violations that occurred on or after August 1, 1994; the revocation
 2.17 of snowmobile or all-terrain vehicle operating privileges under section 84.91 (operation of
 2.18 snowmobiles and all-terrain vehicles by persons under the influence of alcohol or controlled
 2.19 substances); or the revocation of motorboat operating privileges under section 86B.331
 2.20 (operation while using alcohol or drugs or with a physical or mental disability).

2.21 (c) "Prior impaired driving-related loss of license" does not include any license action
 2.22 stemming solely from a violation of section 169A.33 (underage drinking and driving),
 2.23 171.09 (conditions of a restricted license), or 340A.503 (persons under the age of 21, illegal
 2.24 acts).

2.25 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 2.26 on or after that date.

2.27 Sec. 2. Minnesota Statutes 2016, section 169A.20, subdivision 2, is amended to read:

2.28 Subd. 2. **Refusal to submit to chemical test crime.** It is a crime for any person to refuse
 2.29 to submit to a chemical test:

2.30 (1) of the person's ~~blood~~, breath, ~~or urine~~ under section 169A.51 (chemical tests for
 2.31 intoxication), or 169A.52 (test refusal or failure; revocation of license); or

3.1 (2) of the person's blood or urine as required by a search warrant under sections 626.04
 3.2 to 626.18, and 171.177.

3.3 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 3.4 on or after that date.

3.5 Sec. 3. Minnesota Statutes 2016, section 169A.51, subdivision 2, is amended to read:

3.6 Subd. 2. ~~Implied consent~~ Breath test advisory. ~~(a) Subject to paragraph (b);~~ At the
 3.7 time a breath test is requested, the person must be informed:

3.8 (1) that Minnesota law requires the person to take a test:

3.9 (i) to determine if the person is under the influence of alcohol, ~~controlled substances, or~~
 3.10 ~~hazardous substances; and~~

3.11 (ii) ~~to determine the presence of a controlled substance listed in Schedule I or II or~~
 3.12 ~~metabolite, other than marijuana or tetrahydrocannabinols; and~~

3.13 ~~(iii)~~ if the motor vehicle was a commercial motor vehicle, to determine the presence of
 3.14 alcohol;

3.15 (2) that refusal to ~~take~~ submit to a breath test is a crime; and

3.16 (3) ~~if the peace officer has probable cause to believe the person has violated the criminal~~
 3.17 ~~vehicular homicide and injury laws, that a test will be taken with or without the person's~~
 3.18 ~~consent; and~~

3.19 ~~(4)~~ that the person has the right to consult with an attorney, but that this right is limited
 3.20 to the extent that it cannot unreasonably delay administration of the test.

3.21 ~~(b) A peace officer who is not pursuing an implied consent revocation is not required~~
 3.22 ~~to give the advisory described in paragraph (a) to a person whom the officer has probable~~
 3.23 ~~cause to believe has violated section 609.2112, subdivision 1, clause (2), (3), (4), (5), or~~
 3.24 ~~(6); 609.2113, subdivision 1, clause (2), (3), (4), (5), or (6); or 609.2114, subdivision 1,~~
 3.25 ~~clause (2), (3), (4), (5), or (6); or Minnesota Statutes 2012, 609.21, subdivision 1, clause~~
 3.26 ~~(2), (3), (4), (5), or (6) (criminal vehicular operation DWI-related provisions).~~

3.27 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 3.28 on or after that date.

4.1 Sec. 4. Minnesota Statutes 2016, section 169A.51, subdivision 3, is amended to read:

4.2 Subd. 3. ~~Type of test~~ **Blood or urine tests; search warrant required.** ~~The peace officer~~
 4.3 ~~who requires a test pursuant to this section may direct whether the test is of blood, breath,~~
 4.4 ~~or urine. Action may be taken against a person who refuses to take a blood test only if an~~
 4.5 ~~alternative test was offered and action may be taken against a person who refuses to take a~~
 4.6 ~~urine test only if an alternative test was offered~~ (a) Notwithstanding any contrary provisions
 4.7 in sections 169A.51 to 169A.53, a blood or urine test may be conducted only pursuant to a
 4.8 search warrant under sections 626.04 to 626.18, or a judicially recognized exception to the
 4.9 search warrant requirement. In addition, blood and urine tests may be conducted only as
 4.10 provided in sections 169A.51 to 169A.53 and 171.177.

4.11 (b) When, under the provisions of section 169A.20, 169A.51, or 171.177, a search
 4.12 warrant is required for a blood or urine test, that requirement is met if a judicially recognized
 4.13 exception to the warrant requirement is applicable.

4.14 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 4.15 on or after that date.

4.16 Sec. 5. Minnesota Statutes 2016, section 169A.51, subdivision 4, is amended to read:

4.17 Subd. 4. **Requirement of urine or blood test.** ~~Notwithstanding subdivision 3,~~ A blood
 4.18 or urine test may be required pursuant to a search warrant under sections 626.04 to 626.18
 4.19 even after a breath test has been administered if there is probable cause to believe that:

4.20 (1) there is impairment by a controlled substance or a hazardous substance that is not
 4.21 subject to testing by a breath test; or

4.22 (2) a controlled substance listed in Schedule I or II or its metabolite, other than marijuana
 4.23 or tetrahydrocannabinols, is present in the person's body; or

4.24 (3) the person is unconscious or incapacitated to the point that the peace officer providing
 4.25 a breath test advisory, administering a breath test, or serving the search warrant has a
 4.26 good-faith belief that the person is mentally or physically unable to comprehend the breath
 4.27 test advisory or otherwise voluntarily submit to chemical tests.

4.28 Action may be taken against a person who refuses to take a blood test under this
 4.29 subdivision only if ~~a urine~~ an alternative test was offered and action may be taken against
 4.30 a person who refuses to take a urine test only if ~~a blood~~ an alternative test was offered. This
 4.31 limitation does not apply to an unconscious person under the circumstances described in
 4.32 clause (3).

5.1 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
5.2 on or after that date.

5.3 Sec. 6. Minnesota Statutes 2016, section 169A.53, subdivision 2, is amended to read:

5.4 Subd. 2. **Petition for judicial review.** (a) Within ~~30~~ 60 days following receipt of a notice
5.5 and order of revocation or disqualification pursuant to section 169A.52 (revocation of license
5.6 for test failure or refusal), a person may petition the court for review. The petition must be
5.7 filed with the district court administrator in the county where the alleged offense occurred,
5.8 together with proof of service of a copy on the commissioner, and accompanied by the
5.9 standard filing fee for civil actions. Responsive pleading is not required of the commissioner,
5.10 and court fees must not be charged for the appearance of the commissioner in the matter.

5.11 (b) The petition must:

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

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

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

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

5.22 (d) Judicial reviews must be conducted according to the Rules of Civil Procedure, except
5.23 that prehearing discovery is mandatory and is limited to:

5.24 (1) the notice of revocation;

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

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

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

5.29 Other types of discovery are available only upon order of the court.

5.30 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
5.31 on or after that date.

6.1 Sec. 7. Minnesota Statutes 2016, section 169A.53, subdivision 3, is amended to read:

6.2 Subd. 3. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under
6.3 this section must be before a district judge in any county in the judicial district where the
6.4 alleged offense occurred. The hearing is to the court and may be conducted at the same time
6.5 and in the same manner as hearings upon pretrial motions in the criminal prosecution under
6.6 section 169A.20 (driving while impaired), if any. The hearing must be recorded. The
6.7 commissioner shall appear and be represented by the attorney general or through the
6.8 prosecuting authority for the jurisdiction involved. The hearing must be held at the earliest
6.9 practicable date, and in any event no later than 60 days following the filing of the petition
6.10 for review. The judicial district administrator shall establish procedures to ensure efficient
6.11 compliance with this subdivision. To accomplish this, the administrator may, whenever
6.12 possible, consolidate and transfer review hearings among the locations within the judicial
6.13 district where terms of district court are held.

6.14 (b) The scope of the hearing is limited to the issues in clauses (1) to ~~(4)~~ (12):

6.15 (1) Did the peace officer have probable cause to believe the person was driving, operating,
6.16 or in physical control of a motor vehicle or commercial motor vehicle in violation of section
6.17 169A.20 (driving while impaired)?

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

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

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

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

6.25 (6) At the time of the request for the test, did the peace officer inform the person of the
6.26 person's rights and the consequences of taking or refusing the test as required by section
6.27 169A.51, subdivision 2?

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

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

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

7.1 (ii) the presence of a controlled substance listed in Schedule I or II or its metabolite,
7.2 other than marijuana or tetrahydrocannabinols?

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

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

7.8 (11) Did the person prove the defense of necessity?

7.9 (12) Did the person prove the defense of controlled substance use in accordance with a
7.10 prescription?

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

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

7.15 (e) The court shall order that the revocation or disqualification be either rescinded or
7.16 sustained and forward the order to the commissioner. The court shall file its order within
7.17 14 days following the hearing. If the revocation or disqualification is sustained, the court
7.18 shall also forward the person's driver's license or permit to the commissioner for further
7.19 action by the commissioner if the license or permit is not already in the commissioner's
7.20 possession.

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

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

7.25 (h) It is an affirmative defense for the petitioner to prove a necessity.

7.26 (i) It is an affirmative defense to the presence of a Schedule I or II controlled substance
7.27 that the person used the controlled substance according to the terms of a prescription issued
7.28 for the person according to sections 152.11 and 152.12, unless the court finds by a
7.29 preponderance of the evidence that the use of the controlled substance impaired the person's
7.30 ability to operate a motor vehicle.

7.31 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
7.32 on or after that date.

8.1 Sec. 8. Minnesota Statutes 2016, section 169A.54, subdivision 6, is amended to read:

8.2 Subd. 6. **Applicability of implied consent revocation.** (a) Any person whose license
8.3 has been revoked pursuant to section 169A.52 (license revocation for test failure or refusal)
8.4 or section 171.177 (revocation; pursuant to a search warrant), as the result of the same
8.5 incident, and who does not have a qualified prior impaired driving incident, is subject to
8.6 the mandatory revocation provisions of subdivision 1, clause (1) or (2), in lieu of the
8.7 mandatory revocation provisions of section 169A.52 or 171.177.

8.8 (b) Paragraph (a) does not apply to:

8.9 (1) a person whose license has been revoked under subdivision 2 (driving while impaired
8.10 by person under age 21); or

8.11 (2) a person whose driver's license has been revoked for, or who is charged with (i) an
8.12 alcohol concentration of twice the legal limit or more as measured at the time or within two
8.13 hours of the time of the offense; or (ii) a violation of section 169A.20 (driving while
8.14 impaired) with an aggravating factor described in section 169A.03, subdivision 3, clause
8.15 (3).

8.16 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
8.17 on or after that date.

8.18 Sec. 9. Minnesota Statutes 2016, section 169A.60, subdivision 10, is amended to read:

8.19 Subd. 10. **Petition for judicial review.** (a) Within ~~30~~ 60 days following receipt of a
8.20 notice and order of impoundment under this section, a person may petition the court for
8.21 review. The petition must include proof of service of a copy of the petition on the
8.22 commissioner. The petition must include the petitioner's date of birth, driver's license number,
8.23 and date of the plate impoundment violation, as well as the name of the violator and the
8.24 law enforcement agency that issued the plate impoundment order. The petition must state
8.25 with specificity the grounds upon which the petitioner seeks rescission of the order for
8.26 impoundment. The petition may be combined with any petition filed under section 169A.53
8.27 (administrative and judicial review of license revocation).

8.28 (b) Except as otherwise provided in this section, the judicial review and hearing are
8.29 governed by section 169A.53 and must take place at the same time as any judicial review
8.30 of the person's license revocation under section 169A.53. The filing of the petition does not
8.31 stay the impoundment order. The reviewing court may order a stay of the balance of the
8.32 impoundment period if the hearing has not been conducted within 60 days after filing of
8.33 the petition upon terms the court deems proper. The court shall order either that the

9.1 impoundment be rescinded or sustained, and forward the order to the commissioner. The
 9.2 court shall file its order within 14 days following the hearing.

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

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

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

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

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

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

9.14 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 9.15 on or after that date.

9.16 **Sec. 10. [171.177] REVOCATION; PURSUANT TO SEARCH WARRANT.**

9.17 **Subdivision 1. Search warrant-required testing advisory.** (a) At the time a blood or
 9.18 urine test is directed pursuant to a search warrant under sections 626.04 to 626.18, the person
 9.19 must be informed:

9.20 (1) that Minnesota law requires the person to take a test:

9.21 (i) to determine if the person is under the influence of alcohol, controlled substances, or
 9.22 hazardous substances;

9.23 (ii) to determine the presence of a controlled substance listed in Schedule I or II or
 9.24 metabolite, other than marijuana or tetrahydrocannabinols; and

9.25 (iii) if the motor vehicle was a commercial motor vehicle, to determine the presence of
 9.26 alcohol;

9.27 (2) that the test is sought and required pursuant to a search warrant;

9.28 (3) that refusal to submit to a blood or urine test is a crime;

10.1 (4) that if the peace officer has probable cause to believe the person has violated the
10.2 criminal vehicular homicide and injury laws, a test will be taken with or without the person's
10.3 consent; and

10.4 (5) that the person has the right to consult with an attorney, but that this right is limited
10.5 to the extent that it cannot unreasonably delay administration of the test.

10.6 (b) A peace officer who is not pursuing a revocation under this section is not required
10.7 to give the advisory described in paragraph (a) to a person whom the officer has probable
10.8 cause to believe has violated section 609.2112, subdivision 1, clause (2), (3), (4), (5), or
10.9 (6); 609.2113, subdivision 1, clause (2), (3), (4), (5), or (6); or 609.2114, subdivision 1,
10.10 clause (2), (3), (4), (5), or (6); or Minnesota Statutes 2012, section 609.21, subdivision 1,
10.11 clause (2), (3), (4), (5), or (6) (criminal vehicular operation DWI-related provisions).

10.12 Subd. 2. **Type of test.** The peace officer who directs a test pursuant to a search warrant
10.13 shall direct a blood or urine test as provided in the warrant. If the warrant authorizes either
10.14 a blood or urine test, the officer may direct whether the test is of blood or urine. If the person
10.15 to whom the test is directed objects to the test, the officer shall offer the person an alternative
10.16 test of either blood or urine. Action may be taken against a person who refuses to take a
10.17 blood test only if a urine test was offered and action may be taken against a person who
10.18 refuses to take a urine test only if a blood test was offered.

10.19 Subd. 3. **License revocation pursuant to search warrant.** After executing a search
10.20 warrant under sections 626.04 to 626.18 for the collection of a blood or urine sample based
10.21 upon probable cause of a violation of section 169A.20, the peace officer acting under sections
10.22 626.13 to 626.17 shall certify to the commissioner of public safety:

10.23 (1) when a person refuses to comply with the execution of the search warrant; or

10.24 (2) if a person submits to the test and the test results indicate:

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

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

10.28 (iii) the presence of a controlled substance listed in Schedule I or II or its metabolite,
10.29 other than marijuana or tetrahydrocannabinols.

10.30 Subd. 4. **Test refusal; license revocation.** (a) Upon certification under subdivision 3
10.31 that there existed probable cause to believe the person had been driving, operating, or in
10.32 physical control of a motor vehicle in violation of section 169A.20 (driving while impaired),
10.33 and that the person refused to comply with the execution of the search warrant under sections

11.1 626.04 to 626.18, the commissioner shall revoke the person's license or permit to drive or
 11.2 nonresident operating privilege. The commissioner shall revoke the license, permit, or
 11.3 nonresident operating privilege:

11.4 (1) for a person with no qualified prior impaired driving incidents within the past ten
 11.5 years, for a period of not less than one year;

11.6 (2) for a person under the age of 21 years and with no qualified prior impaired driving
 11.7 incidents within the past ten years, for a period of not less than one year;

11.8 (3) for a person with one qualified prior impaired driving incident within the past ten
 11.9 years or two qualified prior impaired driving incidents, for a period of not less than two
 11.10 years;

11.11 (4) for a person with two qualified prior impaired driving incidents within the past ten
 11.12 years or three qualified prior impaired driving incidents, for a period of not less than three
 11.13 years;

11.14 (5) for a person with three qualified prior impaired driving incidents within the past ten
 11.15 years, for a period of not less than four years; or

11.16 (6) for a person with four or more qualified prior impaired driving incidents, for a period
 11.17 of not less than six years.

11.18 (b) When a person who had been driving, operating, or in physical control of a
 11.19 commercial motor vehicle refuses to comply with the search warrant and permit testing,
 11.20 the commissioner shall disqualify the person from operating a commercial motor vehicle
 11.21 and shall revoke the person's license or permit to drive or nonresident operating privilege
 11.22 according to the federal regulations adopted by reference in section 171.165, subdivision
 11.23 2.

11.24 **Subd. 5. Test failure; license revocation.** (a) Upon certification under subdivision 3,
 11.25 pursuant to a search warrant under sections 626.04 to 626.18, that there existed probable
 11.26 cause to believe the person had been driving, operating, or in physical control of a motor
 11.27 vehicle in violation of section 169A.20 (driving while impaired), and that the person
 11.28 submitted to a test and the test results indicate an alcohol concentration of 0.08 or more or
 11.29 the presence of a controlled substance listed in Schedule I or II or its metabolite, other than
 11.30 marijuana or tetrahydrocannabinols, the commissioner shall revoke the person's license or
 11.31 permit to drive or nonresident operating privilege:

11.32 (1) for a period of 90 days or, if the test results indicate an alcohol concentration of twice
 11.33 the legal limit or more, not less than one year;

12.1 (2) if the person is under the age of 21 years, for a period of not less than 180 days or,
12.2 if the test results indicate an alcohol concentration of twice the legal limit or more, not less
12.3 than one year;

12.4 (3) for a person with one qualified prior impaired driving incident within the past ten
12.5 years or two qualified prior impaired driving incidents, for a period of not less than one
12.6 year or, if the test results indicate an alcohol concentration of twice the legal limit or more,
12.7 not less than two years;

12.8 (4) for a person with two qualified prior impaired driving incidents within the past ten
12.9 years or three qualified prior impaired driving incidents, for a period of not less than three
12.10 years;

12.11 (5) for a person with three qualified prior impaired driving incidents within the past ten
12.12 years, for a period of not less than four years; or

12.13 (6) for a person with four or more qualified prior impaired driving incidents, for a period
12.14 of not less than six years.

12.15 (b) On certification by the peace officer that there existed probable cause to believe the
12.16 person had been driving, operating, or in physical control of a commercial motor vehicle
12.17 with any presence of alcohol and that the person submitted to a test and the test results
12.18 indicated an alcohol concentration of 0.04 or more, the commissioner shall disqualify the
12.19 person from operating a commercial motor vehicle under section 171.165 (commercial
12.20 driver's license disqualification).

12.21 (c) If the test is of a person's blood or urine by a laboratory operated by the Bureau of
12.22 Criminal Apprehension or authorized by the bureau to conduct the analysis of a blood or
12.23 urine sample, the laboratory may directly certify to the commissioner the test results, and
12.24 the peace officer shall certify to the commissioner that there existed probable cause to
12.25 believe the person had been driving, operating, or in physical control of a motor vehicle in
12.26 violation of section 169A.20 (driving while impaired), and that the person submitted to a
12.27 test. Upon receipt of both certifications, the commissioner shall undertake the license actions
12.28 described in paragraphs (a) and (b).

12.29 Subd. 6. **Unlicensed drivers; license issuance denial.** If the person is a resident without
12.30 a license or permit to operate a motor vehicle in this state, the commissioner shall deny to
12.31 the person the issuance of a license or permit after the date of the alleged violation for the
12.32 same period as provided in this section for revocation, subject to review as provided in
12.33 subdivisions 10 and 11.

13.1 Subd. 7. **Notice of revocation or disqualification; review.** A revocation under this
13.2 section, or a disqualification under section 171.165 (commercial driver's license
13.3 disqualification), becomes effective at the time the commissioner or a peace officer acting
13.4 on behalf of the commissioner notifies the person of the intention to revoke, disqualify, or
13.5 both, and of revocation or disqualification. The notice must advise the person of the right
13.6 to obtain administrative and judicial review as provided in subdivisions 10 and 11. If mailed,
13.7 the notice and order of revocation or disqualification is deemed received three days after
13.8 mailing to the last known address of the person.

13.9 Subd. 8. **Test refusal; driving privilege lost.** (a) On behalf of the commissioner, a peace
13.10 officer requiring a test or directing the administration of a chemical test pursuant to a search
13.11 warrant under sections 626.04 to 626.18 shall serve immediate notice of intention to revoke
13.12 and of revocation on a person who refuses to permit a test or on a person who submits to a
13.13 test the results of which indicate an alcohol concentration of 0.08 or more.

13.14 (b) On behalf of the commissioner, a peace officer requiring a test or directing the
13.15 administration of a chemical test of a person driving, operating, or in physical control of a
13.16 commercial motor vehicle pursuant to a search warrant under sections 626.04 to 626.18
13.17 shall serve immediate notice of intention to disqualify and of disqualification on a person
13.18 who refuses to permit a test or on a person who submits to a test the results of which indicate
13.19 an alcohol concentration of 0.04 or more.

13.20 (c) The officer shall:

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

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

13.25 (3) send the notification of this action to the commissioner along with the certificate
13.26 required by subdivision 5 or 6.

13.27 Subd. 9. **Notice of action to other states.** When a nonresident's privilege to operate a
13.28 motor vehicle in this state has been revoked or denied, the commissioner shall give
13.29 information in writing of the action taken to the official in charge of traffic control or public
13.30 safety of the state of the person's residence and of any state in which the person has a license.

13.31 Subd. 10. **Administrative review.** (a) At any time during a period of revocation imposed
13.32 under this section, or a period of disqualification imposed under section 171.165 (commercial
13.33 driver's license disqualification), a person may request in writing a review of the order of

14.1 revocation or disqualification by the commissioner, unless the person is entitled to review
14.2 under section 171.166 (review of disqualification). Upon receiving a request, the
14.3 commissioner or the commissioner's designee shall review the order, the evidence upon
14.4 which the order was based, and any other material information brought to the attention of
14.5 the commissioner and determine whether sufficient cause exists to sustain the order. Within
14.6 15 days of receiving the request, the commissioner shall report in writing the results of the
14.7 review. The review provided in this subdivision is not subject to the contested case provisions
14.8 of the Administrative Procedure Act in sections 14.001 to 14.69.

14.9 (b) The availability of administrative review for an order of revocation or disqualification
14.10 has no effect upon the availability of judicial review under this section.

14.11 (c) Review under this subdivision must take place, if possible, at the same time as any
14.12 administrative review of the person's impoundment order under section 169A.60, subdivision
14.13 9.

14.14 Subd. 11. **Petition for judicial review.** (a) Within 60 days following receipt of a notice
14.15 and order of revocation pursuant to this section, a person may petition the court for review.
14.16 The petition must be filed with the district court administrator in the county where the
14.17 alleged offense occurred, together with proof of service of a copy on the commissioner, and
14.18 accompanied by the standard filing fee for civil actions. Responsive pleading is not required
14.19 of the commissioner, and court fees must not be charged for the appearance of the
14.20 commissioner in the matter.

14.21 (b) The petition must:

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

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

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

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

14.32 (d) Judicial reviews must be conducted according to the Rules of Civil Procedure, except
14.33 that prehearing discovery is mandatory and is limited to:

- 15.1 (1) the notice of revocation;
 15.2 (2) the certificate of analysis of the blood or urine test;
 15.3 (3) the peace officer's certificate and any accompanying documentation submitted by
 15.4 the arresting officer to the commissioner; and
 15.5 (4) disclosure of potential witnesses, including experts, and the basis of their testimony.

15.6 Other types of discovery are available only upon order of the court.

15.7 Subd. 12. **Judicial hearing; issues, order, appeal.** (a) A judicial review hearing under
 15.8 this section must be before a district judge in any county in the judicial district where the
 15.9 alleged offense occurred. The hearing is to the court and may be conducted at the same time
 15.10 and in the same manner as hearings upon pretrial motions in the criminal prosecution under
 15.11 section 169A.20 (driving while impaired), if any. The hearing must be recorded. The
 15.12 commissioner shall appear and be represented by the attorney general or through the
 15.13 prosecuting authority for the jurisdiction involved. The hearing must be held at the earliest
 15.14 practicable date, and in any event no later than 60 days following the filing of the petition
 15.15 for review. The judicial district administrator shall establish procedures to ensure efficient
 15.16 compliance with this subdivision. To accomplish this, the administrator may, whenever
 15.17 possible, consolidate and transfer review hearings among the locations within the judicial
 15.18 district where terms of district court are held.

15.19 (b) The scope of the hearing is limited to the issues in clauses (1) to (13):

15.20 (1) Did the peace officer have probable cause to believe the person was driving, operating,
 15.21 or in physical control of a motor vehicle or commercial motor vehicle in violation of section
 15.22 169A.20 (driving while impaired)?

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

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

15.26 (4) Did a licensed peace officer apply for a search warrant in accordance with the
 15.27 requirements set forth in sections 626.04 to 626.18?

15.28 (5) Did a neutral magistrate review the application for a search warrant and determine
 15.29 there was probable cause to believe that the person was driving, operating, or in physical
 15.30 control of a motor vehicle or commercial motor vehicle in violation of section 169A.20
 15.31 (driving while impaired)?

15.32 (6) Was the search warrant and the process by which it was obtained valid?

16.1 (7) At the time of directing the person to take the test, did the peace officer inform the
16.2 person that the person had a legal obligation to take the test and inform the person of the
16.3 person's rights and the consequences of taking or refusing the test as required by subdivision
16.4 1?

16.5 (8) Did the person refuse to permit the test?

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

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

16.9 (ii) the presence of a controlled substance listed in Schedule I or II or its metabolite,
16.10 other than marijuana or tetrahydrocannabinols?

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

16.14 (11) Was the testing method used valid and reliable and were the test results accurately
16.15 evaluated?

16.16 (12) Did the person prove the defense of necessity?

16.17 (13) Did the person prove the defense of controlled substance use in accordance with a
16.18 prescription?

16.19 (c) Certified or otherwise authenticated copies of laboratory or medical personnel reports,
16.20 records, documents, licenses, and certificates are admissible as substantive evidence.

16.21 (d) The court shall order that the revocation or disqualification be either rescinded or
16.22 sustained and forward the order to the commissioner. The court shall file its order within
16.23 14 days following the hearing. If the revocation or disqualification is sustained, the court
16.24 shall also forward the person's driver's license or permit to the commissioner for further
16.25 action by the commissioner if the license or permit is not already in the commissioner's
16.26 possession.

16.27 (e) Any party aggrieved by the decision of the reviewing court may appeal the decision
16.28 as provided in the Rules of Appellate Procedure.

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

16.31 (g) It is an affirmative defense for the petitioner to prove a necessity.

17.1 (h) It is an affirmative defense to the presence of a Schedule I or II controlled substance
 17.2 that the person used the controlled substance according to the terms of a prescription issued
 17.3 for the person according to sections 152.11 and 152.12, unless the court finds by a
 17.4 preponderance of the evidence that the use of the controlled substance impaired the person's
 17.5 ability to operate a motor vehicle.

17.6 Subd. 13. **Test refusal; no test given.** (a) If a person refuses to permit a blood or urine
 17.7 test as required by a search warrant and the provisions of this section, then a test must not
 17.8 be given. However, the applicable provisions of this section, section 169A.52, subdivision
 17.9 1, and other law apply.

17.10 (b) Notwithstanding paragraph (a), if a peace officer has probable cause to believe that
 17.11 a person has violated section 609.2112, 609.2113, or 609.2114, or Minnesota Statutes 2012,
 17.12 section 609.21 (criminal vehicular homicide or injury), a test may be required and obtained
 17.13 despite the person's refusal. A refusal to submit to a test does not constitute a violation of
 17.14 section 609.50 (obstructing legal process), unless the refusal was accompanied by force or
 17.15 violence or the threat of force or violence.

17.16 Subd. 14. **Definitions.** The definitions from section 169A.03 apply to this section.

17.17 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 17.18 on or after that date.

17.19 **ARTICLE 2**

17.20 **CONFORMING CHANGES**

17.21 Section 1. Minnesota Statutes 2016, section 97B.066, subdivision 1, is amended to read:

17.22 Subdivision 1. **Mandatory chemical testing.** (a) A person who takes wild animals with
 17.23 a bow or firearm in this state or on a boundary water of this state is required, subject to the
 17.24 provisions of this section, to take or submit to a test of the person's blood, breath, or urine
 17.25 for the purpose of determining the presence and amount of alcohol or a controlled substance.
 17.26 The test shall be administered at the direction of an officer authorized to make arrests under
 17.27 section 97B.065, subdivision 2.

17.28 (b) Taking or submitting to ~~the~~ a test of the person's breath is mandatory when requested
 17.29 by an officer who has probable cause to believe the person was hunting in violation of
 17.30 section 97B.065, subdivision 1, paragraph (a) or (c), and one of the following conditions
 17.31 exists:

18.1 (1) the person has been lawfully placed under arrest for violating section 97B.065,
18.2 subdivision 1, paragraph (a) or (c);

18.3 (2) the person has been involved while hunting in an accident resulting in property
18.4 damage, personal injury, or death;

18.5 (3) the person has refused to take the preliminary screening test provided for in section
18.6 97B.065, subdivision 3; or

18.7 (4) the screening test was administered and indicated an alcohol concentration of 0.08
18.8 or more.

18.9 (c) Taking or submitting to a test of the person's blood or urine is mandatory when
18.10 requested by a peace officer under the conditions described in paragraph (b) if the officer
18.11 is acting pursuant to a search warrant under sections 626.04 to 626.18.

18.12 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
18.13 on or after that date.

18.14 Sec. 2. Minnesota Statutes 2016, section 97B.066, is amended by adding a subdivision to
18.15 read:

18.16 Subd. 1a. **Blood or urine test; search warrant required.** Notwithstanding any contrary
18.17 provision in this section, a blood or urine test may be conducted only pursuant to a search
18.18 warrant under sections 626.04 to 626.18, or a judicially recognized exception to the search
18.19 warrant requirement. When, under the provisions of this section, a search warrant is required
18.20 for a blood or urine test, that requirement is met if a judicially recognized exception to the
18.21 search warrant is applicable.

18.22 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
18.23 on or after that date.

18.24 Sec. 3. Minnesota Statutes 2016, section 97B.066, subdivision 2, is amended to read:

18.25 **Subd. 2. Penalties; refusal; revocation of hunting privilege.** (a) If a person refuses to
18.26 take a test required under subdivision 1, none must be given but the officer authorized to
18.27 make arrests under section 97B.065, subdivision 2, shall report the refusal to the
18.28 commissioner of natural resources and to the authority having responsibility for prosecution
18.29 of misdemeanor offenses for the jurisdiction in which the incident occurred that gave rise
18.30 to the test demand and refusal.

19.1 On certification by the officer that probable cause existed to believe the person had been
 19.2 hunting while under the influence of alcohol or a controlled substance, that in the case of a
 19.3 blood or urine test the officer was acting pursuant to a search warrant, and that the person
 19.4 refused to submit to testing, the commissioner shall impose a civil penalty of \$500 and shall
 19.5 prohibit the person from hunting for one year.

19.6 On behalf of the commissioner, an officer requiring a test or directing the administration
 19.7 of a test shall serve on a person who refused to permit a test immediate notice of intention
 19.8 to prohibit the person from hunting, and to impose the civil penalty set forth in this
 19.9 subdivision. If the officer fails to serve a notice of intent to suspend hunting privileges, the
 19.10 commissioner may notify the person by certified mail to the address on the license of the
 19.11 person. The notice must advise the person of the right to obtain administrative and judicial
 19.12 review as provided in this section. The prohibition imposed by the commissioner takes
 19.13 effect ten days after receipt of the notice. The civil penalty is imposed 30 days after receipt
 19.14 of the notice or upon return of the certified mail to the commissioner, and must be paid
 19.15 within 30 days of imposition.

19.16 (b) A person who hunts during the period the person is prohibited from hunting as
 19.17 provided under paragraph (a) is guilty of a misdemeanor.

19.18 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
 19.19 on or after that date.

19.20 Sec. 4. Minnesota Statutes 2016, section 97B.066, subdivision 4, is amended to read:

19.21 Subd. 4. ~~Requirement of urine~~ Type of test. ~~Notwithstanding subdivision 1,~~ (a) A
 19.22 peace officer who directs a test pursuant to this section may direct a breath test.

19.23 (b) A peace officer, acting pursuant to a search warrant, may direct a blood or urine test
 19.24 as provided in the warrant. If the warrant authorizes either a blood or urine test, the officer
 19.25 may direct whether the test is of blood or urine. If the person to whom the test is directed
 19.26 objects to the test, the officer shall offer the person an alternative test of either blood or
 19.27 urine.

19.28 (c) If there is probable cause to believe there is impairment by a controlled substance
 19.29 that is not subject to testing by a breath test, a blood or urine test may be required pursuant
 19.30 to a search warrant even after a breath test has been administered.

19.31 (d) Action under this section may be taken against a person who refuses to take a blood
 19.32 test only if an alternative test was offered and action may be taken against a person who
 19.33 refuses to take a urine test only if an alternative test was offered.

20.1 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
20.2 on or after that date.

20.3 Sec. 5. Minnesota Statutes 2016, section 97B.066, subdivision 8, is amended to read:

20.4 Subd. 8. **Judicial review.** (a) Within ~~30~~ 60 days following receipt of a notice and order
20.5 imposing sanctions under this section, a person may petition the court for review. The
20.6 petition must be filed with the district court administrator in the county where the incident
20.7 occurred giving rise to the test demand and refusal, together with proof of service of a copy
20.8 on the commissioner and the prosecuting authority for misdemeanor offenses for the
20.9 jurisdiction in which the incident occurred. A responsive pleading is not required of the
20.10 commissioner of natural resources, and court fees may not be charged for the appearance
20.11 of the representative of the commissioner in the matter.

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

20.15 (c) The filing of the petition does not stay the revocation or prohibition against hunting.
20.16 However, the filing of a petition stays imposition of the civil penalty. The judicial review
20.17 shall be conducted according to the Rules of Civil Procedure.

20.18 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
20.19 on or after that date.

20.20 Sec. 6. Minnesota Statutes 2016, section 97B.066, subdivision 9, is amended to read:

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

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

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

21.2 (1) whether the officer had probable cause to believe that the person violated section
21.3 97B.065;

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

21.5 (3) if the test involved blood or urine, whether a licensed peace officer applied for a
21.6 search warrant in accordance with the requirements set forth in sections 626.04 to 626.18,
21.7 and, if so, whether a neutral magistrate reviewed the application for the search warrant and
21.8 determined there was probable cause to believe that the person violated section 97B.065,
21.9 and whether the warrant and the process by which it was obtained was valid;

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

21.11 ~~(4)~~ (5) whether the person refused to submit to testing.

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

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

21.17 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
21.18 on or after that date.

21.19 Sec. 7. Minnesota Statutes 2016, section 360.0753, subdivision 2, is amended to read:

21.20 Subd. 2. **Implied consent; conditions; election of test.** (a) Any person who operates
21.21 or attempts to operate an aircraft in or over this state or over any boundary water of this
21.22 state consents, subject to the provisions of this section and section 360.0752, to a chemical
21.23 test of that person's blood, breath, or urine for the purpose of determining the presence or
21.24 amount of alcohol, controlled substances, or hazardous substances. The test shall be
21.25 administered at the direction of a peace officer.

21.26 ~~The~~ (b) A test of the person's breath may be required ~~of a person~~ when an officer has
21.27 probable cause to believe the person was operating or attempting to operate an aircraft in
21.28 violation of section 360.0752 and one of the following conditions exists:

21.29 (1) the person has been lawfully placed under arrest for violation of section 360.0752;

21.30 (2) the person has been involved in an aircraft accident or collision resulting in property
21.31 damage, personal injury, or death;

22.1 (3) the person has refused to take the screening test provided for by section 360.0752;

22.2 (4) the screening test was administered and recorded an alcohol concentration of 0.04
22.3 or more or the presence of a controlled substance listed in Schedule I or II other than
22.4 marijuana or tetrahydrocannabinols; or

22.5 (5) the officer had probable cause to believe that the person was operating or attempting
22.6 to operate an aircraft with any amount of alcohol present in the person's body.

22.7 (c) A test of the person's blood or urine may be required by an officer under the conditions
22.8 described in paragraph (b) if the officer is acting pursuant to a search warrant under sections
22.9 626.04 to 626.18.

22.10 ~~(b)~~ (d) At the time a test is requested, the person shall be informed:

22.11 (1) that Minnesota law requires the person to take a test to determine the presence or
22.12 amount of alcohol or a controlled substance listed in Schedule I or II other than marijuana
22.13 or tetrahydrocannabinols, or to determine if the person is under the influence of alcohol,
22.14 controlled substances, or hazardous substances;

22.15 (2) that whether a test is taken or refused, the person may be subject to criminal
22.16 prosecution for an alcohol, controlled substance, or hazardous substance-related offense
22.17 relating to the operation of an aircraft;

22.18 (3) that if testing is refused, the person may be subject to criminal prosecution because
22.19 the person refused testing and the person will be disqualified from operating an aircraft for
22.20 a minimum period of one year;

22.21 (4) if the peace officer has probable cause to believe the person has violated the criminal
22.22 vehicular homicide and injury laws, that pursuant to a search warrant a test will be taken
22.23 with or without the person's consent; and

22.24 (5) that the person has the right to consult with an attorney, but that this right is limited
22.25 to the extent that it cannot unreasonably delay administration of the test.

22.26 ~~(e) The peace officer who requires a test pursuant to this subdivision may direct whether~~
22.27 ~~the test shall be of blood, breath, or urine. Action may be taken against a person who refuses~~
22.28 ~~to take a blood test only if an alternative test was offered, and action may be taken against~~
22.29 ~~a person who refuses to take a urine test only if an alternative test was offered.~~

22.30 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
22.31 on or after that date.

23.1 Sec. 8. Minnesota Statutes 2016, section 360.0753, is amended by adding a subdivision
23.2 to read:

23.3 Subd. 2a. **Blood or urine test; search warrant required.** Notwithstanding any contrary
23.4 provision in this section, a blood or urine test may be conducted only pursuant to a search
23.5 warrant under sections 626.04 to 626.18, or a judicially recognized exception to the search
23.6 warrant requirement. When, under the provisions of this section, a search warrant is required
23.7 for a blood or urine test, that requirement is met if a judicially recognized exception to the
23.8 search warrant is applicable.

23.9 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
23.10 on or after that date.

23.11 Sec. 9. Minnesota Statutes 2016, section 360.0753, subdivision 3, is amended to read:

23.12 Subd. 3. ~~Requirement of urine or blood~~ **Type of test.** Notwithstanding subdivision 2,
23.13 (a) A peace officer who directs a test pursuant to this section may direct a breath test.

23.14 (b) A peace officer, acting pursuant to a search warrant, may direct a blood or urine test
23.15 as provided in the warrant. If the warrant authorizes either a blood or urine test, the officer
23.16 may direct whether the test is of blood or urine. If the person to whom the test is directed
23.17 objects to the test, the officer shall offer the person an alternative test of either blood or
23.18 urine.

23.19 (c) A blood or urine test may be required pursuant to a search warrant even after a breath
23.20 test has been administered if there is probable cause to believe that: (1) there is impairment
23.21 by a controlled substance or hazardous substance that is not subject to testing by a breath
23.22 test; or (2) a controlled substance listed in Schedule I or II, other than marijuana or
23.23 tetrahydrocannabinols, is present in the person's body. ~~Action may be taken against a person~~
23.24 ~~who refuses to take a blood test under this subdivision only if a urine test was offered, and~~
23.25 ~~action may be taken against a person who refuses to take a urine test only if a blood test~~
23.26 ~~was offered.~~

23.27 (d) Action under this section may be taken against a person who refuses to take a blood
23.28 test only if an alternative test was offered and action may be taken against a person who
23.29 refuses to take a urine test only if an alternative test was offered.

23.30 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
23.31 on or after that date.

24.1 Sec. 10. Minnesota Statutes 2016, section 360.0753, subdivision 7, is amended to read:

24.2 Subd. 7. **Refusal to permit test; cease and desist order.** If a person under arrest refuses
24.3 to permit chemical testing, none shall be given, but the commissioner of transportation,
24.4 upon the receipt of a certificate of the peace officer that the officer had reasonable and
24.5 probable grounds to believe the arrested person had been operating or attempting to operate
24.6 an aircraft in violation of section 360.0752, that in the case of a blood or urine test the officer
24.7 was acting pursuant to a search warrant, and that the person had refused to permit the test,
24.8 shall issue a cease and desist order prohibiting the operation of an aircraft for a period of
24.9 one year. However, if a peace officer has probable cause to believe that the person has
24.10 violated section 609.2112, 609.2113, or 609.2114, a test may be required and obtained
24.11 despite the person's refusal. When a test is obtained pursuant to this section after the person
24.12 refused to submit to testing, the commissioner of transportation shall issue a cease and desist
24.13 order under this section based on the person's refusal. However, if the test is of the person's
24.14 blood or urine, the test must have been taken pursuant to a search warrant in order for a
24.15 cease and desist order to be issued.

24.16 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
24.17 on or after that date.

24.18 Sec. 11. Minnesota Statutes 2016, section 360.0753, subdivision 9, is amended to read:

24.19 Subd. 9. **Hearing.** The hearing shall be before a district court in the county where the
24.20 arrest occurred, unless there is agreement that the hearing may be held in some other county.
24.21 The hearing shall be recorded and proceed as in a criminal matter, without the right of trial
24.22 by jury, and its scope shall cover the issues of whether the peace officer had reasonable and
24.23 probable grounds to believe the person was operating or attempting to operate an aircraft
24.24 in violation of section 360.0752; whether the person was lawfully placed under arrest; if
24.25 the test involved blood or urine, whether a licensed peace officer applied for a search warrant
24.26 in accordance with the requirements set forth in sections 626.04 to 626.18, and, if so, whether
24.27 a neutral magistrate reviewed the application for the search warrant and determined there
24.28 was probable cause to believe that the person violated section 360.0752, and whether the
24.29 warrant and the process by which it was obtained was valid; whether the person refused to
24.30 permit the test, and if the person refused whether the person had reasonable grounds for
24.31 refusing to permit the test; and whether at the time of request for the test the peace officer
24.32 informed the person that the right to fly will be denied if the person refused to permit the
24.33 test and of the right to have additional tests made by someone of the person's own choosing.

25.1 The court shall order either that the denial be rescinded or sustained and refer the order to
25.2 the commissioner of transportation for further action.

25.3 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
25.4 on or after that date.

25.5 Sec. 12. Minnesota Statutes 2016, section 624.7143, subdivision 1, is amended to read:

25.6 Subdivision 1. **Mandatory chemical testing.** (a) A person who carries a pistol in a
25.7 public place on or about the person's clothes or person is required, subject to the provisions
25.8 of this section, to take or submit to a test of the person's blood, breath, or urine for the
25.9 purpose of determining the presence and amount of alcohol or a controlled substance. The
25.10 test shall be administered at the direction of an officer authorized to make arrests under
25.11 section 624.7142.

25.12 (b) Taking or submitting to ~~the~~ a test of the person's breath is mandatory when requested
25.13 by an officer who has probable cause to believe the person was carrying a pistol in violation
25.14 of section 624.7142, and one of the following conditions exists:

25.15 (1) the person has been lawfully placed under arrest for violating section 624.7142;

25.16 (2) the person has been involved while carrying a firearm in a firearms-related accident
25.17 resulting in property damage, personal injury, or death;

25.18 (3) the person has refused to take the preliminary screening test provided for in section
25.19 624.7142; or

25.20 (4) the screening test was administered and indicated an alcohol concentration of 0.04
25.21 or more.

25.22 (c) Taking or submitting to a test of the person's blood or urine is mandatory when
25.23 requested by a peace officer under the conditions described in paragraph (b) if the officer
25.24 is acting pursuant to a search warrant under sections 626.04 to 626.18.

25.25 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
25.26 on or after that date.

25.27 Sec. 13. Minnesota Statutes 2016, section 624.7143, is amended by adding a subdivision
25.28 to read:

25.29 Subd. 1a. **Blood or urine test; search warrant required.** Notwithstanding any contrary
25.30 provision in this section, a blood or urine test may be conducted only pursuant to a search
25.31 warrant under sections 626.04 to 626.18, or a judicially recognized exception to the search

26.1 warrant requirement. When, under the provisions of this section, a search warrant is required
26.2 for a blood or urine test, that requirement is met if a judicially recognized exception to the
26.3 search warrant is applicable.

26.4 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
26.5 on or after that date.

26.6 Sec. 14. Minnesota Statutes 2016, section 624.7143, subdivision 2, is amended to read:

26.7 Subd. 2. **Penalties; refusal; revocation.** (a) If a person refuses to take a test required
26.8 under subdivision 1, none must be given but the officer shall report the refusal to the sheriff
26.9 and to the authority having responsibility for prosecution of misdemeanor offenses for the
26.10 jurisdiction in which the incident occurred that gave rise to the test demand and refusal. On
26.11 certification by the officer that probable cause existed to believe the person had been carrying
26.12 a pistol on or about the person's clothes or person in a public place while under the influence
26.13 of alcohol or a controlled substance, that in the case of a blood or urine test the officer was
26.14 acting pursuant to a search warrant, and that the person refused to submit to testing, a court
26.15 may impose a civil penalty of \$500 and may revoke the person's authority to carry a pistol
26.16 in a public place on or about the person's clothes or person under the provisions of a permit
26.17 or otherwise for a period of one year from the date of the refusal. The person shall be
26.18 accorded notice and an opportunity to be heard prior to imposition of the civil penalty or
26.19 the revocation.

26.20 (b) Revocations under this subdivision must be reported in the same manner as in section
26.21 624.714, subdivision 12a.

26.22 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
26.23 on or after that date.

26.24 Sec. 15. Minnesota Statutes 2016, section 624.7143, subdivision 4, is amended to read:

26.25 Subd. 4. ~~**Requirement of blood or urine**~~ **Type of test.** ~~Notwithstanding subdivision 1,~~
26.26 (a) A peace officer who directs a test pursuant to this section may direct a breath test.

26.27 (b) A peace officer, acting pursuant to a search warrant, may direct a blood or urine test
26.28 as provided in the warrant. If the warrant authorizes either a blood or urine test, the officer
26.29 may direct whether the test is of blood or urine. If the person to whom the test is directed
26.30 objects to the test, the officer shall offer the person an alternative test of either blood or
26.31 urine.

27.1 (c) If there is probable cause to believe there is impairment by a controlled substance
27.2 that is not subject to testing by a breath test, a blood or urine test may be required pursuant
27.3 to a search warrant even after a breath test has been administered.

27.4 (d) Action under this section may be taken against a person who refuses to take a blood
27.5 test only if an alternative test was offered and action may be taken against a person who
27.6 refuses to take a urine test only if an alternative test was offered.

27.7 **EFFECTIVE DATE.** This section is effective July 1, 2017, and applies to acts committed
27.8 on or after that date.

27.9 Sec. 16. **REVISOR'S INSTRUCTION.**

27.10 The revisor of statutes shall add references to new Minnesota Statutes, section 171.177,
27.11 in statutes that reference driver's license revocations under Minnesota Statutes, section
27.12 169A.52, as appropriate.

27.13 **EFFECTIVE DATE.** This section is effective July 1, 2017.

APPENDIX
Article locations in S2375-1

ARTICLE 1 DWI LAW CHANGES Page.Ln 1.12
ARTICLE 2 CONFORMING CHANGES Page.Ln 17.19