

Minnesota's worst law?

Earlier this month, the Minnesota legislature convened for its 2009-2010 session. In the coming weeks, legislators, citizens and lobbyists will wrestle over the future shape of Minnesota's legal code as they introduce scores of bills seeking to create new laws, or to modify those that already exist.

Minnesota's current statutes are grouped into 648 chapters, and fill thousands of printed pages, covering everything from agriculture, to weights and measures, to veterans' affairs. Some of these laws have relatively high public profiles, due to the press coverage they received at the time of their passage. In this category we find state statute 169.686, which provides criminal penalties for failing to wear a seat belt while operating a motor vehicle. Others dwell in comparative obscurity, rarely utilized or enforced. A representative example is statute 192.31, which exempts military vehicles from traffic regulations while on official duty.

A feature that's common to many prominent Minnesota laws is the existence of a committed set of opponents seeking their modification or repeal. Whether it's the tax code or sentencing guidelines, these laws tend to generate an abundance of critics, and provide a reliable source of controversy.

While many laws are singled out for criticism in the course of our public debate, which one has the distinction of being called Minnesota's worst? What follows is a brief, informal survey of opinions from across the policy spectrum about possible answers to that question. Some survey respondents cited specific laws or regulations, while others had a more generalized critique. Phil Krinke, a former legislator and current president of the Minnesota Taxpayer's League joked, "The worst Minnesota law? You could start at chapter one and practically go all the way through."

Twila Brase

President, Citizens Council on Health Care (CCHC)

Twila Brase heads a policy organization that encourages free market solutions to health care challenges. For her pick, she selected the 1992 HealthRight Act, the forerunner to today's MinnesotaCare.

MinnesotaCare provides subsidized health care coverage to certain state residents, based on income level and insurance status. Brase criticized the MinnesotaCare program on several fronts. The existence of the program, she said, has had a negative impact on the private health care options that Minnesota residents have access to, by discouraging private insurers from offering certain forms of coverage. “MinnesotaCare,” said Brase, “limits the treatment and insurance choices of all Minnesotans.”

Her organization has also criticized the scope of MinnesotaCare’s coverage as being too broad for a program designed to assist low-income Minnesotans. The CCHC website notes that a waiver under MinnesotaCare expands access to federal Medicare benefits, broadening the scope of coverage beyond low-income families, to many middle-class families earning incomes up to 275 percent higher than the federal poverty threshold.

In addition to its substance, Brase expressed concerns about the procedures used to pass the original bill. “The bill was drafted behind closed doors,” she claimed. “According to one DFL senator I talked with, even interested legislators in the ruling DFL party weren't allowed to see the bill until it was introduced on March 9, 1992. Apparently, it was actually four bills which went through the legislature and its myriad committees all at once, making it difficult for everyone to be at each and every hearing that was held. Then the bills were combined into one bill, and the vote was called.”

Amy Johnson

Executive Director, Outfront Minnesota

Outfront Minnesota is a non-profit organization that advocates on behalf of GLBT legal rights. Outfront’s Amy Johnson said that from her perspective, the question of “Minnesota’s worst law” was framed too narrowly. “There are a whole host of inter-related laws that negatively impact gays and lesbians in Minnesota,” she claimed. Johnson pointed to 515 specific Minnesota laws that provide unequal treatment to same-sex couples. She noted that these statutes had been identified and cataloged by a peer organization - Project 515 – which works to raise public awareness about legal disparities facing same-sex couples in Minnesota.

Johnson noted that the most well known statute impacting gay and lesbian couples is Minnesota’s law defining marriage. State statute 517.10 defines

marriage as a civil contract between a consenting man and woman, and explicitly states that “lawful marriage may be contracted only between persons of the opposite sex.” This definition, Johnson said, does not exist in a void, but impacts scores of other statutes, and has ramifications in a host of areas from “wrongful death actions to family medical leave.”

Other areas that Johnson highlighted include disparities in the allocation of benefits to deceased partners, the provision of burial rights, and access to hospital visitation. Johnson also asserted that Minnesota law provides multiple impediments for same-sex couples trying to make decisions for partners at critical junctures in their health care. For example, state statute 144A.75 includes “relatives” in the definition of persons who can assert rights for patients receiving hospice care, but the law affords no similar, express status to same-sex partners.

Jeff Sheridan

Defense Attorney

Eagan-based defense attorney Jeff Sheridan selected Minnesota’s Implied Consent law as the state’s worst law. The law applies to persons who are stopped by the police under suspicion of drunken or impaired driving. Under the relevant statutes, a driver’s refusal to submit to chemical testing triggers an immediate suspension of their license for one year. Such refusal also constitutes a criminal offense. According to the law, a license suspension must be supported by probable cause that the person has been driving under the influence. Says Sheridan, “The cop can make a decision on the spot, and instantly issue a notice of revocation. It’s punishment before there’s been any process or conviction.”

While one is able to get a hearing to review a license revocation, the hearing is not automatic – it must be requested by the driver. Sheridan noted that over the years, Minnesota has moved from a post-hearing revocation process, to a pre-hearing process. Prior to the enactment of the Implied Consent law in 1982, Sheridan said that the state would issue a notice of its intention to revoke a person’s license, and the individual would be afforded an opportunity to challenge the revocation before it occurred. The driver, he noted, also was also able to get a hearing on the matter relatively quickly - within seven days. Sheridan contrasted this time-frame with today’s wait for an Implied Consent hearing, which he claimed can take up to sixty days to occur.

Sheridan maintained that such laws get passed because the legislature does not want to challenge what he termed the “MADD mothers” lobby. “And it’s not just the legislature who’s responsible,” he added. “It’s also the appellate courts who uphold these laws. Judicial elections are determined by so few votes that one mailer from MADD could tip what would otherwise be an uneventful election.”

“If you look at the criminal code,” said Sheridan, “the first degree murder statute takes up three-quarters of a page. By contrast, the DWI statutes fill 44 pages. Why do we need all of these rules to deal with what is a serious, but uncomplicated, crime?”

Vic Rosenthal

Executive Director, Jewish Community Action

With Jewish Community Action’s focus on affordable housing, community reinvestment, and racial justice, Vic Rosenthal noted that, “Many of our concerns relate to what’s *not* been passed, rather than to what’s already on the books.”

For his part, Rosenthal singled out a Minnesota administrative rule - rather than a state statute - for particular criticism. “One of the issues that’s motivated us in recent years has been the fair treatment of immigrants,” he said. Rosenthal cited a Department of Public Safety rule governing driver license issuance as being problematic when applied to immigrants.

Minnesota administrative rule 7410.0410 states that in order to obtain a driver’s license, the applicant must attest to residence within the state of Minnesota, and must also provide proof of either United States citizenship, lawful short-term admission to the United States, or permanent U.S. resident status.

Rosenthal objected to the immigration status inquiries mandated by the rule. Driver’s licenses, he maintained, should fulfill the narrow mission of licensing individuals to operate automobiles, rather than serving as immigration status verification documents. “Immigration is a federal issue,” Rosenthal noted. He held that the Department of Public Safety (DPS) should not serve as a proxy for the immigration enforcement function of the federal government.

More “worst laws” ahead?

As the current legislative session presses on, chances are high that additional, controversial statutes will be added to the Minnesota code. At minimum, it is safe to assume that *more* laws will be added. The website of the Minnesota Revisor’s office lists over 200 laws that were passed during the 2008 regular session alone.

The Taxpayer’s League’s Phil Krinke was circumspect about the prospects for improving the Minnesota legal code by adding additional verbiage. He noted that the culture of the legislature rewards its members for adding new statutes, rather than streamlining or repealing existing legal provisions. Legislative careers are often viewed through the prism of what gets passed, he said. Krinke noted that when he served in the legislature during the early 1990s, “reinventing government” was the buzz-phrase of choice around the state capital. He recalls telling a colleague at the time that the best strategy for doing this might be to “scrap the whole code and start over.”

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