

LEGISLATIVE BILL 210

Approved by the Governor March 13, 1997

Introduced by Kristensen, 37; Crosby, 29; Vrtiska, 1

AN ACT relating to driving or boating under the influence of alcohol or a controlled substance; to amend sections 37-1254.06 and 60-6,202, Reissue Revised Statutes of Nebraska, and sections 60-462 and 60-479, Revised Statutes Supplement, 1996; to provide for blood specimen certificates as prescribed; to provide for liability of the state as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 37-1254.06, Reissue Revised Statutes of Nebraska, is amended to read:

37-1254.06. (1) Any physician, registered nurse, other trained person employed by a licensed institution or facility defined in section 71-2017.01, a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 37-1254.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 37-1254.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services Regulation and Licensure and such forms shall be made available to the persons listed in subsection (1) of this section. Any physician, registered nurse, qualified technician, or hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 37-1254.02, and the state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing such act. The physician, registered nurse, qualified technician, or hospital shall not be individually liable for damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a law enforcement officer pursuant to section 37-1254.02 except for acts of gross negligence of the agent or of persons employed by such agent.

Sec. 2. Section 60-462, Revised Statutes Supplement, 1996, is amended to read:

60-462. Sections 60-462 to 60-4,188 and section 4 of this act shall be known and may be cited as the Motor Vehicle Operator's License Act.

Sec. 3. Section 60-479, Revised Statutes Supplement, 1996, is amended to read:

60-479. Sections 60-480 to 60-4,111 and 60-4,182 to 60-4,188 and section 4 of this act shall apply to any operator's license issued pursuant to the Motor Vehicle Operator's License Act.

Sec. 4. (1) Any physician, registered nurse, other trained person employed by a licensed institution or facility defined in section 71-2017.01, a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to section 60-4,164. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a

peace officer pursuant to such section except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-4.164 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services Regulation and Licensure and such forms shall be made available to the persons listed in subsection (1) of this section.

Sec. 5. Section 60-6,202, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,202. (1) Any physician, registered nurse, other trained person employed by a licensed institution or facility which is defined in section 71-2017.01, or a clinical laboratory certified pursuant to the Nebraska Clinical Laboratories Certification Act, the federal Clinical Laboratory Improvement Act of 1967, as amended, or Title XVIII or XIX of the federal Social Security Act, as amended, to withdraw human blood for scientific or medical purposes, or a hospital shall be an agent of the State of Nebraska when performing the act of withdrawing blood at the request of a peace officer pursuant to sections 60-6,197 and 60-6,211.02. The state shall be liable in damages for any illegal or negligent acts or omissions of such agents in performing the act of withdrawing blood. The agent shall not be individually liable in damages or otherwise for any act done or omitted in performing the act of withdrawing blood at the request of a peace officer pursuant to such sections except for acts of willful, wanton, or gross negligence of the agent or of persons employed by such agent.

(2) Any person listed in subsection (1) of this section withdrawing a blood specimen for purposes of section 60-6.197 or 60-6.211.02 shall, upon request, furnish to any law enforcement agency or the person being tested a certificate stating that such specimen was taken in a medically acceptable manner. The certificate shall be signed under oath before a notary public and shall be admissible in any proceeding as evidence of the statements contained in the certificate. The form of the certificate shall be prescribed by the Department of Health and Human Services Regulation and Licensure and such forms shall be made available to the persons listed in subsection (1) of this section.

Sec. 6. Original sections 37-1254.06 and 60-6,202, Reissue Revised Statutes of Nebraska, and sections 60-462 and 60-479, Revised Statutes Supplement, 1996, are repealed.