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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH
SESSION

HOUSE FILE No. **690**

February 8, 2007

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act
1.2 relating to public safety; authorizing phlebotomists to take blood samples from
1.3 DWI offenders under certain circumstances and providing legal immunity for
1.4 so doing; adding references to controlled substance metabolites in the criminal
1.5 vehicular operation law; making numerous technical changes to the criminal
1.6 vehicular operation law to simplify it; providing for notice to an accused of
1.7 the contents of certain reports and clarifying the repercussions of the accused's
1.8 not requesting the preparer of the report to testify at trial; amending Minnesota
1.9 Statutes 2006, sections 169A.51, subdivision 7; 609.21, subdivisions 1, 4a, by
1.10 adding subdivisions; 634.15, subdivisions 1, 2; repealing Minnesota Statutes
1.11 2006, section 609.21, subdivisions 2, 2a, 2b, 3, 4.

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

1.13 Section 1. Minnesota Statutes 2006, section 169A.51, subdivision 7, is amended to
1.14 read:

1.15 Subd. 7. **Requirements for conducting tests; liability.** (a) Only a physician,
1.16 medical technician, emergency medical technician-paramedic, registered nurse, medical
1.17 technologist, medical laboratory technician, phlebotomist, or laboratory assistant acting
1.18 at the request of a peace officer may withdraw blood for the purpose of determining the
1.19 presence of alcohol, a controlled substance or its metabolite, or a hazardous substance.
1.20 This limitation does not apply to the taking of a breath or urine sample.

1.21 (b) The person tested has the right to have someone of the person's own choosing
1.22 administer a chemical test or tests in addition to any administered at the direction of a
1.23 peace officer; provided, that the additional test sample on behalf of the person is obtained
1.24 at the place where the person is in custody, after the test administered at the direction of a
1.25 peace officer, and at no expense to the state. The failure or inability to obtain an additional
1.26 test or tests by a person does not preclude the admission in evidence of the test taken at

2.1 the direction of a peace officer unless the additional test was prevented or denied by the
2.2 peace officer.

2.3 (c) The physician, medical technician, emergency medical technician-paramedic,
2.4 medical technologist, medical laboratory technician, laboratory assistant, phlebotomist,
2.5 or registered nurse drawing blood at the request of a peace officer for the purpose of
2.6 determining the concentration of alcohol, a controlled substance or its metabolite, or a
2.7 hazardous substance is in no manner liable in any civil or criminal action except for
2.8 negligence in drawing the blood. The person administering a breath test must be fully
2.9 trained in the administration of breath tests pursuant to training given by the commissioner
2.10 of public safety.

2.11 **EFFECTIVE DATE.** This section is effective the day following final enactment
2.12 and applies to crimes committed on or after that date.

2.13 Sec. 2. Minnesota Statutes 2006, section 609.21, subdivision 1, is amended to read:

2.14 Subdivision 1. **Criminal vehicular ~~homicide~~ operation; crime described.** A
2.15 person is guilty of criminal vehicular ~~homicide resulting in death and may be sentenced to~~
2.16 ~~imprisonment for not more than ten years or to payment of a fine of not more than \$20,000;~~
2.17 ~~or both~~ operation and may be sentenced as provided in subdivision 1a, if the person causes
2.18 injury to or the death of a human being not constituting murder or manslaughter another
2.19 as a result of operating a motor vehicle:

2.20 (1) in a grossly negligent manner;

2.21 (2) in a negligent manner while under the influence of:

2.22 (i) alcohol;

2.23 (ii) a controlled substance; or

2.24 (iii) any combination of those elements;

2.25 (3) while having an alcohol concentration of 0.08 or more;

2.26 (4) while having an alcohol concentration of 0.08 or more, as measured within
2.27 two hours of the time of driving;

2.28 (5) in a negligent manner while knowingly under the influence of a hazardous
2.29 substance;

2.30 (6) in a negligent manner while any amount of a controlled substance listed in
2.31 schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is
2.32 present in the person's body; or

2.33 (7) where the driver who causes the accident leaves the scene of the accident in
2.34 violation of section 169.09, subdivision 1 or 6.

3.1 **EFFECTIVE DATE.** This section is effective August 1, 2007, and applies to crimes
3.2 committed on or after that date.

3.3 Sec. 3. Minnesota Statutes 2006, section 609.21, is amended by adding a subdivision
3.4 to read:

3.5 Subd. 1a. **Criminal penalties.** (a) A person who violates subdivision 1 and causes
3.6 the death of a human being not constituting murder or manslaughter or the death of an
3.7 unborn child may be sentenced to imprisonment for not more than ten years or to payment
3.8 of a fine of not more than \$20,000, or both.

3.9 (b) A person who violates subdivision 1 and causes great bodily harm to another not
3.10 constituting attempted murder or assault or great bodily harm to an unborn child who is
3.11 subsequently born alive may be sentenced to imprisonment for not more than five years or
3.12 to payment of a fine of not more than \$10,000, or both.

3.13 (c) A person who violates subdivision 1 and causes substantial bodily harm to
3.14 another may be sentenced to imprisonment for not more than three years or to payment of
3.15 a fine of not more than \$10,000, or both.

3.16 (d) A person who violates subdivision 1 and causes bodily harm to another may be
3.17 sentenced to imprisonment for not more than one year or to payment of a fine of not
3.18 more than \$3,000, or both.

3.19 **EFFECTIVE DATE.** This section is effective August 1, 2007, and applies to crimes
3.20 committed on or after that date.

3.21 Sec. 4. Minnesota Statutes 2006, section 609.21, is amended by adding a subdivision
3.22 to read:

3.23 Subd. 1b. **Conviction not bar to punishment for other crimes.** A prosecution
3.24 for or a conviction of a crime under this section relating to causing death or injury to an
3.25 unborn child is not a bar to conviction of or punishment for any other crime committed by
3.26 the defendant as part of the same conduct.

3.27 **EFFECTIVE DATE.** This section is effective August 1, 2007, and applies to crimes
3.28 committed on or after that date.

3.29 Sec. 5. Minnesota Statutes 2006, section 609.21, subdivision 4a, is amended to read:

3.30 Subd. 4a. **Affirmative defense.** It shall be an affirmative defense to a charge under
3.31 subdivision 1, clause (6); ~~2, clause (6); 2a, clause (6); 2b, clause (6); 3, clause (6); or 4,~~

4.1 ~~clause (6)~~, that the defendant used the controlled substance according to the terms of a
4.2 prescription issued for the defendant in accordance with sections 152.11 and 152.12.

4.3 **EFFECTIVE DATE.** This section is effective August 1, 2007, and applies to crimes
4.4 committed on or after that date.

4.5 Sec. 6. Minnesota Statutes 2006, section 634.15, subdivision 1, is amended to read:

4.6 Subdivision 1. **Certificates of analysis; blood sample reports; chain of custody.**

4.7 (a) In any hearing or trial of a criminal offense or petty misdemeanor or proceeding
4.8 pursuant to section 169A.53, subdivision 3, the following documents shall be admissible
4.9 in evidence:

4.10 ~~(a)~~ (1) a report of the facts and results of any laboratory analysis or examination if it
4.11 is prepared and attested by the person performing the laboratory analysis or examination
4.12 in any laboratory operated by the Bureau of Criminal Apprehension or authorized by the
4.13 bureau to conduct an analysis or examination, or in any laboratory of the Federal Bureau
4.14 of Investigation, the federal Postal Inspection Service, the federal Bureau of Alcohol,
4.15 Tobacco and Firearms, or the federal Drug Enforcement Administration;

4.16 ~~(b)~~ (2) a report of a blood sample withdrawn under the implied consent law if:

4.17 (i) The report was prepared by the person who administered the test;

4.18 (ii) The person who withdrew the blood sample was competent to administer the test
4.19 under section 169A.51, subdivision 7; and

4.20 (iii) The report was prepared consistent with any applicable rules promulgated
4.21 by the commissioner of public safety; and

4.22 ~~(c)~~ (3) a verified chain of custody of a specimen while under the control of a
4.23 laboratory described in clause ~~(a)~~ (1).

4.24 (b) A report described in paragraph (a), clause ~~(a)~~ (1), purported to be signed by the
4.25 person performing the analysis or examination in a laboratory named in that clause, or a
4.26 blood sample report described in paragraph (a), clause ~~(b)~~ (2), purported to be signed by
4.27 the person who withdrew the blood sample shall be admissible as evidence without proof
4.28 of the seal, signature or official character of the person whose name is signed to it. The
4.29 signature in paragraph (a), clause ~~(a)~~ (1) or ~~(b)~~ (2), can be written or in electronic format.

4.30 (c) At least 20 days before trial, the prosecutor shall submit to the accused person or
4.31 the accused person's attorney notice of the contents of a report described in paragraph (a)
4.32 and of the requirements of subdivision 2.

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

5.1 Sec. 7. Minnesota Statutes 2006, section 634.15, subdivision 2, is amended to read:

5.2 Subd. 2. **Testimony at trial.** (a) Except in civil proceedings, including proceedings
 5.3 under section 169A.53, an accused person or the accused person's attorney may request,
 5.4 by notifying the prosecuting attorney at least ten days before the trial, that the following
 5.5 persons testify in person at the trial on behalf of the state:

5.6 ~~(a)~~ (1) a person who performed the laboratory analysis or examination for the report
 5.7 described in subdivision 1, paragraph (a), clause ~~(a)~~ (1); or

5.8 ~~(b)~~ (2) a person who prepared the blood sample report described in subdivision
 5.9 1, paragraph (a), clause ~~(b)~~ (2).

5.10 If a petitioner in a proceeding under section 169A.53 subpoenas a person described
 5.11 in ~~paragraph (a) clause (1) or (b) (2),~~ to testify at the proceeding, the petitioner is not
 5.12 required to pay the person witness fees under section 357.22 in excess of \$100.

5.13 (b) If the accused person or the accused person's attorney does not comply with
 5.14 the ten-day requirement described in paragraph (a), the prosecutor is not required to
 5.15 produce the person who performed the analysis or examination or prepared the report.
 5.16 In this case, the accused person's right to confront that witness is waived and the report
 5.17 shall be admitted into evidence.

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

5.19 Sec. 8. **REVISOR'S INSTRUCTION.**

5.20 (a) In Minnesota Statutes, sections 171.3215, subdivision 2a; and 609.135,
 5.21 subdivision 2, the revisor of statutes shall change the references in column A to the
 5.22 references in column B.

5.23	<u>Column A</u>	<u>Column B</u>
5.24	<u>609.21, subdivision 1</u>	<u>609.21, subdivision 1a, paragraph (a)</u>
5.25	<u>609.21, subdivision 2</u>	<u>609.21, subdivision 1a, paragraph (b)</u>
5.26	<u>609.21, subdivision 2a</u>	<u>609.21, subdivision 1a, paragraph (c)</u>
5.27	<u>609.21, subdivision 2b</u>	<u>609.21, subdivision 1a, paragraph (d)</u>
5.28	<u>609.21, subdivision 4</u>	<u>609.21, subdivision 1a, paragraph (b)</u>

5.29 (b) In Minnesota Statutes, section 609.035, subdivision 1, the revisor of statutes shall
 5.30 replace the reference to Minnesota Statutes, section 609.21, subdivisions 3 and 4, with a
 5.31 reference to Minnesota Statutes, section 609.21, subdivision 1b.

5.32 (c) In Minnesota Statutes, section 609.266, the revisor of statutes shall replace the
 5.33 reference to Minnesota Statutes, section 609.21, subdivisions 3 and 4, with a reference to
 5.34 Minnesota Statutes, section 609.21, subdivision 1a, paragraphs (a) and (b).

6.1 (d) In Minnesota Statutes, section 169A.03, subdivisions 20 and 21, and Minnesota
6.2 Statutes, section 169A.24, subdivision 1, the revisor of statutes shall strike the references
6.3 to Minnesota Statutes, section 609.21, subdivision 2, clauses (2) to (6); subdivision 2a,
6.4 clauses (2) to (6); subdivision 2b, clauses (2) to (6); subdivision 3, clauses (2) to (6); and
6.5 subdivision 4, clauses (2) to (6).

6.6 **EFFECTIVE DATE.** This section is effective August 1, 2007.

6.7 **Sec. 9. REPEALER.**

6.8 Minnesota Statutes 2006, section 609.21, subdivisions 2, 2a, 2b, 3, and 4, are
6.9 repealed.

6.10 **EFFECTIVE DATE.** This section is effective August 1, 2007, and applies to crimes
6.11 committed on or after that date.