

By Representative Betancourt

1                                   A bill to be entitled  
2           An act relating to tests for alcohol, chemical  
3           substances or controlled substances; amending  
4           ss. 316.1932, 316.1933, F.S.; amending the  
5           implied consent law and laws prescribing  
6           testing for impairment or intoxication in cases  
7           of death or serious bodily injury; authorizing  
8           certain health care providers who become aware  
9           of a person's unlawful blood-alcohol level to  
10          notify law enforcement officials; prescribing a  
11          form for the notice; providing that such  
12          reporting is not a violation of any ethical or  
13          moral duty; prohibiting any action or  
14          administrative proceeding being brought against  
15          anyone participating in good faith in making  
16          such report; providing immunity from civil or  
17          criminal liability and from any professional  
18          disciplinary action; providing immunity in any  
19          judicial proceeding resulting from the report;  
20          providing that information relating to the  
21          alcohol content of the blood or breath or the  
22          presence of chemical substances or controlled  
23          substances in the blood obtained under these  
24          sections must be released to a court,  
25          prosecuting attorney, defense attorney, or law  
26          enforcement officer in connection with a  
27          violation of s. 322.2616, F.S., relating to  
28          suspension of a driver's license; providing an  
29          effective date.

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31 Be It Enacted by the Legislature of the State of Florida:

1           Section 1. Paragraph (f) of subsection (1) and  
2 subsection (3) of section 316.1932, Florida Statutes, 1996  
3 Supplement, are amended to read:

4           316.1932 Breath, blood, and urine tests for alcohol,  
5 chemical substances, or controlled substances; implied  
6 consent; right to refuse.--

7           (1)

8           (f)1. The tests determining the weight of alcohol in  
9 the defendant's blood or breath shall be administered at the  
10 request of a law enforcement officer substantially in  
11 accordance with rules of the Department of Law Enforcement.  
12 Such rules must specify precisely the test or tests that are  
13 approved by the Department of Law Enforcement for reliability  
14 of result and ease of administration, and must provide an  
15 approved method of administration which must be followed in  
16 all such tests given under this section. However, the failure  
17 of a law enforcement officer to request the withdrawal of  
18 blood does not affect the admissibility of a test of blood  
19 withdrawn for medical purposes.

20           2.a. Only a physician, certified paramedic, registered  
21 nurse, licensed practical nurse, other personnel authorized by  
22 a hospital to draw blood, or duly licensed clinical laboratory  
23 director, supervisor, technologist, or technician, acting at  
24 the request of a law enforcement officer, may withdraw blood  
25 for the purpose of determining its alcoholic content or the  
26 presence of chemical substances or controlled substances  
27 therein. However, the failure of a law enforcement officer to  
28 request the withdrawal of blood does not affect the  
29 admissibility of a test of blood withdrawn for medical  
30 purposes.

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1           b. If a health care provider who is providing medical  
2 care in a health care facility to a person injured in a motor  
3 vehicle crash becomes aware, as a result of any blood test  
4 performed in the course of that treatment that the person's  
5 blood-alcohol level meets or exceeds the blood-alcohol level  
6 specified in s. 316.193(1)(b), the health care provider may  
7 notify, as soon as is reasonably possible, any law enforcement  
8 officer or agency.

9           c. The notice must consist of the name of the person  
10 being treated, the name of the person who drew the blood, the  
11 blood-alcohol level disclosed by the test, and the date and  
12 time of the administration of the test.

13           d. Nothing contained in s. 395.3025(4) affects the  
14 authority to report imposed by that section, and the health  
15 care provider is not considered to have breached any duty  
16 under s. 395.3025(4) owed to the person about whom the report  
17 is made. Reporting or failing to report is not a violation of  
18 any ethical or moral duty.

19           e. An action or administrative proceeding may not be  
20 brought against anyone participating in good faith in the  
21 making of a report under this section. Any person  
22 participating in making the report has immunity from any  
23 liability, civil or criminal, and from any professional  
24 disciplinary action that might otherwise be incurred or  
25 imposed with respect to making the report. Any such  
26 participant has the same immunity with respect to  
27 participating in any judicial proceedings resulting from the  
28 report.

29           3. The person tested may, at his or her own expense,  
30 have a physician, registered nurse, other personnel authorized  
31 by a hospital to draw blood, or duly licensed clinical

1 laboratory director, supervisor, technologist, or technician,  
2 or other person of his or her own choosing administer an  
3 independent test in addition to the test administered at the  
4 direction of the law enforcement officer for the purpose of  
5 determining the amount of alcohol in the person's blood or  
6 breath or the presence of chemical substances or controlled  
7 substances at the time alleged, as shown by chemical analysis  
8 of his or her blood or urine, or by chemical or physical test  
9 of his or her breath. The failure or inability to obtain an  
10 independent test by a person does not preclude the  
11 admissibility in evidence of the test taken at the direction  
12 of the law enforcement officer. The law enforcement officer  
13 shall not interfere with the person's opportunity to obtain  
14 the independent test and shall provide the person with timely  
15 telephone access to secure the test, but the burden is on the  
16 person to arrange and secure the test at the person's own  
17 expense.

18           4. Upon the request of the person tested, full  
19 information concerning the test taken at the direction of the  
20 law enforcement officer shall be made available to the person  
21 or his or her attorney.

22           5. A hospital, clinical laboratory, medical clinic, or  
23 similar medical institution or physician, certified paramedic,  
24 registered nurse, licensed practical nurse, other personnel  
25 authorized by a hospital to draw blood, or duly licensed  
26 clinical laboratory director, supervisor, technologist, or  
27 technician, or other person assisting a law enforcement  
28 officer does not incur any civil or criminal liability as a  
29 result of the withdrawal or analysis of a blood or urine  
30 specimen, or the chemical or physical test of a person's  
31 breath pursuant to accepted medical standards when requested

1 by a law enforcement officer, regardless of whether or not the  
2 subject resisted administration of the test.

3 (3) Notwithstanding any provision of law pertaining to  
4 the confidentiality of hospital records or other medical  
5 records, information relating to the alcoholic content of the  
6 blood or breath or the presence of chemical substances or  
7 controlled substances in the blood obtained ~~pursuant to this~~  
8 ~~section~~ shall be released to a court, prosecuting attorney,  
9 defense attorney, or law enforcement officer in connection  
10 with an alleged violation of s. 316.193 or s. 322.2616 upon  
11 request for such information.

12 Section 2. Paragraph (a) of subsection (2) and  
13 subsection (4) of section 316.1933, Florida Statutes, 1996  
14 Supplement, are amended to read:

15 316.1933 Blood test for impairment or intoxication in  
16 cases of death or serious bodily injury; right to use  
17 reasonable force.--

18 (2)(a) Only a physician, certified paramedic,  
19 registered nurse, licensed practical nurse, other personnel  
20 authorized by a hospital to draw blood, or duly licensed  
21 clinical laboratory director, supervisor, technologist, or  
22 technician, acting at the request of a law enforcement  
23 officer, may withdraw blood for the purpose of determining the  
24 alcoholic content thereof or the presence of chemical  
25 substances or controlled substances therein. However, the  
26 failure of a law enforcement officer to request the withdrawal  
27 of blood shall not affect the admissibility of a test of blood  
28 withdrawn for medical purposes.

29 1. If a health care provider who is providing medical  
30 care in a health care facility to a person injured in a motor  
31 vehicle crash becomes aware, as a result of any blood test

1 performed in the course of that treatment, that the person's  
2 blood-alcohol level meets or exceeds the blood-alcohol level  
3 specified in s. 316.193(1)(b), the health care provider may  
4 notify, as soon as is reasonably possible, any law enforcement  
5 officer or agency.

6 2. The notice must consist of the name of the person  
7 being treated, the name of the person who drew the blood, the  
8 blood-alcohol level disclosed by the test, and the date and  
9 time of the administration of the test.

10 3. Nothing contained in s. 395.3025(4) affects the  
11 authority to report imposed by that section, and the health  
12 care provider shall not be considered to have breached any  
13 duty under s. 395.3025(4) owed to the person about whom the  
14 report is made. Reporting or failing to report is not a  
15 violation of any ethical or moral duty.

16 4. An action or administrative proceeding may not be  
17 brought against anyone participating in good faith in the  
18 making of a report under this section, and any person  
19 participating in making the report shall have immunity from  
20 any liability, civil or criminal, and from any professional  
21 disciplinary action that might otherwise be incurred or  
22 imposed with respect to making the report. Any such  
23 participant shall have the same immunity with respect to  
24 participating in any judicial proceedings resulting from the  
25 report.

26 (4) Notwithstanding any provision of law pertaining to  
27 the confidentiality of hospital records or other medical  
28 records, information relating to the alcoholic content of the  
29 blood or the presence of chemical substances or controlled  
30 substances in the blood obtained ~~pursuant to this section~~  
31 shall be released to a court, prosecuting attorney, defense

1 attorney, or law enforcement officer in connection with an  
2 alleged violation of s. 316.193 or s. 322.2616 upon request  
3 for such information.

4 Section 3. This act shall take effect July 1, 1997.

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7 SENATE SUMMARY

8 Amends the implied consent law and laws prescribing  
9 testing for impairment or intoxication in cases of death  
10 or serious bodily injury. Authorizes certain health care  
11 providers who become aware of a person's unlawful  
12 blood-alcohol level to notify law enforcement officials.  
13 Prescribes a form for the notice. Provides that such  
14 reporting is not a violation of any ethical or moral  
15 duty. Prohibits any action or administrative proceeding  
16 being brought against anyone participating in good faith  
17 in making such report. Provides immunity from civil or  
18 criminal liability and from any professional disciplinary  
19 action. Provides immunity in any judicial proceeding  
20 relating to the alcohol content of the blood or breath,  
21 or the presence of chemical substances or controlled  
22 substances in the blood, obtained under s. 316.1932 or s.  
23 316.1933, F.S., must be released to a court, prosecuting  
24 attorney, defense attorney, or law enforcement officer in  
25 connection with a violation of s. 322.2616, F.S.,  
26 relating to suspension of a driver's license.  
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