

By the Committees on Health Care Standards & Regulatory Reform, Law Enforcement & Public Safety and Representatives Betancourt, Fasano and Heyman

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 and 316.1933, F.S., relating to
5 implied consent for testing for impairment or
6 intoxication in cases of death or serious
7 bodily injury; authorizing certain health care
8 providers who become aware of a person's
9 unlawful blood-alcohol level to notify law
10 enforcement officials; prescribing a form for
11 the notice; providing that such notice or
12 failure to provide notice is not a violation of
13 any ethical, moral, or legal duty; prohibiting
14 any action or administrative proceeding being
15 brought against anyone participating in good
16 faith in providing or failing to provide such
17 notice; providing for certain immunity from
18 civil or criminal liability and from any
19 professional disciplinary action; providing for
20 certain immunity in any judicial proceeding
21 resulting from the notice or failure to provide
22 notice; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Paragraph (f) of subsection (1) of section
27 316.1932, Florida Statutes, is amended to read:

28 316.1932 Breath, blood, and urine tests for alcohol,
29 chemical substances, or controlled substances; implied
30 consent; right to refuse.--

31 (1)

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12 withdrawn for medical purposes.

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

24 b. Notwithstanding any provision of law pertaining to
25 the confidentiality of hospital records or other medical
26 records, if a health care provider, who is providing medical
27 care in a health care facility to a person injured in a motor
28 vehicle crash, becomes aware, as a result of any blood test
29 performed in the course of that medical treatment, that the
30 person's blood-alcohol level meets or exceeds the
31 blood-alcohol level specified in s. 316.193(1)(b), the health

1 care provider may notify any law enforcement officer or law
2 enforcement agency. Any such notice must be given within a
3 reasonable time after the health care provider receives the
4 test result. Any such notice shall be used only for the
5 purpose of providing the law enforcement officer with
6 reasonable cause to request the withdrawal of a blood sample
7 pursuant to this section.

8 c. The notice shall consist only of the name of the
9 person being treated, the name of the person who drew the
10 blood, the blood-alcohol level indicated by the test, and the
11 date and time of the administration of the test.

12 d. Nothing contained in s. 395.3025(4), s. 455.667, or
13 any applicable practice act affects the authority to provide
14 notice under this section, and the health care provider is not
15 considered to have breached any duty owed to the person under
16 s. 395.3025(4), s. 455.667, or any applicable practice act by
17 providing notice or failing to provide notice. It shall not be
18 a breach of any ethical, moral, or legal duty for a health
19 care provider to provide notice or fail to provide notice.

20 e. A civil, criminal, or administrative action may not
21 be brought against any person or health care provider
22 participating in good faith in the provision of notice or
23 failure to provide notice as provided in this section. Any
24 person or health care provider participating in the provision
25 of notice or failure to provide notice as provided in this
26 section shall be immune from any civil or criminal liability
27 and from any professional disciplinary action with respect to
28 the provision of notice or failure to provide notice under
29 this section. Any such participant has the same immunity with
30 respect to participating in any judicial proceedings resulting
31 from the notice or failure to provide notice.

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

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

25 5. A hospital, clinical laboratory, medical clinic, or
26 similar medical institution or physician, certified paramedic,
27 registered nurse, licensed practical nurse, other personnel
28 authorized by a hospital to draw blood, or duly licensed
29 clinical laboratory director, supervisor, technologist, or
30 technician, or other person assisting a law enforcement
31 officer does not incur any civil or criminal liability as a

1 result of the withdrawal or analysis of a blood or urine
2 specimen, or the chemical or physical test of a person's
3 breath pursuant to accepted medical standards when requested
4 by a law enforcement officer, regardless of whether or not the
5 subject resisted administration of the test.

6 Section 2. Paragraph (a) of subsection (2) of section
7 316.1933, Florida Statutes, is amended to read:

8 316.1933 Blood test for impairment or intoxication in
9 cases of death or serious bodily injury; right to use
10 reasonable force.--

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

22 1. Notwithstanding any provision of law pertaining to
23 the confidentiality of hospital records or other medical
24 records, if a health care provider, who is providing medical
25 care in a health care facility to a person injured in a motor
26 vehicle crash, becomes aware, as a result of any blood test
27 performed in the course of that medical treatment, that the
28 person's blood-alcohol level meets or exceeds the
29 blood-alcohol level specified in s. 316.193(1)(b), the health
30 care provider may notify any law enforcement officer or law
31 enforcement agency. Any such notice must be given within a

1 reasonable time after the health care provider receives the
2 test result. Any such notice shall be used only for the
3 purpose of providing the law enforcement officer with
4 reasonable cause to request the withdrawal of a blood sample
5 pursuant to this section.

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

10 3. Nothing contained in s. 395.3025(4), s. 455.667, or
11 any applicable practice act affects the authority to provide
12 notice under this section, and the health care provider is not
13 considered to have breached any duty owed to the person under
14 s. 395.3025(4), s. 455.667, or any applicable practice act by
15 providing notice or failing to provide notice. It shall not be
16 a breach of any ethical, moral, or legal duty for a health
17 care provider to provide notice or fail to provide notice.

18 4. A civil, criminal, or administrative action may not
19 be brought against any person or health care provider
20 participating in good faith in the provision of notice or
21 failure to provide notice as provided in this section. Any
22 person or health care provider participating in the provision
23 of notice or failure to provide notice as provided in this
24 section shall be immune from any civil or criminal liability
25 and from any professional disciplinary action with respect to
26 the provision of notice or failure to provide notice under
27 this section. Any such participant has the same immunity with
28 respect to participating in any judicial proceedings resulting
29 from the notice or failure to provide notice.

30 Section 3. This act shall take effect July 1 of the
31 year in which enacted.