

By Senator Horne

6-249-98

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 an effective date.

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

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24           Section 1. Paragraph (f) of subsection (1) of section  
25 316.1932, Florida Statutes, is amended to read:

26           316.1932 Breath, blood, and urine tests for alcohol,  
27 chemical substances, or controlled substances; implied  
28 consent; right to refuse.--

29           (1)

30           (f)1. The tests determining the weight of alcohol in  
31 the defendant's blood or breath shall be administered at the

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10 withdrawn for medical purposes.

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20 admissibility of a test of blood withdrawn for medical  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

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

1 requesting the withdrawal of a blood sample pursuant to this  
2 section.

3 c. The notice must consist of the name of the person  
4 being treated, the name of the person who drew the blood, the  
5 blood-alcohol level disclosed by the test, and the date and  
6 time of the administration of the test. Such notification must  
7 be given within a reasonable time exclusively for the purpose  
8 of a law enforcement officer requesting the withdrawal of a  
9 blood sample pursuant to this section.

10 d. Nothing contained in s. 395.3025(4) or s. 455.241  
11 affects the authority to report imposed by that section, and  
12 the health care provider is not considered to have breached  
13 any duty under s. 395.3025(4) or s. 455.241 owed to the person  
14 about whom the report is made. Reporting or failing to report  
15 is not a violation of any ethical or moral duty.

16 e. 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. Any person  
19 participating in making the report has immunity from any  
20 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 has the same immunity with respect to  
24 participating in any judicial proceedings resulting from the  
25 report.

26 3. The person tested may, at his or her own expense,  
27 have a physician, registered nurse, other personnel authorized  
28 by a hospital to draw blood, or duly licensed clinical  
29 laboratory director, supervisor, technologist, or technician,  
30 or other person of his or her own choosing administer an  
31 independent test in addition to the test administered at the

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

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

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

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

3           316.1933 Blood test for impairment or intoxication in  
4 cases of death or serious bodily injury; right to use  
5 reasonable force.--

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

17           1. If a health care provider who is providing medical  
18 care in a health care facility to a person injured in a motor  
19 vehicle crash becomes aware, as a result of any blood test  
20 performed in the course of that treatment, that the person's  
21 blood-alcohol level meets or exceeds the blood-alcohol level  
22 specified in s. 316.193(1)(b), the health care provider may  
23 notify any law enforcement officer or agency. Such  
24 notification must be given within a reasonable time  
25 exclusively for the purpose of a law enforcement officer  
26 requesting the withdrawal of a blood sample pursuant to this  
27 section.

28           2. The notice must consist of the name of the person  
29 being treated, the name of the person who drew the blood, the  
30 blood-alcohol level disclosed by the test, and the date and  
31 time of the administration of the test.

1           3. Nothing contained in s. 395.3025(4) or 455.241  
2 affects the authority to report imposed by that section, and  
3 the health, care provider shall not be considered to have  
4 breached any duty under s. 395.3025(4) or s. 455.241 owed to  
5 the person about whom the report is made. Reporting or failing  
6 to report is not a violation of any ethical or moral duty.

7           4. An action or administrative proceeding may not be  
8 brought against anyone participating in good faith in the  
9 making of a report under this section, and any person  
10 participating in making the report shall have immunity from  
11 any liability, civil or criminal, and from any professional  
12 disciplinary action that might otherwise be incurred or  
13 imposed with respect to making the report. Any such  
14 participant shall have the same immunity with respect to  
15 participating in any judicial proceedings resulting from the  
16 report.

17           Section 3. This act shall take effect July 1, 1998.

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20           SENATE SUMMARY

21           Authorizes, but does not require, a health care provider  
22           who provides care to a person injured in a motor vehicle  
23           crash to notify a law enforcement officer or agency if  
24           the provider becomes aware, in the course of treating the  
25           injured person, that the person has an unlawful  
26           blood-alcohol level.