

By the Committee on Criminal Justice and Senator Horne

307-1787-98

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 notice
12 or failure to provide notice is not a violation
13 of any ethical, moral, or legal duty;
14 prohibiting any action or administrative
15 proceeding being brought against anyone
16 participating in good faith in providing or
17 failing to provide such notice; providing for
18 certain immunity from civil or criminal
19 liability and from any professional
20 disciplinary action; providing for certain
21 immunity in any judicial proceeding resulting
22 from the notice or failure to provide notice;
23 providing an effective date.

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

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27 Section 1. Paragraph (f) of subsection (1) of section
28 316.1932, Florida Statutes, is amended to read:

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

1 (1)

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13 withdrawn for medical purposes.

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23 admissibility of a test of blood withdrawn for medical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

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

1 blood-alcohol level specified in s. 316.193(1)(b), the health
2 care provider may notify any law enforcement officer or law
3 enforcement agency. Any such notice must be given within a
4 reasonable time after the health care provider receives the
5 test result. Any such notice shall be used only for the
6 purpose of providing the law enforcement officer with
7 reasonable cause to request the withdrawal of a blood sample
8 pursuant to this section.

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

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

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

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

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

27 5. A hospital, clinical laboratory, medical clinic, or
28 similar medical institution or physician, certified paramedic,
29 registered nurse, licensed practical nurse, other personnel
30 authorized by a hospital to draw blood, or duly licensed
31 clinical laboratory director, supervisor, technologist, or

1 technician, or other person assisting a law enforcement
2 officer does not incur any civil or criminal liability as a
3 result of the withdrawal or analysis of a blood or urine
4 specimen, or the chemical or physical test of a person's
5 breath pursuant to accepted medical standards when requested
6 by a law enforcement officer, regardless of whether or not the
7 subject resisted administration of the test.

8 Section 2. Paragraph (a) of subsection (2) of section
9 316.1933, Florida Statutes, is amended to read:

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

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

24 1. 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 2. 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 3. 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 4. 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 Section 3. This act shall take effect July 1, 1998.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 Senate Bill 508

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7 Clarifies that a health care provider who chooses to notify or
8 not to notify a law enforcement officer about a person's
9 unlawful blood alcohol level will not be violating any
10 ethical, legal, or moral duty under s. 395.3025(4), s.
11 455.667, or under any applicable practice act.

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