STORAGE NAME: h0575c.cp
DATE: April 13, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS

BILL #: HB 575

RELATING TO: DUI/Chemical Test

SPONSOR(S): Rep. Stafford

COMPANION BILL(S): SB 688(I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) JUDICIARY YEAS 9 NAYS 0
(2) CRIME AND PUNISHMENT
(3) CRIMINAL JUSTICE APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill creates s. 316.1939, F.S., which makes it a first degree misdemeanor for a person to refuse to submit to a chemical test of his or her breath, blood, or urine, upon the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.

The bill also provides that the disposition of any administrative proceeding relating to the suspension of the person's driving privilege does not affect a criminal action under new s. 316.1939, F.S., and further provides that the disposition of a criminal proceeding under new s. 316.1939, F.S., does not affect any administrative proceeding relating to the suspension of a person's driving privilege.

The bill also contains various largely technical amendments to s. 316.1932, F.S., conforming that section to new s. 316.1939, F.S.

The bill provides an effective date of October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 316, F.S., contains Florida's uniform traffic control laws, including those laws relating to driving under the influence ("DUI"), the tests that may lawfully be imposed on persons suspected of a DUI, and the rules and regulations that apply to those tests. In particular, s. 316.1932, F.S., provides that breath, blood, and urine tests may be taken from persons suspected of driving under the influence of alcohol, controlled substances or chemical substances.

Section 316.1932, F.S., provides that "any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test..." This implied consent rule confers on Florida citizens the *option* of refusing an appropriate test, but not the *right* to refuse such tests. *State v. Hoch*, 500 So. 2d 597 (Fla. 3d DCA 1986). Florida courts have determined the testing regime created by s. 316.1932 to be constitutionally valid. See *State v. Taylor*, 648 So. 2d 701 (Fla. 1995)(as to Fourth Amendment); *State v. Hoch, supra* (as to Fifth Amendment right to counsel); *State v. Burns*, 661 So. 2d 842 (Fla. 5th DCA 1995)(as to Sixth Amendment right to counsel).

Section 316.1932, F.S., imposes an administrative penalty on those persons who refuse to submit to an appropriate sobriety test. In such cases, the person's privilege to operate a motor vehicle will be suspended for a period of 1 year for the first refusal, or a period of 18 months in cases where a person's license has previously been suspended for refusal to submit to a test. s. 316.1932(1)(a), F.S.

Section 316.1932, F.S., allows a law enforcement officer to request a chemical or physical breath test of a person the officer has reasonable cause to believe was driving or was in actual physical control of a motor vehicle within this state while under the influence of alcoholic beverages. s. 316.1932(1)(a), F.S. The test must be incidental to the arrest of the driver. *Id*. The law enforcement officer may also request a urine sample, incident to the driver's arrest, and based upon the officer's reasonable cause to believe that the driver was driving or was in actual physical control of a motor vehicle within this state while under the influence of controlled substances. *Id*.

The law provides a stricter process for taking blood samples. Section 316.1932(1)(c), F.S., authorizes blood tests for the purpose of determining the alcoholic content of a person's blood or a test for the purpose of determining the presence of chemical substances or controlled substances, when the person to be tested appears for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible. As with the previous tests, the blood test may be conducted only where there is reasonable cause to believe the person was driving or in actual physical control of a motor vehicle within this state while under the influence of alcoholic beverages or chemical or controlled substances. s. 316.1932, F.S.

Finally, section 316.1933, F.S., allows a law enforcement officer to use reasonable force to obtain a blood sample from a person when the officer has probable cause to believe that a motor vehicle was driven by or in the actual physical control of that person and that person was under the influence of alcoholic beverages or any controlled substances and has caused the death or serious bodily injury of another person. s. 316.1933(1), F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill creates s. 316.1939, F.S., which makes it a first degree misdemeanor for a person to refuse to submit to a chemical test of his or her breath, blood, or urine, upon the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.

The bill also provides that the disposition of any administrative proceeding relating to the suspension of the person's driving privilege does not affect a criminal action under new s. 316.1939, F.S., and further provides that the disposition of a criminal proceeding under new s. 316.1939, F.S., does not affect any administrative proceeding relating to the suspension of a person's driving privilege.

The bill also contains various largely technical amendments to s. 316.1932, F.S., conforming that section to new s. 316.1939, F.S.

A number of other states have enacted similar laws, including Rhode Island, Nebraska, Vermont, Alaska, and Minnesota. The Minnesota Supreme Court has determined that the addition of criminal penalties for refusing to submit to a chemical test is not violative of a person's Fifth Amendment right against self-incrimination. See *McDonnell v. Commissioner of Public Safety*, 473 N.W.2d 848 (Minn. 1991). The United States Supreme Court has held that the imposition of a penalty for the refusal to submit to a sobriety test is "unquestionably legitimate." *South Dakota v. Neville*, 459 U.S. 553, 558 (1983) (referring to administrative suspension of driving privileges).

In Florida, one of the central policy goals underlying s. 316.1932, F.S., is to "facilitate the identification of drunken drivers and their removal from the highways." Hoch, supra at 601 (citation omitted). The other likely public policy goals behind the creation of penalties for refusal to submit to a sobriety test include: encouraging of drivers to submit to the tests and fostering the collection of physical evidence. An increased penalty for refusal to submit to a sobriety test may increase the number of persons who will submit to such tests.

The bill would make it possible for a person to be charged with driving under the influence and with refusing to submit to a test to determine if the person is under the influence. The vast majority of the time the test measures a person's alcohol level from a breath sample. Generally, an officer may not use force to take a sample without a court order, unless there is an accident involving great bodily harm.

Compelling a person to give sample to be tested is not testimonial and therefore does not conflict with a person's right against self-incrimination. *Pennsylvania v. Muniz*, 496 U.S. 582 (1990) (requiring a suspect to demonstrate the physical way in which he articulates words is not a request for a testimonial, potentially incriminating response).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill may require the promulgation of rules relating to the taking of blood or urine samples.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

No agency program is reduced or eliminated.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

The bill does not create or change a program providing services to families or children.

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

s. 316.1932, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 316.1939, F.S., which makes it a first degree misdemeanor for a person to refuse to submit to a chemical test of his or her breath, blood, or urine, upon the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances.

Provides that the disposition of any administrative proceeding relating to the suspension of the person's driving privilege does not affect a criminal action under new s. 316.1939, F.S., and further provides that the disposition of a criminal proceeding under new s. 316.1939, F.S., does not affect any administrative proceeding relating to the suspension of a person's driving privilege.

Section 2. Contains various largely technical amendments to s. 316.1932, F.S., conforming that section to new s. 316.1939, F.S.

Section 3. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

The bill creates a new misdemeanor penalty, and a person may not be sentenced to state prison for a misdemeanor. Therefore the bill will not have a fiscal impact on the state prison system. The bill could increase the number of persons in the county jail and is likely to be an offense that is often charged and used. The bill could limit the number of DUI trials because the new offense is relatively simple to prove, and many defendants who have triable DUI cases will not have a good case against the offense created by the bill. A first time DUI and the offense created by the bill provide for similar penalties.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 of the Florida Constitution does not apply to criminal laws.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by: J. Willis Renuart

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