

By Senator Campbell

33-597-99

1 A bill to be entitled
2 An act relating to driving under the influence;
3 creating s. 316.1939, F.S.; providing that it
4 is a first-degree misdemeanor for a person to
5 refuse to submit to a chemical test of his or
6 her breath, blood, or urine upon the request of
7 a law enforcement officer who has reasonable
8 cause to believe such person was driving under
9 the influence of alcohol or drugs; providing
10 that the prosecution of such offense does not
11 affect an administrative action to suspend a
12 person's driving privilege; providing that an
13 administrative action to suspend a person's
14 driving privilege does not affect prosecution
15 of the offense of refusing to submit to a test
16 for the presence of alcohol or drugs; amending
17 s. 316.1932, F.S.; requiring that a person be
18 informed that it is a crime to fail to submit
19 to a test for the presence of alcohol or drugs
20 upon the request of a law enforcement officer;
21 providing an effective date.

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

24
25 Section 1. Section 316.1939, Florida Statutes, is
26 created to read:

27 316.1939 Refusal to submit to testing; penalties.--

28 (1) Any person who refuses to submit to a chemical
29 test of his or her breath, blood, or urine, as described in s.
30 316.1932, upon the request of a law enforcement officer who
31 has reasonable cause to believe such person was driving or was

1 in actual physical control of a motor vehicle while under the
2 influence of alcoholic beverages, chemical substances, or
3 controlled substances, commits a misdemeanor of the first
4 degree, punishable as provided in s. 775.082 or s. 775.083.

5 (2) The disposition of any administrative proceeding
6 that relates to the suspension of a person's driving privilege
7 does not affect a criminal action under this section.

8 (3) The disposition of a criminal action under this
9 section does not affect any administrative proceeding that
10 relates to the suspension of a person's driving privilege.

11 Section 2. Section 316.1932, Florida Statutes, 1998
12 Supplement, is amended to read:

13 316.1932 Breath, blood, and urine tests for alcohol,
14 chemical substances, or controlled substances; implied
15 consent; refusal ~~right to refuse~~--

16 (1)(a) Any person who accepts the privilege extended
17 by the laws of this state of operating a motor vehicle within
18 this state is, by so operating such vehicle, deemed to have
19 given his or her consent to submit to an approved chemical
20 test or physical test including, but not limited to, an
21 infrared light test of his or her breath for the purpose of
22 determining the alcoholic content of his or her blood or
23 breath, and to a urine test for the purpose of detecting the
24 presence of chemical substances as set forth in s. 877.111 or
25 controlled substances, if the person is lawfully arrested for
26 any offense allegedly committed while the person was driving
27 or was in actual physical control of a motor vehicle while
28 under the influence of alcoholic beverages, chemical
29 substances, or controlled substances. The chemical or
30 physical breath test must be incidental to a lawful arrest and
31 administered at the request of a law enforcement officer who

1 has reasonable cause to believe such person was driving or was
2 in actual physical control of the motor vehicle within this
3 state while under the influence of alcoholic beverages. The
4 urine test must be incidental to a lawful arrest and
5 administered at a detention facility or any other facility,
6 mobile or otherwise, which is equipped to administer such
7 tests at the request of a law enforcement officer who has
8 reasonable cause to believe such person was driving or was in
9 actual physical control of a motor vehicle within this state
10 while under the influence of controlled substances. The urine
11 test shall be administered at a detention facility or any
12 other facility, mobile or otherwise, which is equipped to
13 administer such tests in a reasonable manner that will ensure
14 the accuracy of the specimen and maintain the privacy of the
15 individual involved. The administration of one type of test
16 does not preclude the administration of another type of test.
17 The person shall be told that his or her failure to submit to
18 any lawful test of his or her breath or urine, or both, is a
19 crime and will result in the suspension of the person's
20 privilege to operate a motor vehicle for a period of 1 year
21 for a first refusal, or for a period of 18 months if the
22 driving privilege of such person has been previously suspended
23 as a result of a refusal to submit to such a test or tests.
24 The refusal to submit to a chemical or physical breath test or
25 to a urine test upon the request of a law enforcement officer
26 as provided in this section is admissible into evidence in any
27 criminal proceeding.

28 (b)1. The blood-alcohol level must be based upon grams
29 of alcohol per 100 milliliters of blood. The breath-alcohol
30 level must be based upon grams of alcohol per 210 liters of
31 breath.

1 2. An analysis of a person's breath, in order to be
2 considered valid under this section, must have been performed
3 substantially according to methods approved by the Department
4 of Law Enforcement. For this purpose, the department may
5 approve satisfactory techniques or methods. Any insubstantial
6 differences between approved techniques and actual testing
7 procedures in any individual case do not render the test or
8 test results invalid.

9 (c) Any person who accepts the privilege extended by
10 the laws of this state of operating a motor vehicle within
11 this state is, by operating such vehicle, deemed to have given
12 his or her consent to submit to an approved blood test for the
13 purpose of determining the alcoholic content of the blood or a
14 blood test for the purpose of determining the presence of
15 chemical substances or controlled substances as provided in
16 this section if there is reasonable cause to believe the
17 person was driving or in actual physical control of a motor
18 vehicle while under the influence of alcoholic beverages or
19 chemical or controlled substances and the person appears for
20 treatment at a hospital, clinic, or other medical facility and
21 the administration of a breath or urine test is impractical or
22 impossible. As used in this paragraph, the term "other medical
23 facility" includes an ambulance or other medical emergency
24 vehicle. The blood test shall be performed in a reasonable
25 manner. Any person who is incapable of refusal by reason of
26 unconsciousness or other mental or physical condition is
27 deemed not to have withdrawn his or her consent to such test.
28 A blood test may be administered whether or not the person is
29 told that his or her failure to submit to such a blood test is
30 a crime and will result in the suspension of the person's
31 privilege to operate a motor vehicle upon the public highways

1 of this state. Any person who is capable of refusal shall be
2 told that his or her failure to submit to such a blood test is
3 a crime and will result in the suspension of the person's
4 privilege to operate a motor vehicle for a period of 1 year
5 for a first refusal, or for a period of 18 months if the
6 driving privilege of the person has been suspended previously
7 as a result of a refusal to submit to such a test or tests.
8 The refusal to submit to a blood test upon the request of a
9 law enforcement officer is admissible in evidence in any
10 criminal proceeding.

11 (d) If the arresting officer does not request a
12 chemical or physical breath test of the person arrested for
13 any offense allegedly committed while the person was driving
14 or was in actual physical control of a motor vehicle while
15 under the influence of alcoholic beverages or controlled
16 substances, such person may request the arresting officer to
17 have a chemical or physical test made of the arrested person's
18 breath or a test of the urine or blood for the purpose of
19 determining the alcoholic content of the person's blood or
20 breath or the presence of chemical substances or controlled
21 substances; and, if so requested, the arresting officer shall
22 have the test performed.

23 (e)1. By applying for a driver's license and by
24 accepting and using a driver's license, the person holding the
25 driver's license is deemed to have expressed his or her
26 consent to the provisions of this section.

27 2. A nonresident or any other person driving in a
28 status exempt from the requirements of the driver's license
29 law, by his or her act of driving in such exempt status, is
30 deemed to have expressed his or her consent to the provisions
31 of this section.

1 3. A warning of the consent provision of this section
2 shall be printed above the signature line on each new or
3 renewed driver's license.

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

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

27 b. Notwithstanding any provision of law pertaining to
28 the confidentiality of hospital records or other medical
29 records, 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 medical treatment, that the
2 person's blood-alcohol level meets or exceeds the
3 blood-alcohol level specified in s. 316.193(1)(b), the health
4 care provider may notify any law enforcement officer or law
5 enforcement agency. Any such notice must be given within a
6 reasonable time after the health care provider receives the
7 test result. Any such notice shall be used only for the
8 purpose of providing the law enforcement officer with
9 reasonable cause to request the withdrawal of a blood sample
10 pursuant to this section.

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

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

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

1 this section. Any such participant has the same immunity with
2 respect to participating in any judicial proceedings resulting
3 from the notice or failure to provide notice.

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

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

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

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

9 (2) The results of any test administered pursuant to
10 this section for the purpose of detecting the presence of any
11 controlled substance shall not be admissible as evidence in a
12 criminal prosecution for the possession of a controlled
13 substance.

14 (3) Notwithstanding any provision of law pertaining to
15 the confidentiality of hospital records or other medical
16 records, information relating to the alcoholic content of the
17 blood or breath or the presence of chemical substances or
18 controlled substances in the blood obtained pursuant to this
19 section shall be released to a court, prosecuting attorney,
20 defense attorney, or law enforcement officer in connection
21 with an alleged violation of s. 316.193 upon request for such
22 information.

23 Section 3. This act shall take effect October 1, 1999.

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26 SENATE SUMMARY

27 Provides that it is a first-degree misdemeanor for a
28 person to refuse to submit to a chemical test of his or
29 her breath, blood, or urine upon the request of a law
30 enforcement officer who has reasonable cause to believe
31 such person was driving under the influence of alcohol or
drugs. Requires that a person be informed that it is a
crime to fail to submit to a lawful test for the presence
of alcohol or drugs upon the request of a law enforcement
officer.