

By the Committee on Criminal Justice and Senator Campbell

307-2204-99

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; requiring
10 warnings concerning the consequences of
11 refusing to take these tests; providing that
12 the prosecution of such offense does not affect
13 an administrative action to suspend a person's
14 driving privilege; providing that an
15 administrative action to suspend a person's
16 driving privilege does not affect prosecution
17 of the offense of refusing to submit to a test
18 for the presence of alcohol or drugs; amending
19 s. 316.1932, F.S.; requiring that a person be
20 informed that it is a crime to fail to submit
21 to a test for the presence of alcohol or drugs
22 upon the request of a law enforcement officer;
23 amending s. 316.1933, F.S.; deleting a
24 reference to the person's ability to refuse to
25 submit to certain tests; providing an effective
26 date.

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

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30 Section 1. Section 316.1939, Florida Statutes, is
31 created to read:

1 316.1939 Refusal to submit to testing; penalties.--
2 (1) Any person who has refused to submit to a chemical
3 or physical test of his or her breath, blood, or urine, as
4 described in s. 316.1932, and:
5 (a) Whom the arresting law enforcement officer had
6 probable cause to believe was driving or in actual physical
7 control of a motor vehicle in this state while under the
8 influence of alcoholic beverages or controlled substances;
9 (b) Who was placed under lawful arrest for a violation
10 of s. 316.193, unless such test was requested pursuant to s.
11 316.1932(1)(c);
12 (c) Who was informed that if he or she refused to
13 submit to such test his or her privilege to operate a motor
14 vehicle would be suspended for a period of 1 year or, in the
15 case of a second or subsequent refusal, for a period of 18
16 months, and that the refusal to submit to such test is a
17 misdemeanor; and
18 (d) Who, after having been so informed, refused to
19 submit to any such test when requested to do so by a law
20 enforcement officer or correctional officer
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22 commits a misdemeanor of the first degree and is subject to
23 punishment as provided in s. 775.082 or s. 775.083.
24 (2) The disposition of any administrative proceeding
25 that relates to the suspension of a person's driving privilege
26 does not affect a criminal action under this section.
27 (3) The disposition of a criminal action under this
28 section does not affect any administrative proceeding that
29 relates to the suspension of a person's driving privilege.
30 Section 2. Section 316.1932, Florida Statutes, 1998
31 Supplement, is amended to read:

1 316.1932 Breath, blood, and urine tests for alcohol,
2 chemical substances, or controlled substances; implied
3 consent; refusal ~~right to refuse~~.--

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

1 administer such tests in a reasonable manner that will ensure
2 the accuracy of the specimen and maintain the privacy of the
3 individual involved. The administration of one type of test
4 does not preclude the administration of another type of test.
5 The person shall be told that his or her failure to submit to
6 any lawful test of his or her breath or urine, or both, is a
7 misdemeanor and will result in the suspension of the person's
8 privilege to operate a motor vehicle for a period of 1 year
9 for a first refusal, or for a period of 18 months if the
10 driving privilege of such person has been previously suspended
11 as a result of a refusal to submit to such a test or tests.
12 The refusal to submit to a chemical or physical breath test or
13 to a urine test upon the request of a law enforcement officer
14 as provided in this section is admissible into evidence in any
15 criminal proceeding.

16 (b)1. The blood-alcohol level must be based upon grams
17 of alcohol per 100 milliliters of blood. The breath-alcohol
18 level must be based upon grams of alcohol per 210 liters of
19 breath.

20 2. An analysis of a person's breath, in order to be
21 considered valid under this section, must have been performed
22 substantially according to methods approved by the Department
23 of Law Enforcement. For this purpose, the department may
24 approve satisfactory techniques or methods. Any insubstantial
25 differences between approved techniques and actual testing
26 procedures in any individual case do not render the test or
27 test results invalid.

28 (c) Any person who accepts the privilege extended by
29 the laws of this state of operating a motor vehicle within
30 this state is, by operating such vehicle, deemed to have given
31 his or her consent to submit to an approved blood test for the

1 purpose of determining the alcoholic content of the blood or a
2 blood test for the purpose of determining the presence of
3 chemical substances or controlled substances as provided in
4 this section if there is reasonable cause to believe the
5 person was driving or in actual physical control of a motor
6 vehicle while under the influence of alcoholic beverages or
7 chemical or controlled substances and the person appears for
8 treatment at a hospital, clinic, or other medical facility and
9 the administration of a breath or urine test is impractical or
10 impossible. As used in this paragraph, the term "other medical
11 facility" includes an ambulance or other medical emergency
12 vehicle. The blood test shall be performed in a reasonable
13 manner. Any person who is incapable of refusal by reason of
14 unconsciousness or other mental or physical condition is
15 deemed not to have withdrawn his or her consent to such test.
16 A blood test may be administered whether or not the person is
17 told that his or her failure to submit to such a blood test is
18 a misdemeanor and will result in the suspension of the
19 person's privilege to operate a motor vehicle upon the public
20 highways of this state. Any person who is capable of refusal
21 shall be told that his or her failure to submit to such a
22 blood test is a misdemeanor and will result in the suspension
23 of the person's privilege to operate a motor vehicle for a
24 period of 1 year for a first refusal, or for a period of 18
25 months if the driving privilege of the person has been
26 suspended previously as a result of a refusal to submit to
27 such a test or tests. The refusal to submit to a blood test
28 upon the request of a law enforcement officer is admissible in
29 evidence in any criminal proceeding.

30 (d) If the arresting officer does not request a
31 chemical or physical breath test of the person arrested for

1 any offense allegedly committed while the person was driving
2 or was in actual physical control of a motor vehicle while
3 under the influence of alcoholic beverages or controlled
4 substances, such person may request the arresting officer to
5 have a chemical or physical test made of the arrested person's
6 breath or a test of the urine or blood for the purpose of
7 determining the alcoholic content of the person's blood or
8 breath or the presence of chemical substances or controlled
9 substances; and, if so requested, the arresting officer shall
10 have the test performed.

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

15 2. A nonresident or any other person driving in a
16 status exempt from the requirements of the driver's license
17 law, by his or her act of driving in such exempt status, is
18 deemed to have expressed his or her consent to the provisions
19 of this section.

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

23 (f)1. The tests determining the weight of alcohol in
24 the defendant's blood or breath shall be administered at the
25 request of a law enforcement officer substantially in
26 accordance with rules of the Department of Law Enforcement.
27 Such rules must specify precisely the test or tests that are
28 approved by the Department of Law Enforcement for reliability
29 of result and ease of administration, and must provide an
30 approved method of administration which must be followed in
31 all such tests given under this section. However, the failure

1 of a law enforcement officer to request the withdrawal of
2 blood does not affect the admissibility of a test of blood
3 withdrawn for medical purposes.

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

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

30 c. The notice shall consist only of the name of the
31 person being treated, the name of the person who drew the

1 blood, the blood-alcohol level indicated by the test, and the
2 date and time of the administration of the test.

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

11 e. A civil, criminal, or administrative action may not
12 be brought against any person or health care provider
13 participating in good faith in the provision of notice or
14 failure to provide notice as provided in this section. Any
15 person or health care provider participating in the provision
16 of notice or failure to provide notice as provided in this
17 section shall be immune from any civil or criminal liability
18 and from any professional disciplinary action with respect to
19 the provision of notice or failure to provide notice under
20 this section. Any such participant has the same immunity with
21 respect to participating in any judicial proceedings resulting
22 from the notice or failure to provide notice.

23 3. The person tested may, at his or her own expense,
24 have a physician, registered nurse, other personnel authorized
25 by a hospital to draw blood, or duly licensed clinical
26 laboratory director, supervisor, technologist, or technician,
27 or other person of his or her own choosing administer an
28 independent test in addition to the test administered at the
29 direction of the law enforcement officer for the purpose of
30 determining the amount of alcohol in the person's blood or
31 breath or the presence of chemical substances or controlled

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

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

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

28 (2) The results of any test administered pursuant to
29 this section for the purpose of detecting the presence of any
30 controlled substance shall not be admissible as evidence in a
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1 criminal prosecution for the possession of a controlled
2 substance.

3 (3) Notwithstanding any provision of law pertaining to
4 the confidentiality of hospital records or other medical
5 records, information relating to the alcoholic content of the
6 blood or breath or the presence of chemical substances or
7 controlled substances in the blood obtained pursuant to this
8 section shall be released to a court, prosecuting attorney,
9 defense attorney, or law enforcement officer in connection
10 with an alleged violation of s. 316.193 upon request for such
11 information.

12 Section 3. Subsection (1) of section 316.1933, Florida
13 Statutes, 1998 Supplement, is amended to read:

14 316.1933 Blood test for impairment or intoxication in
15 cases of death or serious bodily injury; right to use
16 reasonable force.--

17 ~~(1) Notwithstanding any recognized ability to refuse~~
18 ~~to submit to the tests provided in s. 316.1932 or any~~
19 ~~recognized power to revoke the implied consent to such tests,~~
20 If a law enforcement officer has probable cause to believe
21 that a motor vehicle driven by or in the actual physical
22 control of a person under the influence of alcoholic
23 beverages, any chemical substances, or any controlled
24 substances has caused the death or serious bodily injury of a
25 human being, such person shall submit, upon the request of a
26 law enforcement officer, to a test of the person's blood for
27 the purpose of determining the alcoholic content thereof or
28 the presence of chemical substances as set forth in s. 877.111
29 or any substance controlled under chapter 893. The law
30 enforcement officer may use reasonable force if necessary to
31 require such person to submit to the administration of the

1 blood test. The blood test shall be performed in a reasonable
2 manner. The term "serious bodily injury" means an injury to
3 any person, including the driver, which consists of a physical
4 condition that creates a substantial risk of death, serious
5 personal disfigurement, or protracted loss or impairment of
6 the function of any bodily member or organ.

7 Section 4. This act shall take effect October 1, 1999.

8
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 Senate Bill 688

12 Prescribes the elements that are required to be established
13 before a person can be convicted of refusing to take a
14 chemical or physical test of his or her breath, blood, or
15 urine for DUI purposes.
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