

1 A bill to be entitled

2 An act relating to blood testing of persons involved in a
3 traffic accident causing serious injury or death; amending
4 s. 316.1933, F.S.; requiring a law enforcement officer who
5 has a reasonable suspicion that a person was driving or in
6 actual physical control of a motor vehicle when it was
7 involved in an accident that may have caused or
8 contributed to the death or serious bodily injury of a
9 human being to require that person to submit to a test of
10 the person's blood to determine the alcoholic content
11 thereof or the presence of specified substances;
12 authorizing the law enforcement officer to use reasonable
13 force if necessary; requiring that the blood test be
14 performed in a reasonable manner; providing that the test
15 need not be incidental to a lawful arrest of the person;
16 providing testing requirements and procedures; providing a
17 limitation of liability; providing for disposition of
18 charges; limiting use of test results; authorizing release
19 of results to certain persons; reenacting ss. 316.066(7),
20 316.1934(2), 322.2616(18), and 322.27(1)(a), F.S.,
21 relating to written reports of crashes; presumption of
22 impairment and testing methods; suspension of license,
23 persons under 21 years of age, and right to review; and
24 authority of the Department of Highway Safety and Motor
25 Vehicles to suspend or revoke license; providing an
26 effective date.

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

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Section 1. Section 316.1933, Florida Statutes, is amended to read:

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

(1) (a) If a law enforcement officer has probable cause to believe that a motor vehicle driven by or in the actual physical control of a person under the influence of alcoholic beverages, any chemical substances, or any controlled substances has caused the death or serious bodily injury of a human being, a law enforcement officer shall require the person driving or in actual physical control of the motor vehicle to submit to a test of the person's blood for the purpose of determining the alcoholic content thereof or the presence of chemical substances as set forth in s. 877.111 or any substance controlled under chapter 893. The law enforcement officer may use reasonable force if necessary to require such person to submit to the administration of the blood test. The blood test shall be performed in a reasonable manner. Notwithstanding s. 316.1932, the testing required by this paragraph need not be incidental to a lawful arrest of the person.

(b) If a law enforcement officer has a reasonable suspicion that a person was driving or in actual physical control of a motor vehicle when it was involved in an accident that may have caused or contributed to the death or serious bodily injury of a human being, a law enforcement officer shall require the person who is suspected of driving or being in

57 actual physical control of the motor vehicle to submit to a test
58 of the person's blood for the purpose of determining the
59 alcoholic content thereof or the presence of chemical substances
60 as set forth in s. 877.111 or any substance controlled under
61 chapter 893. The law enforcement officer may use reasonable
62 force if necessary to require such person to submit to the
63 administration of the blood test. The blood test shall be
64 performed in a reasonable manner. Notwithstanding s. 316.1932,
65 the testing required by this paragraph need not be incidental to
66 a lawful arrest of the person.

67 (c) ~~(b)~~ The term "serious bodily injury" means an injury to
68 any person, including the driver, which consists of a physical
69 condition that creates a substantial risk of death, serious
70 personal disfigurement, or protracted loss or impairment of the
71 function of any bodily member or organ.

72 (2) (a) Only a physician, certified paramedic, registered
73 nurse, licensed practical nurse, other personnel authorized by a
74 hospital to draw blood, or duly licensed clinical laboratory
75 director, supervisor, technologist, or technician, acting at the
76 request of a law enforcement officer, may withdraw blood for the
77 purpose of determining the alcoholic content thereof or the
78 presence of chemical substances or controlled substances
79 therein. However, the failure of a law enforcement officer to
80 request the withdrawal of blood shall not affect the
81 admissibility of a test of blood withdrawn for medical purposes.

82 1. Notwithstanding any provision of law pertaining to the
83 confidentiality of hospital records or other medical records, if
84 a health care provider, who is providing medical care in a

85 health care facility to a person injured in a motor vehicle
86 crash, becomes aware, as a result of any blood test performed in
87 the course of that medical treatment, that the person's blood-
88 alcohol level meets or exceeds the blood-alcohol level specified
89 in s. 316.193(1)(b), the health care provider may notify any law
90 enforcement officer or law enforcement agency. Any such notice
91 must be given within a reasonable time after the health care
92 provider receives the test result. Any such notice shall be used
93 only for the purpose of providing the law enforcement officer
94 with reasonable cause to request the withdrawal of a blood
95 sample pursuant to this section.

96 2. The notice shall consist only of the name of the person
97 being treated, the name of the person who drew the blood, the
98 blood-alcohol level indicated by the test, and the date and time
99 of the administration of the test.

100 3. Nothing contained in s. 395.3025(4), s. 456.057, or any
101 applicable practice act affects the authority to provide notice
102 under this section, and the health care provider is not
103 considered to have breached any duty owed to the person under s.
104 395.3025(4), s. 456.057, or any applicable practice act by
105 providing notice or failing to provide notice. It shall not be a
106 breach of any ethical, moral, or legal duty for a health care
107 provider to provide notice or fail to provide notice.

108 4. A civil, criminal, or administrative action may not be
109 brought against any person or health care provider participating
110 in good faith in the provision of notice or failure to provide
111 notice as provided in this section. Any person or health care
112 provider participating in the provision of notice or failure to

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113 provide notice as provided in this section shall be immune from
114 any civil or criminal liability and from any professional
115 disciplinary action with respect to the provision of notice or
116 failure to provide notice under this section. Any such
117 participant has the same immunity with respect to participating
118 in any judicial proceedings resulting from the notice or failure
119 to provide notice.

120 (b) A chemical analysis of the person's blood to determine
121 the alcoholic content thereof must have been performed
122 substantially in accordance with methods approved by the
123 Department of Law Enforcement and by an individual possessing a
124 valid permit issued by the department for this purpose. The
125 Department of Law Enforcement may approve satisfactory
126 techniques or methods, ascertain the qualifications and
127 competence of individuals to conduct such analyses, and issue
128 permits that are subject to termination or revocation at the
129 discretion of the department. Any insubstantial differences
130 between approved methods or techniques and actual testing
131 procedures, or any insubstantial defects concerning the permit
132 issued by the department, in any individual case, shall not
133 render the test or test results invalid.

134 (c) No hospital, clinical laboratory, medical clinic, or
135 similar medical institution or physician, certified paramedic,
136 registered nurse, licensed practical nurse, other personnel
137 authorized by a hospital to draw blood, or duly licensed
138 clinical laboratory director, supervisor, technologist, or
139 technician, or other person assisting a law enforcement officer
140 shall incur any civil or criminal liability as a result of the

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141 withdrawal or analysis of a blood specimen pursuant to accepted
142 medical standards when requested by a law enforcement officer,
143 regardless of whether or not the subject resisted administration
144 of the test.

145 (3) (a) Any criminal charge resulting from the incident
146 giving rise to the officer's demand for testing shall be tried
147 concurrently with a charge of any violation arising out of the
148 same incident, unless, in the discretion of the court, such
149 charges should be tried separately. If such charges are tried
150 separately, the fact that such person refused, resisted,
151 obstructed, or opposed testing shall be admissible at the trial
152 of the criminal offense which gave rise to the demand for
153 testing.

154 (b) The results of any test administered pursuant to this
155 section for the purpose of detecting the presence of any
156 controlled substance shall not be admissible as evidence in a
157 criminal prosecution for the possession of a controlled
158 substance.

159 (4) Notwithstanding any provision of law pertaining to the
160 confidentiality of hospital records or other medical records,
161 information relating to the alcoholic content of the blood or
162 the presence of chemical substances or controlled substances in
163 the blood obtained pursuant to this section shall be released to
164 a court, prosecuting attorney, defense attorney, or law
165 enforcement officer in connection with an alleged violation of
166 s. 316.193 upon request for such information.

167 Section 2. For the purpose of incorporating the amendment
168 made by this act to section 316.1933, Florida Statutes, in a

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169 reference thereto, subsection (7) of section 316.066, Florida
170 Statutes, is reenacted to read:

171 316.066 Written reports of crashes.--

172 (7) Except as specified in this subsection, each crash
173 report made by a person involved in a crash and any statement
174 made by such person to a law enforcement officer for the purpose
175 of completing a crash report required by this section shall be
176 without prejudice to the individual so reporting. No such report
177 or statement shall be used as evidence in any trial, civil or
178 criminal. However, subject to the applicable rules of evidence,
179 a law enforcement officer at a criminal trial may testify as to
180 any statement made to the officer by the person involved in the
181 crash if that person's privilege against self-incrimination is
182 not violated. The results of breath, urine, and blood tests
183 administered as provided in s. 316.1932 or s. 316.1933 are not
184 confidential and shall be admissible into evidence in accordance
185 with the provisions of s. 316.1934(2). Crash reports made by
186 persons involved in crashes shall not be used for commercial
187 solicitation purposes; however, the use of a crash report for
188 purposes of publication in a newspaper or other news periodical
189 or a radio or television broadcast shall not be construed as
190 "commercial purpose."

191 Section 3. For the purpose of incorporating the amendment
192 made by this act to section 316.1933, Florida Statutes, in a
193 reference thereto, subsection (2) of section 316.1934, Florida
194 Statutes, is reenacted to read:

195 316.1934 Presumption of impairment; testing methods.--

196 (2) At the trial of any civil or criminal action or
197 proceeding arising out of acts alleged to have been committed by
198 any person while driving, or in actual physical control of, a
199 vehicle while under the influence of alcoholic beverages or
200 controlled substances, when affected to the extent that the
201 person's normal faculties were impaired or to the extent that he
202 or she was deprived of full possession of his or her normal
203 faculties, the results of any test administered in accordance
204 with s. 316.1932 or s. 316.1933 and this section are admissible
205 into evidence when otherwise admissible, and the amount of
206 alcohol in the person's blood or breath at the time alleged, as
207 shown by chemical analysis of the person's blood, or by chemical
208 or physical test of the person's breath, gives rise to the
209 following presumptions:

210 (a) If there was at that time a blood-alcohol level or
211 breath-alcohol level of 0.05 or less, it is presumed that the
212 person was not under the influence of alcoholic beverages to the
213 extent that his or her normal faculties were impaired.

214 (b) If there was at that time a blood-alcohol level or
215 breath-alcohol level in excess of 0.05 but less than 0.08, that
216 fact does not give rise to any presumption that the person was
217 or was not under the influence of alcoholic beverages to the
218 extent that his or her normal faculties were impaired but may be
219 considered with other competent evidence in determining whether
220 the person was under the influence of alcoholic beverages to the
221 extent that his or her normal faculties were impaired.

222 (c) If there was at that time a blood-alcohol level or
223 breath-alcohol level of 0.08 or higher, that fact is prima facie

224 evidence that the person was under the influence of alcoholic
 225 beverages to the extent that his or her normal faculties were
 226 impaired. Moreover, such person who has a blood-alcohol level or
 227 breath-alcohol level of 0.08 or higher is guilty of driving, or
 228 being in actual physical control of, a motor vehicle, with an
 229 unlawful blood-alcohol level or breath-alcohol level.

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 231 The presumptions provided in this subsection do not limit the
 232 introduction of any other competent evidence bearing upon the
 233 question of whether the person was under the influence of
 234 alcoholic beverages to the extent that his or her normal
 235 faculties were impaired.

236 Section 4. For the purpose of incorporating the amendment
 237 made by this act to section 316.1933, Florida Statutes, in a
 238 reference thereto, subsection (18) of section 322.2616, Florida
 239 Statutes, is reenacted to read:

240 322.2616 Suspension of license; persons under 21 years of
 241 age; right to review.--

242 (18) The result of a blood test obtained during an
 243 investigation conducted under s. 316.1932 or s. 316.1933 may be
 244 used to suspend the driving privilege of a person under this
 245 section.

246 Section 5. For the purpose of incorporating the amendment
 247 made by this act to section 316.1933, Florida Statutes, in a
 248 reference thereto, paragraph (a) of subsection (1) of section
 249 322.27, Florida Statutes, is reenacted to read:

250 322.27 Authority of department to suspend or revoke
 251 license.--

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252 (1) Notwithstanding any provisions to the contrary in
253 chapter 120, the department is hereby authorized to suspend the
254 license of any person without preliminary hearing upon a showing
255 of its records or other sufficient evidence that the licensee:

256 (a) Has committed an offense for which mandatory
257 revocation of license is required upon conviction. A law
258 enforcement agency must provide information to the department
259 within 24 hours after any traffic fatality or when the law
260 enforcement agency initiates action pursuant to s. 316.1933;

261 Section 6. This act shall take effect July 1, 2007.