

HB 317

2008

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 for admissibility of test result at trial;
17 providing testing requirements and procedures; providing a
18 limitation of liability; providing for disposition of
19 charges; limiting use of test results; authorizing release
20 of results to certain persons; reenacting ss. 316.066(7),
21 316.1934(2), 322.2616(18), and 322.27(1)(a), F.S.,
22 relating to written reports of crashes; presumption of
23 impairment and testing methods; suspension of license,
24 persons under 21 years of age, and right to review; and
25 authority of the Department of Highway Safety and Motor
26 Vehicles to suspend or revoke license; providing an
27 effective date.

28

HB 317

2008

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

30

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

33 316.1933 Blood test for impairment or intoxication in
34 cases of death or serious bodily injury; right to use reasonable
35 force.--

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

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

HB 317

2008

57 require the person who is suspected of driving or being in
58 actual physical control of the motor vehicle to submit to a test
59 of the person's blood for the purpose of determining the
60 alcoholic content thereof or the presence of chemical substances
61 as set forth in s. 877.111 or any substance controlled under
62 chapter 893. The law enforcement officer may use reasonable
63 force if necessary to require such person to submit to the
64 administration of the blood test. The blood test shall be
65 performed in a reasonable manner. Notwithstanding s. 316.1932,
66 the testing required by this paragraph need not be incidental to
67 a lawful arrest of the person. The result of the test is
68 admissible at trial if the court, after reviewing all the
69 evidence, whether gathered prior to, during, or after the test,
70 is satisfied that probable cause exists, independent of the test
71 result, to believe that the person suspected of driving or being
72 in actual physical control of the motor vehicle was under the
73 influence of alcohol, any chemical substance as set forth in s.
74 877.111, or any substance controlled under chapter 893 at the
75 time of the accident.

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

81 (2) (a) Only a physician, certified paramedic, registered
82 nurse, licensed practical nurse, other personnel authorized by a
83 hospital to draw blood, or duly licensed clinical laboratory
84 director, supervisor, technologist, or technician, acting at the

HB 317

2008

85 request of a law enforcement officer, may withdraw blood for the
86 purpose of determining the alcoholic content thereof or the
87 presence of chemical substances or controlled substances
88 therein. However, the failure of a law enforcement officer to
89 request the withdrawal of blood shall not affect the
90 admissibility of a test of blood withdrawn for medical purposes.

91 1. Notwithstanding any provision of law pertaining to the
92 confidentiality of hospital records or other medical records, if
93 a health care provider, who is providing medical care in a
94 health care facility to a person injured in a motor vehicle
95 crash, becomes aware, as a result of any blood test performed in
96 the course of that medical treatment, that the person's blood-
97 alcohol level meets or exceeds the blood-alcohol level specified
98 in s. 316.193(1)(b), the health care provider may notify any law
99 enforcement officer or law enforcement agency. Any such notice
100 must be given within a reasonable time after the health care
101 provider receives the test result. Any such notice shall be used
102 only for the purpose of providing the law enforcement officer
103 with reasonable cause to request the withdrawal of a blood
104 sample pursuant to this section.

105 2. The notice shall consist only of the name of the person
106 being treated, the name of the person who drew the blood, the
107 blood-alcohol level indicated by the test, and the date and time
108 of the administration of the test.

109 3. Nothing contained in s. 395.3025(4), s. 456.057, or any
110 applicable practice act affects the authority to provide notice
111 under this section, and the health care provider is not
112 considered to have breached any duty owed to the person under s.

HB 317

2008

113 395.3025(4), s. 456.057, or any applicable practice act by
114 providing notice or failing to provide notice. It shall not be a
115 breach of any ethical, moral, or legal duty for a health care
116 provider to provide notice or fail to provide notice.

117 4. A civil, criminal, or administrative action may not be
118 brought against any person or health care provider participating
119 in good faith in the provision of notice or failure to provide
120 notice as provided in this section. Any person or health care
121 provider participating in the provision of notice or failure to
122 provide notice as provided in this section shall be immune from
123 any civil or criminal liability and from any professional
124 disciplinary action with respect to the provision of notice or
125 failure to provide notice under this section. Any such
126 participant has the same immunity with respect to participating
127 in any judicial proceedings resulting from the notice or failure
128 to provide notice.

129 (b) A chemical analysis of the person's blood to determine
130 the alcoholic content thereof must have been performed
131 substantially in accordance with methods approved by the
132 Department of Law Enforcement and by an individual possessing a
133 valid permit issued by the department for this purpose. The
134 Department of Law Enforcement may approve satisfactory
135 techniques or methods, ascertain the qualifications and
136 competence of individuals to conduct such analyses, and issue
137 permits that are subject to termination or revocation at the
138 discretion of the department. Any insubstantial differences
139 between approved methods or techniques and actual testing
140 procedures, or any insubstantial defects concerning the permit

141 issued by the department, in any individual case, shall not
142 render the test or test results invalid.

143 (c) No hospital, clinical laboratory, medical clinic, or
144 similar medical institution or physician, certified paramedic,
145 registered nurse, licensed practical nurse, other personnel
146 authorized by a hospital to draw blood, or duly licensed
147 clinical laboratory director, supervisor, technologist, or
148 technician, or other person assisting a law enforcement officer
149 shall incur any civil or criminal liability as a result of the
150 withdrawal or analysis of a blood specimen pursuant to accepted
151 medical standards when requested by a law enforcement officer,
152 regardless of whether or not the subject resisted administration
153 of the test.

154 (3) (a) Any criminal charge resulting from the incident
155 giving rise to the officer's demand for testing shall be tried
156 concurrently with a charge of any violation arising out of the
157 same incident, unless, in the discretion of the court, such
158 charges should be tried separately. If such charges are tried
159 separately, the fact that such person refused, resisted,
160 obstructed, or opposed testing shall be admissible at the trial
161 of the criminal offense which gave rise to the demand for
162 testing.

163 (b) The results of any test administered pursuant to this
164 section for the purpose of detecting the presence of any
165 controlled substance shall not be admissible as evidence in a
166 criminal prosecution for the possession of a controlled
167 substance.

HB 317

2008

168 (4) Notwithstanding any provision of law pertaining to the
169 confidentiality of hospital records or other medical records,
170 information relating to the alcoholic content of the blood or
171 the presence of chemical substances or controlled substances in
172 the blood obtained pursuant to this section shall be released to
173 a court, prosecuting attorney, defense attorney, or law
174 enforcement officer in connection with an alleged violation of
175 s. 316.193 upon request for such information.

176 Section 2. For the purpose of incorporating the amendment
177 made by this act to section 316.1933, Florida Statutes, in a
178 reference thereto, subsection (7) of section 316.066, Florida
179 Statutes, is reenacted to read:

180 316.066 Written reports of crashes.--

181 (7) Except as specified in this subsection, each crash
182 report made by a person involved in a crash and any statement
183 made by such person to a law enforcement officer for the purpose
184 of completing a crash report required by this section shall be
185 without prejudice to the individual so reporting. No such report
186 or statement shall be used as evidence in any trial, civil or
187 criminal. However, subject to the applicable rules of evidence,
188 a law enforcement officer at a criminal trial may testify as to
189 any statement made to the officer by the person involved in the
190 crash if that person's privilege against self-incrimination is
191 not violated. The results of breath, urine, and blood tests
192 administered as provided in s. 316.1932 or s. 316.1933 are not
193 confidential and shall be admissible into evidence in accordance
194 with the provisions of s. 316.1934(2). Crash reports made by
195 persons involved in crashes shall not be used for commercial

HB 317

2008

196 solicitation purposes; however, the use of a crash report for
197 purposes of publication in a newspaper or other news periodical
198 or a radio or television broadcast shall not be construed as
199 "commercial purpose."

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

204 316.1934 Presumption of impairment; testing methods.--

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

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

223 (b) If there was at that time a blood-alcohol level or
 224 breath-alcohol level in excess of 0.05 but less than 0.08, that
 225 fact does not give rise to any presumption that the person was
 226 or was not under the influence of alcoholic beverages to the
 227 extent that his or her normal faculties were impaired but may be
 228 considered with other competent evidence in determining whether
 229 the person was under the influence of alcoholic beverages to the
 230 extent that his or her normal faculties were impaired.

231 (c) If there was at that time a blood-alcohol level or
 232 breath-alcohol level of 0.08 or higher, that fact is prima facie
 233 evidence that the person was under the influence of alcoholic
 234 beverages to the extent that his or her normal faculties were
 235 impaired. Moreover, such person who has a blood-alcohol level or
 236 breath-alcohol level of 0.08 or higher is guilty of driving, or
 237 being in actual physical control of, a motor vehicle, with an
 238 unlawful blood-alcohol level or breath-alcohol level.

239
 240 The presumptions provided in this subsection do not limit the
 241 introduction of any other competent evidence bearing upon the
 242 question of whether the person was under the influence of
 243 alcoholic beverages to the extent that his or her normal
 244 faculties were impaired.

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

249 322.2616 Suspension of license; persons under 21 years of
 250 age; right to review.--

251 (18) The result of a blood test obtained during an
 252 investigation conducted under s. 316.1932 or s. 316.1933 may be
 253 used to suspend the driving privilege of a person under this
 254 section.

255 Section 5. For the purpose of incorporating the amendment
 256 made by this act to section 316.1933, Florida Statutes, in a
 257 reference thereto, paragraph (a) of subsection (1) of section
 258 322.27, Florida Statutes, is reenacted to read:

259 322.27 Authority of department to suspend or revoke
 260 license.--

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

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

270 Section 6. This act shall take effect July 1, 2008.