

By Senator Wise

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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), F.S., relating
22 to written reports of crashes, presumption of impairment
23 and testing methods, suspension of license, persons under
24 21 years of age and right to review, and authority of the
25 Department of Highway Safety and Motor Vehicles to suspend
26 or revoke a license; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 316.1933, Florida Statutes, is amended
31 to read:

32 316.1933 Blood test for impairment or intoxication in cases
33 of death or serious bodily injury; right to use reasonable
34 force.--

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

51 (b) If a law enforcement officer has a reasonable suspicion
52 that a person was driving or in actual physical control of a
53 motor vehicle when it was involved in an accident that may have
54 caused or contributed to the death or serious bodily injury of a
55 human being, a law enforcement officer shall require the person
56 who is suspected of driving or being in actual physical control
57 of the motor vehicle to submit to a test of the person's blood
58 for the purpose of determining the alcoholic content thereof or

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

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

79 (2) (a) Only a physician, certified paramedic, registered
80 nurse, licensed practical nurse, other personnel authorized by a
81 hospital to draw blood, or duly licensed clinical laboratory
82 director, supervisor, technologist, or technician, acting at the
83 request of a law enforcement officer, may withdraw blood for the
84 purpose of determining the alcoholic content thereof or the
85 presence of chemical substances or controlled substances therein.
86 However, the failure of a law enforcement officer to request the

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87 withdrawal of blood shall not affect the admissibility of a test
88 of blood withdrawn for medical purposes.

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

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

107 3. Nothing contained in s. 395.3025(4), s. 456.057, or any
108 applicable practice act affects the authority to provide notice
109 under this section, and the health care provider is not
110 considered to have breached any duty owed to the person under s.
111 395.3025(4), s. 456.057, or any applicable practice act by
112 providing notice or failing to provide notice. It shall not be a
113 breach of any ethical, moral, or legal duty for a health care
114 provider to provide notice or fail to provide notice.

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

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

141 (c) No hospital, clinical laboratory, medical clinic, or
142 similar medical institution or physician, certified paramedic,
143 registered nurse, licensed practical nurse, other personnel

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144 authorized by a hospital to draw blood, or duly licensed clinical
145 laboratory director, supervisor, technologist, or technician, or
146 other person assisting a law enforcement officer shall incur any
147 civil or criminal liability as a result of the withdrawal or
148 analysis of a blood specimen pursuant to accepted medical
149 standards when requested by a law enforcement officer, regardless
150 of whether or not the subject resisted administration of the
151 test.

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

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

166 (4) Notwithstanding any provision of law pertaining to the
167 confidentiality of hospital records or other medical records,
168 information relating to the alcoholic content of the blood or the
169 presence of chemical substances or controlled substances in the
170 blood obtained pursuant to this section shall be released to a
171 court, prosecuting attorney, defense attorney, or law enforcement

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172 officer in connection with an alleged violation of s. 316.193
173 upon request for such information.

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

178 316.066 Written reports of crashes.--

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

198 Section 3. For the purpose of incorporating the amendment
199 made by this act to section 316.1933, Florida Statutes, in a

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200 reference thereto, subsection (2) of section 316.1934, Florida
201 Statutes, is reenacted to read:

202 316.1934 Presumption of impairment; testing methods.--

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

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

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

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

237
238 The presumptions provided in this subsection do not limit the
239 introduction of any other competent evidence bearing upon the
240 question of whether the person was under the influence of
241 alcoholic beverages to the extent that his or her normal
242 faculties were impaired.

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

247 322.2616 Suspension of license; persons under 21 years of
248 age; right to review.--

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

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

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257 322.27 Authority of department to suspend or revoke
258 license.--

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

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

268 (b) Has been convicted of a violation of any traffic law
269 which resulted in a crash that caused the death or personal
270 injury of another or property damage in excess of \$500;

271 (c) Is incompetent to drive a motor vehicle;

272 (d) Has permitted an unlawful or fraudulent use of such
273 license or has knowingly been a party to the obtaining of a
274 license by fraud or misrepresentation or to display, or represent
275 as one's own, any driver's license not issued him or her.
276 Provided, however, no provision of this section shall be
277 construed to include the provisions of s. 322.32(1);

278 (e) Has committed an offense in another state which if
279 committed in this state would be grounds for suspension or
280 revocation; or

281 (f) Has committed a second or subsequent violation of s.
282 316.172(1) within a 5-year period of any previous violation.

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