

By Senator Wise

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

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

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

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

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

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

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

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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 is ~~shall be~~ immune  
123 from 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, does ~~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

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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 is ~~shall be~~ admissible at the  
161 trial of the criminal offense that ~~which~~ gave rise to the demand  
162 for 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 are ~~shall~~ not be admissible as evidence in  
166 a criminal prosecution for the possession of a controlled  
167 substance.

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

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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  
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:

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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



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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, subsection (1) of section 322.27, Florida  
258 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

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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 revocation  
266 of license is required upon conviction. A law enforcement agency  
267 must provide information to the department within 24 hours after  
268 any traffic fatality or when the law enforcement agency  
269 initiates action pursuant to s. 316.1933;

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

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

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

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

283 (f) Has committed a second or subsequent violation of s.  
284 316.172(1) within a 5-year period of any previous violation.

285 Section 6. This act shall take effect July 1, 2009.