

STORAGE NAME: h1137s2.hcr

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 1137

RELATING TO: Alcohol Impairment Testing

SPONSOR(S): Committee on Health Care Standards and Regulatory Reform, Committee on Law Enforcement and Public Safety, Representative Betancourt and Others

COMPANION BILL(S): SB 508 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 4 NAYS 0
 - (2) HEALTH CARE STANDARDS & REGULATORY REFORM YEAS 7 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Committee Substitute for Committee Substitute for House Bill 1137 specifically allows a health care provider who is treating a person injured in a motor vehicle crash to notify law enforcement if that person's blood alcohol level (BAL) is .08 percent or higher, whenever a health care provider becomes aware of this fact as a result of a blood test performed as a part of the medical treatment. The notification must be given within a reasonable time, and used exclusively for the purpose of a law enforcement officer requesting the withdrawal of a blood sample pursuant to s. 316.1932 or s. 316.1933, F.S.

The bill also provides that the reporting, or failure to report a person's BAL, is not a violation of any ethical or moral duty on the part of the health care provider. Further, the bill prohibits any action or administrative proceeding being brought against any health care provider on the basis of such a report, and provides immunity from civil or criminal liability and from any professional disciplinary action that may arise.

The bill has no fiscal impact on state and local government or the private sector.

This bill was carried over to the 1998 Session pursuant to House Rule 96, and passed both the Law Enforcement and Public Safety, and Health Care Standards and Regulatory Reform Committees.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Currently, health care practitioners cannot report suspected alcohol or drug-related motor crashes to law enforcement due to patient confidentiality laws which prohibit disclosure of a patient's condition without the patient's consent. Should a health care practitioner make such a disclosure without the patient's consent, the practitioner would be subject to disciplinary action by the licensing board and to civil action by the patient.

Driving Under the Influence (DUI)/Ordering Alcohol or Drug Tests

Section 316.193, F.S., proscribes the offense of driving under the influence of alcohol or drugs to the extent normal faculties are impaired, or driving with a BAL of .08 percent or higher. Penalties for DUI vary according to the frequency of previous convictions, the offender's BAL when arrested, and whether serious injury or death results.

Section 316.1932, F.S., provides that any person operating a motor vehicle in Florida is deemed to have given "implied consent" to submit to approved chemical or physical tests to determine blood or breath alcohol content or to a urine test to detect the presence of drugs. Such tests may only be administered incidentally to a lawful arrest upon reasonable cause to believe the person is driving under the influence of alcohol or drugs. Refusal to submit to a required chemical or physical test results in suspension of the driver's license. The "implied consent" statute also provides that a person is deemed to have consented to an approved blood test to determine the blood alcohol content or the presence of drugs by appearing for treatment at a hospital, clinic, or other medical facility and the administration of a breath or urine test is impractical or impossible.

Section 316.1933, F.S., authorizes blood tests when a law enforcement officer has probable cause to believe a vehicle driven by a person under the influence of alcohol or drugs has caused the death or serious bodily injury to a human being. The officer may use reasonable force if necessary to require the driver to submit to a blood test.

Results of Blood Tests for DUI Prosecution/Limited Availability to the State

Sections 316.1932 and 316.1933, F.S., permit a prosecutor, court, defense attorney, or law enforcement officer to obtain otherwise confidential medical records containing blood test results upon request, provided that the blood was drawn pursuant to an alleged violation of s. 316.193, F.S. Blood samples drawn upon request of a law enforcement officer who has shown probable cause are commonly referred to as "legal" blood samples.

Subpoena and Notice Required to Obtain Medical Records

When blood is drawn as part of diagnostic tests for medical purposes (commonly referred to as "medical" blood samples) rather than for the specific purpose of determining the BAL, the state must subpoena the patient's medical records and give proper notice to the patient or his attorney, under s. 395.3025(4)(d), F.S. , see also *State v. Wenger*, 560 So.2d 347 (Fla. 5th DCA 1990) (holding that the blood alcohol test results may be suppressed if the driver was not given notice of the subpoena). This is a

statutory exception to the general prohibition against disclosing a patient's confidential medical records without the patient's express consent under s. 395.3025, F.S. The state has the burden to show the relevancy of the patient's medical records to the criminal investigation before issuing the subpoena, if the patient objects to such records being disclosed. *Hunter v. State*, 639 So.2d 72, 74 (Fla. 5th DCA 1994).

Statutory/Common Law Confidentiality of Medical Test Results

The confidentiality requirements of s. 395.3025, F. S., also prohibit emergency room personnel and medical care facility personnel treating persons involved in motor vehicle accidents, who discover the driver has a BAL of .08 percent or higher as a result of diagnostic blood tests performed for medical treatment purposes, from revealing this fact to the investigating law enforcement officer. This information may be the only evidence the officer has to establish the requisite probable cause to request a "legal" blood draw pursuant to ss. 316.1932 or 316.1933, F.S.

In *State v. Buchanan*, 610 So. 2d 467 (2d DCA 1992), the court suppressed blood test results where the treating doctor's statement that the patient had been drinking provided the sole evidence to support the officer's probable cause to order the "legal" blood test. The court held that the diagnostic information supplied by the doctor violated the patient records privilege under s. 395.017, F.S. (now s. 395.3025, F.S.) and could not be used by the officer as the only evidence of probable cause that alcohol was a factor in the accident. *Id.* at 468.

B. EFFECT OF PROPOSED CHANGES:

Health Care Providers May Notify Law Enforcement Officers of Medical Blood Test Results So That the Officer May Request a Blood Sample for DUI Investigation

Committee Substitute for Committee Substitute for HB 1137 specifically allows a health care provider treating a person injured in a motor vehicle accident to notify a law enforcement officer of that person's BAL, provided that the BAL is .08 percent or higher and the health care provider became aware of this fact as a result of a blood test performed as a part of the medical treatment. The notification should be given within a reasonable time, and used exclusively for the purpose of the law enforcement officer requesting the withdrawal of a blood sample pursuant to ss. 316.1932 or 316.1933, F.S. The notice must contain the name of the person being treated, the name of the person who drew the blood, the BAL, and the date and time of the test.

Such Notification is Not an Ethical Breach of Health Care Providers' Duty Not to Disclose Confidential Patient Records

The bill also provides that reporting such information is not a breach of the health care provider's duties under s. 395.3025(4), F.S., relating to the confidentiality of patient records. Furthermore, reporting or failing to report would not be violations of ethical or moral duties.

Health Care Providers Granted Immunity from Breach of Confidentiality Actions for Such Notification

The bill prohibits bringing any action or administrative proceeding against a health care provider making a good-faith report of blood test results to a law enforcement officer for purposes of this section. The bill also provides immunity from civil or criminal liability, any professional disciplinary action, or judicial proceeding resulting from the report.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

ss. 316.1932, and 316.1933, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 316.1932(1) (f), F. S., to allow health care practitioners to report, within a reasonable period of time, suspected alcohol or drug-related motor crashes to law enforcement without exposure to disciplinary action or liability for breaching patient confidentiality. Provides specifics for contents of the notice.

Section 2. Amends s. 316.1933(2) (a), F.S., to conform to language provided in Section 1 and to require that the notice must include the name of the person being treated, the name of the person who drew the blood, the blood-alcohol level disclosed by the test, and the date and time of the administration of the test.

Section 3. Provides that the act shall take effect on July 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its September 18, 1997 committee meeting, the Committee on Law Enforcement and Public Safety passed a "strike everything" amendment which made technical changes to the bill and adding language strengthening the requirement that law enforcement must give its specific notification of intent to have blood withdrawn.

At its January 5, 1998 committee meeting, the Committee on Health Care Standards and Regulatory Reform passed a "strike everything" amendment which clarifies the intent of the bill, provides more consistent use of certain terms, and modifies language to clarify that administrative, civil, or criminal action may not be brought against persons who report under this section, as well as protecting persons who fail to report under this section.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

Kurt E. Ahrendt

Kurt E. Ahrendt

AS REVISED BY THE COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

Prepared by:

Legislative Research Director:

Terri L. Paddon

Robert W. Coggins