# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 17, 1998 Revised: _____ _____ _____ _____

Subject: Alcohol Impairment Notification

| | Analyst | Staff Director | Reference | Action |
|---|---|---|---|---|
| 1. | Dugger | Miller | CJ | Favorable/CS |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

## I. Summary:

The CS/SB 508 would allow a health care provider who is treating a person injured in a motor vehicle crash to notify a law enforcement officer of that person's blood alcohol level (BAL) if it 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 would have to be given within a reasonable time, to be used only for the purpose of providing a law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to ss. 316.1932 or 316.1933, F.S.

This CS would substantially amend the following sections of the Florida Statutes: 316.1932 and 316.1933.

## II. Present Situation:

Section 316.193, F.S., proscribes 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 (DUI). 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 who operates a motor vehicle in Florida is deemed to have consented to submit to an approved chemical test or physical test for the purpose of determining the alcoholic content of his blood or breath and to a urine test for the purpose of detecting the presence of drugs. Such tests may only be administered incidental to a lawful arrest based upon reasonable cause to believe the person is driving under the influence. Refusal to submit to a required test will result in the suspension of a person's driver's license.

The implied consent statute also provides that a person consents to an approved blood test to determine the alcoholic content of blood or the presence of drugs when the person appears 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 mandatory blood tests when a law enforcement officer has probable cause to believe a vehicle driven by a person who is under the influence of alcohol or drugs has caused the death or serious bodily injury of a human being. The officer may use reasonable force if necessary to require the driver to submit to a blood test.

Both of these testing sections contain language which allows a prosecutor, court, defense attorney, or law enforcement officer to obtain otherwise confidential medical records containing blood test results upon request, when the blood drawn pursuant to these sections is in connection with an alleged violation of s. 316.193, F.S., meaning the officer had the requisite probable cause to request the blood sample (commonly referred to as "legal" blood).

When blood is drawn not for the specific purpose of determining a driver's blood alcohol content for a DUI investigation under s. 316.1932 or 316.1933, F.S., but rather as part of diagnostic tests for medical treatment purposes (commonly referred to "medical" blood), the state is required to subpoena the patient's medical records and give proper notice to the patient or his attorney. s. 395.3025(4)(d), F.S.; s. 455.667, F.S. (formerly s. 455.241, F.S.); *State v. Wenger*, 560 So.2d 347 (Fla. 5th DCA 1990); and *Hunter v. State*, 639 So.2d 72 (Fla. 5th DCA 1994). This is one of the exceptions to the general prohibition against disclosing a patient's confidential medical records without the patient's express consent under ss. 395.3025 and 455.667, F.S. The state is also required to establish that the patient's medical records are relevant to the criminal investigation before the subpoena is allowed to issue, if the patient objects to such records being disclosed. *Hunter*, 639 So.2d at 73.

These confidentiality requirements also prohibit emergency room personnel and medical care facility personnel who treat persons involved in a car accident and discover as a result of diagnostic blood tests performed for medical treatment purposes that the person has a BAL of .08 percent or higher, from revealing this fact to the investigating law enforcement officer. Sometimes this information is 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. Buchanon*, 610 So.2d 467 (Fla. 2nd DCA 1992), for example, the Second District Court of Appeal suppressed a blood test where the sole evidence to support the officer's probable cause to order the "legal" blood test resulted from the treating doctor's statement that the patient had been drinking. The doctor knew this because of the results of an earlier diagnostic test performed on the defendant. The court held that this confidential diagnostic information supplied by the doctor violated the patient records privilege under s. 395.017, F.S. (now s. 395.3025) and, thus, could not be properly used by the officer as the only source of probable cause to believe alcohol was a factor in the accident. *Id*. at 468.

## III. Effect of Proposed Changes:

The CS would allow a health care provider who is treating a person injured in a motor vehicle crash to notify a law enforcement officer of that person's BAL if it 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 would have to be given within a reasonable time, to be used for the purpose of providing a law enforcement officer with reasonable cause to request the withdrawal of a blood sample pursuant to ss. 316.1932 or 316.1933, F.S. The notice would consist of 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.

The CS would also provide that reporting or failing to report such information would not be considered a breach of duty under ss. 395.3025(4) or 455.667, F.S., relating to the confidentiality of patient records, or under any applicable practice act. Furthermore, reporting or failing to report would not be considered a violation of any ethical, moral, or legal duty under the CS.

The CS would also prohibit any civil or criminal action or administrative proceeding being brought against anyone participating in good faith in making or failing to make such a report. It would also provide immunity from civil or criminal liability, from any professional disciplinary action, as well as provide immunity in any judicial proceeding resulting from making or failing to make the report.

Thus, unlike the result in *Buchanon* where the "legal" blood test result was suppressed because it was based solely on probable cause gleaned from testimony concerning a "medical" blood test, under the CS, a law enforcement officer would be able to use a health care worker's proper notification regarding a patient's BAL, provided one is given, to establish reasonable cause to request a "legal" blood draw under ss. 316.1932 or 316.1933, F.S. (The law enforcement officer would remain responsible for developing the requisite probable cause in order to satisfy Fourth Amendment requirements.)

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

## V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Amendments:

None.