

1 HB415
2 137826-2
3 By Representative Poole
4 RFD: Judiciary
5 First Read: 23-FEB-12

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8 SYNOPSIS: Under existing law, a person involved in an
9 accident that results in death or a serious
10 physical injury to any person is deemed to have
11 given consent to a blood test to determine alcohol
12 content or the presence of certain substances. The
13 failure to submit to a test will result in the
14 suspension of the person's driver's license for a
15 period of two years.

16 This bill would require all persons involved
17 in an accident that results in death or a serious
18 physical injury to submit to a blood test upon
19 probable cause and would allow a law enforcement
20 officer to take reasonable steps to obtain the
21 blood sample.

22 This bill would also provide certain health
23 care providers immunity from civil or criminal
24 liability related to the administration of a blood
25 test at the direction of law enforcement.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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4 To amend Section 32-5-200, Code of Alabama 1975, to
5 require all persons involved in an accident that results in
6 death or a serious physical injury to submit to a blood test
7 upon probable cause; to authorize law enforcement officers to
8 take reasonable steps to obtain a blood sample; and to provide
9 immunity to certain health care providers administering blood
10 tests at the direction of law enforcement.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 32-5-200, Code of Alabama 1975,
13 is amended to read as follows:

14 "§32-5-200.

15 "(a) Any person who operates a motor vehicle on the
16 public highways of this state who is involved in an accident
17 that results in death or a serious physical injury to any
18 person shall ~~be deemed to have given consent to a test~~ submit
19 a sample of his or her blood for the purpose of determining
20 the alcoholic content of his or her blood or the presence ~~of~~
21 ~~amphetamines, opiates, or cannabis~~ any substance which may
22 cause impairment if a law enforcement officer has probable
23 cause to believe that a person is under the influence of
24 alcohol or any other illegal or controlled substance. The test
25 or tests shall be administered by or at the direction of a law
26 enforcement officer having reasonable grounds to believe that
27 the person, while driving a motor vehicle on the public

1 highways of this state, was under the influence of ~~alcohol,~~
2 ~~amphetamines, opiates, or cannabis~~ any substance which may
3 cause impairment. ~~The person shall be informed by the law~~
4 ~~enforcement officer who is investigating the accident that~~
5 ~~failure to submit to a test will result in the suspension of~~
6 ~~his or her privilege to operate a motor vehicle for a period~~
7 ~~of two years.~~

8 "(b) For purposes of this section, the term "serious
9 physical injury" means physical injury which creates a
10 substantial risk of death, or which causes serious and
11 protracted disfigurement, protracted impairment of health, or
12 protracted loss or impairment of the function of any bodily
13 organ.

14 ~~"(c) Any person who is dead, unconscious, or who is~~
15 ~~otherwise in a condition in which they are incapable of~~
16 ~~refusal, shall be deemed not to have withdrawn the consent~~
17 ~~provided by subsection (a)~~ The officer may direct that
18 reasonable steps be used to obtain samples of blood from the
19 person to be tested.

20 "(d) ~~If a person refuses to submit to a test, none~~
21 ~~shall be given, unless a court order has been obtained~~
22 ~~ordering the person to submit to a test. If the person is~~
23 ~~found not to have been at fault in causing the accident, the~~
24 ~~Director of Public Safety may reduce the period of suspension.~~
25 A person may not refuse to submit to a chemical test as
26 required under the provisions of this section.

1 "~~(e) Upon suspending the license or permit to drive~~
2 ~~or the privilege of driving a motor vehicle on the highways of~~
3 ~~this state that is given to a nonresident or any person, or~~
4 ~~upon determining that the issuance of a license or permit~~
5 ~~shall be denied to the person, the Director of Public Safety~~
6 ~~or his or her authorized agent shall within three days of~~
7 ~~suspension notify the person in writing. Upon a request filed~~
8 ~~by the person within five days from the date of the notice of~~
9 ~~suspension or denial, the director shall schedule a hearing~~
10 ~~with notice of the hearing to be provided by certified mail to~~
11 ~~the person stating the date, time, place, and scope of the~~
12 ~~hearing. The scope of the hearing shall pertain to all of the~~
13 ~~following issues: A physician, registered nurse, or duly~~
14 ~~licensed chemical laboratory technologist, clinical laboratory~~
15 ~~technician, or medical facility shall not incur any civil or~~
16 ~~criminal liability as a result of the proper administration of~~
17 ~~a blood test when requested by a law enforcement officer to~~
18 ~~administer the test.~~

19 "~~(1) Whether a law enforcement officer had~~
20 ~~reasonable grounds to believe the person had been driving a~~
21 ~~motor vehicle on the public highways of this state while under~~
22 ~~the influence of the substances enumerated in subsection (a).~~

23 "~~(2) Whether the person was at fault in causing the~~
24 ~~accident.~~

25 "~~(3) Whether the person refused to submit to the~~
26 ~~test upon request of a law enforcement officer.~~

1 ~~"(4) Whether the person was informed that his or her~~
2 ~~privilege to drive would be suspended or denied if he or she~~
3 ~~refused to submit to the test shall not be an issue.~~

4 ~~"(f) If the suspension or determination that there~~
5 ~~should be a denial or issuance is sustained by the director or~~
6 ~~his or her authorized agent, the person whose license or~~
7 ~~permit to drive or a nonresident operating privilege has been~~
8 ~~suspended, or to whom a license or permit is denied, shall~~
9 ~~have the right to file a petition to review the final order,~~
10 ~~suspension, or denial within 30 days after the entry of the~~
11 ~~final order of suspension or denial by the director in the~~
12 ~~appropriate court to review the final order of suspension.~~

13 ~~"(g) When it has been finally determined under the~~
14 ~~procedures of this section that the privilege of a nonresident~~
15 ~~to operate a motor vehicle in this state has been suspended,~~
16 ~~the director shall give information in writing of the action~~
17 ~~taken to the motor vehicle administrator of the state of the~~
18 ~~residence of the person and to any state in which the person~~
19 ~~has a license."~~

20 Section 2. This act shall become effective on the
21 first day of the third month following its passage and
22 approval by the Governor, or its otherwise becoming law.