

1 HB120
2 147503-1
3 By Representative Poole
4 RFD: Public Safety and Homeland Security
5 First Read: 05-FEB-13

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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 and would
19 allow a law enforcement officer to take reasonable
20 steps to obtain the blood sample.

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

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

13 "§32-5-200.

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

1 ~~the accident that failure to submit to a test will result in~~
2 ~~the suspension of his or her privilege to operate a motor~~
3 ~~vehicle for a period of two years.~~

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

10 ~~"(c) Any person who is dead, unconscious, or who is~~
11 ~~otherwise in a condition in which they are incapable of~~
12 ~~refusal, shall be deemed not to have withdrawn the consent~~
13 ~~provided by subsection (a)~~

14 ~~"(d) If a person refuses to submit to a test, none~~
15 ~~shall be given, unless a court order has been obtained~~
16 ~~ordering the person to submit to a test. If the person is~~
17 ~~found not to have been at fault in causing the accident, the~~
18 ~~Director of Public Safety may reduce the period of suspension.~~

19 ~~"(e) Upon suspending the license or permit to drive~~
20 ~~or the privilege of driving a motor vehicle on the highways of~~
21 ~~this state that is given to a nonresident or any person, or~~
22 ~~upon determining that the issuance of a license or permit~~
23 ~~shall be denied to the person, the Director of Public Safety~~
24 ~~or his or her authorized agent shall within three days of~~
25 ~~suspension notify the person in writing. Upon a request filed~~
26 ~~by the person within five days from the date of the notice of~~
27 ~~suspension or denial, the director shall schedule a hearing~~

1 with notice of the hearing to be provided by certified mail to
2 the person stating the date, time, place, and scope of the
3 hearing. The scope of the hearing shall pertain to all of the
4 following issues:

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

9 "~~(2) Whether the person was at fault in causing the~~
10 ~~accident.~~

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

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

16 "~~(f) If the suspension or determination that there~~
17 ~~should be a denial or issuance is sustained by the director or~~
18 ~~his or her authorized agent, the person whose license or~~
19 ~~permit to drive or a nonresident operating privilege has been~~
20 ~~suspended, or to whom a license or permit is denied, shall~~
21 ~~have the right to file a petition to review the final order,~~
22 ~~suspension, or denial within 30 days after the entry of the~~
23 ~~final order of suspension or denial by the director in the~~
24 ~~appropriate court to review the final order of suspension.~~

25 "~~(g) When it has been finally determined under the~~
26 ~~procedures of this section that the privilege of a nonresident~~
27 ~~to operate a motor vehicle in this state has been suspended,~~

1 ~~the director shall give information in writing of the action~~
2 ~~taken to the motor vehicle administrator of the state of the~~
3 ~~residence of the person and to any state in which the person~~
4 ~~has a license.~~

5 "(c) The officer may direct that reasonable steps be
6 used to obtain samples of blood from the person to be tested.

7 "(d) A person may not refuse to submit to a chemical
8 blood test as required under the provisions of this section. A
9 physician, registered nurse, chemical laboratory technician,
10 phlebotomist, or other health care provider trained and
11 authorized to administer blood tests is under no obligation to
12 administer a blood test when the administration of the blood
13 test would endanger the health of the physician, registered
14 nurse, chemical laboratory technician, phlebotomist, other
15 health care provider, or any other person.

16 "(e) A physician, registered nurse, duly licensed
17 chemical laboratory technologist, clinical laboratory
18 technician, or hospital, as defined in Section 22-21-20, shall
19 not incur any civil or criminal liability as a result of the
20 administration of a blood test when requested by a law
21 enforcement officer to administer the test."

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