

ACT 101

S.B. NO. 377

A Bill for an Act Relating to Impaired Drivers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 286-163, Hawaii Revised Statutes, is amended to read as follows:

**“§286-163 Applicable scope of part; mandatory testing in the event of a collision resulting in injury or death. (a)** Nothing in this part shall be construed to prevent the police from obtaining a sample of breath or blood as evidence of

intoxication from the driver of any vehicle involved in a collision resulting in injury to or the death of any person.

(b) If a health care provider who is providing medical care in a health care facility to any person involved in a motor vehicle accident, becomes aware, as a result of any blood test performed in the course of medical treatment, that the alcohol content in the person's blood meets or exceeds the amount specified in section 291-4, and has a reasonable belief that the person was the driver of a motor vehicle involved in the accident, the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the accident or, if no such officer is present, the county police department in the county where the accident occurred. Where the health care provider is aware of any blood test result as provided in the preceding sentence, but lacks information to form a reasonable belief as to the identity of the driver involved in a motor vehicle accident, then the health care provider shall give notice as provided in the preceding sentence for all persons involved in a motor vehicle accident whose alcohol content in the person's blood meets or exceeds the amount specified in section 291-4. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol level disclosed by the test, and the date and time of the administration of the test. Such notice shall be deemed to satisfy the intoxication element necessary to establish the probable cause requirement set forth in subsection (c).

(c) In the event of a collision resulting in injury or death, and the police have probable cause to believe that a person involved in the incident has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7, the police shall request that a sample of blood be recovered from the driver or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, 291-4, or 291-7. The police shall make this request to the hospital or medical facility treating the person from whom the police request that the blood be recovered. Upon the request of the police that blood be recovered pursuant to this section, and except where the responsible attending personnel at the hospital or medical facility determines in good faith that recovering or attempting to recover blood from the person represents an imminent threat to the health of the medical personnel or others, the hospital or medical facility shall provide the police with the blood sample requested, recover the sample in compliance with section 321-161, and assign a person authorized under section 286-152 to withdraw the blood sample.

(d) Any person complying with [a request to withdraw blood under the direction of a police officer pursuant to] this section shall be exempt from liability pursuant to section 663-1.9 as a result thereof.

(e) As used in this section, unless the context otherwise requires:  
"Health care facility" includes any program, institution, place, building, or agency, or portion thereof, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, rehabilitative, or preventive care to any person. The term includes but is not limited to health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature.

"Health care provider" means a person who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or practice of a profession."

SECTION 2. Section 663-1.9, Hawaii Revised Statutes, is amended to read as follows:

“[§663-1.9] Exception to liability for health care provider, authorized person withdrawing blood at the direction of a police officer. (a) Any health care provider who, in good faith in compliance with section 286-163, provides notice concerning the alcohol content of a person’s blood shall be immune from any civil liability in any action based upon the compliance. The health care provider shall also be immune from any civil liability for participating in any subsequent judicial proceeding relating to the person’s compliance.”

(b) Any authorized person who properly withdraws blood from another person at the written request of a police officer for testing of the blood’s alcoholic content, and any hospital, laboratory, or clinic, employing or utilizing the services of such person, and owning or leasing the premises on which such tests are performed, shall not be liable for civil damages resulting from the authorized person’s acts or omissions in withdrawing the blood, except for such damages as may result from the authorized person’s gross negligence or wanton acts or omissions.

(c) For the purpose of this section[, “authorized person”]:  
“Authorized person” means a person authorized under section 286-152 to withdraw blood at the direction of a police officer.

“Health care provider” has the same meaning as in section 286-163.”

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 2, 1997.)