

SENATE BILL NO. 328

2/05 Introduced
2/06 Referred to Public Health, Welfare & Safety
2/11 Rereferred to Judiciary
2/15 Hearing
2/18 Committee Report-Bill Pass As Amended
2/20 2nd Reading Pass
2/22 3rd Reading Pass

Transmitted to House

2/27 Referred to Judiciary
3/19 Hearing
3/27 Adverse Committee Report
3/28 Bill Killed

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INTRODUCED BY Senate BILL NO. 328
Bob Brown Senial

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE
EXCULPATORY CLAUSE PROTECTING MEDICAL PERSONNEL FROM SUIT
FOR DAMAGES WHEN DRAWING BLOOD FOR BLOOD ALCOHOL TESTS;
AMENDING SECTION 61-8-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-8-405, MCA, is amended to read:

"61-8-405. Administration of tests. (1) Only a
physician or registered nurse or other qualified person
under the supervision and direction of a physician or
registered nurse acting at the request of a peace officer
may withdraw blood for the purpose of determining the
alcoholic content therein. This limitation shall not apply
to the taking of breath or urine specimens.

(2) The person tested may, at his own expense, have a
physician or registered nurse of his own choosing administer
a test, in addition to any administered at the direction of
a peace officer, for the purpose of determining the amount
of alcohol in his blood at the time alleged as shown by
chemical analysis of his blood, breath, or urine. The
failure or inability to obtain an additional test by a
person shall not preclude the admissibility in evidence of

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the test taken at the direction of a peace officer.

(3) Upon the request of the person tested full
information concerning the test taken at the direction of
the peace officer shall be made available to him or his
attorney.

(4) No physician, or registered nurse, licensed
hospital, hospital employee, or other qualified person under
~~the supervision and direction of a physician or registered~~
nurse, acting within the scope of such person's competence,
shall incur any civil or criminal liability as a result of
the proper administering of a blood test when requested in
writing by a peace officer to administer or assist in
administering such a test except in cases of willful injury.

(5) If the test given under 61-8-402 is a chemical
test of urine, the person tested shall be given such privacy
in the taking of the urine specimen as will insure the
accuracy of the specimen and, at the same time, maintain the
dignity of the individual involved.

(6) The division of motor vehicles in cooperation with
the division of forensic sciences, or any other appropriate
agency, shall adopt uniform rules for the giving of blood
alcohol tests and may require certification of training to
administer such tests as deemed necessary."

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 328

INTRODUCED BY B. BROWN, DANIELS

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(2) The person tested may, at his own expense, have a physician or registered nurse of his own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining the amount of alcohol in his blood at the time alleged as shown by chemical analysis of his blood, breath, or urine. The failure or inability to obtain an additional test by a person shall not preclude the admissibility in evidence of

the test taken at the direction of a peace officer.

(3) Upon the request of the person tested full information concerning the test taken at the direction of the peace officer shall be made available to him or his attorney.

(4) No physician, or registered nurse, licensed hospital, ~~hospital--employee~~ or other qualified QUALIFIED person ~~under the supervision and direction of a physician or registered nurse acting within the scope of such person's~~ competence shall incur any civil or criminal liability as a result of the proper PROPER administering of a blood test when requested in writing by a peace officer to administer ~~or assist in administering~~ such a test ~~except in cases of~~ willful injury. IF A BLOOD TEST IS ADMINISTERED AT THE WRITTEN REQUEST OF A PEACE OFFICER WITHOUT THE CONSENT OF A PERSON SUSPECTED OF HOMICIDE, NO PHYSICIAN, LICENSED HOSPITAL, REGISTERED NURSE, OR OTHER QUALIFIED PERSON ADMINISTERING THE TEST, OR ANY HOSPITAL EMPLOYEE ASSISTING IN ADMINISTERING THE TEST, SHALL INCUR ANY CIVIL OR CRIMINAL LIABILITY IN CONNECTION WITH THE TEST AS A RESULT OF ANY RESISTANCE OFFERED BY THE SUSPECTED PERSON.

(5) If the test given under 61-8-402 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the

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1 dignity of the individual involved.

2 (6) The division of motor vehicles in cooperation with
3 the division of forensic sciences, or any other appropriate
4 agency, shall adopt uniform rules for the giving of blood
5 alcohol tests and may require certification of training to
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