



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 58

128th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Sens. Hughes, Schaffer, Wagoner, Grendell

BILL SUMMARY

- Prohibits a person from knowingly collecting any blood, urine, tissue, or other bodily substance of another person without privilege or consent to do so.
- Corrects erroneous cross-references in provisions enacted in Am. Sub. H.B. 280 of the 127th General Assembly regarding increased penalties for domestic violence committed against a pregnant woman.
- Permits an emergency medical technician to withdraw blood for the purpose of the watercraft or vehicle OVI law or the commercial motor vehicle law and generally provides a qualified immunity to the technician, the health care facility at which the technician withdraws blood, and the emergency medical service organization that employs the technician.

CONTENT AND OPERATION

The bill prohibits a person from knowingly collecting any blood, urine, tissue, or other bodily substance of another person without "privilege" (see the second succeeding paragraph) or consent to do so. A violation of this prohibition is the offense of "unlawful collection of a bodily substance." The offense generally is a misdemeanor of the first degree, but if the offender previously has been convicted of or pleaded guilty to a violation of the prohibition, the offense is a felony of the fifth degree.

The bill specifies that the prohibition described in the preceding paragraph does not apply to: (1) the collection of any bodily substance of a person by a law enforcement officer, or by another person pursuant to the direction or advice of a law enforcement officer, for purposes of a chemical test or tests of the substance under a provision of the Watercraft Implied Consent Law or the Vehicle Implied Consent Law to determine the alcohol, drug, controlled substance, metabolite of a controlled

substance, or combination content of the bodily substance, or (2) the collection of any bodily substance of a person by a peace officer, or by another person pursuant to the direction or advice of a peace officer, for purposes of a test or tests of the substance as provided in a provision of the Commercial Motor Vehicle Implied Consent Law to determine the person's alcohol concentration or the presence of any controlled substance or metabolite of a controlled substance. The bill states that these exemptions are not to be construed as implying that the persons they identify do not have privilege to collect the bodily substance of another person as described in the exemptions or as limiting the definition of "privilege" that is described in the next paragraph. (R.C. 2927.15; see COMMENT.)

Existing R.C. 2901.01, which is not in the bill, provides that, as used in the Revised Code, "privilege" means an immunity, license, or right conferred by law, bestowed by an express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

Correction of erroneous cross-references in provisions enacted in Am. Sub. H.B. 280 of the 127th General Assembly

Am. Sub. H.B. 280 of the 127th General Assembly, which takes effect on April 7, 2009, generally provides an increased penalty for the offense of "domestic violence" when it is a misdemeanor and a mandatory prison term for the offense when it is a felony, if the offender knew that the victim of the offense was pregnant at the time of the violation. In some cases, the act's provisions that include the increased penalties refer to penalties provided or required under "division (A)(6)," "division (A)(3), (4), or (5)," or "division (A)(6)(b) or (c)" of R.C. 2919.25. The cross-references to "division (A)(6)," "division (A)(3), (4), or (5)," and "division (A)(6)(b) or (c)" of R.C. 2919.25 are erroneous, since division (A) of the section contains one of the prohibitions that constitutes the offense and does not provide or require any penalty. All of the penalties for the offense are contained in division (D) of R.C. 2919.25, and, thus, the cross-references to penalties provided or required for the offense should be to division (D) of the section.

The bill corrects the erroneous cross-references enacted in Am. Sub. H.B. 280 to penalties provided or required for the offense of "domestic violence" if the offender knew that the victim of the offense was pregnant at the time of the violation. Under the bill, the cross-references are corrected so that they are references to "division (D)(6)," "division (D)(3), (4), or (5)," and "division (D)(6)(b) or (c)" of R.C. 2919.25. (R.C. 2919.25(D)(3), (4), (5), (6), (6)(a), and (6)(d) and R.C. 2929.13(F)(17).)

Withdraw of blood by emergency medical technician

Related to the operation of a vessel or vehicle

Current law

Current law prohibits a person from operating or being in physical control of any vessel underway, from manipulating any water skis, aquaplane, or similar device on Ohio waters, and from operating any vehicle, streetcar, or trackless trolley within the state if, at the time of the operation, control, or manipulation: (1) the person is under the influence of alcohol, a drug of abuse, or a combination of them, (2) the person has a specified concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine, or (3) the person has a specified concentration of a specified controlled substance or a metabolite of a specified controlled substance in the person's whole blood, blood serum or plasma, breath, or urine. Current law also prohibits a person under 21 years of age from operating or being in physical control of any vessel underway, from manipulating any water skis, aquaplane, or similar device on Ohio waters, and from operating any vehicle, streetcar, or trackless trolley within the state if, at the time of the operation, control, or manipulation, the person has a specified concentration of alcohol in the person's whole blood, blood serum or plasma, breath, or urine (the specified concentration is much lower than the specified concentration that applies under the prohibitions described in the first sentence in this paragraph).

In any criminal prosecution or juvenile court proceeding for a violation of any prohibition described in the preceding paragraph or for an equivalent offense, the result of any test of any blood or urine withdrawn and analyzed at any health care provider may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

In any criminal prosecution or juvenile court proceeding for a violation of any prohibition described in the second preceding paragraph or for an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's or child's whole blood, blood serum or plasma, urine, or breath at the time of the alleged violation as shown by chemical analysis of the substance withdrawn, or specimen taken within three hours of the time of the alleged violation. The three-hour time limit specified in this provision regarding the admission of evidence does not extend or affect the two-hour time limit otherwise specified under the Watercraft Implied Consent Law (R.C. 1547.111) or the Vehicle Implied Consent Law (R.C. 4511.191 and 4511.192) as the maximum period of time during which a person may consent to a chemical test or tests. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request

of a law enforcement officer under the Watercraft Implied Consent Law or the Vehicle Implied Consent Law or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist may withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this provision may refuse to withdraw blood under this provision if, in that person's opinion, the physical welfare of the defendant or child would be endangered by withdrawing blood. The whole blood, blood serum or plasma, urine, or breath withdrawn under this provision must be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to R.C. 3701.143.

Except as otherwise described in this paragraph, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to the provisions described in the preceding paragraph, the Watercraft Implied Consent Law, or the Vehicle Implied Consent Law, and a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to the provisions described in the preceding paragraph, the Watercraft Implied Consent Law, or the Vehicle Implied Consent Law, is immune from criminal and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this provision is not available to a person who withdraws blood if the person engages in willful or wanton misconduct. (R.C. 1547.11(A), (B), (D), and (G) and 4511.19(A), (B), (D), and (F).)

Operation of the bill

The bill expands the provisions that currently permit only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist to withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma related to the prohibitions described above in "**Current law**" so that they also permit an emergency medical technician to withdraw blood for that purpose. An emergency medical technician may refuse to withdraw blood under the provisions if, in the technician's opinion, the physical welfare of the defendant or child from whom it is to be withdrawn would be endangered by withdrawing blood. Blood withdrawn under the provisions must be analyzed in accordance with methods approved by the Director of Health by an individual possessing a valid permit issued by the Director pursuant to R.C. 3701.143. (R.C. 1547.11(D)(1)(b), 4511.19(D)(1)(b), 4765.37(E), 4765.38(D), and 4765.39(D).)

The bill requires any emergency medical technician who withdraws blood under the provisions described in the preceding paragraph to do so in accordance with the general law governing emergency medical technician-basics, emergency medical technician-intermediates, or emergency medical technician-paramedics, whichever is applicable (R.C. Chapter 4765.), and any rules adopted by the State Board of Emergency Medical Services (R.C. 4765.37(E), 4765.38(D), and 4765.39(D)).

The bill also generally extends the provisions that currently grant criminal and civil immunity to a physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person under the provisions related to the prohibitions described above in "**Current law**," the Watercraft Implied Consent Law, or the Vehicle Implied Consent Law, and to a hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to the provisions, so that the provisions also apply to any of the following (R.C. 1547.11(G) and 4511.19(F)):

(1) An emergency medical technician who withdraws blood from a person under the provisions containing the watercraft-related prohibitions described above in "**Current law**" or the Watercraft Implied Consent Law (due to an oversight, the bill does not similarly extend the provisions to an emergency medical technician who withdraws blood from a person under the provisions containing the vehicle-related prohibitions described above in "**Current law**" or the Vehicle Implied Consent Law). As under current law for the persons currently authorized to withdraw blood, the immunity provided under the bill is not available to an emergency medical technician if the technician engages in willful or wanton misconduct.

(2) A hospital, first-aid station, or clinic at which blood is withdrawn from a person under the provisions related to the prohibitions described above in "**Current law**," the Watercraft Implied Consent Law, or the Vehicle Implied Consent Law;

(3) An emergency medical service organization that employs an emergency medical technician who withdraws blood under the provisions related to the prohibitions described above in "**Current law**."

Related to the operation of a commercial motor vehicle

Current law

Current law includes a Commercial Motor Vehicle Implied Consent Law for the purpose of determining the alcohol concentration of, or the presence of any controlled substance or a metabolite of a controlled substance in, the whole blood, blood serum or plasma, breath, or urine of a person who holds a commercial driver's license and who is operating a commercial motor vehicle. Current law provides that a person who holds a commercial driver's license must be disqualified from driving a commercial motor

vehicle for a specified period of time if the person either refused to submit to a test under that Law or submitted to a test that disclosed the presence of a controlled substance or a metabolite of a controlled substance or a prohibited alcohol concentration.

A test of a person's whole blood or a person's blood serum or plasma given under the Commercial Motor Vehicle Implied Consent Law must comply with the applicable provisions of the law regarding the taking of blood related to the operation of motor vehicles, as described above in the third paragraph of the "**Existing law**" portion of "**Related to the operation of a vessel or vehicle**," and any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws whole blood or blood serum or plasma from a person under the Commercial Motor Vehicle Implied Consent Law, and any hospital, first-aid station, clinic, or other facility at which whole blood or blood serum or plasma is withdrawn from a person pursuant to that Law, is immune from criminal liability, and from civil liability that is based upon a claim of assault and battery or based upon any other claim of malpractice, for any act performed in withdrawing whole blood or blood serum or plasma from the person. (R.C. 4506.17(A) to (F).)

Operation of the bill

As described above in the "**Operation of the bill**" portion of "**Related to the operation of a vessel or vehicle**," the bill expands the provisions that currently permit only a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist to withdraw blood for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma in relation to the operation of a vessel or motor vehicle so that they also permit an emergency medical technician to withdraw blood for that purpose. By cross-reference, that expansion also seemingly applies regarding a test of a person's whole blood or a person's blood serum or plasma given under the Commercial Motor Vehicle Implied Consent Law. (R.C. 4506.17(F).)

The bill requires any emergency medical technician who withdraws blood under the provisions described in the preceding paragraph to do so in accordance with the general law governing emergency medical technician-basic, emergency medical technician-intermediates, or emergency medical technician-paramedics, whichever is applicable (R.C. Chapter 4765.), and any rules adopted by the State Board of Emergency Medical Services (R.C. 4506.17(F), 4765.37(E), 4765.38(D), and 4765.39(D)).

The bill extends the provision that currently grants criminal and civil immunity to a physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws whole blood or blood serum or plasma under the Commercial Motor Vehicle Implied Consent Law and to any hospital, first-aid station, clinic, or other

facility at which whole blood or blood serum or plasma is withdrawn under that Law so that the provision also applies to an emergency medical technician who withdraws blood from a person under that Law, to any hospital, first-aid station, clinic, or other facility at which whole blood or blood serum or plasma is withdrawn, and to an emergency medical service organization that employs an emergency medical technician who withdraws blood from a person under that Law (R.C. 4506.17(F)).

COMMENT

The Criminal Code currently does not address the collection of a bodily substance of a person, but it does address the harassment of another in specified circumstances with a bodily substance. Existing R.C. 2921.38, which is not in the bill, prohibits a person from doing any of the following: (a) if the person is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the substance at the other person, by expelling the substance upon the other person, or in any other manner, (b) with intent to harass, annoy, threaten, or alarm a law enforcement officer, causing or attempting to cause the officer to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the substance at the officer, by expelling the substance upon the officer, or in any other manner, or (c) with knowledge that the person is a carrier of the virus that causes AIDS, is a carrier of a hepatitis virus, or is infected with tuberculosis and with intent to harass, annoy, threaten, or alarm another person, causing or attempting to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the substance at the other person, by expelling the substance upon the other person, or in any other manner. The prohibition does not apply to a person who is hospitalized, institutionalized, or confined in a facility operated by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities. A violation of the prohibition is the offense of "harassment with a bodily substance" and, depending upon the portion violated, is either a felony of the fifth degree or a felony of the third degree.

HISTORY

ACTION	DATE
Introduced	02-26-09
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