

By: Deuell, et al.

S.B. No. 261

Substitute the following for S.B. No. 261:

By: Christian

C.S.S.B. No. 261

A BILL TO BE ENTITLED

AN ACT

relating to the taking of a specimen of the breath or blood of certain persons arrested for an intoxication offense.

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

SECTION 1. This Act shall be known as the Nicole "Lilly" Lalime Act.

SECTION 2. Sections 724.012(b) and (d), Transportation Code, are amended to read as follows:

(b) A peace officer shall require the taking of a specimen of the person's breath or blood under any of the following circumstances if ~~+~~

~~(1)~~ the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily: ~~+~~

(1) ~~(2)~~ the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and, ~~+~~

~~(3)~~ at the time of the arrest, the officer reasonably believes that as a direct result of the accident:

(A) any individual has died or will die; ~~or~~

(B) an individual other than the person has suffered serious bodily injury; or

(C) an individual other than the person has

1 suffered bodily injury and been transported to a hospital or other
2 medical facility for medical treatment;

3 (2) the offense for which the officer arrests the
4 person is an offense under Section 49.045, Penal Code; or

5 (3) at the time of the arrest, the officer possesses or
6 receives reliable information from a credible source that the
7 person:

8 (A) has been previously convicted of or placed on
9 deferred adjudication community supervision for an offense under
10 Section 49.045, 49.07, or 49.08, Penal Code, or an offense under the
11 laws of another state containing elements substantially similar to
12 the elements of an offense under those sections; or

13 (B) on two or more occasions, has been previously
14 convicted of or placed on deferred adjudication community
15 supervision for an offense under Section 49.04, 49.05, 49.06, or
16 49.065, Penal Code, or an offense under the laws of another state
17 containing elements substantially similar to the elements of an
18 offense under those sections [and

19 ~~(4) the person refuses the officer's request to~~
20 ~~submit to the taking of a specimen voluntarily].~~

21 (d) In this section, "bodily injury" and "serious bodily
22 injury" have [has] the meanings [meaning] assigned by Section 1.07,
23 Penal Code.

24 SECTION 3. Section 724.017, Transportation Code, is amended
25 by amending Subsection (b) and adding Subsection (d) to read as
26 follows:

27 (b) If the blood specimen was taken according to recognized

1 medical procedures, the ~~[The]~~ person who takes the blood specimen
2 under this chapter, the facility that employs the person who takes
3 the blood specimen, or the hospital where the blood specimen is
4 taken~~[,]~~ is immune from civil liability ~~[not liable]~~ for damages
5 arising from the taking of the blood specimen at the request or
6 order of the peace officer or pursuant to a search warrant ~~[to take~~
7 ~~the blood specimen]~~ as provided by this chapter and is not subject
8 to discipline by any licensing or accrediting agency or body ~~[if the~~
9 ~~blood specimen was taken according to recognized medical~~
10 ~~procedures]~~. This subsection does not relieve a person from
11 liability for negligence in the taking of a blood specimen. The
12 taking of a specimen from a person who objects to the taking of the
13 specimen or who is resisting the taking of the specimen does not in
14 itself constitute negligence and may not be considered evidence of
15 negligence.

16 (d) A person whose blood specimen is taken under this
17 chapter in a hospital is not considered to be present in the
18 hospital for medical screening or treatment unless the appropriate
19 hospital personnel determine that medical screening or treatment is
20 required for proper medical care of the person.

21 SECTION 4. Article 18.01, Code of Criminal Procedure, is
22 amended by amending Subsection (c) and adding Subsection (j) to
23 read as follows:

24 (c) A search warrant may not be issued under Article
25 18.02(10) ~~[pursuant to Subdivision (10) of Article 18.02 of this~~
26 ~~code]~~ unless the sworn affidavit required by Subsection (b) ~~[of~~
27 ~~this article]~~ sets forth sufficient facts to establish probable

cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d) ~~[z]~~ and (i) ~~[z and (j)]~~ of this article, only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, or a justice of the Supreme Court of Texas, including the chief justice, may issue warrants under Article 18.02(10) ~~[pursuant to Subdivision (10), Article 18.02 of this code]~~.

~~[(j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:~~

- ~~(1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code, and~~
- ~~(2) refuses to submit to a breath or blood alcohol test.]~~

SECTION 5. (a) Section 724.012, Transportation Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was

1 committed before the effective date of this Act if any element of
2 the offense was committed before that date.

3 ~~(b) Article 18.01, Code of Criminal Procedure, as amended by~~
4 ~~this Act, applies only to a search warrant issued on or after the~~
5 ~~effective date of this Act. A search warrant issued before the~~
6 ~~effective date of this Act is governed by the law in effect on the~~
7 ~~date the warrant was issued, and the former law is continued in~~
8 ~~effect for that purpose.~~

9 SECTION 6. This Act takes effect September 1, 2009.