

2A:62A-10+11

4/8/87

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:62A-10, 2A:62A-11 (Drug & alcohol testing-- medical personnel-- immunity from civil & criminal liability)

CHAPTER 189

Laws Of: 1986

Bill No: S1089

Sponsor(s): Dorsey

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Law, Public Safety & Defense

Amended during passage: No

Date of Passage: Assembly: November 10, 1986

Senate: May 15, 1986

Date of Approval: December 17, 1986

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

SENATE, No. 1089

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1986 SESSION

By Senator DORSEY

AN ACT concerning immunity from civil and criminal liability for certain medical personnel and providing for the admission of certain sworn certificates into evidence.

1 BE IT ENACTED by the Senate and General Assembly of the State  
2 of New Jersey:

1 1. When acting in response to a request of a State, county or  
2 municipal law enforcement officer, a county prosecutor or his  
3 assistant, the Attorney General or his deputy or a State or county  
4 medical examiner, any physician, nurse or medical technician who  
5 withdraws or otherwise obtains, in a medically accepted manner,  
6 a specimen of breath, blood, urine or other bodily substance and  
7 delivers it to the law enforcement officers specified herein shall  
8 be immune from civil or criminal liability for so acting, pro-  
9 vided the skill and care exercised is that ordinarily required and  
10 exercised by others in the profession. The immunity from civil or  
11 criminal liability shall extend to the hospital or other medical  
12 facility on whose premises or under whose auspices the specimens  
13 are obtained, provided the skill, care and facilities provided are  
14 those ordinarily so provided by similar medical facilities.

1 2. Any person taking a specimen pursuant to section 1 of this  
2 act shall, upon request, furnish to any law enforcement agency  
3 a certificate stating that the specimen was taken pursuant to  
4 section 1 of this act and in a medically acceptable manner. The  
5 certificate shall be signed under oath before a notary public or  
6 other person empowered to take oaths and shall be admissible in  
7 any proceeding as evidence of the statements contained therein.

1 3. This act shall take effect immediately.

HEALTH CARE FACILITIES AND PROVIDERS

Immun. fr. liab.—blood, dwi

Provides immunity from civil and criminal liability for certain medical personnel who take breath, blood or urine samples at the request of law enforcement officers.

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## SPONSORS' STATEMENT

When individuals taken into custody for driving while intoxicated or death by auto refuse or are unable to provide breath samples for testing to determine blood alcohol content, police officers frequently seek the assistance of medical personnel. These personnel are often reluctant to take specimens out of a concern that the subject may institute civil or criminal charges for assault. Without their cooperation, valuable time is lost and any future prosecution is jeopardized. The willingness of medical professionals to cooperate with law enforcement officers will be increased if they are assured of immunity from nuisance suits. Section 1 of this bill would create limited immunity for medical personnel who take breath, blood or urine samples at the request of law enforcement officers.

Section 2 of this bill would permit the introduction of documentary evidence attesting to the manner and circumstances under which a breath, blood or urine specimen was taken. This recognizes the policy that doctors, nurses and other professionals should not be taken away from other important responsibilities for the purposes of testifying to what is nothing more than a foundation for the eventual admission into evidence of the results of the analysis of the specimen. If the results of the analysis, the crucial issue in a prosecution, may be put into evidence by means of a laboratory report, Rule of Evidence 63 (13), *State v. Martorelli*, 136 N. J. Super. 449, 346 A. 2d 430 (1975), certf. denied 69 N. J. 445 (1976), there is no sound reason for requiring live testimony on a threshold issue. As an element of the preliminary inquiry into the ultimate admissibility of test results, the circumstances surrounding the initial taking of the specimen should not be subject to the usual restrictions of the Rules of Evidence. See Rule of Evidence 8 (1), *State v. Cardone*, 146 N. J. Super. 23, 368 A. 2d 952 (1976), certf. denied, 75 N. J. 3 (1977). In order to avoid the potential unnecessary disruption of medical facilities' operations, section 2 explicitly applies this principle.

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S1089 (1986)

ASSEMBLY JUDICIARY COMMITTEE  
STATEMENT TO  
**SENATE, No. 1089**  
**STATE OF NEW JERSEY**

DATED: OCTOBER 27, 1986

The Assembly Judiciary Committee reports favorably Senate Bill No. 1089.

Senate Bill No. 1089 creates immunity from civil or criminal liability for medical professionals who take specimens of breath, blood, urine or other bodily substance at the request of law enforcement officers, provided the skill and care exercised is that ordinarily required and exercised by others in the profession. This immunity is extended to the hospital or other medical facility on whose premises the specimen is taken, provided the skill, care and facilities are those ordinarily provided by similar medical facilities.

The bill further provides for the introduction of documentary evidence attesting to the manner and circumstances under which the medical specimen was taken.

Senate Bill No. 1089 is identical to Assembly Bill No. 2664.

SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO

**SENATE, No. 1089**

**STATE OF NEW JERSEY**

DATED: JANUARY 23, 1986

The Senate Law, Public Safety and Defense Committee favorably reports Senate Bill No. 1089.

When individuals taken into custody for driving while intoxicated or death by auto refuse or are unable to provide breath samples for testing to determine blood alcohol content, police officers frequently seek the assistance of medical personnel. These personnel are often reluctant to take specimens out of a concern that the subject may institute civil or criminal charges for assault and that they will be required to appear in court to testify about the manner and circumstances under which the sample was taken. The purpose of Senate Bill No. 1089 is to encourage medical personnel to cooperate with law enforcement officials in obtaining these samples.

Senate Bill No. 1089 establishes that medical personnel who take samples of breath, blood, urine, or other bodily substances at the request of a law enforcement officer will be immune from civil or criminal liability, as long as the skill and care exercised in obtaining the sample is the same that is ordinarily required and exercised by others in the profession. The bill also permits a certificate, signed under oath and stating that the specimen was taken at the request of a law enforcement officer and in a medically acceptable manner, to be admissible in any proceeding as evidence of the statements contained in the certificate.

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This bill was pre-filed for introduction in the 1986 session pending technical review. As reported, the bill includes the changes required by technical review has been performed.