

By Senator Brown-Waite

10-956-00

1                                   A bill to be entitled  
2           An act relating to rulemaking authority of the  
3           Department of Law Enforcement (RAB); amending  
4           s. 943.03, F.S.; authorizing the Department of  
5           Law Enforcement to adopt rules defining  
6           misconduct and setting standards for  
7           disciplinary action for department employees;  
8           amending ss. 943.131, 943.14, F.S.; authorizing  
9           the Criminal Justice Standards and Training  
10          Commission to adopt rules for determining  
11          whether certain applicants are exempt from the  
12          training requirements for basic recruits;  
13          authorizing the commission to establish, by  
14          rule, procedures for certifying and  
15          disciplining instructors in criminal justice  
16          training schools; amending ss. 316.1932,  
17          322.63, 327.352, F.S.; providing requirements  
18          for the Alcohol Testing Program within the  
19          department with respect to the certification,  
20          operation, and inspection of breath-test  
21          instruments and the instruction and  
22          certification of persons who operate  
23          breath-test instruments; specifying duties of  
24          the program for enforcing the provisions of ch.  
25          316, ch. 322, and ch. 327, F.S., which prohibit  
26          driving or boating under the influence of  
27          alcohol or controlled substances; providing an  
28          effective date.

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30 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Subsection (4) of section 943.03, Florida  
2 Statutes, is amended to read:

3           943.03 Department of Law Enforcement.--

4           (4) The department shall adopt rules pursuant to ss.  
5 120.536(1) and 120.54 to administer ~~implement~~ the provisions  
6 of law this chapter conferring powers or duties upon it. The  
7 department may adopt rules that define acts of misconduct and  
8 set standards of disciplinary action for its employees.

9           Section 2. Subsection (2) of section 943.131, Florida  
10 Statutes, is amended to read:

11           943.131 Temporary employment or appointment; minimum  
12 basic recruit training exemption.--

13           (2) If an applicant seeks an exemption from completing  
14 a commission-approved basic recruit training program, the  
15 employing agency must verify that the applicant has  
16 successfully completed a comparable basic recruit training  
17 program in another state or for the Federal Government.  
18 Further, the employing agency must verify that the applicant  
19 has served as a full-time sworn officer in another state or  
20 for the Federal Government for at least one year. When the  
21 employing agency obtains written documentation regarding the  
22 applicant's criminal justice experience, the documentation  
23 must be submitted to the commission. The commission shall  
24 adopt rules that establish criteria and procedures to  
25 determine whether if the applicant is exempt from completing  
26 the commission-approved basic recruit training program, and,  
27 upon making a determination, shall notify the employing  
28 agency. If the applicant is exempt from completing the  
29 commission-approved basic recruit training program, the  
30 applicant must complete training, as required by the  
31 commission by rule, in areas which include, but are not

1 limited to, defensive driving, defensive tactics, firearms  
2 training, and first responder training. Except as provided in  
3 subsection (1), before the employing agency may employ or  
4 appoint the applicant as an officer, the applicant must meet  
5 the minimum qualifications described in s. 943.13(1)-(8), and  
6 must fulfill the requirements of s. 943.13(10).

7 Section 3. Subsection (3) of section 943.14, Florida  
8 Statutes, is amended to read:

9 943.14 Criminal justice training schools; certificates  
10 and diplomas; exemptions; injunctive relief; fines.--

11 (3) The commission shall establish, by rule,  
12 ~~certification~~ procedures for the certification and discipline  
13 of all instructors in any criminal justice training school.

14 Section 4. Paragraph (a) of subsection (1) of section  
15 316.1932, Florida Statutes, is amended to read:

16 316.1932 Breath, blood, and urine tests for alcohol,  
17 chemical substances, or controlled substances; implied  
18 consent; right to refuse.--

19 (1)(a) Any person who accepts the privilege extended  
20 by the laws of this state of operating a motor vehicle within  
21 this state is, by so operating such vehicle, deemed to have  
22 given his or her consent to submit to an approved chemical  
23 test or physical test including, but not limited to, an  
24 infrared light test of his or her breath for the purpose of  
25 determining the alcoholic content of his or her blood or  
26 breath, and to a urine test for the purpose of detecting the  
27 presence of chemical substances as set forth in s. 877.111 or  
28 controlled substances, if the person is lawfully arrested for  
29 any offense allegedly committed while the person was driving  
30 or was in actual physical control of a motor vehicle while  
31 under the influence of alcoholic beverages, chemical

1 substances, or controlled substances. The chemical or  
2 physical breath test must be incidental to a lawful arrest and  
3 administered at the request of a law enforcement officer who  
4 has reasonable cause to believe such person was driving or was  
5 in actual physical control of the motor vehicle within this  
6 state while under the influence of alcoholic beverages. The  
7 urine test must be incidental to a lawful arrest and  
8 administered at a detention facility or any other facility,  
9 mobile or otherwise, which is equipped to administer such  
10 tests at the request of a law enforcement officer who has  
11 reasonable cause to believe such person was driving or was in  
12 actual physical control of a motor vehicle within this state  
13 while under the influence of controlled substances. The urine  
14 test shall be administered at a detention facility or any  
15 other facility, mobile or otherwise, which is equipped to  
16 administer such tests in a reasonable manner that will ensure  
17 the accuracy of the specimen and maintain the privacy of the  
18 individual involved. The administration of one type of test  
19 does not preclude the administration of another type of test.  
20 The person shall be told that his or her failure to submit to  
21 any lawful test of his or her breath or urine, or both, will  
22 result in the suspension of the person's privilege to operate  
23 a motor vehicle for a period of 1 year for a first refusal, or  
24 for a period of 18 months if the driving privilege of such  
25 person has been previously suspended as a result of a refusal  
26 to submit to such a test or tests. The refusal to submit to a  
27 chemical or physical breath test or to a urine test upon the  
28 request of a law enforcement officer as provided in this  
29 section is admissible into evidence in any criminal  
30 proceeding.  
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1           1. The Alcohol Testing Program within the Department  
2 of Law Enforcement shall administer the certification,  
3 operation, and inspection of breath-test instruments used  
4 under the provisions of this chapter, chapter 322, or chapter  
5 327 which prohibit driving or boating under the influence of  
6 alcohol or controlled substances. The program shall administer  
7 rules governing individuals who operate, inspect, and provide  
8 instruction for operating breath-test instruments. The program  
9 shall administer rules governing blood analysts who conduct  
10 blood tests used to enforce the provisions of this chapter,  
11 chapter 322, or chapter 327 which prohibit driving or boating  
12 under the influence of alcohol or controlled substances. The  
13 Alcohol Testing Program may:  
14           a. Establish uniform criteria for issuing permits to  
15 breath-test operators, agency inspectors, instructors, and  
16 blood analysts and for certifying instruments.  
17           b. Issue permits to breath-test operators, agency  
18 inspectors, instructors, and blood analysts and permits  
19 certifying instruments.  
20           c. Discipline, suspend, revoke, or renew permits of  
21 breath-test operators, agency inspectors, instructors, or  
22 blood analysts and suspend, revoke, or renew permits  
23 certifying instruments.  
24           d. Establish uniform requirements for a course of  
25 instruction and curricula for obtaining a permit to operate or  
26 inspect approved instruments.  
27           e. Specify a single approved curriculum for obtaining  
28 a permit to operate or inspect approved instruments.  
29           f. Establish a procedure for approving courses for  
30 breath-test operators and agency inspectors.  
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1           g. Approve breath-test instruments and accompanying  
2 paraphernalia used to enforce the provisions of this chapter,  
3 chapter 322, or chapter 327 which prohibit driving or boating  
4 under the influence of alcohol or controlled substances.

5           h. With the approval of the executive director of the  
6 Department of Law Enforcement, make and enter into contracts  
7 and agreements with other agencies, organizations,  
8 associations, corporations, individuals, or federal agencies  
9 which are necessary or incidental to performing its duties.

10           i. Issue final orders, including findings of fact and  
11 conclusions of law, which constitute final agency action for  
12 purposes of chapter 120.

13           j. Enforce compliance with this section through civil  
14 or administrative proceedings.

15           k. Make recommendations to the Department of Law  
16 Enforcement concerning any matter within the purview of this  
17 chapter, chapter 322, or chapter 327.

18           l. Adopt rules to administer this subparagraph,  
19 including the definition of terms.

20           m. Consult and cooperate with other entities for the  
21 purpose of administering this subparagraph.

22           n. Approve the type of blood test used under the  
23 provisions of this chapter, chapter 322, or chapter 327 which  
24 prohibit driving or boating under the influence of alcohol or  
25 controlled substances.

26           o. Specify techniques and methods for conducting  
27 breath-alcohol testing and blood testing used under the  
28 provisions of this chapter, chapter 322, or chapter 327 which  
29 prohibit driving or boating under the influence of alcohol or  
30 controlled substances.

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1           p. Approve repair facilities for breath-test  
2 instruments and establish the criteria for such approval.

3           2. Subparagraph 1. does not supersede any other  
4 provision of this chapter, chapter 322, or chapter 327.

5           3. The requirements of subparagraph 1. are derived  
6 from the authority otherwise possessed by the Department of  
7 Law Enforcement and are enumerated to comply with chapter  
8 99-379, Laws of Florida.

9           Section 5. Subsection (3) of section 322.63, Florida  
10 Statutes, is amended to read:

11           322.63 Alcohol or drug testing; commercial motor  
12 vehicle operators.--

13           (3)(a) The physical and chemical tests authorized in  
14 this section must ~~shall~~ be administered substantially in  
15 accordance with rules adopted by the Department of Law  
16 Enforcement. ~~Such rules shall be adopted after public hearing,~~  
17 ~~shall specify the tests that are approved, and shall provide~~  
18 ~~an approved method of administration.~~

19           ~~(b) The Department of Law Enforcement is authorized to~~  
20 ~~approve techniques or methods for administering such physical~~  
21 ~~and chemical tests. Any insubstantial differences between~~  
22 ~~approved techniques and actual testing procedures in any~~  
23 ~~individual case does not render the test or tests results~~  
24 ~~invalid.~~

25           (b)1. The Alcohol Testing Program within the  
26 Department of Law Enforcement shall administer the  
27 certification, operation, and inspection of breath-test  
28 instruments used under the provisions of chapter 316, this  
29 chapter, or chapter 327 which prohibit driving or boating  
30 under the influence of alcohol or controlled substances. The  
31 program shall administer rules governing individuals who

1 operate, inspect, and provide instruction for operating  
2 breath-test instruments. The program shall administer rules  
3 governing blood analysts who conduct blood tests used to  
4 enforce the provisions of chapter 316, this chapter, or  
5 chapter 327 which prohibit driving or boating under the  
6 influence of alcohol or controlled substances. The Alcohol  
7 Testing Program may:  
8       a. Establish uniform criteria for issuing permits to  
9 breath-test operators, agency inspectors, instructors, and  
10 blood analysts and for certifying instruments.  
11       b. Issue permits to breath-test operators, agency  
12 inspectors, instructors, and blood analysts and permits  
13 certifying instruments.  
14       c. Discipline, suspend, revoke, or renew permits of  
15 breath-test operators, agency inspectors, instructors, or  
16 blood analysts and suspend, revoke, or renew permits  
17 certifying instruments.  
18       d. Establish uniform requirements for a course of  
19 instruction and curricula for obtaining a permit to operate or  
20 inspect approved instruments.  
21       e. Specify a single approved curriculum for obtaining  
22 a permit to operate or inspect approved instruments.  
23       f. Establish a procedure for approving courses for  
24 breath-test operators and agency inspectors.  
25       g. Approve breath-test instruments and accompanying  
26 paraphernalia used to enforce the provisions of chapter 316,  
27 this chapter, or chapter 327 which prohibit driving or boating  
28 under the influence of alcohol or controlled substances.  
29       h. With the approval of the executive director of the  
30 Department of Law Enforcement, make and enter into contracts  
31 and agreements with other agencies, organizations,



1 associations, corporations, individuals, or federal agencies  
2 which are necessary or incidental to performing its duties.

3 i. Issue final orders, including findings of fact and  
4 conclusions of law, which constitute final agency action for  
5 purposes of chapter 120.

6 j. Enforce compliance with this section through civil  
7 or administrative proceedings.

8 k. Make recommendations to the Department of Law  
9 Enforcement concerning any matter within the purview of this  
10 chapter, chapter 322, or chapter 327.

11 l. Adopt rules to administer this subparagraph,  
12 including the definition of terms.

13 m. Consult and cooperate with other entities for the  
14 purpose of administering this subparagraph.

15 n. Approve the type of blood test used under the  
16 provisions of chapter 316, this chapter, or chapter 327 which  
17 prohibit driving or boating under the influence of alcohol or  
18 controlled substances.

19 o. Specify techniques and methods for conducting  
20 breath-alcohol testing and blood testing used under the  
21 provisions of chapter 316, this chapter, or chapter 327 which  
22 prohibit driving or boating under the influence of alcohol or  
23 controlled substances.

24 p. Approve repair facilities for breath-test  
25 instruments and establish the criteria for such approval.

26 2. Subparagraph 1. does not supersede any other  
27 provision of chapter 316, this chapter, or chapter 327.

28 3. The requirements of subparagraph 1. are derived  
29 from the authority otherwise possessed by the Department of  
30 Law Enforcement and are enumerated to comply with chapter  
31 99-379, Laws of Florida.

1 (c) Notwithstanding any other provision of this  
2 section, the failure of a law enforcement officer to request  
3 the withdrawal of blood shall not affect the admissibility of  
4 a test of blood withdrawn for medical purposes.

5 Section 6. Paragraphs (b) and (e) of subsection (1) of  
6 section 327.352, Florida Statutes, are amended to read:

7 327.352 Breath, blood, and urine tests for alcohol,  
8 chemical substances, or controlled substances; implied  
9 consent; right to refuse.--

10 (1)

11 (b)1. The blood-alcohol level must be based upon grams  
12 of alcohol per 100 milliliters of blood. The breath-alcohol  
13 level must be based upon grams of alcohol per 210 liters of  
14 breath.

15 2. An analysis of a person's breath, in order to be  
16 considered valid under this section, must have been performed  
17 substantially according to methods approved by the Department  
18 of Law Enforcement. ~~For this purpose, the department may~~  
19 ~~approve satisfactory techniques or methods.~~ Any insubstantial  
20 differences between approved techniques and actual testing  
21 procedures in any individual case do not render the test or  
22 test results invalid.

23 3. The Alcohol Testing Program within the Department  
24 of Law Enforcement shall administer the certification,  
25 operation, and inspection of breath-test instruments used  
26 under the provisions of chapter 316, chapter 322, or this  
27 chapter which prohibit driving or boating under the influence  
28 of alcohol or controlled substances. The program shall  
29 administer rules governing individuals who operate, inspect,  
30 and provide instruction for operating breath-test instruments.  
31 The program shall administer rules governing blood analysts

1 who conduct blood tests used to enforce the provisions of  
2 chapter 316, chapter 322, or this chapter which prohibit  
3 driving or boating under the influence of alcohol or  
4 controlled substances. The Alcohol Testing Program may:

5 a. Establish uniform criteria for issuing permits to  
6 breath-test operators, agency inspectors, instructors, and  
7 blood analysts and for certifying instruments.

8 b. Issue permits to breath-test operators, agency  
9 inspectors, instructors, and blood analysts and permits  
10 certifying instruments.

11 c. Discipline, suspend, revoke, or renew permits of  
12 breath-test operators, agency inspectors, instructors, or  
13 blood analysts and suspend, revoke, or renew permits  
14 certifying instruments.

15 d. Establish uniform requirements for a course of  
16 instruction and curricula for obtaining a permit to operate or  
17 inspect approved instruments.

18 e. Specify a single approved curriculum for obtaining  
19 a permit to operate or inspect approved instruments.

20 f. Establish a procedure for approving courses for  
21 breath-test operators and agency inspectors.

22 g. Approve breath-test instruments and accompanying  
23 paraphernalia used to enforce the provisions of chapter 316,  
24 chapter 322, or this chapter which prohibit driving or boating  
25 under the influence of alcohol or controlled substances.

26 h. With the approval of the executive director of the  
27 Department of Law Enforcement, make and enter into contracts  
28 and agreements with other agencies, organizations,  
29 associations, corporations, individuals, or federal agencies  
30 which are necessary or incidental to performing its duties.

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1           i. Issue final orders, including findings of fact and  
2 conclusions of law, which constitute final agency action for  
3 purposes of chapter 120.

4           j. Enforce compliance with this section through civil  
5 or administrative proceedings.

6           k. Make recommendations to the Department of Law  
7 Enforcement concerning any matter within the purview of  
8 chapter 316, chapter 322, or this chapter.

9           l. Adopt rules to administer this subparagraph,  
10 including the definition of terms.

11           m. Consult and cooperate with other entities for the  
12 purpose of administering this subparagraph.

13           n. Approve the type of blood test used under the  
14 provisions of chapter 316, chapter 322, or this chapter which  
15 prohibit driving or boating under the influence of alcohol or  
16 controlled substances.

17           o. Specify techniques and methods for conducting  
18 breath-alcohol testing and blood testing used under the  
19 provisions of chapter 316, chapter 322, or this chapter which  
20 prohibit driving or boating under the influence of alcohol or  
21 controlled substances.

22           p. Approve repair facilities for breath-test  
23 instruments and establish the criteria for such approval.

24           4. Subparagraph 3. does not supersede any other  
25 provision of chapter 316, chapter 322, or this chapter.

26           5. The requirements of subparagraph 3. are derived  
27 from the authority otherwise possessed by the Department of  
28 Law Enforcement and are enumerated to comply with chapter  
29 99-379, Laws of Florida.

30           (e)1. The tests determining the weight of alcohol in  
31 the defendant's blood or breath shall be administered at the

1 request of a law enforcement officer substantially in  
2 accordance with rules of the Department of Law Enforcement.  
3 ~~Such rules must specify precisely the test or tests that are~~  
4 ~~approved by the Department of Law Enforcement for reliability~~  
5 ~~of result and ease of administration, and must provide an~~  
6 ~~approved method of administration which must be followed in~~  
7 ~~all such tests given under this section.~~However, the failure  
8 of a law enforcement officer to request the withdrawal of  
9 blood does not affect the admissibility of a test of blood  
10 withdrawn for medical purposes.

11           2. Only a physician, certified paramedic, registered  
12 nurse, licensed practical nurse, other personnel authorized by  
13 a hospital to draw blood, or duly licensed clinical laboratory  
14 director, supervisor, technologist, or technician, acting at  
15 the request of a law enforcement officer, may withdraw blood  
16 for the purpose of determining its alcoholic content or the  
17 presence of chemical substances or controlled substances  
18 therein. However, the failure of a law enforcement officer to  
19 request the withdrawal of blood does not affect the  
20 admissibility of a test of blood withdrawn for medical  
21 purposes.

22           3. The person tested may, at his or her own expense,  
23 have a physician, registered nurse, other personnel authorized  
24 by a hospital to draw blood, or duly licensed clinical  
25 laboratory director, supervisor, technologist, or technician,  
26 or other person of his or her own choosing administer an  
27 independent test in addition to the test administered at the  
28 direction of the law enforcement officer for the purpose of  
29 determining the amount of alcohol in the person's blood or  
30 breath or the presence of chemical substances or controlled  
31 substances at the time alleged, as shown by chemical analysis

1 of his or her blood or urine, or by chemical or physical test  
2 of his or her breath. The failure or inability to obtain an  
3 independent test by a person does not preclude the  
4 admissibility in evidence of the test taken at the direction  
5 of the law enforcement officer. The law enforcement officer  
6 shall not interfere with the person's opportunity to obtain  
7 the independent test and shall provide the person with timely  
8 telephone access to secure the test, but the burden is on the  
9 person to arrange and secure the test at the person's own  
10 expense.

11 4. Upon the request of the person tested, full  
12 information concerning the test taken at the direction of the  
13 law enforcement officer shall be made available to the person  
14 or his or her attorney.

15 5. A hospital, clinical laboratory, medical clinic, or  
16 similar medical institution or physician, certified paramedic,  
17 registered nurse, licensed practical nurse, other personnel  
18 authorized by a hospital to draw blood, or duly licensed  
19 clinical laboratory director, supervisor, technologist, or  
20 technician, or other person assisting a law enforcement  
21 officer does not incur any civil or criminal liability as a  
22 result of the withdrawal or analysis of a blood or urine  
23 specimen, or the chemical or physical test of a person's  
24 breath pursuant to accepted medical standards when requested  
25 by a law enforcement officer, regardless of whether or not the  
26 subject resisted administration of the test.

27 Section 7. This act shall take effect July 1, 2000.  
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SENATE SUMMARY

Authorizes the Department of Law Enforcement to adopt rules defining misconduct and setting standards for disciplinary action for department employees. Authorizes the Criminal Justice Standards and Training Commission to adopt rules governing applicants for certification and providing procedures to certify and discipline instructors of criminal justice training schools. Authorizes the Alcohol Testing Program within the Department of Law Enforcement to adopt rules governing breath tests and blood tests used to enforce provisions prohibiting driving or boating under the influence of alcohol or controlled substances.