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2 An act relating to rulemaking; amending ss.
3 316.1932, 322.63, and 327.352, F.S.; specifying
4 the responsibilities of the Alcohol Testing
5 Program of the Department of Law Enforcement
6 with respect to breath test instruments,
7 persons who operate, inspect, and instruct on
8 such instruments, and blood analysts who
9 conduct blood testing, in connection with
10 testing pursuant to the driving or boating
11 under the influence provisions of chapters 316,
12 322, and 327, F.S., and providing for rules
13 with respect thereto; removing references to
14 department authority and rulemaking with
15 respect to such testing; amending s. 943.03,
16 F.S.; revising the department's rulemaking
17 authority; authorizing rules relating to
18 employee misconduct and discipline; amending s.
19 943.131, F.S.; directing the Criminal Justice
20 Standards and Training Commission to adopt
21 rules relating to determination of an
22 applicant's eligibility for exemption from
23 completing the basic recruit training program;
24 amending s. 943.14, F.S.; directing the
25 commission to establish procedures for
26 discipline of criminal justice training school
27 instructors by rule; providing an effective
28 date.

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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (a) of subsection (1) of section
2 316.1932, Florida Statutes, is amended to read:

3 316.1932 Breath, blood, and urine tests for alcohol,
4 chemical substances, or controlled substances; implied
5 consent; right to refuse.--

6 (1)(a)1. Any person who accepts the privilege extended
7 by the laws of this state of operating a motor vehicle within
8 this state is, by so operating such vehicle, deemed to have
9 given his or her consent to submit to an approved chemical
10 test or physical test including, but not limited to, an
11 infrared light test of his or her breath for the purpose of
12 determining the alcoholic content of his or her blood or
13 breath, and to a urine test for the purpose of detecting the
14 presence of chemical substances as set forth in s. 877.111 or
15 controlled substances, if the person is lawfully arrested for
16 any offense allegedly committed while the person was driving
17 or was in actual physical control of a motor vehicle while
18 under the influence of alcoholic beverages, chemical
19 substances, or controlled substances. The chemical or
20 physical breath test must be incidental to a lawful arrest and
21 administered at the request of a law enforcement officer who
22 has reasonable cause to believe such person was driving or was
23 in actual physical control of the motor vehicle within this
24 state while under the influence of alcoholic beverages. The
25 urine test must be incidental to a lawful arrest and
26 administered at a detention facility or any other facility,
27 mobile or otherwise, which is equipped to administer such
28 tests at the request of a law enforcement officer who has
29 reasonable cause to believe such person was driving or was in
30 actual physical control of a motor vehicle within this state
31 while under the influence of controlled substances. The urine

1 test shall be administered at a detention facility or any
2 other facility, mobile or otherwise, which is equipped to
3 administer such tests in a reasonable manner that will ensure
4 the accuracy of the specimen and maintain the privacy of the
5 individual involved. The administration of one type of test
6 does not preclude the administration of another type of test.
7 The person shall be told that his or her failure to submit to
8 any lawful test of his or her breath or urine, or both, will
9 result in the suspension of the person's privilege to operate
10 a motor vehicle for a period of 1 year for a first refusal, or
11 for a period of 18 months if the driving privilege of such
12 person has been previously suspended as a result of a refusal
13 to submit to such a test or tests. The refusal to submit to a
14 chemical or physical breath test or to a urine test upon the
15 request of a law enforcement officer as provided in this
16 section is admissible into evidence in any criminal
17 proceeding.

18 2. The Alcohol Testing Program within the Department
19 of Law Enforcement is responsible for the regulation of the
20 operation, inspection, and registration of breath test
21 instruments utilized under the driving and boating under the
22 influence provisions and related provisions located in this
23 chapter and chapters 322 and 327. The program is responsible
24 for the regulation of the individuals who operate, inspect,
25 and instruct on the breath test instruments utilized in the
26 driving and boating under the influence provisions and related
27 provisions located in this chapter and chapters 322 and 327.
28 The program is further responsible for the regulation of blood
29 analysts who conduct blood testing to be utilized under the
30 driving and boating under the influence provisions and related
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- 1 provisions located in this chapter and chapters 322 and 327.
2 The program shall:
- 3 a. Establish uniform criteria for the issuance of
4 permits to breath test operators, agency inspectors,
5 instructors, blood analysts, and instruments.
- 6 b. Have the authority to permit breath test operators,
7 agency inspectors, instructors, blood analysts, and
8 instruments.
- 9 c. Have the authority to discipline and suspend,
10 revoke, or renew the permits of breath test operators, agency
11 inspectors, instructors, blood analysts, and instruments.
- 12 d. Establish uniform requirements for instruction and
13 curricula for the operation and inspection of approved
14 instruments.
- 15 e. Have the authority to specify one approved
16 curriculum for the operation and inspection of approved
17 instruments.
- 18 f. Establish a procedure for the approval of breath
19 test operator and agency inspector classes.
- 20 g. Have the authority to approve or disapprove breath
21 test instruments and accompanying paraphernalia for use
22 pursuant to the driving and boating under the influence
23 provisions and related provisions located in this chapter and
24 chapters 322 and 327.
- 25 h. With the approval of the executive director of the
26 Department of Law Enforcement, make and enter into contracts
27 and agreements with other agencies, organizations,
28 associations, corporations, individuals, or federal agencies
29 as are necessary, expedient, or incidental to the performance
30 of duties.
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1 i. Issue final orders which include findings of fact
2 and conclusions of law and which constitute final agency
3 action for the purpose of chapter 120.

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

6 k. Make recommendations concerning any matter within
7 the purview of this section, this chapter, chapter 322, or
8 chapter 327.

9 l. Promulgate rules for the administration and
10 implementation of this section, including definitions of
11 terms.

12 m. Consult and cooperate with other entities for the
13 purpose of implementing the mandates of this section.

14 n. Have the authority to approve the type of blood
15 test utilized under the driving and boating under the
16 influence provisions and related provisions located in this
17 chapter and chapters 322 and 327.

18 o. Have the authority to specify techniques and
19 methods for breath alcohol testing and blood testing utilized
20 under the driving and boating under the influence provisions
21 and related provisions located in this chapter and chapters
22 322 and 327.

23 p. Have the authority to approve repair facilities for
24 the approved breath test instruments, including the authority
25 to set criteria for approval.

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27 Nothing in this section shall be construed to supersede
28 provisions in this chapter and chapters 322 and 327. The
29 specifications in this section are derived from the power and
30 authority previously and currently possessed by the Department
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1 of Law Enforcement and are enumerated to conform with the
2 mandates of chapter 99-379, Laws of Florida.

3 Section 2. Subsection (3) of section 322.63, Florida
4 Statutes, is amended to read:

5 322.63 Alcohol or drug testing; commercial motor
6 vehicle operators.--

7 (3)(a) The physical and chemical tests authorized in
8 this section shall be administered substantially in accordance
9 with rules adopted by the Department of Law Enforcement. ~~Such~~
10 ~~rules shall be adopted after public hearing, shall specify the~~
11 ~~tests that are approved, and shall provide an approved method~~
12 ~~of administration.~~

13 (b) The Alcohol Testing Program within the Department
14 of Law Enforcement is responsible for the regulation of the
15 operation, inspection, and registration of breath test
16 instruments utilized under the driving and boating under the
17 influence provisions and related provisions located in this
18 chapter and chapters 316 and 327. The program is responsible
19 for the regulation of the individuals who operate, inspect,
20 and instruct on the breath test instruments utilized in the
21 driving and boating under the influence provisions and related
22 provisions located in this chapter and chapters 316 and 327.
23 The program is further responsible for the regulation of blood
24 analysts who conduct blood testing to be utilized under the
25 driving and boating under the influence provisions and related
26 provisions located in this chapter and chapters 316 and 327.
27 The program shall:

28 1. Establish uniform criteria for the issuance of
29 permits to breath test operators, agency inspectors,
30 instructors, blood analysts, and instruments.

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1 2. Have the authority to permit breath test operators,
2 agency inspectors, instructors, blood analysts, and
3 instruments.

4 3. Have the authority to discipline and suspend,
5 revoke, or renew the permits of breath test operators, agency
6 inspectors, instructors, blood analysts, and instruments.

7 4. Establish uniform requirements for instruction and
8 curricula for the operation and inspection of approved
9 instruments.

10 5. Have the authority to specify one approved
11 curriculum for the operation and inspection of approved
12 instruments.

13 6. Establish a procedure for the approval of breath
14 test operator and agency inspector classes.

15 7. Have the authority to approve or disapprove breath
16 test instruments and accompanying paraphernalia for use
17 pursuant to the driving and boating under the influence
18 provisions and related provisions located in this chapter and
19 chapters 316 and 327.

20 8. With the approval of the executive director of the
21 Department of Law Enforcement, make and enter into contracts
22 and agreements with other agencies, organizations,
23 associations, corporations, individuals, or federal agencies
24 as are necessary, expedient, or incidental to the performance
25 of duties.

26 9. Issue final orders which include findings of fact
27 and conclusions of law and which constitute final agency
28 action for the purpose of chapter 120.

29 10. Enforce compliance with the provisions of this
30 section through civil or administrative proceedings.

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1 11. Make recommendations concerning any matter within
2 the purview of this section, this chapter, chapter 316, or
3 chapter 327.

4 12. Promulgate rules for the administration and
5 implementation of this section, including definitions of
6 terms.

7 13. Consult and cooperate with other entities for the
8 purpose of implementing the mandates of this section.

9 14. Have the authority to approve the type of blood
10 test utilized under the driving and boating under the
11 influence provisions and related provisions located in this
12 chapter and chapters 316 and 327.

13 15. Have the authority to specify techniques and
14 methods for breath alcohol testing and blood testing utilized
15 under the driving and boating under the influence provisions
16 and related provisions located in this chapter and chapters
17 316 and 327.

18 16. Have the authority to approve repair facilities
19 for the approved breath test instruments including the
20 authority to set criteria for approval.

21
22 Nothing in this section shall be construed to supersede
23 provisions in this chapter and chapters 316 and 327. The
24 specifications in this section are derived from the power and
25 authority previously and currently possessed by the Department
26 of Law Enforcement and are enumerated to conform with the
27 mandates of chapter 99-379, Laws of Florida.~~The Department of~~
28 ~~Law Enforcement is authorized to approve techniques or methods~~
29 ~~for administering such physical and chemical tests.~~

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1 (c) Any insubstantial differences between approved
2 techniques and actual testing procedures in any individual
3 case does not render the test or tests results invalid.

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

8 Section 3. Paragraphs (b) and (e) of subsection (1) of
9 section 327.352, Florida Statutes, are amended to read:

10 327.352 Breath, blood, and urine tests for alcohol,
11 chemical substances, or controlled substances; implied
12 consent; right to refuse.--

13 (1)

14 (b)1. The blood-alcohol level must be based upon grams
15 of alcohol per 100 milliliters of blood. The breath-alcohol
16 level must be based upon grams of alcohol per 210 liters of
17 breath.

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

26 3. The Alcohol Testing Program within the Department
27 of Law Enforcement is responsible for the regulation of the
28 operation, inspection, and registration of breath test
29 instruments utilized under the driving and boating under the
30 influence provisions and related provisions located in this
31 chapter and chapters 316 and 322. The program is responsible

1 for the regulation of the individuals who operate, inspect,
2 and instruct on the breath test instruments utilized in the
3 driving and boating under the influence provisions and related
4 provisions located in this chapter and chapters 316 and 322.
5 The program is further responsible for the regulation of blood
6 analysts who conduct blood testing to be utilized under the
7 driving and boating under the influence provisions and related
8 provisions located in this chapter and chapters 316 and 322.
9 The program shall:

10 a. Establish uniform criteria for the issuance of
11 permits to breath test operators, agency inspectors,
12 instructors, blood analysts, and instruments.

13 b. Have the authority to permit breath test operators,
14 agency inspectors, instructors, blood analysts, and
15 instruments.

16 c. Have the authority to discipline and suspend,
17 revoke, or renew the permits of breath test operators, agency
18 inspectors, instructors, blood analysts, and instruments.

19 d. Establish uniform requirements for instruction and
20 curricula for the operation and inspection of approved
21 instruments.

22 e. Have the authority to specify one approved
23 curriculum for the operation and inspection of approved
24 instruments.

25 f. Establish a procedure for the approval of breath
26 test operator and agency inspector classes.

27 g. Have the authority to approve or disapprove breath
28 test instruments and accompanying paraphernalia for use
29 pursuant to the driving and boating under the influence
30 provisions and related provisions located in this chapter and
31 chapters 316 and 322.

1 h. With the approval of the executive director of the
2 Department of Law Enforcement, make and enter into contracts
3 and agreements with other agencies, organizations,
4 associations, corporations, individuals, or federal agencies
5 as are necessary, expedient, or incidental to the performance
6 of duties.

7 i. Issue final orders which include findings of fact
8 and conclusions of law and which constitute final agency
9 action for the purpose of chapter 120.

10 j. Enforce compliance with the provisions of this
11 section through civil or administrative proceedings.

12 k. Make recommendations concerning any matter within
13 the purview of this section, this chapter, chapter 316, or
14 chapter 322.

15 l. Promulgate rules for the administration and
16 implementation of this section, including definitions of
17 terms.

18 m. Consult and cooperate with other entities for the
19 purpose of implementing the mandates of this section.

20 n. Have the authority to approve the type of blood
21 test utilized under the driving and boating under the
22 influence provisions and related provisions located in this
23 chapter and chapters 316 and 322.

24 o. Have the authority to specify techniques and
25 methods for breath alcohol testing and blood testing utilized
26 under the driving and boating under the influence provisions
27 and related provisions located in this chapter and chapters
28 316 and 322.

29 p. Have the authority to approve repair facilities for
30 the approved breath test instruments, including the authority
31 to set criteria for approval.

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2 Nothing in this section shall be construed to supersede
3 provisions in this chapter and chapters 316 and 322. The
4 specifications in this section are derived from the power and
5 authority previously and currently possessed by the Department
6 of Law Enforcement and are enumerated to conform with the
7 mandates of chapter 99-379, Laws of Florida.

8 (e)1. The tests determining the weight of alcohol in
9 the defendant's blood or breath shall be administered at the
10 request of a law enforcement officer substantially in
11 accordance with rules of the Department of Law Enforcement.
12 ~~Such rules must specify precisely the test or tests that are~~
13 ~~approved by the Department of Law Enforcement for reliability~~
14 ~~of result and ease of administration, and must provide an~~
15 ~~approved method of administration which must be followed in~~
16 ~~all such tests given under this section. However, the failure~~
17 ~~of a law enforcement officer to request the withdrawal of~~
18 ~~blood does not affect the admissibility of a test of blood~~
19 ~~withdrawn for medical purposes.~~

20 2. Only a physician, certified paramedic, registered
21 nurse, licensed practical nurse, other personnel authorized by
22 a hospital to draw blood, or duly licensed clinical laboratory
23 director, supervisor, technologist, or technician, acting at
24 the request of a law enforcement officer, may withdraw blood
25 for the purpose of determining its alcoholic content or the
26 presence of chemical substances or controlled substances
27 therein. However, the failure of a law enforcement officer to
28 request the withdrawal of blood does not affect the
29 admissibility of a test of blood withdrawn for medical
30 purposes.

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1 3. The person tested may, at his or her own expense,
2 have a physician, registered nurse, other personnel authorized
3 by a hospital to draw blood, or duly licensed clinical
4 laboratory director, supervisor, technologist, or technician,
5 or other person of his or her own choosing administer an
6 independent test in addition to the test administered at the
7 direction of the law enforcement officer for the purpose of
8 determining the amount of alcohol in the person's blood or
9 breath or the presence of chemical substances or controlled
10 substances at the time alleged, as shown by chemical analysis
11 of his or her blood or urine, or by chemical or physical test
12 of his or her breath. The failure or inability to obtain an
13 independent test by a person does not preclude the
14 admissibility in evidence of the test taken at the direction
15 of the law enforcement officer. The law enforcement officer
16 shall not interfere with the person's opportunity to obtain
17 the independent test and shall provide the person with timely
18 telephone access to secure the test, but the burden is on the
19 person to arrange and secure the test at the person's own
20 expense.

21 4. Upon the request of the person tested, full
22 information concerning the test taken at the direction of the
23 law enforcement officer shall be made available to the person
24 or his or her attorney.

25 5. A hospital, clinical laboratory, medical clinic, or
26 similar medical institution or physician, certified paramedic,
27 registered nurse, licensed practical nurse, other personnel
28 authorized by a hospital to draw blood, or duly licensed
29 clinical laboratory director, supervisor, technologist, or
30 technician, or other person assisting a law enforcement
31 officer does not incur any civil or criminal liability as a

1 result of the withdrawal or analysis of a blood or urine
2 specimen, or the chemical or physical test of a person's
3 breath pursuant to accepted medical standards when requested
4 by a law enforcement officer, regardless of whether or not the
5 subject resisted administration of the test.

6 Section 4. Subsection (4) of section 943.03, Florida
7 Statutes, is amended to read:

8 943.03 Department of Law Enforcement.--

9 (4) The department shall adopt rules pursuant to ss.
10 120.536(1) and 120.54 to implement the provisions of law this
11 chapter conferring powers or duties upon it. The department
12 may adopt rules defining acts of misconduct and setting
13 standards of disciplinary action for its employees.

14 Section 5. Subsection (2) of section 943.131, Florida
15 Statutes, is amended to read:

16 943.131 Temporary employment or appointment; minimum
17 basic recruit training exemption.--

18 (2) If an applicant seeks an exemption from completing
19 a commission-approved basic recruit training program, the
20 employing agency must verify that the applicant has
21 successfully completed a comparable basic recruit training
22 program in another state or for the Federal Government.
23 Further, the employing agency must verify that the applicant
24 has served as a full-time sworn officer in another state or
25 for the Federal Government for at least one year. When the
26 employing agency obtains written documentation regarding the
27 applicant's criminal justice experience, the documentation
28 must be submitted to the commission. The commission shall
29 adopt rules that establish criteria and procedures to
30 determine if the applicant is exempt from completing the
31 commission-approved basic recruit training program, and, upon

1 making a determination, shall notify the employing agency. If
2 the applicant is exempt from completing the
3 commission-approved basic recruit training program, the
4 applicant must complete training, as required by the
5 commission by rule, in areas which include, but are not
6 limited to, defensive driving, defensive tactics, firearms
7 training, and first responder training. Except as provided in
8 subsection (1), before the employing agency may employ or
9 appoint the applicant as an officer, the applicant must meet
10 the minimum qualifications described in s. 943.13(1)-(8), and
11 must fulfill the requirements of s. 943.13(10).

12 Section 6. Subsection (3) of section 943.14, Florida
13 Statutes, is amended to read:

14 943.14 Criminal justice training schools; certificates
15 and diplomas; exemptions; injunctive relief; fines.--

16 (3) The commission shall establish, by rule,
17 ~~certification~~ procedures for the certification and discipline
18 of for all instructors in any criminal justice training
19 school.

20 Section 7. This act shall take effect upon becoming a
21 law.

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