

By the Committee on Criminal Justice; and Senator Saunders

307-2295-03

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A bill to be entitled
An act relating to tests for alcohol, chemical substances, or controlled substances; amending ss. 316.1932 and 327.352, F.S.; revising provisions that provide for tests to determine blood alcohol content or the presence of chemical or controlled substances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 316.1932, Florida Statutes, is amended to read:

316.1932 ~~Breath, blood, and urine~~ Tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.--

(1)(a)1.a. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath, ~~and to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances,~~ if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages, ~~chemical substances, or controlled substances.~~ The chemical or physical breath test must be incidental to a lawful arrest and

1 administered at the request of a law enforcement officer who
2 has reasonable cause to believe such person was driving or was
3 in actual physical control of the motor vehicle within this
4 state while under the influence of alcoholic beverages. ~~The~~
5 ~~urine test must be incidental to a lawful arrest and~~
6 ~~administered at a detention facility or any other facility,~~
7 ~~mobile or otherwise, which is equipped to administer such~~
8 ~~tests at the request of a law enforcement officer who has~~
9 ~~reasonable cause to believe such person was driving or was in~~
10 ~~actual physical control of a motor vehicle within this state~~
11 ~~while under the influence of controlled substances. The urine~~
12 ~~test shall be administered at a detention facility or any~~
13 ~~other facility, mobile or otherwise, which is equipped to~~
14 ~~administer such tests in a reasonable manner that will ensure~~
15 ~~the accuracy of the specimen and maintain the privacy of the~~
16 ~~individual involved.~~The administration of a breath ~~one type~~
17 ~~of test~~ does not preclude the administration of another type
18 of test. The person shall be told that his or her failure to
19 submit to any lawful test of his or her breath ~~or urine, or~~
20 ~~both,~~will result in the suspension of the person's privilege
21 to operate a motor vehicle for a period of 1 year for a first
22 refusal, or for a period of 18 months if the driving privilege
23 of such person has been previously suspended as a result of a
24 refusal to submit to such a test or tests, and shall also be
25 told that if he or she refuses to submit to a lawful test of
26 his or her breath ~~or urine, or both,~~and his or her driving
27 privilege has been previously suspended for a prior refusal to
28 submit to a lawful test of his or her breath, urine, or blood,
29 he or she commits a misdemeanor in addition to any other
30 penalties. The refusal to submit to a chemical or physical
31 breath test ~~or to a urine test~~ upon the request of a law

1 enforcement officer as provided in this section is admissible
2 into evidence in any criminal proceeding.

3 b. Any person who accepts the privilege extended by
4 the laws of this state of operating a motor vehicle within
5 this state is, by so operating such vehicle, deemed to have
6 given his or her consent to submit to a urine test for the
7 purpose of detecting the presence of chemical substances as
8 set forth in s. 877.111 or controlled substances if the person
9 is lawfully arrested for any offense allegedly committed while
10 the person was driving or was in actual physical control of a
11 motor vehicle while under the influence of chemical substances
12 or controlled substances. The urine test must be incidental to
13 a lawful arrest and administered at a detention facility or
14 any other facility, mobile or otherwise, which is equipped to
15 administer such tests at the request of a law enforcement
16 officer who has reasonable cause to believe such person was
17 driving or was in actual physical control of a motor vehicle
18 within this state while under the influence of chemical
19 substances or controlled substances. The urine test shall be
20 administered at a detention facility or any other facility,
21 mobile or otherwise, which is equipped to administer such test
22 in a reasonable manner that will ensure the accuracy of the
23 specimen and maintain the privacy of the individual involved.
24 The administration of a urine test does not preclude the
25 administration of another type of test. The person shall be
26 told that his or her failure to submit to any lawful test of
27 his or her urine will result in the suspension of the person
28 s privilege to operate a motor vehicle for a period of 1 year
29 for the first refusal, or for a period of 18 months if the
30 driving privilege of such person has been previously suspended
31 as a result of a refusal to submit to such a test or tests,

1 and shall also be told that if he or she refuses to submit to
2 a lawful test of his or her urine and his or her driving
3 privilege has been previously suspended for a prior refusal to
4 submit to a lawful test of his or her breath, urine, or blood,
5 he or she commits a misdemeanor in addition to any other
6 penalties. The refusal to submit to a urine test upon the
7 request of a law enforcement officer as provided in this
8 section is admissible into evidence in any criminal
9 proceeding.

10 2. The Alcohol Testing Program within the Department
11 of Law Enforcement is responsible for the regulation of the
12 operation, inspection, and registration of breath test
13 instruments utilized under the driving and boating under the
14 influence provisions and related provisions located in this
15 chapter and chapters 322 and 327. The program is responsible
16 for the regulation of the individuals who operate, inspect,
17 and instruct on the breath test instruments utilized in the
18 driving and boating under the influence provisions and related
19 provisions located in this chapter and chapters 322 and 327.
20 The program is further responsible for the regulation of blood
21 analysts who conduct blood testing to be utilized under the
22 driving and boating under the influence provisions and related
23 provisions located in this chapter and chapters 322 and 327.

24 The program shall:

25 a. Establish uniform criteria for the issuance of
26 permits to breath test operators, agency inspectors,
27 instructors, blood analysts, and instruments.

28 b. Have the authority to permit breath test operators,
29 agency inspectors, instructors, blood analysts, and
30 instruments.

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

4 d. Establish uniform requirements for instruction and
5 curricula for the operation and inspection of approved
6 instruments.

7 e. Have the authority to specify one approved
8 curriculum for the operation and inspection of approved
9 instruments.

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

12 g. Have the authority to approve or disapprove breath
13 test instruments and accompanying paraphernalia for use
14 pursuant to the driving and boating under the influence
15 provisions and related provisions located in this chapter and
16 chapters 322 and 327.

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

23 i. Issue final orders which include findings of fact
24 and conclusions of law and which constitute final agency
25 action for the purpose of chapter 120.

26 j. Enforce compliance with the provisions of this
27 section through civil or administrative proceedings.

28 k. Make recommendations concerning any matter within
29 the purview of this section, this chapter, chapter 322, or
30 chapter 327.

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1 1. Promulgate rules for the administration and
2 implementation of this section, including definitions of
3 terms.

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

6 n. Have the authority to approve the type of blood
7 test utilized under the driving and boating under the
8 influence provisions and related provisions located in this
9 chapter and chapters 322 and 327.

10 o. Have the authority to specify techniques and
11 methods for breath alcohol testing and blood testing utilized
12 under the driving and boating under the influence provisions
13 and related provisions located in this chapter and chapters
14 322 and 327.

15 p. Have the authority to approve repair facilities for
16 the approved breath test instruments, including the authority
17 to set criteria for approval.

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19 Nothing in this section shall be construed to supersede
20 provisions in this chapter and chapters 322 and 327. The
21 specifications in this section are derived from the power and
22 authority previously and currently possessed by the Department
23 of Law Enforcement and are enumerated to conform with the
24 mandates of chapter 99-379, Laws of Florida.

25 (b)1. The blood-alcohol level must be based upon grams
26 of alcohol per 100 milliliters of blood. The breath-alcohol
27 level must be based upon grams of alcohol per 210 liters of
28 breath.

29 2. An analysis of a person's breath, in order to be
30 considered valid under this section, must have been performed
31 substantially according to methods approved by the Department

1 of Law Enforcement. For this purpose, the department may
2 approve satisfactory techniques or methods. Any insubstantial
3 differences between approved techniques and actual testing
4 procedures in any individual case do not render the test or
5 test results invalid.

6 (c) Any person who accepts the privilege extended by
7 the laws of this state of operating a motor vehicle within
8 this state is, by operating such vehicle, deemed to have given
9 his or her consent to submit to an approved blood test for the
10 purpose of determining the alcoholic content of the blood or a
11 blood test for the purpose of determining the presence of
12 chemical substances or controlled substances as provided in
13 this section if there is reasonable cause to believe the
14 person was driving or in actual physical control of a motor
15 vehicle while under the influence of alcoholic beverages or
16 chemical or controlled substances and the person appears for
17 treatment at a hospital, clinic, or other medical facility and
18 the administration of a breath or urine test is impractical or
19 impossible. As used in this paragraph, the term "other medical
20 facility" includes an ambulance or other medical emergency
21 vehicle. The blood test shall be performed in a reasonable
22 manner. Any person who is incapable of refusal by reason of
23 unconsciousness or other mental or physical condition is
24 deemed not to have withdrawn his or her consent to such test.
25 A blood test may be administered whether or not the person is
26 told that his or her failure to submit to such a blood test
27 will result in the suspension of the person's privilege to
28 operate a motor vehicle upon the public highways of this state
29 and that a refusal to submit to a lawful test of his or her
30 blood, if his or her driving privilege has been previously
31 suspended for refusal to submit to a lawful test of his or her

1 breath, urine, or blood, is a misdemeanor. Any person who is
2 capable of refusal shall be told that his or her failure to
3 submit to such a blood test will result in the suspension of
4 the person's privilege to operate a motor vehicle for a period
5 of 1 year for a first refusal, or for a period of 18 months if
6 the driving privilege of the person has been suspended
7 previously as a result of a refusal to submit to such a test
8 or tests, and that a refusal to submit to a lawful test of his
9 or her blood, if his or her driving privilege has been
10 previously suspended for a prior refusal to submit to a lawful
11 test of his or her breath, urine, or blood, is a misdemeanor.
12 The refusal to submit to a blood test upon the request of a
13 law enforcement officer is admissible in evidence in any
14 criminal proceeding.

15 (d) If the arresting officer does not request a
16 chemical or physical breath test of the person arrested for
17 any offense allegedly committed while the person was driving
18 or was in actual physical control of a motor vehicle while
19 under the influence of alcoholic beverages or controlled
20 substances, such person may request the arresting officer to
21 have a chemical or physical test made of the arrested person's
22 breath or a test of the urine or blood for the purpose of
23 determining the alcoholic content of the person's blood or
24 breath or the presence of chemical substances or controlled
25 substances; and, if so requested, the arresting officer shall
26 have the test performed.

27 (e)1. By applying for a driver's license and by
28 accepting and using a driver's license, the person holding the
29 driver's license is deemed to have expressed his or her
30 consent to the provisions of this section.

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1 2. A nonresident or any other person driving in a
2 status exempt from the requirements of the driver's license
3 law, by his or her act of driving in such exempt status, is
4 deemed to have expressed his or her consent to the provisions
5 of this section.

6 3. A warning of the consent provision of this section
7 shall be printed above the signature line on each new or
8 renewed driver's license.

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

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

1 b. Notwithstanding any provision of law pertaining to
2 the confidentiality of hospital records or other medical
3 records, if a health care provider, who is providing medical
4 care in a health care facility to a person injured in a motor
5 vehicle crash, becomes aware, as a result of any blood test
6 performed in the course of that medical treatment, that the
7 person's blood-alcohol level meets or exceeds the
8 blood-alcohol level specified in s. 316.193(1)(b), the health
9 care provider may notify any law enforcement officer or law
10 enforcement agency. Any such notice must be given within a
11 reasonable time after the health care provider receives the
12 test result. Any such notice shall be used only for the
13 purpose of providing the law enforcement officer with
14 reasonable cause to request the withdrawal of a blood sample
15 pursuant to this section.

16 c. The notice shall consist only of the name of the
17 person being treated, the name of the person who drew the
18 blood, the blood-alcohol level indicated by the test, and the
19 date and time of the administration of the test.

20 d. Nothing contained in s. 395.3025(4), s. 456.057, or
21 any applicable practice act affects the authority to provide
22 notice under this section, and the health care provider is not
23 considered to have breached any duty owed to the person under
24 s. 395.3025(4), s. 456.057, or any applicable practice act by
25 providing notice or failing to provide notice. It shall not be
26 a breach of any ethical, moral, or legal duty for a health
27 care provider to provide notice or fail to provide notice.

28 e. A civil, criminal, or administrative action may not
29 be brought against any person or health care provider
30 participating in good faith in the provision of notice or
31 failure to provide notice as provided in this section. Any

1 person or health care provider participating in the provision
2 of notice or failure to provide notice as provided in this
3 section shall be immune from any civil or criminal liability
4 and from any professional disciplinary action with respect to
5 the provision of notice or failure to provide notice under
6 this section. Any such participant has the same immunity with
7 respect to participating in any judicial proceedings resulting
8 from the notice or failure to provide notice.

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

29 4. Upon the request of the person tested, full
30 information concerning the test taken at the direction of the
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1 law enforcement officer shall be made available to the person
2 or his or her attorney.

3 5. A hospital, clinical laboratory, medical clinic, or
4 similar medical institution or physician, certified paramedic,
5 registered nurse, licensed practical nurse, other personnel
6 authorized by a hospital to draw blood, or duly licensed
7 clinical laboratory director, supervisor, technologist, or
8 technician, or other person assisting a law enforcement
9 officer does not incur any civil or criminal liability as a
10 result of the withdrawal or analysis of a blood or urine
11 specimen, or the chemical or physical test of a person's
12 breath pursuant to accepted medical standards when requested
13 by a law enforcement officer, regardless of whether or not the
14 subject resisted administration of the test.

15 (2) The results of any test administered pursuant to
16 this section for the purpose of detecting the presence of any
17 controlled substance shall not be admissible as evidence in a
18 criminal prosecution for the possession of a controlled
19 substance.

20 (3) Notwithstanding any provision of law pertaining to
21 the confidentiality of hospital records or other medical
22 records, information relating to the alcoholic content of the
23 blood or breath or the presence of chemical substances or
24 controlled substances in the blood obtained pursuant to this
25 section shall be released to a court, prosecuting attorney,
26 defense attorney, or law enforcement officer in connection
27 with an alleged violation of s. 316.193 upon request for such
28 information.

29 Section 2. Section 327.352, Florida Statutes, is
30 amended to read:

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1 327.352 ~~Breath, blood, and urine~~ Tests for alcohol,
2 chemical substances, or controlled substances; implied
3 consent; refusal.--

4 (1)(a)1. The Legislature declares that the operation
5 of a vessel is a privilege that must be exercised in a
6 reasonable manner. In order to protect the public health and
7 safety, it is essential that a lawful and effective means of
8 reducing the incidence of boating while impaired or
9 intoxicated be established. Therefore, any person who accepts
10 the privilege extended by the laws of this state of operating
11 a vessel within this state is, by so operating such vessel,
12 deemed to have given his or her consent to submit to an
13 approved chemical test or physical test including, but not
14 limited to, an infrared light test of his or her breath for
15 the purpose of determining the alcoholic content of his or her
16 blood or breath, ~~and to a urine test for the purpose of~~
17 ~~detecting the presence of chemical substances as set forth in~~
18 ~~s. 877.111 or controlled substances,~~ if the person is lawfully
19 arrested for any offense allegedly committed while the person
20 was operating a vessel while under the influence of alcoholic
21 beverages, ~~chemical substances, or controlled substances~~. The
22 chemical or physical breath test must be incidental to a
23 lawful arrest and administered at the request of a law
24 enforcement officer who has reasonable cause to believe such
25 person was operating the vessel within this state while under
26 the influence of alcoholic beverages. ~~The urine test must be~~
27 ~~incidental to a lawful arrest and administered at a detention~~
28 ~~facility or any other facility, mobile or otherwise, which is~~
29 ~~equipped to administer such tests at the request of a law~~
30 ~~enforcement officer who has reasonable cause to believe such~~
31 ~~person was operating a vessel within this state while under~~

1 ~~the influence of controlled substances. The urine test shall~~
2 ~~be administered at a detention facility or any other facility,~~
3 ~~mobile or otherwise, which is equipped to administer such~~
4 ~~tests in a reasonable manner that will ensure the accuracy of~~
5 ~~the specimen and maintain the privacy of the individual~~
6 ~~involved.~~ The administration of a breath ~~one type of~~ test does
7 not preclude the administration of another type of test. The
8 person shall be told that his or her failure to submit to any
9 lawful test of his or her breath ~~or urine, or both,~~ will
10 result in a civil penalty of \$500, and shall also be told that
11 if he or she refuses to submit to a lawful test of his or her
12 breath ~~or urine, or both,~~ and he or she has been previously
13 fined for refusal to submit to any lawful test of his or her
14 breath, urine, or blood, he or she commits a misdemeanor in
15 addition to any other penalties. The refusal to submit to a
16 chemical or physical breath ~~or urine~~ test upon the request of
17 a law enforcement officer as provided in this section is
18 admissible into evidence in any criminal proceeding.

19 2. Any person who accepts the privilege extended by
20 the laws of this state of operating a vessel within this state
21 is, by so operating such vessel, deemed to have given his or
22 her consent to submit to a urine test for the purpose of
23 detecting the presence of chemical substances as set forth in
24 s. 877.111 or controlled substances if the person is lawfully
25 arrested for any offense allegedly committed while the person
26 was operating a vessel while under the influence of chemical
27 substances or controlled substances. The urine test must be
28 incidental to a lawful arrest and administered at a detention
29 facility or any other facility, mobile or otherwise, which is
30 equipped to administer such tests at the request of a law
31 enforcement officer who has reasonable cause to believe such

1 person was operating a vessel within this state while under
2 the influence of chemical substances or controlled substances.
3 The urine test shall be administered at a detention facility
4 or any other facility, mobile or otherwise, which is equipped
5 to administer such test in a reasonable manner that will
6 ensure the accuracy of the specimen and maintain the privacy
7 of the individual involved. The administration of a urine test
8 does not preclude the administration of another type of test.
9 The person shall be told that his or her failure to submit to
10 any lawful test of his or her urine will result in a civil
11 penalty of \$500, and shall also be told that if he or she
12 refuses to submit to a lawful test of his or her urine and he
13 or she has been previously fined for refusal to submit to any
14 lawful test of his or her breath, urine, or blood, he or she
15 commits a misdemeanor in addition to any other penalties. The
16 refusal to submit to a urine test upon the request of a law
17 enforcement officer as provided in this section is admissible
18 into evidence in any criminal proceeding.

19 (b)1. The blood-alcohol level must be based upon grams
20 of alcohol per 100 milliliters of blood. The breath-alcohol
21 level must be based upon grams of alcohol per 210 liters of
22 breath.

23 2. An analysis of a person's breath, in order to be
24 considered valid under this section, must have been performed
25 substantially according to methods approved by the Department
26 of Law Enforcement. Any insubstantial differences between
27 approved techniques and actual testing procedures in any
28 individual case do not render the test or test results
29 invalid.

30 3. The Alcohol Testing Program within the Department
31 of Law Enforcement is responsible for the regulation of the

1 operation, inspection, and registration of breath test
2 instruments utilized under the driving and boating under the
3 influence provisions and related provisions located in this
4 chapter and chapters 316 and 322. The program is responsible
5 for the regulation of the individuals who operate, inspect,
6 and instruct on the breath test instruments utilized in 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 is further responsible for the regulation of blood
10 analysts who conduct blood testing to be utilized under the
11 driving and boating under the influence provisions and related
12 provisions located in this chapter and chapters 316 and 322.
13 The program shall:
14 a. Establish uniform criteria for the issuance of
15 permits to breath test operators, agency inspectors,
16 instructors, blood analysts, and instruments.
17 b. Have the authority to permit breath test operators,
18 agency inspectors, instructors, blood analysts, and
19 instruments.
20 c. Have the authority to discipline and suspend,
21 revoke, or renew the permits of breath test operators, agency
22 inspectors, instructors, blood analysts, and instruments.
23 d. Establish uniform requirements for instruction and
24 curricula for the operation and inspection of approved
25 instruments.
26 e. Have the authority to specify one approved
27 curriculum for the operation and inspection of approved
28 instruments.
29 f. Establish a procedure for the approval of breath
30 test operator and agency inspector classes.
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1 g. Have the authority to approve or disapprove breath
2 test instruments and accompanying paraphernalia for use
3 pursuant to the driving and boating under the influence
4 provisions and related provisions located in this chapter and
5 chapters 316 and 322.

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

12 i. Issue final orders which include findings of fact
13 and conclusions of law and which constitute final agency
14 action for the purpose of chapter 120.

15 j. Enforce compliance with the provisions of this
16 section through civil or administrative proceedings.

17 k. Make recommendations concerning any matter within
18 the purview of this section, this chapter, chapter 316, or
19 chapter 322.

20 l. Promulgate rules for the administration and
21 implementation of this section, including definitions of
22 terms.

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

25 n. Have the authority to approve the type of blood
26 test utilized under the driving and boating under the
27 influence provisions and related provisions located in this
28 chapter and chapters 316 and 322.

29 o. Have the authority to specify techniques and
30 methods for breath alcohol testing and blood testing utilized
31 under the driving and boating under the influence provisions

1 and related provisions located in this chapter and chapters
2 316 and 322.

3 p. Have the authority to approve repair facilities for
4 the approved breath test instruments, including the authority
5 to set criteria for approval.

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

13 (c) Any person who accepts the privilege extended by
14 the laws of this state of operating a vessel within this state
15 is, by operating such vessel, deemed to have given his or her
16 consent to submit to an approved blood test for the purpose of
17 determining the alcoholic content of the blood or a blood test
18 for the purpose of determining the presence of chemical
19 substances or controlled substances as provided in this
20 section if there is reasonable cause to believe the person was
21 operating a vessel while under the influence of alcoholic
22 beverages or chemical or controlled substances and the person
23 appears for treatment at a hospital, clinic, or other medical
24 facility and the administration of a breath or urine test is
25 impractical or impossible. As used in this paragraph, the term
26 "other medical facility" includes an ambulance or other
27 medical emergency vehicle. The blood test shall be performed
28 in a reasonable manner. Any person who is incapable of
29 refusal by reason of unconsciousness or other mental or
30 physical condition is deemed not to have withdrawn his or her
31 consent to such test. Any person who is capable of refusal

1 shall be told that his or her failure to submit to such a
2 blood test will result in a civil penalty of \$500 and that a
3 refusal to submit to a lawful test of his or her blood, if he
4 or she has previously been fined for refusal to submit to any
5 lawful test of his or her breath, urine, or blood, is a
6 misdemeanor. The refusal to submit to a blood test upon the
7 request of a law enforcement officer shall be admissible in
8 evidence in any criminal proceeding.

9 (d) If the arresting officer does not request a
10 chemical or physical breath test of the person arrested for
11 any offense allegedly committed while the person was operating
12 a vessel while under the influence of alcoholic beverages or
13 controlled substances, the person may request the arresting
14 officer to have a chemical or physical test made of the
15 arrested person's breath or a test of the urine or blood for
16 the purpose of determining the alcoholic content of the
17 person's blood or breath or the presence of chemical
18 substances or controlled substances; and, if so requested, the
19 arresting officer shall have the test performed.

20 (e)1. The tests determining the weight of alcohol in
21 the defendant's blood or breath shall be administered at the
22 request of a law enforcement officer substantially in
23 accordance with rules of the Department of Law Enforcement.
24 However, the failure of a law enforcement officer to request
25 the withdrawal of blood does not affect the admissibility of a
26 test of blood withdrawn for medical purposes.

27 2. Only a physician, certified paramedic, registered
28 nurse, licensed practical nurse, other personnel authorized by
29 a hospital to draw blood, or duly licensed clinical laboratory
30 director, supervisor, technologist, or technician, acting at
31 the request of a law enforcement officer, may withdraw blood

1 for the purpose of determining its alcoholic content or the
2 presence of chemical substances or controlled substances
3 therein. However, the failure of a law enforcement officer to
4 request the withdrawal of blood does not affect the
5 admissibility of a test of blood withdrawn for medical
6 purposes.

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

27 4. Upon the request of the person tested, full
28 information concerning the test taken at the direction of the
29 law enforcement officer shall be made available to the person
30 or his or her attorney.

31

1 5. A hospital, clinical laboratory, medical clinic, or
2 similar medical institution or physician, certified paramedic,
3 registered nurse, licensed practical nurse, other personnel
4 authorized by a hospital to draw blood, or duly licensed
5 clinical laboratory director, supervisor, technologist, or
6 technician, or other person assisting a law enforcement
7 officer does not incur any civil or criminal liability as a
8 result of the withdrawal or analysis of a blood or urine
9 specimen, or the chemical or physical test of a person's
10 breath pursuant to accepted medical standards when requested
11 by a law enforcement officer, regardless of whether or not the
12 subject resisted administration of the test.

13 (2) The results of any test administered pursuant to
14 this section for the purpose of detecting the presence of any
15 controlled substance shall not be admissible as evidence in a
16 criminal prosecution for the possession of a controlled
17 substance.

18 (3) Notwithstanding any provision of law pertaining to
19 the confidentiality of hospital records or other medical
20 records, information relating to the alcoholic content of the
21 blood or breath or the presence of chemical substances or
22 controlled substances in the blood obtained pursuant to this
23 section shall be released to a court, prosecuting attorney,
24 defense attorney, or law enforcement officer in connection
25 with an alleged violation of s. 327.35 upon request for such
26 information.

27 Section 3. This act shall take effect upon becoming a
28 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2430

Deletes underlining from page 15, line 19 until the end of the
bill to restore current law.