

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 947 Tests for Alcohol, Chemical Substances, or Controlled Substances
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 2430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation</u>	<u>17 Y, 2 N</u>	<u>Garner</u>	<u>Miller</u>
2) <u>Public Safety & Crime Prevention</u>	<u></u>	<u>Kramer</u>	<u>De La Paz</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The Second District Court of Appeal held that in administering Florida's DUI implied consent law, the Florida Department of Law Enforcement (FDLE) is statutorily required to adopt rules in accordance with the Florida Administrative Procedures Act governing the collection, preservation, and analysis of urine samples obtained by law enforcement. In the Bodden case, the defendant successfully moved to exclude the results of a urine test because the methodology of the test had not been approved by FDLE. As a result of that decision, DUI convictions based on a urine test administered under the implied consent law may now be subject to challenge and reversal.

HB 947 separates urine test provisions in the implied consent law from the provisions relating to tests to detect the alcoholic content of the blood or breath, thereby eliminating the requirement that the methodology relating to urine tests must be approved by FDLE.

The bill does not appear to have a direct fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 316.1932(1)(a)(1), F.S., provides that:

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....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.

This provision is known as the "implied consent" law. An identical provision in chapter 322 applies to operating a vessel.¹ A urine test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe the offender was driving under the influence of controlled substances. The section also provides that a urine test must be administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved.

The offender must be told that the failure to submit to any lawful test will result in the suspension of the offender's driver's license. An offender's license must be suspended for a year for a first refusal. If the offender's driver's license has previously been suspended for a refusal to submit., a subsequent refusal to submit to a breath or urine test is a first degree misdemeanor, punishable by up to one year in jail and by license suspension for eighteen months, s. 322.2615, F.S. The refusal to submit to the test is admissible into evidence in any criminal proceeding.²

In a recent case, the Second District Court of Appeal held that in administering Florida's implied consent law, the Florida Department of Law Enforcement (FDLE) is required to adopt rules in accordance with the Florida Administrative Procedures Act governing the collection, preservation, and analysis of urine samples obtained by law enforcement. State v. Bodden, 2002 WL 31421575 (Fla. 2nd DCA 2002). The court based its holding on an interpretation of s. 316.1932(1)(a)(1), quoted above.

¹ s. 327.352, F.S.

² The result of any test pursuant to this section which indicates the presence of a controlled substances is not admissible in a trial for the possession of a controlled substance.

The State had argued that the section required “that only a test to determine the alcoholic content of a person’s blood or breath has to be approved and not a urine test to determine the present of a chemical or controlled substance.” The State pointed out that while section 316.1932(1)(b)(2)³ requires an analysis of a person’s breath be performed according to methods approved by FDLE in order to be considered valid, the section did not contain any such language relating to the validity of a urine test. Further, the State noted that while section 316.1932(1)(f)(1)⁴ requires FDLE to adopt rules specifying the methodology to be used in administering breath and blood tests, the section does not require that FDLE adopt rules in regard to the administering of urine tests.

The court rejected these arguments and concluded that an approved urine test is one which is performed substantially in compliance with methods approved by FDLE. FDLE, apparently assuming that it did not have the statutory authority to promulgate rules pertaining to urine tests, had not done so. The court acknowledged that “the methodology for administering a urine test should be somewhat less complex than the methodology necessary for administering a breath or blood test” but nonetheless affirmed the trial court’s order excluding the results of the urine test.

As a result of the Bodden decision, DUI convictions in the Second District and elsewhere based on a urine test administered under the implied consent law may now be subject to challenge and reversal. Furthermore, additional convictions based upon the implied consent law as they relate to urine tests will be in doubt.

Effect of Proposed Changes

HB 947 separates urine test provisions in the implied consent law from the provisions relating to tests to detect the alcoholic content of the blood or breath, thereby eliminating the requirement that the methodology for urine tests be approved by FDLE. These changes will apply to the statutes relating to operating a vehicle as well as those relating to operating a vessel.

In addition, the bill clarifies that an officer may order a urine test upon a reasonable belief that the suspect was driving a vehicle or vessel under the influence of chemical substances or controlled substances. Currently, although the urine test may be administered for the purpose of detecting the presence of either specified *chemical substances* or controlled substances, the plain language of the law appears to authorize the testing only in cases where a law enforcement officer has reasonable cause to believe that the suspect was driving or was in actual physical control of a motor vehicle while under the influence of controlled substances. The statute is silent as to whether the officer may order the urine test upon a reasonable belief that the suspect was driving under the influence of specified chemical substances.

C. SECTION DIRECTORY:

³ Section 316.1932(1)(b)(2), F.S. provides the following:

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

⁴ Section 316.1932(1)(f)(1), F.S. provides the following:

The tests determining the weight of alcohol in the defendant's blood or breath shall be administered at the request of a law enforcement officer substantially in accordance with rules of the Department of Law Enforcement. Such rules must specify precisely the test or tests that are approved by the Department of Law Enforcement for reliability of result and ease of administration, and must provide an approved method of administration which must be followed in all such tests given under this section.

Section 1. Amends s. 316.1932, F.S., to clarify that urine tests need not be approved by FDLE, and that a urine test may be ordered upon a reasonable belief that a suspect was driving a vehicle under the influence of chemical substances or controlled substances.

Section 2. Amends s. 327.352, F.S., to clarify that urine tests need not be approved, and that a urine test may be ordered upon a reasonable belief that a suspect was operating a vessel under the influence of chemical substances or controlled substances.

Section 3. Provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 947 does not require the exercise of any rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES