

By Senator Lynn

7-801-04

1 A bill to be entitled
2 An act relating to driving or boating under the
3 influence of alcohol or a controlled substance;
4 amending ss. 316.1932 and 316.1939, F.S.;
5 providing that any person operating a motor
6 vehicle within the state who refuses to submit
7 to a breath, urine, or blood test upon the
8 request of a law enforcement officer commits a
9 misdemeanor of the first degree; deleting
10 provisions that limit imposition of the penalty
11 to a second or subsequent refusal to submit to
12 such a test; amending ss. 327.352 and 327.359,
13 F.S.; providing that any person operating a
14 vessel within the state who refuses to submit
15 to a breath, urine, or blood test upon the
16 request of a law enforcement officer commits a
17 misdemeanor of the first degree; deleting
18 provisions that limit imposition of the penalty
19 to a second or subsequent refusal to submit to
20 such a test; providing an effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Paragraphs (a) and (c) of subsection (1) of
25 section 316.1932, Florida Statutes, are amended to read:

26 316.1932 Tests for alcohol, chemical substances, or
27 controlled substances; implied consent; refusal.--

28 (1)(a)1.

29 a. Any person who accepts the privilege extended by
30 the laws of this state of operating a motor vehicle within
31 this state is, by so operating such vehicle, deemed to have

1 given his or her consent to submit to an approved chemical
2 test or physical test including, but not limited to, an
3 infrared light test of his or her breath for the purpose of
4 determining the alcoholic content of his or her blood or
5 breath if the person is lawfully arrested for any offense
6 allegedly committed while the person was driving or was in
7 actual physical control of a motor vehicle while under the
8 influence of alcoholic beverages. The chemical or physical
9 breath test must be incidental to a lawful arrest and
10 administered at the request of a law enforcement officer who
11 has reasonable cause to believe such person was driving or was
12 in actual physical control of the motor vehicle within this
13 state while under the influence of alcoholic beverages. The
14 administration of a breath test does not preclude the
15 administration of another type of test. The person shall be
16 told that his or her failure to submit to any lawful test of
17 his or her breath will result in the suspension of the
18 person's privilege to operate a motor vehicle for a period of
19 1 year for a first refusal, or for a period of 18 months if
20 the driving privilege of such person has been previously
21 suspended as a result of a refusal to submit to such a test or
22 tests, and shall also be told that if he or she refuses to
23 submit to a lawful test of his or her breath ~~and his or her~~
24 ~~driving privilege has been previously suspended for a prior~~
25 ~~refusal to submit to a lawful test of his or her breath,~~
26 ~~urine, or blood,~~ he or she commits a misdemeanor in addition
27 to any other penalties. The refusal to submit to a chemical or
28 physical breath test upon the request of a law enforcement
29 officer as provided in this section is admissible into
30 evidence in any criminal proceeding.

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

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

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

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

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

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

1 d. Establish uniform requirements for instruction and
2 curricula for the operation and inspection of approved
3 instruments.

4 e. Have the authority to specify one approved
5 curriculum for the operation and inspection of approved
6 instruments.

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

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

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

20 i. Issue final orders which include findings of fact
21 and conclusions of law and which constitute final agency
22 action for the purpose of chapter 120.

23 j. Enforce compliance with the provisions of this
24 section through civil or administrative proceedings.

25 k. Make recommendations concerning any matter within
26 the purview of this section, this chapter, chapter 322, or
27 chapter 327.

28 l. Promulgate rules for the administration and
29 implementation of this section, including definitions of
30 terms.

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

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

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

12 p. Have the authority to approve repair facilities for
13 the approved breath test instruments, including the authority
14 to set criteria for approval.

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

22 (c) Any person who accepts the privilege extended by
23 the laws of this state of operating a motor vehicle within
24 this state is, by operating such vehicle, deemed to have given
25 his or her consent to submit to an approved blood test for the
26 purpose of determining the alcoholic content of the blood or a
27 blood test for the purpose of determining the presence of
28 chemical substances or controlled substances as provided in
29 this section if there is reasonable cause to believe the
30 person was driving or in actual physical control of a motor
31 vehicle while under the influence of alcoholic beverages or

1 chemical or controlled substances and the person appears for
2 treatment at a hospital, clinic, or other medical facility and
3 the administration of a breath or urine test is impractical or
4 impossible. As used in this paragraph, the term "other medical
5 facility" includes an ambulance or other medical emergency
6 vehicle. The blood test shall be performed in a reasonable
7 manner. Any person who is incapable of refusal by reason of
8 unconsciousness or other mental or physical condition is
9 deemed not to have withdrawn his or her consent to such test.
10 A blood test may be administered whether or not the person is
11 told that his or her failure to submit to such a blood test
12 will result in the suspension of the person's privilege to
13 operate a motor vehicle upon the public highways of this state
14 and that a refusal to submit to a lawful test of his or her
15 blood, ~~if his or her driving privilege has been previously~~
16 ~~suspended for refusal to submit to a lawful test of his or her~~
17 ~~breath, urine, or blood,~~ is a misdemeanor. Any person who is
18 capable of refusal shall be told that his or her failure to
19 submit to such a blood test will result in the suspension of
20 the person's privilege to operate a motor vehicle for a period
21 of 1 year for a first refusal, or for a period of 18 months if
22 the driving privilege of the person has been suspended
23 previously as a result of a refusal to submit to such a test
24 or tests, and that a refusal to submit to a lawful test of his
25 or her blood, ~~if his or her driving privilege has been~~
26 ~~previously suspended for a prior refusal to submit to a lawful~~
27 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.
28 The refusal to submit to a blood test upon the request of a
29 law enforcement officer is admissible in evidence in any
30 criminal proceeding.
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1 Section 2. Subsection (1) of section 316.1939, Florida
2 Statutes, is amended to read:

3 316.1939 Refusal to submit to testing; penalties.--

4 (1) Any person who refuses ~~has refused~~ to submit to a
5 chemical or physical test of his or her breath, blood, or
6 urine, as described in s. 316.1932, ~~and whose driving~~
7 ~~privilege was previously suspended for a prior refusal to~~
8 ~~submit to a lawful test of his or her breath, urine, or blood,~~
9 and:

10 (a) Who the arresting law enforcement officer had
11 probable cause to believe was driving or in actual physical
12 control of a motor vehicle in this state while under the
13 influence of alcoholic beverages, chemical substances, or
14 controlled substances;

15 (b) Who was placed under lawful arrest for a violation
16 of s. 316.193 unless such test was requested pursuant to s.
17 316.1932(1)(c);

18 (c) Who was informed that, if he or she refused to
19 submit to such test, his or her privilege to operate a motor
20 vehicle would be suspended for a period of 1 year or, in the
21 case of a second or subsequent refusal, for a period of 18
22 months;

23 (d) Who was informed that a refusal to submit to a
24 lawful test of his or her breath, urine, or blood, ~~if his or~~
25 ~~her driving privilege has been previously suspended for a~~
26 ~~prior refusal to submit to a lawful test of his or her breath,~~
27 ~~urine, or blood,~~ is a misdemeanor; and

28 (e) Who, after having been so informed, refuses
29 ~~refused~~ to submit to any such test when requested to do so by
30 a law enforcement officer or correctional officer,
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1 commits a misdemeanor of the first degree and is subject to
2 punishment as provided in s. 775.082 or s. 775.083.

3 Section 3. Paragraphs (a) and (c) of subsection (1) of
4 section 327.352, Florida Statutes, are amended to read:

5 327.352 Tests for alcohol, chemical substances, or
6 controlled substances; implied consent; refusal.--

7 (1)(a)1. The Legislature declares that the operation
8 of a vessel is a privilege that must be exercised in a
9 reasonable manner. In order to protect the public health and
10 safety, it is essential that a lawful and effective means of
11 reducing the incidence of boating while impaired or
12 intoxicated be established. Therefore, any person who accepts
13 the privilege extended by the laws of this state of operating
14 a vessel within this state is, by so operating such vessel,
15 deemed to have given his or her consent to submit to an
16 approved chemical test or physical test including, but not
17 limited to, an infrared light test of his or her breath for
18 the purpose of determining the alcoholic content of his or her
19 blood or breath if the person is lawfully arrested for any
20 offense allegedly committed while the person was operating a
21 vessel while under the influence of alcoholic beverages. 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 administration of a
27 breath test does not preclude the administration of another
28 type of test. The person shall be told that his or her failure
29 to submit to any lawful test of his or her breath will result
30 in a civil penalty of \$500, and shall also be told that if he
31 or she refuses to submit to a lawful test of his or her breath

1 ~~and he or she has been previously fined for refusal to submit~~
2 ~~to any lawful test of his or her breath, urine, or blood, he~~
3 or she commits a misdemeanor in addition to any other
4 penalties. The refusal to submit to a chemical or physical
5 breath test upon the request of a law enforcement officer as
6 provided in this section is admissible into evidence in any
7 criminal proceeding.

8 2. Any person who accepts the privilege extended by
9 the laws of this state of operating a vessel within this state
10 is, by so operating such vessel, deemed to have given his or
11 her consent to submit to a urine test for the purpose of
12 detecting the presence of chemical substances as set forth in
13 s. 877.111 or controlled substances if the person is lawfully
14 arrested for any offense allegedly committed while the person
15 was operating a vessel while under the influence of chemical
16 substances or controlled substances. The urine test must be
17 incidental to a lawful arrest and administered at a detention
18 facility or any other facility, mobile or otherwise, which is
19 equipped to administer such tests at the request of a law
20 enforcement officer who has reasonable cause to believe such
21 person was operating a vessel within this state while under
22 the influence of chemical substances or controlled substances.
23 The urine test shall be administered at a detention facility
24 or any other facility, mobile or otherwise, which is equipped
25 to administer such test in a reasonable manner that will
26 ensure the accuracy of the specimen and maintain the privacy
27 of the individual involved. The administration of a urine test
28 does not preclude the administration of another type of test.
29 The person shall be told that his or her failure to submit to
30 any lawful test of his or her urine will result in a civil
31 penalty of \$500, and shall also be told that if he or she

1 | refuses to submit to a lawful test of his or her urine ~~and he~~
2 | ~~or she has been previously fined for refusal to submit to any~~
3 | ~~lawful test of his or her breath, urine, or blood,~~ he or she
4 | commits a misdemeanor in addition to any other penalties. The
5 | refusal to submit to a urine test upon the request of a law
6 | enforcement officer as provided in this section is admissible
7 | into evidence in any criminal proceeding.

8 | (c) Any person who accepts the privilege extended by
9 | the laws of this state of operating a vessel within this state
10 | is, by operating such vessel, deemed to have given his or her
11 | consent to submit to an approved blood test for the purpose of
12 | determining the alcoholic content of the blood or a blood test
13 | for the purpose of determining the presence of chemical
14 | substances or controlled substances as provided in this
15 | section if there is reasonable cause to believe the person was
16 | operating a vessel while under the influence of alcoholic
17 | beverages or chemical or controlled substances and the person
18 | appears for treatment at a hospital, clinic, or other medical
19 | facility and the administration of a breath or urine test is
20 | impractical or impossible. As used in this paragraph, the term
21 | "other medical facility" includes an ambulance or other
22 | medical emergency vehicle. The blood test shall be performed
23 | in a reasonable manner. Any person who is incapable of
24 | refusal by reason of unconsciousness or other mental or
25 | physical condition is deemed not to have withdrawn his or her
26 | consent to such test. Any person who is capable of refusal
27 | shall be told that his or her failure to submit to such a
28 | blood test will result in a civil penalty of \$500 and that a
29 | refusal to submit to a lawful test of his or her blood, ~~if he~~
30 | ~~or she has been previously fined for refusal to submit to any~~
31 | ~~lawful test of his or her breath, urine, or blood,~~ is a

1 misdemeanor. The refusal to submit to a blood test upon the
2 request of a law enforcement officer shall be admissible in
3 evidence in any criminal proceeding.

4 Section 4. Section 327.359, Florida Statutes, is
5 amended to read:

6 327.359 Refusal to submit to testing; penalties.--Any
7 person who refuses ~~has refused~~ to submit to a chemical or
8 physical test of his or her breath, blood, or urine, as
9 described in s. 327.352, ~~and who has been previously fined for~~
10 ~~refusal to submit to a lawful test of his or her breath,~~
11 ~~urine, or blood,~~and:

12 (1) Who the arresting law enforcement officer had
13 probable cause to believe was operating or in actual physical
14 control of a vessel in this state while under the influence of
15 alcoholic beverages, chemical substances, or controlled
16 substances;

17 (2) Who was placed under lawful arrest for a violation
18 of s. 327.35 unless such test was requested pursuant to s.
19 327.352(1)(c);

20 (3) Who was informed that if he or she refused to
21 submit to such test he or she is subject to a fine of \$500;

22 (4) Who was informed that a refusal to submit to a
23 lawful test of his or her breath, urine, or blood, ~~if he or~~
24 ~~she has been previously fined for refusal to submit to a~~
25 ~~lawful test of his or her breath, urine, or blood,~~is a
26 misdemeanor; and

27 (5) Who, after having been so informed, refuses
28 ~~refused~~ to submit to any such test when requested to do so by
29 a law enforcement officer or correctional officer,
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1 commits a misdemeanor of the first degree and is subject to
2 punishment as provided in s. 775.082 or s. 775.083.

3 Section 5. This act shall take effect July 1, 2004.
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6 SENATE SUMMARY

7 Provides that it is a first-degree misdemeanor to refuse
8 to submit to a breath, urine, or blood test upon the
9 request of a law enforcement officer while operating a
10 motor vehicle or vessel, regardless of whether it is the
11 first refusal or a second or subsequent refusal to submit
12 to such a test.
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