

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Porth offered the following:

2  
3 **Amendment**

4 Remove lines 309-571 and insert:  
5 required inspection of such instrument.

6  
7 Full information does not include manuals, schematics, or  
8 software of the instrument used to test the person or any other  
9 material that is not in the actual possession of the state.

10 Additionally, full information does not include information in  
11 the possession of the manufacturer of the test instrument.

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

24 |       Section 2. Section 316.1939, Florida Statutes, is amended  
25 | to read:

26 |       316.1939 Refusal to submit to testing; penalties.--

27 |       (1) Any person who has refused to submit to a chemical or  
28 | physical test of his or her breath, blood, or urine, as  
29 | described in s. 316.1932, ~~and whose driving privilege was~~  
30 | ~~previously suspended for a prior refusal to submit to a lawful~~  
31 | ~~test of his or her breath, urine, or blood, and:~~

32 |       (a) Who the arresting law enforcement officer had probable  
33 | cause to believe was driving or in actual physical control of a  
34 | motor vehicle in this state while under the influence of  
35 | alcoholic beverages, chemical substances, or controlled  
36 | substances;

37 |       (b) Who was placed under lawful arrest for a violation of  
38 | s. 316.193 unless such test was requested pursuant to s.  
39 | 316.1932(1)(c);

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

44 |       (d) Who was informed that a refusal to submit to a lawful  
45 | test of his or her breath, urine, or blood, ~~if his or her~~  
46 | ~~driving privilege has been previously suspended for a prior~~

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47 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
48 ~~or blood,~~ is a misdemeanor; and

49 (e) Who, after having been so informed, refused to submit  
50 to any such test when requested to do so by a law enforcement  
51 officer or correctional officer,

52

53 commits the offense of refusal to submit to testing. If such  
54 person's driving privilege was previously suspended for a prior  
55 refusal to submit to a lawful test of his or her breath, urine,  
56 or blood, such offense is a misdemeanor of the first degree,  
57 punishable and is subject to punishment as provided in s.  
58 775.082 or s. 775.083. If such person's driving privilege was  
59 not previously suspended for a prior refusal to submit to a  
60 lawful test of his or her breath, urine, or blood, such offense  
61 shall be punished by imprisonment for not more than 6 months and  
62 by a fine of up to \$500.

63 (2) The disposition of any administrative proceeding that  
64 relates to the suspension of a person's driving privilege does  
65 not affect a criminal action under this section.

66 (3) The disposition of a criminal action under this  
67 section does not affect any administrative proceeding that  
68 relates to the suspension of a person's driving privilege. The  
69 department's records showing that a person's license has been  
70 previously suspended for a prior refusal to submit to a lawful  
71 test of his or her breath, urine, or blood shall be admissible  
72 and shall create a rebuttable presumption of such suspension.

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

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75 327.352 Tests for alcohol, chemical substances, or  
76 controlled substances; implied consent; refusal.--

77 (1)(a)1. The Legislature declares that the operation of a  
78 vessel is a privilege that must be exercised in a reasonable  
79 manner. In order to protect the public health and safety, it is  
80 essential that a lawful and effective means of reducing the  
81 incidence of boating while impaired or intoxicated be  
82 established. Therefore, any person who accepts the privilege  
83 extended by the laws of this state of operating a vessel within  
84 this state is, by so operating such vessel, deemed to have given  
85 his or her consent to submit to an approved chemical test or  
86 physical test including, but not limited to, an infrared light  
87 test of his or her breath for the purpose of determining the  
88 alcoholic content of his or her blood or breath if the person is  
89 lawfully arrested for any offense allegedly committed while the  
90 person was operating a vessel while under the influence of  
91 alcoholic beverages. The chemical or physical breath test must  
92 be incidental to a lawful arrest and administered at the request  
93 of a law enforcement officer who has reasonable cause to believe  
94 such person was operating the vessel within this state while  
95 under the influence of alcoholic beverages. The administration  
96 of a breath test does not preclude the administration of another  
97 type of test. The person shall be told that his or her failure  
98 to submit to any lawful test of his or her breath will result in  
99 a civil penalty of \$500~~7~~ and shall also be told that if he or  
100 she refuses to submit to a lawful test of his or her breath ~~and~~  
101 ~~he or she has been previously fined for refusal to submit to any~~  
102 ~~lawful test of his or her breath, urine, or blood,~~ he or she  
103 commits a misdemeanor in addition to any other penalties. The

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104 refusal to submit to a chemical or physical breath test upon the  
105 request of a law enforcement officer as provided in this section  
106 is admissible into evidence in any criminal proceeding.

107         2. Any person who accepts the privilege extended by the  
108 laws of this state of operating a vessel within this state is,  
109 by so operating such vessel, deemed to have given his or her  
110 consent to submit to a urine test for the purpose of detecting  
111 the presence of chemical substances as set forth in s. 877.111  
112 or controlled substances if the person is lawfully arrested for  
113 any offense allegedly committed while the person was operating a  
114 vessel while under the influence of chemical substances or  
115 controlled substances. The urine test must be incidental to a  
116 lawful arrest and administered at a detention facility or any  
117 other facility, mobile or otherwise, which is equipped to  
118 administer such tests at the request of a law enforcement  
119 officer who has reasonable cause to believe such person was  
120 operating a vessel within this state while under the influence  
121 of chemical substances or controlled substances. The urine test  
122 shall be administered at a detention facility or any other  
123 facility, mobile or otherwise, which is equipped to administer  
124 such test in a reasonable manner that will ensure the accuracy  
125 of the specimen and maintain the privacy of the individual  
126 involved. The administration of a urine test does not preclude  
127 the administration of another type of test. The person shall be  
128 told that his or her failure to submit to any lawful test of his  
129 or her urine will result in a civil penalty of \$500~~7~~ and shall  
130 also be told that if he or she refuses to submit to a lawful  
131 test of his or her urine ~~and he or she has been previously fined~~  
132 ~~for refusal to submit to any lawful test of his or her breath,~~

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133 ~~urine, or blood~~, he or she commits a misdemeanor in addition to  
134 any other penalties. The refusal to submit to a urine test upon  
135 the request of a law enforcement officer as provided in this  
136 section is admissible into evidence in any criminal proceeding.

137 (c) Any person who accepts the privilege extended by the  
138 laws of this state of operating a vessel within this state is,  
139 by operating such vessel, deemed to have given his or her  
140 consent to submit to an approved blood test for the purpose of  
141 determining the alcoholic content of the blood or a blood test  
142 for the purpose of determining the presence of chemical  
143 substances or controlled substances as provided in this section  
144 if there is reasonable cause to believe the person was operating  
145 a vessel while under the influence of alcoholic beverages or  
146 chemical or controlled substances and the person appears for  
147 treatment at a hospital, clinic, or other medical facility and  
148 the administration of a breath or urine test is impractical or  
149 impossible. As used in this paragraph, the term "other medical  
150 facility" includes an ambulance or other medical emergency  
151 vehicle. The blood test shall be performed in a reasonable  
152 manner. Any person who is incapable of refusal by reason of  
153 unconsciousness or other mental or physical condition is deemed  
154 not to have withdrawn his or her consent to such test. Any  
155 person who is capable of refusal shall be told that his or her  
156 failure to submit to such a blood test will result in a civil  
157 penalty of \$500 and that a refusal to submit to a lawful test of  
158 his or her blood, ~~if he or she has previously been fined for~~  
159 ~~refusal to submit to any lawful test of his or her breath,~~  
160 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a

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161 blood test upon the request of a law enforcement officer shall  
162 be admissible in evidence in any criminal proceeding.

163 (e)1. The tests determining the weight of alcohol in the  
164 defendant's blood or breath shall be administered at the request  
165 of a law enforcement officer substantially in accordance with  
166 rules of the Department of Law Enforcement. However, the failure  
167 of a law enforcement officer to request the withdrawal of blood  
168 does not affect the admissibility of a test of blood withdrawn  
169 for medical purposes.

170 2. Only a physician, certified paramedic, registered  
171 nurse, licensed practical nurse, other personnel authorized by a  
172 hospital to draw blood, or duly licensed clinical laboratory  
173 director, supervisor, technologist, or technician, acting at the  
174 request of a law enforcement officer, may withdraw blood for the  
175 purpose of determining its alcoholic content or the presence of  
176 chemical substances or controlled substances therein. However,  
177 the failure of a law enforcement officer to request the  
178 withdrawal of blood does not affect the admissibility of a test  
179 of blood withdrawn for medical purposes.

180 3. The person tested may, at his or her own expense, have  
181 a physician, registered nurse, other personnel authorized by a  
182 hospital to draw blood, or duly licensed clinical laboratory  
183 director, supervisor, technologist, or technician, or other  
184 person of his or her own choosing administer an independent test  
185 in addition to the test administered at the direction of the law  
186 enforcement officer for the purpose of determining the amount of  
187 alcohol in the person's blood or breath or the presence of  
188 chemical substances or controlled substances at the time  
189 alleged, as shown by chemical analysis of his or her blood or  
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190 urine, or by chemical or physical test of his or her breath. The  
191 failure or inability to obtain an independent test by a person  
192 does not preclude the admissibility in evidence of the test  
193 taken at the direction of the law enforcement officer. The law  
194 enforcement officer shall not interfere with the person's  
195 opportunity to obtain the independent test and shall provide the  
196 person with timely telephone access to secure the test, but the  
197 burden is on the person to arrange and secure the test at the  
198 person's own expense.

199 4. Upon the request of the person tested, full information  
200 concerning the results of the test taken at the direction of the  
201 law enforcement officer shall be made available to the person or  
202 his or her attorney. Full information is limited to the  
203 following:

204 a. The type of test administered and the procedures  
205 followed.

206 b. The time of the collection of the blood or breath  
207 sample analyzed.

208 c. The numerical results of the test indicating the  
209 alcohol content of the blood and breath.

210 d. The type and status of any permit issued by the  
211 Department of Law Enforcement which was held by the person who  
212 performed the test.

213 e. If the test was administered by means of a breath  
214 testing instrument, the date of performance of the most recent  
215 required inspection of such instrument.

216  
217 Full information does not include manuals, schematics, or  
218 software of the instrument used to test the person or any other  
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219 material that is not in the actual possession of the state.  
220 Additionally, full information does not include information in  
221 the possession of the manufacturer of the test instrument.

222 5. A hospital, clinical laboratory, medical clinic, or  
223 similar medical institution or physician, certified paramedic,  
224 registered nurse, licensed practical nurse, other personnel  
225 authorized by a hospital to draw blood, or duly licensed  
226 clinical laboratory director, supervisor, technologist, or  
227 technician, or other person assisting a law enforcement officer  
228 does not incur any civil or criminal liability as a result of  
229 the withdrawal or analysis of a blood or urine specimen, or the  
230 chemical or physical test of a person's breath pursuant to  
231 accepted medical standards when requested by a law enforcement  
232 officer, regardless of whether or not the subject resisted  
233 administration of the test.

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

236 327.359 Refusal to submit to testing; penalties.--Any  
237 person who has refused to submit to a chemical or physical test  
238 of his or her breath, blood, or urine, as described in s.  
239 ~~327.352, and who has been previously fined for refusal to submit~~  
240 ~~to a lawful test of his or her breath, urine, or blood, and:~~

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

245 (2) Who was placed under lawful arrest for a violation of  
246 s. 327.35 unless such test was requested pursuant to s.

247 327.352(1)(c);

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

250 (4) Who was informed that a refusal to submit to a lawful  
251 test of his or her breath, urine, or blood, ~~if he or she has~~  
252 ~~been previously fined for refusal to submit to a lawful test of~~  
253 ~~his or her breath, urine, or blood,~~ is a misdemeanor; and

254 (5) Who, after having been so informed, refused to submit  
255 to any such test when requested to do so by a law enforcement  
256 officer or correctional officer,

257  
258 commits the offense of refusal to submit to testing. If such  
259 person has previously been fined for a prior refusal to submit  
260 to a lawful test of his or her breath, urine, or blood, such  
261 offense is a misdemeanor of the first degree, punishable and is  
262 subject to punishment as provided in s. 775.082 or s. 775.083.  
263 If such person has not previously been fined for a prior refusal  
264 to submit to a lawful test of his or her breath, urine, or  
265 blood, such offense shall be punished by imprisonment for not  
266 more than 6 months and by a fine of up to \$500.