

Bill No. HB 187, 1st Eng.

Barcode 623682

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator King moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause,

and insert:

Section 1. Paragraphs (a), (c), and (f) of subsection
(1) of section 316.1932, Florida Statutes, are amended to
read:

316.1932 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 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

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

24 b. Any person who accepts the privilege extended by
25 the laws of this state of operating a motor vehicle within
26 this state is, by so operating such vehicle, deemed to have
27 given his or her consent to submit to a urine test for the
28 purpose of detecting the presence of chemical substances as
29 set forth in s. 877.111 or controlled substances if the person
30 is lawfully arrested for any offense allegedly committed while
31 the person was driving or was in actual physical control of a

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1 motor vehicle while under the influence of chemical substances
2 or controlled substances. The urine test must be incidental to
3 a lawful arrest and administered at a detention facility or
4 any other facility, mobile or otherwise, which is equipped to
5 administer such tests at the request of a law enforcement
6 officer who has reasonable cause to believe such person was
7 driving or was in actual physical control of a motor vehicle
8 within this state while under the influence of chemical
9 substances or controlled substances. The urine test shall be
10 administered at a detention facility or any other facility,
11 mobile or otherwise, which is equipped to administer such test
12 in a reasonable manner that will ensure the accuracy of the
13 specimen and maintain the privacy of the individual involved.
14 The administration of a urine 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 urine will result in the suspension of the person's
18 privilege to operate a motor vehicle for a period of 1 year
19 for the first refusal, or for a period of 18 months if the
20 driving privilege of such person has been previously suspended
21 as a result of a refusal to submit to such a test or tests,
22 and shall also be told that if he or she refuses to submit to
23 a lawful test of his or her urine and his or her driving
24 privilege has been previously suspended for a prior refusal to
25 submit to a lawful test of his or her breath, urine, or blood,
26 he or she commits a misdemeanor in addition to any other
27 penalties. The refusal to submit to a urine test upon the
28 request of a law enforcement officer as provided in this
29 section is admissible into evidence in any criminal
30 proceeding.

31 2. The Alcohol Testing Program within the Department

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1 of Law Enforcement is responsible for the regulation of the
2 operation, inspection, and registration of breath test
3 instruments utilized under the driving and boating under the
4 influence provisions and related provisions located in this
5 chapter and chapters 322 and 327. The program is responsible
6 for the regulation of the individuals who operate, inspect,
7 and instruct on the breath test instruments utilized in the
8 driving and boating under the influence provisions and related
9 provisions located in this chapter and chapters 322 and 327.
10 The program is further responsible for the regulation of blood
11 analysts who conduct blood testing to be utilized under the
12 driving and boating under the influence provisions and related
13 provisions located in this chapter and chapters 322 and 327.
14 The program shall:

- 15 a. Establish uniform criteria for the issuance of
- 16 permits to breath test operators, agency inspectors,
- 17 instructors, blood analysts, and instruments.
- 18 b. Have the authority to permit breath test operators,
- 19 agency inspectors, instructors, blood analysts, and
- 20 instruments.
- 21 c. Have the authority to discipline and suspend,
- 22 revoke, or renew the permits of breath test operators, agency
- 23 inspectors, instructors, blood analysts, and instruments.
- 24 d. Establish uniform requirements for instruction and
- 25 curricula for the operation and inspection of approved
- 26 instruments.
- 27 e. Have the authority to specify one approved
- 28 curriculum for the operation and inspection of approved
- 29 instruments.
- 30 f. Establish a procedure for the approval of breath
- 31 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 322 and 327.

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 322, or
 19 chapter 327.

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 322 and 327.

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

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1 and related provisions located in this chapter and chapters
2 322 and 327.

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 322 and 327. 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 motor vehicle within
15 this state is, by operating such vehicle, deemed to have given
16 his or her consent to submit to an approved blood test for the
17 purpose of determining the alcoholic content of the blood or a
18 blood test for the purpose of determining the presence of
19 chemical substances or controlled substances as provided in
20 this section if there is reasonable cause to believe the
21 person was driving or in actual physical control of a motor
22 vehicle while under the influence of alcoholic beverages or
23 chemical or controlled substances and the person appears for
24 treatment at a hospital, clinic, or other medical facility and
25 the administration of a breath or urine test is impractical or
26 impossible. As used in this paragraph, the term "other medical
27 facility" includes an ambulance or other medical emergency
28 vehicle. The blood test shall be performed in a reasonable
29 manner. Any person who is incapable of refusal by reason of
30 unconsciousness or other mental or physical condition is
31 deemed not to have withdrawn his or her consent to such test.

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1 A blood test may be administered whether or not the person is
2 told that his or her failure to submit to such a blood test
3 will result in the suspension of the person's privilege to
4 operate a motor vehicle upon the public highways of this state
5 and that a refusal to submit to a lawful test of his or her
6 blood, if his or her driving privilege has been previously
7 suspended for refusal to submit to a lawful test of his or her
8 breath, urine, or blood, is a misdemeanor. Any person who is
9 capable of refusal shall be told that his or her failure to
10 submit to such a blood test will result in the suspension of
11 the person's privilege to operate a motor vehicle for a period
12 of 1 year for a first refusal, or for a period of 18 months if
13 the driving privilege of the person has been suspended
14 previously as a result of a refusal to submit to such a test
15 or tests, and that a refusal to submit to a lawful test of his
16 or her blood, if his or her driving privilege has been
17 previously suspended for a prior refusal to submit to a lawful
18 test of his or her breath, urine, or blood, is a misdemeanor.
19 The refusal to submit to a blood test upon the request of a
20 law enforcement officer is admissible in evidence in any
21 criminal proceeding.

22 (f)1. The tests determining the weight of alcohol in
23 the defendant's blood or breath shall be administered at the
24 request of a law enforcement officer substantially in
25 accordance with rules of the Department of Law Enforcement.
26 Such rules must specify precisely the test or tests that are
27 approved by the Department of Law Enforcement for reliability
28 of result and ease of administration, and must provide an
29 approved method of administration which must be followed in
30 all such tests given under this section. However, the failure
31 of a law enforcement officer to request the withdrawal of

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1 | blood does not affect the admissibility of a test of blood
2 | withdrawn for medical purposes.

3 | 2.a. Only a physician, certified paramedic, registered
4 | nurse, licensed practical nurse, other personnel authorized by
5 | a hospital to draw blood, or duly licensed clinical laboratory
6 | director, supervisor, technologist, or technician, acting at
7 | the request of a law enforcement officer, may withdraw blood
8 | for the purpose of determining its alcoholic content or the
9 | presence of chemical substances or controlled substances
10 | therein. However, the failure of a law enforcement officer to
11 | request the withdrawal of blood does not affect the
12 | admissibility of a test of blood withdrawn for medical
13 | purposes.

14 | b. Notwithstanding any provision of law pertaining to
15 | the confidentiality of hospital records or other medical
16 | records, if a health care provider, who is providing medical
17 | care in a health care facility to a person injured in a motor
18 | vehicle crash, becomes aware, as a result of any blood test
19 | performed in the course of that medical treatment, that the
20 | person's blood-alcohol level meets or exceeds the
21 | blood-alcohol level specified in s. 316.193(1)(b), the health
22 | care provider may notify any law enforcement officer or law
23 | enforcement agency. Any such notice must be given within a
24 | reasonable time after the health care provider receives the
25 | test result. Any such notice shall be used only for the
26 | purpose of providing the law enforcement officer with
27 | reasonable cause to request the withdrawal of a blood sample
28 | pursuant to this section.

29 | c. The notice shall consist only of the name of the
30 | person being treated, the name of the person who drew the
31 | blood, the blood-alcohol level indicated by the test, and the

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1 date and time of the administration of the test.

2 d. Nothing contained in s. 395.3025(4), s. 456.057, or
3 any applicable practice act affects the authority to provide
4 notice under this section, and the health care provider is not
5 considered to have breached any duty owed to the person under
6 s. 395.3025(4), s. 456.057, or any applicable practice act by
7 providing notice or failing to provide notice. It shall not be
8 a breach of any ethical, moral, or legal duty for a health
9 care provider to provide notice or fail to provide notice.

10 e. A civil, criminal, or administrative action may not
11 be brought against any person or health care provider
12 participating in good faith in the provision of notice or
13 failure to provide notice as provided in this section. Any
14 person or health care provider participating in the provision
15 of notice or failure to provide notice as provided in this
16 section shall be immune from any civil or criminal liability
17 and from any professional disciplinary action with respect to
18 the provision of notice or failure to provide notice under
19 this section. Any such participant has the same immunity with
20 respect to participating in any judicial proceedings resulting
21 from the notice or failure to provide notice.

22 3. The person tested may, at his or her own expense,
23 have a physician, registered nurse, other personnel authorized
24 by a hospital to draw blood, or duly licensed clinical
25 laboratory director, supervisor, technologist, or technician,
26 or other person of his or her own choosing administer an
27 independent test in addition to the test administered at the
28 direction of the law enforcement officer for the purpose of
29 determining the amount of alcohol in the person's blood or
30 breath or the presence of chemical substances or controlled
31 substances at the time alleged, as shown by chemical analysis

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1 of his or her blood or urine, or by chemical or physical test
2 of his or her breath. The failure or inability to obtain an
3 independent test by a person does not preclude the
4 admissibility in evidence of the test taken at the direction
5 of the law enforcement officer. The law enforcement officer
6 shall not interfere with the person's opportunity to obtain
7 the independent test and shall provide the person with timely
8 telephone access to secure the test, but the burden is on the
9 person to arrange and secure the test at the person's own
10 expense.

11 4. Upon the request of the person tested, full
12 information concerning the results of the test taken at the
13 direction of the law enforcement officer shall be made
14 available to the person or his or her attorney. Full
15 information is limited to the following:

16 a. The type of test administered and the procedures
17 followed.

18 b. The time of the collection of the blood or breath
19 sample analyzed.

20 c. The numerical results of the test indicating the
21 alcohol content of the blood and breath.

22 d. The type and status of any permit issued by the
23 Department of Law Enforcement which was held by the person who
24 performed the test.

25 e. If the test was administered by means of a breath
26 testing instrument, the date of performance of the most recent
27 required inspection of such instrument.

28
29 Full information does not include manuals, schematics, or
30 software of the instrument used to test the person or any
31 other material that is not in the actual possession of the

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1 state. Additionally, full information does not include
2 information in the possession of the manufacturer of the test
3 instrument.

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

16 Section 2. Paragraphs (a), (c), and (e) of subsection
17 (1) of section 327.352, Florida Statutes, are amended to read:

18 327.352 Tests for alcohol, chemical substances, or
19 controlled substances; implied consent; refusal.--

20 (1)(a)1. The Legislature declares that the operation
21 of a vessel is a privilege that must be exercised in a
22 reasonable manner. In order to protect the public health and
23 safety, it is essential that a lawful and effective means of
24 reducing the incidence of boating while impaired or
25 intoxicated be established. Therefore, any person who accepts
26 the privilege extended by the laws of this state of operating
27 a vessel within this state is, by so operating such vessel,
28 deemed to have given his or her consent to submit to an
29 approved chemical test or physical test including, but not
30 limited to, an infrared light test of his or her breath for
31 the purpose of determining the alcoholic content of his or her

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1 blood or breath if the person is lawfully arrested for any
2 offense allegedly committed while the person was operating a
3 vessel while under the influence of alcoholic beverages. The
4 chemical or physical breath test must be incidental to a
5 lawful arrest and administered at the request of a law
6 enforcement officer who has reasonable cause to believe such
7 person was operating the vessel within this state while under
8 the influence of alcoholic beverages. The administration of a
9 breath test does not preclude the administration of another
10 type of test. The person shall be told that his or her failure
11 to submit to any lawful test of his or her breath will result
12 in a civil penalty of \$500, and shall also be told that if he
13 or she refuses to submit to a lawful test of his or her breath
14 and he or she has been previously fined for refusal to submit
15 to any lawful test of his or her breath, urine, or blood, he
16 or she commits a misdemeanor in addition to any other
17 penalties. The refusal to submit to a chemical or physical
18 breath test upon the request of a law enforcement officer as
19 provided in this section is admissible into evidence in any
20 criminal proceeding.

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

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

21 | (c) Any person who accepts the privilege extended by
22 | the laws of this state of operating a vessel within this state
23 | is, by operating such vessel, deemed to have given his or her
24 | consent to submit to an approved blood test for the purpose of
25 | determining the alcoholic content of the blood or a blood test
26 | for the purpose of determining the presence of chemical
27 | substances or controlled substances as provided in this
28 | section if there is reasonable cause to believe the person was
29 | operating a vessel while under the influence of alcoholic
30 | beverages or chemical or controlled substances and the person
31 | appears for treatment at a hospital, clinic, or other medical

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1 facility and the administration of a breath or urine test is
 2 impractical or impossible. As used in this paragraph, the term
 3 "other medical facility" includes an ambulance or other
 4 medical emergency vehicle. The blood test shall be performed
 5 in a reasonable manner. Any person who is incapable of refusal
 6 by reason of unconsciousness or other mental or physical
 7 condition is deemed not to have withdrawn his or her consent
 8 to such test. Any person who is capable of refusal shall be
 9 told that his or her failure to submit to such a blood test
 10 will result in a civil penalty of \$500 and that a refusal to
 11 submit to a lawful test of his or her blood, if he or she has
 12 previously been fined for refusal to submit to any lawful test
 13 of his or her breath, urine, or blood, is a misdemeanor. The
 14 refusal to submit to a blood test upon the request of a law
 15 enforcement officer shall be admissible in evidence in any
 16 criminal proceeding.

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

24 2. Only a physician, certified paramedic, registered
 25 nurse, licensed practical nurse, other personnel authorized by
 26 a hospital to draw blood, or duly licensed clinical laboratory
 27 director, supervisor, technologist, or technician, acting at
 28 the request of a law enforcement officer, may withdraw blood
 29 for the purpose of determining its alcoholic content or the
 30 presence of chemical substances or controlled substances
 31 therein. However, the failure of a law enforcement officer to

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1 request the withdrawal of blood does not affect the
2 admissibility of a test of blood withdrawn for medical
3 purposes.

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

24 4. Upon the request of the person tested, full
25 information concerning the results of the test taken at the
26 direction of the law enforcement officer shall be made
27 available to the person or his or her attorney. Full
28 information is limited to the following:

29 a. The type of test administered and the procedures
30 followed.

31 b. The time of the collection of the blood or breath

1 sample analyzed.

2 c. The numerical results of the test indicating the
3 alcohol content of the blood and breath.

4 d. The type and status of any permit issued by the
5 Department of Law Enforcement which was held by the person who
6 performed the test.

7 e. If the test was administered by means of a breath
8 testing instrument, the date of performance of the most recent
9 required inspection of such instrument.

10

11 Full information does not include manuals, schematics, or
12 software of the instrument used to test the person or any
13 other material that is not in the actual possession of the
14 state. Additionally, full information does not include
15 information in the possession of the manufacturer of the test
16 instrument.

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

29 Section 3. This act shall take effect October 1, 2006.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause,

4

5 and insert:

6 A bill to be entitled

7 An act relating to lawful testing for alcohol,

8 chemical substances, or controlled substances;

9 amending s. 316.1932, F.S.; limiting

10 information to be made available to a person

11 tested to determine the amount of alcohol in

12 the person's blood or breath or the presence of

13 chemical substances or controlled substances;

14 amending s. 327.352, F.S.; limiting information

15 to be made available to a person tested to

16 determine the amount of alcohol in the person's

17 blood or breath or the presence of chemical

18 substances or controlled substances; providing

19 an effective date.

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