

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to lawful testing for alcohol, chemical
7 substances, or controlled substances; amending s.
8 316.1932, F.S.; revising provisions to notify a person
9 that refusal to submit to a lawful test of the person's
10 breath, urine, or blood is a misdemeanor, to conform to
11 changes made by the act; limiting information to be made
12 available to a person tested to determine the amount of
13 alcohol in the person's blood or breath or the presence of
14 chemical substances or controlled substances; amending s.
15 316.1939, F.S.; removing prior suspension as a condition
16 for the commission of a misdemeanor by refusal to submit
17 to a lawful test of breath, urine, or blood; amending s.
18 327.352, F.S.; revising provisions to notify a person that
19 refusal to submit to a lawful test of the person's breath,
20 urine, or blood is a misdemeanor, to conform to changes
21 made by the act; limiting information to be made available
22 to a person tested to determine the amount of alcohol in
23 the person's blood or breath or the presence of chemical

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24 substances or controlled substances; amending s. 327.359,
25 F.S.; removing prior suspension as a condition for the
26 commission of a misdemeanor by refusal to submit to a
27 lawful test of breath, urine, or blood; providing an
28 effective date.

29

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

31

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

34 316.1932 Tests for alcohol, chemical substances, or
35 controlled substances; implied consent; refusal.--

36 (1)(a)1.a. Any person who accepts the privilege extended
37 by the laws of this state of operating a motor vehicle within
38 this state is, by so operating such vehicle, deemed to have
39 given his or her consent to submit to an approved chemical test
40 or physical test including, but not limited to, an infrared
41 light test of his or her breath for the purpose of determining
42 the alcoholic content of his or her blood or breath if the
43 person is lawfully arrested for any offense allegedly committed
44 while the person was driving or was in actual physical control
45 of a motor vehicle while under the influence of alcoholic
46 beverages. The chemical or physical breath test must be
47 incidental to a lawful arrest and administered at the request of
48 a law enforcement officer who has reasonable cause to believe
49 such person was driving or was in actual physical control of the
50 motor vehicle within this state while under the influence of
51 alcoholic beverages. The administration of a breath test does

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52 not preclude the administration of another type of test. The
53 person shall be told that his or her failure to submit to any
54 lawful test of his or her breath will result in the suspension
55 of the person's privilege to operate a motor vehicle for a
56 period of 1 year for a first refusal, or for a period of 18
57 months if the driving privilege of such person has been
58 previously suspended as a result of a refusal to submit to such
59 a test or tests, and shall also be told that if he or she
60 refuses to submit to a lawful test of his or her breath ~~and his~~
61 ~~or her driving privilege has been previously suspended for a~~
62 ~~prior refusal to submit to a lawful test of his or her breath,~~
63 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to
64 any other penalties. The refusal to submit to a chemical or
65 physical breath test upon the request of a law enforcement
66 officer as provided in this section is admissible into evidence
67 in any criminal proceeding.

68 b. Any person who accepts the privilege extended by the
69 laws of this state of operating a motor vehicle within this
70 state is, by so operating such vehicle, deemed to have given his
71 or her consent to submit to a urine test for the purpose of
72 detecting the presence of chemical substances as set forth in s.
73 877.111 or controlled substances if the person is lawfully
74 arrested for any offense allegedly committed while the person
75 was driving or was in actual physical control of a motor vehicle
76 while under the influence of chemical substances or controlled
77 substances. The urine test must be incidental to a lawful arrest
78 and administered at a detention facility or any other facility,
79 mobile or otherwise, which is equipped to administer such tests

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80 at the request of a law enforcement officer who has reasonable
81 cause to believe such person was driving or was in actual
82 physical control of a motor vehicle within this state while
83 under the influence of chemical substances or controlled
84 substances. The urine test shall be administered at a detention
85 facility or any other facility, mobile or otherwise, which is
86 equipped to administer such test in a reasonable manner that
87 will ensure the accuracy of the specimen and maintain the
88 privacy of the individual involved. The administration of a
89 urine test does not preclude the administration of another type
90 of test. The person shall be told that his or her failure to
91 submit to any lawful test of his or her urine will result in the
92 suspension of the person's privilege to operate a motor vehicle
93 for a period of 1 year for the first refusal, or for a period of
94 18 months if the driving privilege of such person has been
95 previously suspended as a result of a refusal to submit to such
96 a test or tests, and shall also be told that if he or she
97 refuses to submit to a lawful test of his or her urine ~~and his~~
98 ~~or her driving privilege has been previously suspended for a~~
99 ~~prior refusal to submit to a lawful test of his or her breath,~~
100 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to
101 any other penalties. The refusal to submit to a urine test upon
102 the request of a law enforcement officer as provided in this
103 section is admissible into evidence in any criminal proceeding.

104 2. The Alcohol Testing Program within the Department of
105 Law Enforcement is responsible for the regulation of the
106 operation, inspection, and registration of breath test
107 instruments utilized under the driving and boating under the

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108 influence provisions and related provisions located in this
109 chapter and chapters 322 and 327. The program is responsible for
110 the regulation of the individuals who operate, inspect, and
111 instruct on the breath test instruments utilized in the driving
112 and boating under the influence provisions and related
113 provisions located in this chapter and chapters 322 and 327. The
114 program is further responsible for the regulation of blood
115 analysts who conduct blood testing to be utilized under the
116 driving and boating under the influence provisions and related
117 provisions located in this chapter and chapters 322 and 327. The
118 program shall:

119 a. Establish uniform criteria for the issuance of permits
120 to breath test operators, agency inspectors, instructors, blood
121 analysts, and instruments.

122 b. Have the authority to permit breath test operators,
123 agency inspectors, instructors, blood analysts, and instruments.

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

127 d. Establish uniform requirements for instruction and
128 curricula for the operation and inspection of approved
129 instruments.

130 e. Have the authority to specify one approved curriculum
131 for the operation and inspection of approved instruments.

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

134 g. Have the authority to approve or disapprove breath test
135 instruments and accompanying paraphernalia for use pursuant to

136 the driving and boating under the influence provisions and
 137 related provisions located in this chapter and chapters 322 and
 138 327.

139 h. With the approval of the executive director of the
 140 Department of Law Enforcement, make and enter into contracts and
 141 agreements with other agencies, organizations, associations,
 142 corporations, individuals, or federal agencies as are necessary,
 143 expedient, or incidental to the performance of duties.

144 i. Issue final orders which include findings of fact and
 145 conclusions of law and which constitute final agency action for
 146 the purpose of chapter 120.

147 j. Enforce compliance with the provisions of this section
 148 through civil or administrative proceedings.

149 k. Make recommendations concerning any matter within the
 150 purview of this section, this chapter, chapter 322, or chapter
 151 327.

152 l. Promulgate rules for the administration and
 153 implementation of this section, including definitions of terms.

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

156 n. Have the authority to approve the type of blood test
 157 utilized under the driving and boating under the influence
 158 provisions and related provisions located in this chapter and
 159 chapters 322 and 327.

160 o. Have the authority to specify techniques and methods
 161 for breath alcohol testing and blood testing utilized under the
 162 driving and boating under the influence provisions and related
 163 provisions located in this chapter and chapters 322 and 327.

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164 p. Have the authority to approve repair facilities for the
165 approved breath test instruments, including the authority to set
166 criteria for approval.

167

168 Nothing in this section shall be construed to supersede
169 provisions in this chapter and chapters 322 and 327. The
170 specifications in this section are derived from the power and
171 authority previously and currently possessed by the Department
172 of Law Enforcement and are enumerated to conform with the
173 mandates of chapter 99-379, Laws of Florida.

174 (c) Any person who accepts the privilege extended by the
175 laws of this state of operating a motor vehicle within this
176 state is, by operating such vehicle, deemed to have given his or
177 her consent to submit to an approved blood test for the purpose
178 of determining the alcoholic content of the blood or a blood
179 test for the purpose of determining the presence of chemical
180 substances or controlled substances as provided in this section
181 if there is reasonable cause to believe the person was driving
182 or in actual physical control of a motor vehicle while under the
183 influence of alcoholic beverages or chemical or controlled
184 substances and the person appears for treatment at a hospital,
185 clinic, or other medical facility and the administration of a
186 breath or urine test is impractical or impossible. As used in
187 this paragraph, the term "other medical facility" includes an
188 ambulance or other medical emergency vehicle. The blood test
189 shall be performed in a reasonable manner. Any person who is
190 incapable of refusal by reason of unconsciousness or other
191 mental or physical condition is deemed not to have withdrawn his

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192 or her consent to such test. A blood test may be administered
193 whether or not the person is told that his or her failure to
194 submit to such a blood test will result in the suspension of the
195 person's privilege to operate a motor vehicle upon the public
196 highways of this state and that a refusal to submit to a lawful
197 test of his or her blood, ~~if his or her driving privilege has~~
198 ~~been previously suspended for refusal to submit to a lawful test~~
199 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any
200 person who is capable of refusal shall be told that his or her
201 failure to submit to such a blood test will result in the
202 suspension of the person's privilege to operate a motor vehicle
203 for a period of 1 year for a first refusal, or for a period of
204 18 months if the driving privilege of the person has been
205 suspended previously as a result of a refusal to submit to such
206 a test or tests, and that a refusal to submit to a lawful test
207 of his or her blood, ~~if his or her driving privilege has been~~
208 ~~previously suspended for a prior refusal to submit to a lawful~~
209 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.
210 The refusal to submit to a blood test upon the request of a law
211 enforcement officer is admissible in evidence in any criminal
212 proceeding.

213 (f)1. The tests determining the weight of alcohol in the
214 defendant's blood or breath shall be administered at the request
215 of a law enforcement officer substantially in accordance with
216 rules of the Department of Law Enforcement. Such rules must
217 specify precisely the test or tests that are approved by the
218 Department of Law Enforcement for reliability of result and ease
219 of administration, and must provide an approved method of

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220 administration which must be followed in all such tests given
221 under this section. However, the failure of a law enforcement
222 officer to request the withdrawal of blood does not affect the
223 admissibility of a test of blood withdrawn for medical purposes.

224 2.a. Only a physician, certified paramedic, registered
225 nurse, licensed practical nurse, other personnel authorized by a
226 hospital to draw blood, or duly licensed clinical laboratory
227 director, supervisor, technologist, or technician, acting at the
228 request of a law enforcement officer, may withdraw blood for the
229 purpose of determining its alcoholic content or the presence of
230 chemical substances or controlled substances therein. However,
231 the failure of a law enforcement officer to request the
232 withdrawal of blood does not affect the admissibility of a test
233 of blood withdrawn for medical purposes.

234 b. Notwithstanding any provision of law pertaining to the
235 confidentiality of hospital records or other medical records, if
236 a health care provider, who is providing medical care in a
237 health care facility to a person injured in a motor vehicle
238 crash, becomes aware, as a result of any blood test performed in
239 the course of that medical treatment, that the person's blood-
240 alcohol level meets or exceeds the blood-alcohol level specified
241 in s. 316.193(1)(b), the health care provider may notify any law
242 enforcement officer or law enforcement agency. Any such notice
243 must be given within a reasonable time after the health care
244 provider receives the test result. Any such notice shall be used
245 only for the purpose of providing the law enforcement officer
246 with reasonable cause to request the withdrawal of a blood
247 sample pursuant to this section.

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248 c. The notice shall consist only of the name of the person
249 being treated, the name of the person who drew the blood, the
250 blood-alcohol level indicated by the test, and the date and time
251 of the administration of the test.

252 d. Nothing contained in s. 395.3025(4), s. 456.057, or any
253 applicable practice act affects the authority to provide notice
254 under this section, and the health care provider is not
255 considered to have breached any duty owed to the person under s.
256 395.3025(4), s. 456.057, or any applicable practice act by
257 providing notice or failing to provide notice. It shall not be a
258 breach of any ethical, moral, or legal duty for a health care
259 provider to provide notice or fail to provide notice.

260 e. A civil, criminal, or administrative action may not be
261 brought against any person or health care provider participating
262 in good faith in the provision of notice or failure to provide
263 notice as provided in this section. Any person or health care
264 provider participating in the provision of notice or failure to
265 provide notice as provided in this section shall be immune from
266 any civil or criminal liability and from any professional
267 disciplinary action with respect to the provision of notice or
268 failure to provide notice under this section. Any such
269 participant has the same immunity with respect to participating
270 in any judicial proceedings resulting from the notice or failure
271 to provide notice.

272 3. The person tested may, at his or her own expense, have
273 a physician, registered nurse, other personnel authorized by a
274 hospital to draw blood, or duly licensed clinical laboratory
275 director, supervisor, technologist, or technician, or other

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276 person of his or her own choosing administer an independent test
277 in addition to the test administered at the direction of the law
278 enforcement officer for the purpose of determining the amount of
279 alcohol in the person's blood or breath or the presence of
280 chemical substances or controlled substances at the time
281 alleged, as shown by chemical analysis of his or her blood or
282 urine, or by chemical or physical test of his or her breath. The
283 failure or inability to obtain an independent test by a person
284 does not preclude the admissibility in evidence of the test
285 taken at the direction of the law enforcement officer. The law
286 enforcement officer shall not interfere with the person's
287 opportunity to obtain the independent test and shall provide the
288 person with timely telephone access to secure the test, but the
289 burden is on the person to arrange and secure the test at the
290 person's own expense.

291 4. Upon the request of the person tested, full information
292 concerning the results of the test taken at the direction of the
293 law enforcement officer shall be made available to the person or
294 his or her attorney. Full information is limited to the
295 following:

296 a. The type of test administered and the procedures
297 followed.

298 b. The time of the collection of the blood or breath
299 sample analyzed.

300 c. The numerical results of the test indicating the
301 alcohol content of the blood and breath.

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302 d. The type and status of any permit issued by the
 303 Department of Law Enforcement which was held by the person who
 304 performed the test.

305 e. If the test was administered by means of a breath
 306 testing instrument, the date of performance of the most recent
 307 required maintenance of such instrument.

308
 309 Full information does not include manuals, schematics, or
 310 software of the instrument used to test the person or any other
 311 material that is not in the actual possession of the state.
 312 Additionally, full information does not include information in
 313 the possession of the manufacturer of the test instrument.

314 5. A hospital, clinical laboratory, medical clinic, or
 315 similar medical institution or physician, certified paramedic,
 316 registered nurse, licensed practical nurse, other personnel
 317 authorized by a hospital to draw blood, or duly licensed
 318 clinical laboratory director, supervisor, technologist, or
 319 technician, or other person assisting a law enforcement officer
 320 does not incur any civil or criminal liability as a result of
 321 the withdrawal or analysis of a blood or urine specimen, or the
 322 chemical or physical test of a person's breath pursuant to
 323 accepted medical standards when requested by a law enforcement
 324 officer, regardless of whether or not the subject resisted
 325 administration of the test.

326 Section 2. Section 316.1939, Florida Statutes, is amended
 327 to read:

328 316.1939 Refusal to submit to testing; penalties.--

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329 (1) Any person who has refused to submit to a chemical or
 330 physical test of his or her breath, blood, or urine, as
 331 described in s. 316.1932, ~~and whose driving privilege was~~
 332 ~~previously suspended for a prior refusal to submit to a lawful~~
 333 ~~test of his or her breath, urine, or blood,~~ and:

334 (a) Who the arresting law enforcement officer had probable
 335 cause to believe was driving or in actual physical control of a
 336 motor vehicle in this state while under the influence of
 337 alcoholic beverages, chemical substances, or controlled
 338 substances;

339 (b) Who was placed under lawful arrest for a violation of
 340 s. 316.193 unless such test was requested pursuant to s.
 341 316.1932(1)(c);

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

346 (d) Who was informed that a refusal to submit to a lawful
 347 test of his or her breath, urine, or blood, ~~if his or her~~
 348 ~~driving privilege has been previously suspended for a prior~~
 349 ~~refusal to submit to a lawful test of his or her breath, urine,~~
 350 ~~or blood,~~ is a misdemeanor; and

351 (e) Who, after having been so informed, refused to submit
 352 to any such test when requested to do so by a law enforcement
 353 officer or correctional officer,
 354
 355 commits a misdemeanor of the first degree, punishable ~~and is~~
 356 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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

360 (3) The disposition of a criminal action under this
361 section does not affect any administrative proceeding that
362 relates to the suspension of a person's driving privilege. ~~The~~
363 ~~department's records showing that a person's license has been~~
364 ~~previously suspended for a prior refusal to submit to a lawful~~
365 ~~test of his or her breath, urine, or blood shall be admissible~~
366 ~~and shall create a rebuttable presumption of such suspension.~~

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

369 327.352 Tests for alcohol, chemical substances, or
370 controlled substances; implied consent; refusal.--

371 (1)(a)1. The Legislature declares that the operation of a
372 vessel is a privilege that must be exercised in a reasonable
373 manner. In order to protect the public health and safety, it is
374 essential that a lawful and effective means of reducing the
375 incidence of boating while impaired or intoxicated be
376 established. Therefore, any person who accepts the privilege
377 extended by the laws of this state of operating a vessel within
378 this state is, by so operating such vessel, deemed to have given
379 his or her consent to submit to an approved chemical test or
380 physical test including, but not limited to, an infrared light
381 test of his or her breath for the purpose of determining the
382 alcoholic content of his or her blood or breath if the person is
383 lawfully arrested for any offense allegedly committed while the
384 person was operating a vessel while under the influence of

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385 alcoholic beverages. The chemical or physical breath test must
386 be incidental to a lawful arrest and administered at the request
387 of a law enforcement officer who has reasonable cause to believe
388 such person was operating the vessel within this state while
389 under the influence of alcoholic beverages. The administration
390 of a breath test does not preclude the administration of another
391 type of test. The person shall be told that his or her failure
392 to submit to any lawful test of his or her breath will result in
393 a civil penalty of \$500~~7~~, and shall also be told that if he or
394 she refuses to submit to a lawful test of his or her breath ~~and~~
395 ~~he or she has been previously fined for refusal to submit to any~~
396 ~~lawful test of his or her breath, urine, or blood,~~ he or she
397 commits a misdemeanor in addition to any other penalties. The
398 refusal to submit to a chemical or physical breath test upon the
399 request of a law enforcement officer as provided in this section
400 is admissible into evidence in any criminal proceeding.

401 2. Any person who accepts the privilege extended by the
402 laws of this state of operating a vessel within this state is,
403 by so operating such vessel, deemed to have given his or her
404 consent to submit to a urine test for the purpose of detecting
405 the presence of chemical substances as set forth in s. 877.111
406 or controlled substances if the person is lawfully arrested for
407 any offense allegedly committed while the person was operating a
408 vessel while under the influence of chemical substances or
409 controlled substances. The urine test must be incidental to a
410 lawful arrest and administered at a detention facility or any
411 other facility, mobile or otherwise, which is equipped to
412 administer such tests at the request of a law enforcement

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413 officer who has reasonable cause to believe such person was
414 operating a vessel within this state while under the influence
415 of chemical substances or controlled substances. The urine test
416 shall be administered at a detention facility or any other
417 facility, mobile or otherwise, which is equipped to administer
418 such test in a reasonable manner that will ensure the accuracy
419 of the specimen and maintain the privacy of the individual
420 involved. The administration of a urine test does not preclude
421 the administration of another type of test. The person shall be
422 told that his or her failure to submit to any lawful test of his
423 or her urine will result in a civil penalty of \$500~~7~~ and shall
424 also be told that if he or she refuses to submit to a lawful
425 test of his or her urine ~~and he or she has been previously fined~~
426 ~~for refusal to submit to any lawful test of his or her breath,~~
427 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to
428 any other penalties. The refusal to submit to a urine test upon
429 the request of a law enforcement officer as provided in this
430 section is admissible into evidence in any criminal proceeding.

431 (c) Any person who accepts the privilege extended by the
432 laws of this state of operating a vessel within this state is,
433 by operating such vessel, deemed to have given his or her
434 consent to submit to an approved blood test for the purpose of
435 determining the alcoholic content of the blood or a blood test
436 for the purpose of determining the presence of chemical
437 substances or controlled substances as provided in this section
438 if there is reasonable cause to believe the person was operating
439 a vessel while under the influence of alcoholic beverages or
440 chemical or controlled substances and the person appears for

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441 treatment at a hospital, clinic, or other medical facility and
442 the administration of a breath or urine test is impractical or
443 impossible. As used in this paragraph, the term "other medical
444 facility" includes an ambulance or other medical emergency
445 vehicle. The blood test shall be performed in a reasonable
446 manner. Any person who is incapable of refusal by reason of
447 unconsciousness or other mental or physical condition is deemed
448 not to have withdrawn his or her consent to such test. Any
449 person who is capable of refusal shall be told that his or her
450 failure to submit to such a blood test will result in a civil
451 penalty of \$500 and that a refusal to submit to a lawful test of
452 his or her blood, ~~if he or she has previously been fined for~~
453 ~~refusal to submit to any lawful test of his or her breath,~~
454 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a
455 blood test upon the request of a law enforcement officer shall
456 be admissible in evidence in any criminal proceeding.

457 (e)1. The tests determining the weight of alcohol in the
458 defendant's blood or breath shall be administered at the request
459 of a law enforcement officer substantially in accordance with
460 rules of the Department of Law Enforcement. However, the failure
461 of a law enforcement officer to request the withdrawal of blood
462 does not affect the admissibility of a test of blood withdrawn
463 for medical purposes.

464 2. Only a physician, certified paramedic, registered
465 nurse, licensed practical nurse, other personnel authorized by a
466 hospital to draw blood, or duly licensed clinical laboratory
467 director, supervisor, technologist, or technician, acting at the
468 request of a law enforcement officer, may withdraw blood for the

469 purpose of determining its alcoholic content or the presence of
470 chemical substances or controlled substances therein. However,
471 the failure of a law enforcement officer to request the
472 withdrawal of blood does not affect the admissibility of a test
473 of blood withdrawn for medical purposes.

474 3. The person tested may, at his or her own expense, have
475 a physician, registered nurse, other personnel authorized by a
476 hospital to draw blood, or duly licensed clinical laboratory
477 director, supervisor, technologist, or technician, or other
478 person of his or her own choosing administer an independent test
479 in addition to the test administered at the direction of the law
480 enforcement officer for the purpose of determining the amount of
481 alcohol in the person's blood or breath or the presence of
482 chemical substances or controlled substances at the time
483 alleged, as shown by chemical analysis of his or her blood or
484 urine, or by chemical or physical test of his or her breath. The
485 failure or inability to obtain an independent test by a person
486 does not preclude the admissibility in evidence of the test
487 taken at the direction of the law enforcement officer. The law
488 enforcement officer shall not interfere with the person's
489 opportunity to obtain the independent test and shall provide the
490 person with timely telephone access to secure the test, but the
491 burden is on the person to arrange and secure the test at the
492 person's own expense.

493 4. Upon the request of the person tested, full information
494 concerning the results of the test taken at the direction of the
495 law enforcement officer shall be made available to the person or

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496 his or her attorney. Full information is limited to the
497 following:

498 a. The type of test administered and the procedures
499 followed.

500 b. The time of the collection of the blood or breath
501 sample analyzed.

502 c. The numerical results of the test indicating the
503 alcohol content of the blood and breath.

504 d. The type and status of any permit issued by the
505 Department of Law Enforcement which was held by the person who
506 performed the test.

507 e. If the test was administered by means of a breath
508 testing instrument, the date of performance of the most recent
509 required maintenance of such instrument.

510
511 Full information does not include manuals, schematics, or
512 software of the instrument used to test the person or any other
513 material that is not in the actual possession of the state.
514 Additionally, full information does not include information in
515 the possession of the manufacturer of the test instrument.

516 5. A hospital, clinical laboratory, medical clinic, or
517 similar medical institution or physician, certified paramedic,
518 registered nurse, licensed practical nurse, other personnel
519 authorized by a hospital to draw blood, or duly licensed
520 clinical laboratory director, supervisor, technologist, or
521 technician, or other person assisting a law enforcement officer
522 does not incur any civil or criminal liability as a result of
523 the withdrawal or analysis of a blood or urine specimen, or the

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524 chemical or physical test of a person's breath pursuant to
525 accepted medical standards when requested by a law enforcement
526 officer, regardless of whether or not the subject resisted
527 administration of the test.

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

530 327.359 Refusal to submit to testing; penalties.--Any
531 person who has refused to submit to a chemical or physical test
532 of his or her breath, blood, or urine, as described in s.
533 327.352, ~~and who has been previously fined for refusal to submit~~
534 ~~to a lawful test of his or her breath, urine, or blood,~~ and:

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

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

541 327.352(1)(c);

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

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

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

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552 | commits a misdemeanor of the first degree, punishable ~~and is~~
553 | ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

554 | Section 5. This act shall take effect October 1, 2006.