

CHAMBER ACTION

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1 The Transportation & Economic Development Appropriations  
2 Committee recommends the following:

3  
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to lawful testing for alcohol, chemical  
8 substances, or controlled substances; amending s.  
9 316.1932, F.S.; revising provisions to notify a person  
10 that refusal to submit to a lawful test of the person's  
11 breath, urine, or blood is a misdemeanor, to conform to  
12 changes made by the act; limiting information to be made  
13 available to a person tested to determine the amount of  
14 alcohol in the person's blood or breath or the presence of  
15 chemical substances or controlled substances; amending s.  
16 316.1939, F.S.; removing prior suspension as a condition  
17 for the commission of a misdemeanor by refusal to submit  
18 to a lawful test of breath, urine, or blood; amending s.  
19 322.2615, F.S.; requiring the placement of an ignition  
20 interlock device prior to issuance of a permanent or  
21 restricted driver's license when the license was suspended  
22 for refusal to submit to a blood, breath, or urine test  
23 under specified provisions; requiring the device to remain

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24 | for specified time periods under certain circumstances;  
 25 | amending s. 322.271, F.S.; providing for the installation  
 26 | of an ignition interlock device if there has been an  
 27 | administrative suspension for refusal; requiring the  
 28 | device to remain installed for specified time periods  
 29 | under certain circumstances; amending s. 322.2715, F.S.;  
 30 | revising requirements for ignition interlock devices to  
 31 | include installation for refusal to submit to testing  
 32 | under specified provisions; providing for an exception  
 33 | under certain circumstances; amending s. 327.352, F.S.;  
 34 | revising provisions to notify a person that refusal to  
 35 | submit to a lawful test of the person's breath, urine, or  
 36 | blood is a misdemeanor, to conform to changes made by the  
 37 | act; limiting information to be made available to a person  
 38 | tested to determine the amount of alcohol in the person's  
 39 | blood or breath or the presence of chemical substances or  
 40 | controlled substances; amending s. 327.359, F.S.; removing  
 41 | prior suspension as a condition for the commission of a  
 42 | misdemeanor by refusal to submit to a lawful test of  
 43 | breath, urine, or blood; providing an effective date.

45 | Be It Enacted by the Legislature of the State of Florida:

46 |  
 47 | Section 1. Paragraphs (a), (c), and (f) of subsection (1)  
 48 | of section 316.1932, Florida Statutes, are amended to read:  
 49 | 316.1932 Tests for alcohol, chemical substances, or  
 50 | controlled substances; implied consent; refusal.--

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51 (1) (a) 1.a. Any person who accepts the privilege extended  
52 by the laws of this state of operating a motor vehicle within  
53 this state is, by so operating such vehicle, deemed to have  
54 given his or her consent to submit to an approved chemical test  
55 or physical test including, but not limited to, an infrared  
56 light test of his or her breath for the purpose of determining  
57 the alcoholic content of his or her blood or breath if the  
58 person is lawfully arrested for any offense allegedly committed  
59 while the person was driving or was in actual physical control  
60 of a motor vehicle while under the influence of alcoholic  
61 beverages. The chemical or physical breath test must be  
62 incidental to a lawful arrest and administered at the request of  
63 a law enforcement officer who has reasonable cause to believe  
64 such person was driving or was in actual physical control of the  
65 motor vehicle within this state while under the influence of  
66 alcoholic beverages. The administration of a breath test does  
67 not preclude the administration of another type of test. The  
68 person shall be told that his or her failure to submit to any  
69 lawful test of his or her breath will result in the suspension  
70 of the person's privilege to operate a motor vehicle for a  
71 period of 1 year for a first refusal, or for a period of 18  
72 months if the driving privilege of such person has been  
73 previously suspended as a result of a refusal to submit to such  
74 a test or tests, and shall also be told that if he or she  
75 refuses to submit to a lawful test of his or her breath ~~and his~~  
76 ~~or her driving privilege has been previously suspended for a~~  
77 ~~prior refusal to submit to a lawful test of his or her breath,~~  
78 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to

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79 | any other penalties. The refusal to submit to a chemical or  
80 | physical breath test upon the request of a law enforcement  
81 | officer as provided in this section is admissible into evidence  
82 | in any criminal proceeding.

83 |       b. Any person who accepts the privilege extended by the  
84 | laws of this state of operating a motor vehicle within this  
85 | state is, by so operating such vehicle, deemed to have given his  
86 | or her consent to submit to a urine test for the purpose of  
87 | detecting the presence of chemical substances as set forth in s.  
88 | 877.111 or controlled substances if the person is lawfully  
89 | arrested for any offense allegedly committed while the person  
90 | was driving or was in actual physical control of a motor vehicle  
91 | while under the influence of chemical substances or controlled  
92 | substances. The urine test must be incidental to a lawful arrest  
93 | and administered at a detention facility or any other facility,  
94 | mobile or otherwise, which is equipped to administer such tests  
95 | at the request of a law enforcement officer who has reasonable  
96 | cause to believe such person was driving or was in actual  
97 | physical control of a motor vehicle within this state while  
98 | under the influence of chemical substances or controlled  
99 | substances. The urine test shall be administered at a detention  
100 | facility or any other facility, mobile or otherwise, which is  
101 | equipped to administer such test in a reasonable manner that  
102 | will ensure the accuracy of the specimen and maintain the  
103 | privacy of the individual involved. The administration of a  
104 | urine test does not preclude the administration of another type  
105 | of test. The person shall be told that his or her failure to  
106 | submit to any lawful test of his or her urine will result in the

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107 suspension of the person's privilege to operate a motor vehicle  
108 for a period of 1 year for the first refusal, or for a period of  
109 18 months if the driving privilege of such person has been  
110 previously suspended as a result of a refusal to submit to such  
111 a test or tests, and shall also be told that if he or she  
112 refuses to submit to a lawful test of his or her urine ~~and his~~  
113 ~~or her driving privilege has been previously suspended for a~~  
114 ~~prior refusal to submit to a lawful test of his or her breath,~~  
115 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
116 any other penalties. The refusal to submit to a urine test upon  
117 the request of a law enforcement officer as provided in this  
118 section is admissible into evidence in any criminal proceeding.

119 2. The Alcohol Testing Program within the Department of  
120 Law Enforcement is responsible for the regulation of the  
121 operation, inspection, and registration of breath test  
122 instruments utilized under the driving and boating under the  
123 influence provisions and related provisions located in this  
124 chapter and chapters 322 and 327. The program is responsible for  
125 the regulation of the individuals who operate, inspect, and  
126 instruct on the breath test instruments utilized in the driving  
127 and boating under the influence provisions and related  
128 provisions located in this chapter and chapters 322 and 327. The  
129 program is further responsible for the regulation of blood  
130 analysts who conduct blood testing to be utilized under the  
131 driving and boating under the influence provisions and related  
132 provisions located in this chapter and chapters 322 and 327. The  
133 program shall:

- 134 a. Establish uniform criteria for the issuance of permits  
135 to breath test operators, agency inspectors, instructors, blood  
136 analysts, and instruments.
- 137 b. Have the authority to permit breath test operators,  
138 agency inspectors, instructors, blood analysts, and instruments.
- 139 c. Have the authority to discipline and suspend, revoke,  
140 or renew the permits of breath test operators, agency  
141 inspectors, instructors, blood analysts, and instruments.
- 142 d. Establish uniform requirements for instruction and  
143 curricula for the operation and inspection of approved  
144 instruments.
- 145 e. Have the authority to specify one approved curriculum  
146 for the operation and inspection of approved instruments.
- 147 f. Establish a procedure for the approval of breath test  
148 operator and agency inspector classes.
- 149 g. Have the authority to approve or disapprove breath test  
150 instruments and accompanying paraphernalia for use pursuant to  
151 the driving and boating under the influence provisions and  
152 related provisions located in this chapter and chapters 322 and  
153 327.
- 154 h. With the approval of the executive director of the  
155 Department of Law Enforcement, make and enter into contracts and  
156 agreements with other agencies, organizations, associations,  
157 corporations, individuals, or federal agencies as are necessary,  
158 expedient, or incidental to the performance of duties.
- 159 i. Issue final orders which include findings of fact and  
160 conclusions of law and which constitute final agency action for  
161 the purpose of chapter 120.

162           j. Enforce compliance with the provisions of this section  
163 through civil or administrative proceedings.

164           k. Make recommendations concerning any matter within the  
165 purview of this section, this chapter, chapter 322, or chapter  
166 327.

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

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

171           n. Have the authority to approve the type of blood test  
172 utilized under the driving and boating under the influence  
173 provisions and related provisions located in this chapter and  
174 chapters 322 and 327.

175           o. Have the authority to specify techniques and methods  
176 for breath alcohol testing and blood testing utilized under the  
177 driving and boating under the influence provisions and related  
178 provisions located in this chapter and chapters 322 and 327.

179           p. Have the authority to approve repair facilities for the  
180 approved breath test instruments, including the authority to set  
181 criteria for approval.

182  
183 Nothing in this section shall be construed to supersede  
184 provisions in this chapter and chapters 322 and 327. The  
185 specifications in this section are derived from the power and  
186 authority previously and currently possessed by the Department  
187 of Law Enforcement and are enumerated to conform with the  
188 mandates of chapter 99-379, Laws of Florida.

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189 (c) Any person who accepts the privilege extended by the  
190 laws of this state of operating a motor vehicle within this  
191 state is, by operating such vehicle, deemed to have given his or  
192 her consent to submit to an approved blood test for the purpose  
193 of determining the alcoholic content of the blood or a blood  
194 test for the purpose of determining the presence of chemical  
195 substances or controlled substances as provided in this section  
196 if there is reasonable cause to believe the person was driving  
197 or in actual physical control of a motor vehicle while under the  
198 influence of alcoholic beverages or chemical or controlled  
199 substances and the person appears for treatment at a hospital,  
200 clinic, or other medical facility and the administration of a  
201 breath or urine test is impractical or impossible. As used in  
202 this paragraph, the term "other medical facility" includes an  
203 ambulance or other medical emergency vehicle. The blood test  
204 shall be performed in a reasonable manner. Any person who is  
205 incapable of refusal by reason of unconsciousness or other  
206 mental or physical condition is deemed not to have withdrawn his  
207 or her consent to such test. A blood test may be administered  
208 whether or not the person is told that his or her failure to  
209 submit to such a blood test will result in the suspension of the  
210 person's privilege to operate a motor vehicle upon the public  
211 highways of this state and that a refusal to submit to a lawful  
212 test of his or her blood, ~~if his or her driving privilege has~~  
213 ~~been previously suspended for refusal to submit to a lawful test~~  
214 ~~of his or her breath, urine, or blood,~~ is a misdemeanor. Any  
215 person who is capable of refusal shall be told that his or her  
216 failure to submit to such a blood test will result in the

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217 suspension of the person's privilege to operate a motor vehicle  
218 for a period of 1 year for a first refusal, or for a period of  
219 18 months if the driving privilege of the person has been  
220 suspended previously as a result of a refusal to submit to such  
221 a test or tests, and that a refusal to submit to a lawful test  
222 of his or her blood, ~~if his or her driving privilege has been~~  
223 ~~previously suspended for a prior refusal to submit to a lawful~~  
224 ~~test of his or her breath, urine, or blood,~~ is a misdemeanor.  
225 The refusal to submit to a blood test upon the request of a law  
226 enforcement officer is admissible in evidence in any criminal  
227 proceeding.

228 (f)1. The tests determining the weight of alcohol in the  
229 defendant's blood or breath shall be administered at the request  
230 of a law enforcement officer substantially in accordance with  
231 rules of the Department of Law Enforcement. Such rules must  
232 specify precisely the test or tests that are approved by the  
233 Department of Law Enforcement for reliability of result and ease  
234 of administration, and must provide an approved method of  
235 administration which must be followed in all such tests given  
236 under this section. However, the failure of a law enforcement  
237 officer to request the withdrawal of blood does not affect the  
238 admissibility of a test of blood withdrawn for medical purposes.

239 2.a. Only a physician, certified paramedic, registered  
240 nurse, licensed practical nurse, other personnel authorized by a  
241 hospital to draw blood, or duly licensed clinical laboratory  
242 director, supervisor, technologist, or technician, acting at the  
243 request of a law enforcement officer, may withdraw blood for the  
244 purpose of determining its alcoholic content or the presence of

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245 | chemical substances or controlled substances therein. However,  
246 | the failure of a law enforcement officer to request the  
247 | withdrawal of blood does not affect the admissibility of a test  
248 | of blood withdrawn for medical purposes.

249 |       b. Notwithstanding any provision of law pertaining to the  
250 | confidentiality of hospital records or other medical records, if  
251 | a health care provider, who is providing medical care in a  
252 | health care facility to a person injured in a motor vehicle  
253 | crash, becomes aware, as a result of any blood test performed in  
254 | the course of that medical treatment, that the person's blood-  
255 | alcohol level meets or exceeds the blood-alcohol level specified  
256 | in s. 316.193(1)(b), the health care provider may notify any law  
257 | enforcement officer or law enforcement agency. Any such notice  
258 | must be given within a reasonable time after the health care  
259 | provider receives the test result. Any such notice shall be used  
260 | only for the purpose of providing the law enforcement officer  
261 | with reasonable cause to request the withdrawal of a blood  
262 | sample pursuant to this section.

263 |       c. The notice shall consist only of the name of the person  
264 | being treated, the name of the person who drew the blood, the  
265 | blood-alcohol level indicated by the test, and the date and time  
266 | of the administration of the test.

267 |       d. Nothing contained in s. 395.3025(4), s. 456.057, or any  
268 | applicable practice act affects the authority to provide notice  
269 | under this section, and the health care provider is not  
270 | considered to have breached any duty owed to the person under s.  
271 | 395.3025(4), s. 456.057, or any applicable practice act by  
272 | providing notice or failing to provide notice. It shall not be a

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273 | breach of any ethical, moral, or legal duty for a health care  
274 | provider to provide notice or fail to provide notice.

275 |       e. A civil, criminal, or administrative action may not be  
276 | brought against any person or health care provider participating  
277 | in good faith in the provision of notice or failure to provide  
278 | notice as provided in this section. Any person or health care  
279 | provider participating in the provision of notice or failure to  
280 | provide notice as provided in this section shall be immune from  
281 | any civil or criminal liability and from any professional  
282 | disciplinary action with respect to the provision of notice or  
283 | failure to provide notice under this section. Any such  
284 | participant has the same immunity with respect to participating  
285 | in any judicial proceedings resulting from the notice or failure  
286 | to provide notice.

287 |       3. The person tested may, at his or her own expense, have  
288 | a physician, registered nurse, other personnel authorized by a  
289 | hospital to draw blood, or duly licensed clinical laboratory  
290 | director, supervisor, technologist, or technician, or other  
291 | person of his or her own choosing administer an independent test  
292 | in addition to the test administered at the direction of the law  
293 | enforcement officer for the purpose of determining the amount of  
294 | alcohol in the person's blood or breath or the presence of  
295 | chemical substances or controlled substances at the time  
296 | alleged, as shown by chemical analysis of his or her blood or  
297 | urine, or by chemical or physical test of his or her breath. The  
298 | failure or inability to obtain an independent test by a person  
299 | does not preclude the admissibility in evidence of the test  
300 | taken at the direction of the law enforcement officer. The law

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301 enforcement officer shall not interfere with the person's  
302 opportunity to obtain the independent test and shall provide the  
303 person with timely telephone access to secure the test, but the  
304 burden is on the person to arrange and secure the test at the  
305 person's own expense.

306 4. Upon the request of the person tested, full information  
307 concerning the results of the test taken at the direction of the  
308 law enforcement officer shall be made available to the person or  
309 his or her attorney. Full information is limited to the  
310 following:

311 a. The type of test administered and the procedures  
312 followed.

313 b. The time of the collection of the blood or breath  
314 sample analyzed.

315 c. The numerical results of the test indicating the  
316 alcohol content of the blood and breath.

317 d. The type and status of any permit issued by the  
318 Department of Law Enforcement which was held by the person who  
319 performed the test.

320 e. If the test was administered by means of a breath  
321 testing instrument, the date of performance of the most recent  
322 required maintenance of such instrument.

323  
324 Full information does not include manuals, schematics, or  
325 software of the instrument used to test the person or any other  
326 material that is not in the actual possession of the state.  
327 Additionally, full information does not include information in  
328 the possession of the manufacturer of the test instrument.

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329           5. A hospital, clinical laboratory, medical clinic, or  
330 similar medical institution or physician, certified paramedic,  
331 registered nurse, licensed practical nurse, other personnel  
332 authorized by a hospital to draw blood, or duly licensed  
333 clinical laboratory director, supervisor, technologist, or  
334 technician, or other person assisting a law enforcement officer  
335 does not incur any civil or criminal liability as a result of  
336 the withdrawal or analysis of a blood or urine specimen, or the  
337 chemical or physical test of a person's breath pursuant to  
338 accepted medical standards when requested by a law enforcement  
339 officer, regardless of whether or not the subject resisted  
340 administration of the test.

341           Section 2. Section 316.1939, Florida Statutes, is amended  
342 to read:

343           316.1939 Refusal to submit to testing; penalties.--

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

349           (a) Who the arresting law enforcement officer had probable  
350 cause to believe was driving or in actual physical control of a  
351 motor vehicle in this state while under the influence of  
352 alcoholic beverages, chemical substances, or controlled  
353 substances;

354           (b) Who was placed under lawful arrest for a violation of  
355 s. 316.193 unless such test was requested pursuant to s.  
356 316.1932(1)(c);

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

361 (d) Who was informed that a refusal to submit to a lawful  
362 test of his or her breath, urine, or blood, ~~if his or her~~  
363 ~~driving privilege has been previously suspended for a prior~~  
364 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
365 ~~or blood,~~ is a misdemeanor; and

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

369  
370 commits a misdemeanor of the first degree, punishable ~~and is~~  
371 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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

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

382 Section 3. Subsection (17) is added to section 322.2615,  
383 Florida Statutes, to read:

384 322.2615 Suspension of license; right to review.--

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385       (17) Before issuing a permanent or restricted driver's  
386 license to a person suspended under this section for refusal to  
387 submit to a blood, breath, or urine test, the department shall  
388 require placement of a department-approved ignition interlock  
389 device. If this is the first suspension for refusal to submit to  
390 a blood, breath, or urine test, the ignition interlock device  
391 shall be required for a period of 6 months and, in the case of a  
392 second or subsequent suspension for refusal to submit to a  
393 blood, breath, or urine test, the ignition interlock device  
394 shall be required for a period of 1 year.

395       Section 4. Subsection (3) of section 322.271, Florida  
396 Statutes, is amended to read:

397       322.271 Authority to modify revocation, cancellation, or  
398 suspension order.--

399       (3) Upon such hearing, the department shall either  
400 suspend, affirm, or modify its order and may restore to the  
401 licensee the privilege of driving on a limited or restricted  
402 basis for business or employment use only. If the department  
403 suspends, affirms, or modifies its order and restores the  
404 licensee's privilege of driving on a limited or restricted basis  
405 for business or employment use after upholding an administrative  
406 suspension for refusal, the licensee is required to have an  
407 ignition interlock device installed for the time periods listed  
408 in s. 322.2715(3). If a hearing is not held, the administrative  
409 suspension for refusal is upheld and goes into effect and the  
410 licensee is required to have an ignition interlock device  
411 installed for the time periods listed in s. 322.2715(3).

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412 Section 5. Subsection (3) of section 322.2715, Florida  
413 Statutes, is amended, and subsection (5) is added to that  
414 section, to read:

415 322.2715 Ignition interlock device.--

416 (3) If the person is convicted of:

417 (a) A first offense of driving under the influence under  
418 s. 316.193 and has an unlawful blood-alcohol level or breath-  
419 alcohol level as specified in s. 316.193(4), or if a person is  
420 convicted of a first offense of refusal under s. 316.1939, or if  
421 a person is convicted of a violation of s. 316.193 and was at  
422 the time of the offense accompanied in the vehicle by a person  
423 younger than 18 years of age, the person shall have the ignition  
424 interlock device installed for 6 months for the first offense  
425 and for at least 2 years for a second offense.

426 (b) A second offense of driving under the influence or a  
427 refusal under s. 316.1939, the ignition interlock device shall  
428 be installed for a period of not less than 1 year.

429 (c) A third offense of driving under the influence or a  
430 refusal under s. 316.1939, which occurs within 10 years after a  
431 prior conviction for a violation of s. 316.193, the ignition  
432 interlock device shall be installed for a period of not less  
433 than 2 years.

434 (d) A third offense of driving under the influence or a  
435 refusal under s. 316.1939, which occurs more than 10 years after  
436 the date of a prior conviction, the ignition interlock device  
437 shall be installed for a period of not less than 2 years.

438 (5) Before issuing a permanent or restricted driver's  
439 license under this chapter, the department shall require the



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440 placement of a department-approved ignition interlock device for  
441 any person convicted of a refusal under s. 316.1939 or s.  
442 322.2615, except that consideration may be given to those  
443 individuals having a documented medical condition that would  
444 prohibit the device from functioning normally. An ignition  
445 interlock device shall be placed on all vehicles that are  
446 individually or jointly leased or owned and routinely operated  
447 by the convicted person.

448 Section 6. Paragraphs (a), (c), and (e) of subsection (1)  
449 of section 327.352, Florida Statutes, are amended to read:

450 327.352 Tests for alcohol, chemical substances, or  
451 controlled substances; implied consent; refusal.--

452 (1)(a)1. The Legislature declares that the operation of a  
453 vessel is a privilege that must be exercised in a reasonable  
454 manner. In order to protect the public health and safety, it is  
455 essential that a lawful and effective means of reducing the  
456 incidence of boating while impaired or intoxicated be  
457 established. Therefore, any person who accepts the privilege  
458 extended by the laws of this state of operating a vessel within  
459 this state is, by so operating such vessel, deemed to have given  
460 his or her consent to submit to an approved chemical test or  
461 physical test including, but not limited to, an infrared light  
462 test of his or her breath for the purpose of determining the  
463 alcoholic content of his or her blood or breath if the person is  
464 lawfully arrested for any offense allegedly committed while the  
465 person was operating a vessel while under the influence of  
466 alcoholic beverages. The chemical or physical breath test must  
467 be incidental to a lawful arrest and administered at the request

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468 of a law enforcement officer who has reasonable cause to believe  
469 such person was operating the vessel within this state while  
470 under the influence of alcoholic beverages. The administration  
471 of a breath test does not preclude the administration of another  
472 type of test. The person shall be told that his or her failure  
473 to submit to any lawful test of his or her breath will result in  
474 a civil penalty of \$500~~7~~, and shall also be told that if he or  
475 she refuses to submit to a lawful test of his or her breath ~~and~~  
476 ~~he or she has been previously fined for refusal to submit to any~~  
477 ~~lawful test of his or her breath, urine, or blood,~~ he or she  
478 commits a misdemeanor in addition to any other penalties. The  
479 refusal to submit to a chemical or physical breath test upon the  
480 request of a law enforcement officer as provided in this section  
481 is admissible into evidence in any criminal proceeding.

482 2. Any person who accepts the privilege extended by the  
483 laws of this state of operating a vessel within this state is,  
484 by so operating such vessel, deemed to have given his or her  
485 consent to submit to a urine test for the purpose of detecting  
486 the presence of chemical substances as set forth in s. 877.111  
487 or controlled substances if the person is lawfully arrested for  
488 any offense allegedly committed while the person was operating a  
489 vessel while under the influence of chemical substances or  
490 controlled substances. The urine test must be incidental to a  
491 lawful arrest and administered at a detention facility or any  
492 other facility, mobile or otherwise, which is equipped to  
493 administer such tests at the request of a law enforcement  
494 officer who has reasonable cause to believe such person was  
495 operating a vessel within this state while under the influence

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496 of chemical substances or controlled substances. The urine test  
497 shall be administered at a detention facility or any other  
498 facility, mobile or otherwise, which is equipped to administer  
499 such test in a reasonable manner that will ensure the accuracy  
500 of the specimen and maintain the privacy of the individual  
501 involved. The administration of a urine test does not preclude  
502 the administration of another type of test. The person shall be  
503 told that his or her failure to submit to any lawful test of his  
504 or her urine will result in a civil penalty of \$500~~7~~ and shall  
505 also be told that if he or she refuses to submit to a lawful  
506 test of his or her urine ~~and he or she has been previously fined~~  
507 ~~for refusal to submit to any lawful test of his or her breath,~~  
508 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
509 any other penalties. The refusal to submit to a urine test upon  
510 the request of a law enforcement officer as provided in this  
511 section is admissible into evidence in any criminal proceeding.

512 (c) Any person who accepts the privilege extended by the  
513 laws of this state of operating a vessel within this state is,  
514 by operating such vessel, deemed to have given his or her  
515 consent to submit to an approved blood test for the purpose of  
516 determining the alcoholic content of the blood or a blood test  
517 for the purpose of determining the presence of chemical  
518 substances or controlled substances as provided in this section  
519 if there is reasonable cause to believe the person was operating  
520 a vessel while under the influence of alcoholic beverages or  
521 chemical or controlled substances and the person appears for  
522 treatment at a hospital, clinic, or other medical facility and  
523 the administration of a breath or urine test is impractical or

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524 impossible. As used in this paragraph, the term "other medical  
525 facility" includes an ambulance or other medical emergency  
526 vehicle. The blood test shall be performed in a reasonable  
527 manner. Any person who is incapable of refusal by reason of  
528 unconsciousness or other mental or physical condition is deemed  
529 not to have withdrawn his or her consent to such test. Any  
530 person who is capable of refusal shall be told that his or her  
531 failure to submit to such a blood test will result in a civil  
532 penalty of \$500 and that a refusal to submit to a lawful test of  
533 his or her blood, ~~if he or she has previously been fined for~~  
534 ~~refusal to submit to any lawful test of his or her breath,~~  
535 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a  
536 blood test upon the request of a law enforcement officer shall  
537 be admissible in evidence in any criminal proceeding.

538 (e)1. The tests determining the weight of alcohol in the  
539 defendant's blood or breath shall be administered at the request  
540 of a law enforcement officer substantially in accordance with  
541 rules of the Department of Law Enforcement. However, the failure  
542 of a law enforcement officer to request the withdrawal of blood  
543 does not affect the admissibility of a test of blood withdrawn  
544 for medical purposes.

545 2. Only a physician, certified paramedic, registered  
546 nurse, licensed practical nurse, other personnel authorized by a  
547 hospital to draw blood, or duly licensed clinical laboratory  
548 director, supervisor, technologist, or technician, acting at the  
549 request of a law enforcement officer, may withdraw blood for the  
550 purpose of determining its alcoholic content or the presence of  
551 chemical substances or controlled substances therein. However,

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552 the failure of a law enforcement officer to request the  
553 withdrawal of blood does not affect the admissibility of a test  
554 of blood withdrawn for medical purposes.

555 3. The person tested may, at his or her own expense, have  
556 a physician, registered nurse, other personnel authorized by a  
557 hospital to draw blood, or duly licensed clinical laboratory  
558 director, supervisor, technologist, or technician, or other  
559 person of his or her own choosing administer an independent test  
560 in addition to the test administered at the direction of the law  
561 enforcement officer for the purpose of determining the amount of  
562 alcohol in the person's blood or breath or the presence of  
563 chemical substances or controlled substances at the time  
564 alleged, as shown by chemical analysis of his or her blood or  
565 urine, or by chemical or physical test of his or her breath. The  
566 failure or inability to obtain an independent test by a person  
567 does not preclude the admissibility in evidence of the test  
568 taken at the direction of the law enforcement officer. The law  
569 enforcement officer shall not interfere with the person's  
570 opportunity to obtain the independent test and shall provide the  
571 person with timely telephone access to secure the test, but the  
572 burden is on the person to arrange and secure the test at the  
573 person's own expense.

574 4. Upon the request of the person tested, full information  
575 concerning the results of the test taken at the direction of the  
576 law enforcement officer shall be made available to the person or  
577 his or her attorney. Full information is limited to the  
578 following:

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- 579        a. The type of test administered and the procedures  
580 followed.
- 581        b. The time of the collection of the blood or breath  
582 sample analyzed.
- 583        c. The numerical results of the test indicating the  
584 alcohol content of the blood and breath.
- 585        d. The type and status of any permit issued by the  
586 Department of Law Enforcement which was held by the person who  
587 performed the test.
- 588        e. If the test was administered by means of a breath  
589 testing instrument, the date of performance of the most recent  
590 required maintenance of such instrument.
- 591
- 592 Full information does not include manuals, schematics, or  
593 software of the instrument used to test the person or any other  
594 material that is not in the actual possession of the state.  
595 Additionally, full information does not include information in  
596 the possession of the manufacturer of the test instrument.
- 597        5. A hospital, clinical laboratory, medical clinic, or  
598 similar medical institution or physician, certified paramedic,  
599 registered nurse, licensed practical nurse, other personnel  
600 authorized by a hospital to draw blood, or duly licensed  
601 clinical laboratory director, supervisor, technologist, or  
602 technician, or other person assisting a law enforcement officer  
603 does not incur any civil or criminal liability as a result of  
604 the withdrawal or analysis of a blood or urine specimen, or the  
605 chemical or physical test of a person's breath pursuant to  
606 accepted medical standards when requested by a law enforcement

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607 officer, regardless of whether or not the subject resisted  
608 administration of the test.

609 Section 7. Section 327.359, Florida Statutes, is amended  
610 to read:

611 327.359 Refusal to submit to testing; penalties.--Any  
612 person who has refused to submit to a chemical or physical test  
613 of his or her breath, blood, or urine, as described in s.  
614 327.352, ~~and who has been previously fined for refusal to submit~~  
615 ~~to a lawful test of his or her breath, urine, or blood,~~ and:

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

620 (2) Who was placed under lawful arrest for a violation of  
621 s. 327.35 unless such test was requested pursuant to s.  
622 327.352(1)(c);

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

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

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

632  
633 commits a misdemeanor of the first degree, punishable ~~and is~~  
634 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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635 | Section 8. This act shall take effect October 1, 2006. |