

CHAMBER ACTION

1 The Justice Council 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; providing
18 penalties for refusal to submit to testing; amending s.
19 327.352, F.S.; revising provisions to notify a person that
20 refusal to submit to a lawful test of the person's breath,
21 urine, or blood is a misdemeanor, to conform to changes
22 made by the act; limiting information to be made available
23 to a person tested to determine the amount of alcohol in

HB 187 CS

2006
CS

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

31

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

33

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

36 | 316.1932 Tests for alcohol, chemical substances, or
 37 | controlled substances; implied consent; refusal.--

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

HB 187 CS

2006
CS

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

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

HB 187 CS

2006
CS

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

106 | 2. The Alcohol Testing Program within the Department of
107 | Law Enforcement is responsible for the regulation of the

HB 187 CS

2006
CS

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

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

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

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

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

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

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

Page 5 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0187-03-c3

136 | g. Have the authority to approve or disapprove breath test
137 | instruments and accompanying paraphernalia for use pursuant to
138 | the driving and boating under the influence provisions and
139 | related provisions located in this chapter and chapters 322 and
140 | 327.

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

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

149 | j. Enforce compliance with the provisions of this section
150 | through civil or administrative proceedings.

151 | k. Make recommendations concerning any matter within the
152 | purview of this section, this chapter, chapter 322, or chapter
153 | 327.

154 | l. Promulgate rules for the administration and
155 | implementation of this section, including definitions of terms.

156 | m. Consult and cooperate with other entities for the
157 | purpose of implementing the mandates of this section.

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

162 | o. Have the authority to specify techniques and methods
163 | for breath alcohol testing and blood testing utilized under the

HB 187 CS

2006
CS

164 driving and boating under the influence provisions and related
165 provisions located in this chapter and chapters 322 and 327.

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

169

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

176 (c) Any person who accepts the privilege extended by the
177 laws of this state of operating a motor vehicle within this
178 state is, by operating such vehicle, deemed to have given his or
179 her consent to submit to an approved blood test for the purpose
180 of determining the alcoholic content of the blood or a blood
181 test for the purpose of determining the presence of chemical
182 substances or controlled substances as provided in this section
183 if there is reasonable cause to believe the person was driving
184 or in actual physical control of a motor vehicle while under the
185 influence of alcoholic beverages or chemical or controlled
186 substances and the person appears for treatment at a hospital,
187 clinic, or other medical facility and the administration of a
188 breath or urine test is impractical or impossible. As used in
189 this paragraph, the term "other medical facility" includes an
190 ambulance or other medical emergency vehicle. The blood test
191 shall be performed in a reasonable manner. Any person who is

HB 187 CS

2006
CS

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

215 | (f)1. The tests determining the weight of alcohol in the
216 | defendant's blood or breath shall be administered at the request
217 | of a law enforcement officer substantially in accordance with
218 | rules of the Department of Law Enforcement. Such rules must
219 | specify precisely the test or tests that are approved by the

HB 187 CS

2006
CS

220 Department of Law Enforcement for reliability of result and ease
221 of administration, and must provide an approved method of
222 administration which must be followed in all such tests given
223 under this section. However, the failure of a law enforcement
224 officer to request the withdrawal of blood does not affect the
225 admissibility of a test of blood withdrawn for medical purposes.

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

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

HB 187 CS

2006
CS

248 | with reasonable cause to request the withdrawal of a blood
249 | sample pursuant to this section.

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

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

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

274 | 3. The person tested may, at his or her own expense, have
275 | a physician, registered nurse, other personnel authorized by a

HB 187 CS

2006
CS

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

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

298 a. The type of test administered and the procedures
299 followed.

300 b. The time of the collection of the blood or breath
301 sample analyzed.

302 c. The numerical results of the test indicating the
303 alcohol content of the blood and breath.

HB 187 CS

2006
CS

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

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

310

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

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

328 Section 2. Section 316.1939, Florida Statutes, is amended
329 to read:

330 316.1939 Refusal to submit to testing; penalties.--

HB 187 CS

2006
CS

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

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

341 (b) Who was placed under lawful arrest for a violation of
 342 s. 316.193 unless such test was requested pursuant to s.
 343 316.1932(1)(c);

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

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

353 (e) Who, after having been so informed, refused to submit
 354 to any such test when requested to do so by a law enforcement
 355 officer or correctional officer,
 356
 357 commits the offense of refusal to submit to testing. If such
 358 person's driving privilege was previously suspended for a prior

HB 187 CS

2006
CS

359 refusal to submit to a lawful test of his or her breath, urine,
360 or blood, such offense is a misdemeanor of the first degree,
361 punishable and is subject to punishment as provided in s.
362 775.082 or s. 775.083. If such person's driving privilege was
363 not previously suspended for a prior refusal to submit to a
364 lawful test of his or her breath, urine, or blood, such offense
365 shall be punished by imprisonment for not more than 6 months
366 and, if adjudicated guilty, by a fine of up to \$500.

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

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

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

379 327.352 Tests for alcohol, chemical substances, or
380 controlled substances; implied consent; refusal.--

381 (1)(a)1. The Legislature declares that the operation of a
382 vessel is a privilege that must be exercised in a reasonable
383 manner. In order to protect the public health and safety, it is
384 essential that a lawful and effective means of reducing the
385 incidence of boating while impaired or intoxicated be
386 established. Therefore, any person who accepts the privilege

HB 187 CS

2006
CS

387 extended by the laws of this state of operating a vessel within
388 this state is, by so operating such vessel, deemed to have given
389 his or her consent to submit to an approved chemical test or
390 physical test including, but not limited to, an infrared light
391 test of his or her breath for the purpose of determining the
392 alcoholic content of his or her blood or breath if the person is
393 lawfully arrested for any offense allegedly committed while the
394 person was operating a vessel while under the influence of
395 alcoholic beverages. The chemical or physical breath test must
396 be incidental to a lawful arrest and administered at the request
397 of a law enforcement officer who has reasonable cause to believe
398 such person was operating the vessel within this state while
399 under the influence of alcoholic beverages. The administration
400 of a breath test does not preclude the administration of another
401 type of test. The person shall be told that his or her failure
402 to submit to any lawful test of his or her breath will result in
403 a civil penalty of \$500~~7~~, and shall also be told that if he or
404 she refuses to submit to a lawful test of his or her breath ~~and~~
405 ~~he or she has been previously fined for refusal to submit to any~~
406 ~~lawful test of his or her breath, urine, or blood,~~ he or she
407 commits a misdemeanor in addition to any other penalties. The
408 refusal to submit to a chemical or physical breath test upon the
409 request of a law enforcement officer as provided in this section
410 is admissible into evidence in any criminal proceeding.

411 2. Any person who accepts the privilege extended by the
412 laws of this state of operating a vessel within this state is,
413 by so operating such vessel, deemed to have given his or her
414 consent to submit to a urine test for the purpose of detecting

HB 187 CS

2006
CS

415 | the presence of chemical substances as set forth in s. 877.111
416 | or controlled substances if the person is lawfully arrested for
417 | any offense allegedly committed while the person was operating a
418 | vessel while under the influence of chemical substances or
419 | controlled substances. The urine test must be incidental to a
420 | lawful arrest and administered at a detention facility or any
421 | other facility, mobile or otherwise, which is equipped to
422 | administer such tests at the request of a law enforcement
423 | officer who has reasonable cause to believe such person was
424 | operating a vessel within this state while under the influence
425 | of chemical substances or controlled substances. The urine test
426 | shall be administered at a detention facility or any other
427 | facility, mobile or otherwise, which is equipped to administer
428 | such test in a reasonable manner that will ensure the accuracy
429 | of the specimen and maintain the privacy of the individual
430 | involved. The administration of a urine test does not preclude
431 | the administration of another type of test. The person shall be
432 | told that his or her failure to submit to any lawful test of his
433 | or her urine will result in a civil penalty of \$500~~7~~ and shall
434 | also be told that if he or she refuses to submit to a lawful
435 | test of his or her urine ~~and he or she has been previously fined~~
436 | ~~for refusal to submit to any lawful test of his or her breath,~~
437 | ~~urine, or blood,~~ he or she commits a misdemeanor in addition to
438 | any other penalties. The refusal to submit to a urine test upon
439 | the request of a law enforcement officer as provided in this
440 | section is admissible into evidence in any criminal proceeding.

441 | (c) Any person who accepts the privilege extended by the
442 | laws of this state of operating a vessel within this state is,

Page 16 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0187-03-c3

HB 187 CS

2006
CS

443 | by operating such vessel, deemed to have given his or her
444 | consent to submit to an approved blood test for the purpose of
445 | determining the alcoholic content of the blood or a blood test
446 | for the purpose of determining the presence of chemical
447 | substances or controlled substances as provided in this section
448 | if there is reasonable cause to believe the person was operating
449 | a vessel while under the influence of alcoholic beverages or
450 | chemical or controlled substances and the person appears for
451 | treatment at a hospital, clinic, or other medical facility and
452 | the administration of a breath or urine test is impractical or
453 | impossible. As used in this paragraph, the term "other medical
454 | facility" includes an ambulance or other medical emergency
455 | vehicle. The blood test shall be performed in a reasonable
456 | manner. Any person who is incapable of refusal by reason of
457 | unconsciousness or other mental or physical condition is deemed
458 | not to have withdrawn his or her consent to such test. Any
459 | person who is capable of refusal shall be told that his or her
460 | failure to submit to such a blood test will result in a civil
461 | penalty of \$500 and that a refusal to submit to a lawful test of
462 | his or her blood, ~~if he or she has previously been fined for~~
463 | ~~refusal to submit to any lawful test of his or her breath,~~
464 | ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a
465 | blood test upon the request of a law enforcement officer shall
466 | be admissible in evidence in any criminal proceeding.

467 | (e)1. The tests determining the weight of alcohol in the
468 | defendant's blood or breath shall be administered at the request
469 | of a law enforcement officer substantially in accordance with
470 | rules of the Department of Law Enforcement. However, the failure

HB 187 CS

2006
CS

471 of a law enforcement officer to request the withdrawal of blood
472 does not affect the admissibility of a test of blood withdrawn
473 for medical purposes.

474 2. Only a physician, certified paramedic, registered
475 nurse, licensed practical nurse, other personnel authorized by a
476 hospital to draw blood, or duly licensed clinical laboratory
477 director, supervisor, technologist, or technician, acting at the
478 request of a law enforcement officer, may withdraw blood for the
479 purpose of determining its alcoholic content or the presence of
480 chemical substances or controlled substances therein. However,
481 the failure of a law enforcement officer to request the
482 withdrawal of blood does not affect the admissibility of a test
483 of blood withdrawn for medical purposes.

484 3. The person tested may, at his or her own expense, have
485 a physician, registered nurse, other personnel authorized by a
486 hospital to draw blood, or duly licensed clinical laboratory
487 director, supervisor, technologist, or technician, or other
488 person of his or her own choosing administer an independent test
489 in addition to the test administered at the direction of the law
490 enforcement officer for the purpose of determining the amount of
491 alcohol in the person's blood or breath or the presence of
492 chemical substances or controlled substances at the time
493 alleged, as shown by chemical analysis of his or her blood or
494 urine, or by chemical or physical test of his or her breath. The
495 failure or inability to obtain an independent test by a person
496 does not preclude the admissibility in evidence of the test
497 taken at the direction of the law enforcement officer. The law
498 enforcement officer shall not interfere with the person's

499 | opportunity to obtain the independent test and shall provide the
 500 | person with timely telephone access to secure the test, but the
 501 | burden is on the person to arrange and secure the test at the
 502 | person's own expense.

503 | 4. Upon the request of the person tested, full information
 504 | concerning the results of the test taken at the direction of the
 505 | law enforcement officer shall be made available to the person or
 506 | his or her attorney. Full information is limited to the
 507 | following:

508 | a. The type of test administered and the procedures
 509 | followed.

510 | b. The time of the collection of the blood or breath
 511 | sample analyzed.

512 | c. The numerical results of the test indicating the
 513 | alcohol content of the blood and breath.

514 | d. The type and status of any permit issued by the
 515 | Department of Law Enforcement which was held by the person who
 516 | performed the test.

517 | e. If the test was administered by means of a breath
 518 | testing instrument, the date of performance of the most recent
 519 | required maintenance of such instrument.

520 |
 521 | Full information does not include manuals, schematics, or
 522 | software of the instrument used to test the person or any other
 523 | material that is not in the actual possession of the state.
 524 | Additionally, full information does not include information in
 525 | the possession of the manufacturer of the test instrument.

HB 187 CS

2006
CS

526 5. A hospital, clinical laboratory, medical clinic, or
527 similar medical institution or physician, certified paramedic,
528 registered nurse, licensed practical nurse, other personnel
529 authorized by a hospital to draw blood, or duly licensed
530 clinical laboratory director, supervisor, technologist, or
531 technician, or other person assisting a law enforcement officer
532 does not incur any civil or criminal liability as a result of
533 the withdrawal or analysis of a blood or urine specimen, or the
534 chemical or physical test of a person's breath pursuant to
535 accepted medical standards when requested by a law enforcement
536 officer, regardless of whether or not the subject resisted
537 administration of the test.

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

540 327.359 Refusal to submit to testing; penalties.--Any
541 person who has refused to submit to a chemical or physical test
542 of his or her breath, blood, or urine, as described in s.
543 ~~327.352, and who has been previously fined for refusal to submit~~
544 ~~to a lawful test of his or her breath, urine, or blood, and:~~

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

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

551 327.352(1)(c);

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

HB 187 CS

2006
CS

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

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

561
562 commits the offense of refusal to submit to testing. If such
563 person has previously been fined for a prior refusal to submit
564 to a lawful test of his or her breath, urine, or blood, such
565 offense is a misdemeanor of the first degree, punishable and is
566 subject to punishment as provided in s. 775.082 or s. 775.083.
567 If such person has not previously been fined for a prior refusal
568 to submit to a lawful test of his or her breath, urine, or
569 blood, such offense shall be punished by imprisonment for not
570 more than 6 months and, if adjudicated guilty, by a fine of up
571 to \$500.

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