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 HB 187, Engrossed 2

2006 Legislature

1 A bill to be entitled
 2 An act relating to lawful testing for alcohol, chemical
 3 substances, or controlled substances; amending s.
 4 316.1932, F.S.; limiting information to be made available
 5 to a person tested to determine the amount of alcohol in
 6 the person's blood or breath or the presence of chemical
 7 substances or controlled substances; amending s. 327.352,
 8 F.S.; limiting information to be made available to a
 9 person tested to determine the amount of alcohol in the
 10 person's blood or breath or the presence of chemical
 11 substances or controlled substances; providing an
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraphs (a), (c), and (f) of subsection (1)
 17 of section 316.1932, Florida Statutes, are amended to read:

18 316.1932 Tests for alcohol, chemical substances, or
 19 controlled substances; implied consent; refusal.--

20 (1)(a)1.a. Any person who accepts the privilege extended
 21 by the laws of this state of operating a motor vehicle within
 22 this state is, by so operating such vehicle, deemed to have
 23 given his or her consent to submit to an approved chemical test
 24 or physical test including, but not limited to, an infrared
 25 light test of his or her breath for the purpose of determining
 26 the alcoholic content of his or her blood or breath if the
 27 person is lawfully arrested for any offense allegedly committed

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28 | while the person was driving or was in actual physical control
29 | of a motor vehicle while under the influence of alcoholic
30 | beverages. The chemical or physical breath test must be
31 | incidental to a lawful arrest and administered at the request of
32 | a law enforcement officer who has reasonable cause to believe
33 | such person was driving or was in actual physical control of the
34 | motor vehicle within this state while under the influence of
35 | alcoholic beverages. The administration of a breath test does
36 | not preclude the administration of another type of test. The
37 | person shall be told that his or her failure to submit to any
38 | lawful test of his or her breath will result in the suspension
39 | of the person's privilege to operate a motor vehicle for a
40 | period of 1 year for a first refusal, or for a period of 18
41 | months if the driving privilege of such person has been
42 | previously suspended as a result of a refusal to submit to such
43 | a test or tests, and shall also be told that if he or she
44 | refuses to submit to a lawful test of his or her breath and his
45 | or her driving privilege has been previously suspended for a
46 | prior refusal to submit to a lawful test of his or her breath,
47 | urine, or blood, he or she commits a misdemeanor in addition to
48 | any other penalties. The refusal to submit to a chemical or
49 | physical breath test upon the request of a law enforcement
50 | officer as provided in this section is admissible into evidence
51 | in any criminal proceeding.

52 | b. Any person who accepts the privilege extended by the
53 | laws of this state of operating a motor vehicle within this
54 | state is, by so operating such vehicle, deemed to have given his

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55 | or her consent to submit to a urine test for the purpose of
56 | detecting the presence of chemical substances as set forth in s.
57 | 877.111 or controlled substances if the person is lawfully
58 | arrested for any offense allegedly committed while the person
59 | was driving or was in actual physical control of a motor vehicle
60 | while under the influence of chemical substances or controlled
61 | substances. The urine test must be incidental to a lawful arrest
62 | and administered at a detention facility or any other facility,
63 | mobile or otherwise, which is equipped to administer such tests
64 | at the request of a law enforcement officer who has reasonable
65 | cause to believe such person was driving or was in actual
66 | physical control of a motor vehicle within this state while
67 | under the influence of chemical substances or controlled
68 | substances. The urine test shall be administered at a detention
69 | facility or any other facility, mobile or otherwise, which is
70 | equipped to administer such test in a reasonable manner that
71 | will ensure the accuracy of the specimen and maintain the
72 | privacy of the individual involved. The administration of a
73 | urine test does not preclude the administration of another type
74 | of test. The person shall be told that his or her failure to
75 | submit to any lawful test of his or her urine will result in the
76 | suspension of the person's privilege to operate a motor vehicle
77 | for a period of 1 year for the first refusal, or for a period of
78 | 18 months if the driving privilege of such person has been
79 | previously suspended as a result of a refusal to submit to such
80 | a test or tests, and shall also be told that if he or she
81 | refuses to submit to a lawful test of his or her urine and his

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82 | or her driving privilege has been previously suspended for a
83 | prior refusal to submit to a lawful test of his or her breath,
84 | urine, or blood, he or she commits a misdemeanor in addition to
85 | any other penalties. The refusal to submit to a urine test upon
86 | the request of a law enforcement officer as provided in this
87 | section is admissible into evidence in any criminal proceeding.

88 | 2. The Alcohol Testing Program within the Department of
89 | Law Enforcement is responsible for the regulation of the
90 | operation, inspection, and registration of breath test
91 | instruments utilized under the driving and boating under the
92 | influence provisions and related provisions located in this
93 | chapter and chapters 322 and 327. The program is responsible for
94 | the regulation of the individuals who operate, inspect, and
95 | instruct on the breath test instruments utilized in the driving
96 | and boating under the influence provisions and related
97 | provisions located in this chapter and chapters 322 and 327. The
98 | program is further responsible for the regulation of blood
99 | analysts who conduct blood testing to be utilized under the
100 | driving and boating under the influence provisions and related
101 | provisions located in this chapter and chapters 322 and 327. The
102 | program shall:

103 | a. Establish uniform criteria for the issuance of permits
104 | to breath test operators, agency inspectors, instructors, blood
105 | analysts, and instruments.

106 | b. Have the authority to permit breath test operators,
107 | agency inspectors, instructors, blood analysts, and instruments.

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

111 d. Establish uniform requirements for instruction and
 112 curricula for the operation and inspection of approved
 113 instruments.

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

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

118 g. Have the authority to approve or disapprove breath test
 119 instruments and accompanying paraphernalia for use pursuant to
 120 the driving and boating under the influence provisions and
 121 related provisions located in this chapter and chapters 322 and
 122 327.

123 h. With the approval of the executive director of the
 124 Department of Law Enforcement, make and enter into contracts and
 125 agreements with other agencies, organizations, associations,
 126 corporations, individuals, or federal agencies as are necessary,
 127 expedient, or incidental to the performance of duties.

128 i. Issue final orders which include findings of fact and
 129 conclusions of law and which constitute final agency action for
 130 the purpose of chapter 120.

131 j. Enforce compliance with the provisions of this section
 132 through civil or administrative proceedings.

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133 k. Make recommendations concerning any matter within the
 134 purview of this section, this chapter, chapter 322, or chapter
 135 327.

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

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

140 n. Have the authority to approve the type of blood test
 141 utilized under the driving and boating under the influence
 142 provisions and related provisions located in this chapter and
 143 chapters 322 and 327.

144 o. Have the authority to specify techniques and methods
 145 for breath alcohol testing and blood testing utilized under the
 146 driving and boating under the influence provisions and related
 147 provisions located in this chapter and chapters 322 and 327.

148 p. Have the authority to approve repair facilities for the
 149 approved breath test instruments, including the authority to set
 150 criteria for approval.

151
 152 Nothing in this section shall be construed to supersede
 153 provisions in this chapter and chapters 322 and 327. The
 154 specifications in this section are derived from the power and
 155 authority previously and currently possessed by the Department
 156 of Law Enforcement and are enumerated to conform with the
 157 mandates of chapter 99-379, Laws of Florida.

158 (c) Any person who accepts the privilege extended by the
 159 laws of this state of operating a motor vehicle within this

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160 state is, by operating such vehicle, deemed to have given his or
161 her consent to submit to an approved blood test for the purpose
162 of determining the alcoholic content of the blood or a blood
163 test for the purpose of determining the presence of chemical
164 substances or controlled substances as provided in this section
165 if there is reasonable cause to believe the person was driving
166 or in actual physical control of a motor vehicle while under the
167 influence of alcoholic beverages or chemical or controlled
168 substances and the person appears for treatment at a hospital,
169 clinic, or other medical facility and the administration of a
170 breath or urine test is impractical or impossible. As used in
171 this paragraph, the term "other medical facility" includes an
172 ambulance or other medical emergency vehicle. The blood test
173 shall be performed in a reasonable manner. Any person who is
174 incapable of refusal by reason of unconsciousness or other
175 mental or physical condition is deemed not to have withdrawn his
176 or her consent to such test. A blood test may be administered
177 whether or not the person is told that his or her failure to
178 submit to such a blood test will result in the suspension of the
179 person's privilege to operate a motor vehicle upon the public
180 highways of this state and that a refusal to submit to a lawful
181 test of his or her blood, if his or her driving privilege has
182 been previously suspended for refusal to submit to a lawful test
183 of his or her breath, urine, or blood, is a misdemeanor. Any
184 person who is capable of refusal shall be told that his or her
185 failure to submit to such a blood test will result in the
186 suspension of the person's privilege to operate a motor vehicle

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187 | for a period of 1 year for a first refusal, or for a period of
188 | 18 months if the driving privilege of the person has been
189 | suspended previously as a result of a refusal to submit to such
190 | a test or tests, and that a refusal to submit to a lawful test
191 | of his or her blood, if his or her driving privilege has been
192 | previously suspended for a prior refusal to submit to a lawful
193 | test of his or her breath, urine, or blood, is a misdemeanor.
194 | The refusal to submit to a blood test upon the request of a law
195 | enforcement officer is admissible in evidence in any criminal
196 | proceeding.

197 | (f)1. The tests determining the weight of alcohol in the
198 | defendant's blood or breath shall be administered at the request
199 | of a law enforcement officer substantially in accordance with
200 | rules of the Department of Law Enforcement. Such rules must
201 | specify precisely the test or tests that are approved by the
202 | Department of Law Enforcement for reliability of result and ease
203 | of administration, and must provide an approved method of
204 | administration which must be followed in all such tests given
205 | under this section. However, the failure of a law enforcement
206 | officer to request the withdrawal of blood does not affect the
207 | admissibility of a test of blood withdrawn for medical purposes.

208 | 2.a. Only a physician, certified paramedic, registered
209 | nurse, licensed practical nurse, other personnel authorized by a
210 | hospital to draw blood, or duly licensed clinical laboratory
211 | director, supervisor, technologist, or technician, acting at the
212 | request of a law enforcement officer, may withdraw blood for the
213 | purpose of determining its alcoholic content or the presence of

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214 chemical substances or controlled substances therein. However,
215 the failure of a law enforcement officer to request the
216 withdrawal of blood does not affect the admissibility of a test
217 of blood withdrawn for medical purposes.

218 b. Notwithstanding any provision of law pertaining to the
219 confidentiality of hospital records or other medical records, if
220 a health care provider, who is providing medical care in a
221 health care facility to a person injured in a motor vehicle
222 crash, becomes aware, as a result of any blood test performed in
223 the course of that medical treatment, that the person's blood-
224 alcohol level meets or exceeds the blood-alcohol level specified
225 in s. 316.193(1)(b), the health care provider may notify any law
226 enforcement officer or law enforcement agency. Any such notice
227 must be given within a reasonable time after the health care
228 provider receives the test result. Any such notice shall be used
229 only for the purpose of providing the law enforcement officer
230 with reasonable cause to request the withdrawal of a blood
231 sample pursuant to this section.

232 c. The notice shall consist only of the name of the person
233 being treated, the name of the person who drew the blood, the
234 blood-alcohol level indicated by the test, and the date and time
235 of the administration of the test.

236 d. Nothing contained in s. 395.3025(4), s. 456.057, or any
237 applicable practice act affects the authority to provide notice
238 under this section, and the health care provider is not
239 considered to have breached any duty owed to the person under s.
240 395.3025(4), s. 456.057, or any applicable practice act by

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241 providing notice or failing to provide notice. It shall not be a
242 breach of any ethical, moral, or legal duty for a health care
243 provider to provide notice or fail to provide notice.

244 e. A civil, criminal, or administrative action may not be
245 brought against any person or health care provider participating
246 in good faith in the provision of notice or failure to provide
247 notice as provided in this section. Any person or health care
248 provider participating in the provision of notice or failure to
249 provide notice as provided in this section shall be immune from
250 any civil or criminal liability and from any professional
251 disciplinary action with respect to the provision of notice or
252 failure to provide notice under this section. Any such
253 participant has the same immunity with respect to participating
254 in any judicial proceedings resulting from the notice or failure
255 to provide notice.

256 3. The person tested may, at his or her own expense, have
257 a physician, registered nurse, other personnel authorized by a
258 hospital to draw blood, or duly licensed clinical laboratory
259 director, supervisor, technologist, or technician, or other
260 person of his or her own choosing administer an independent test
261 in addition to the test administered at the direction of the law
262 enforcement officer for the purpose of determining the amount of
263 alcohol in the person's blood or breath or the presence of
264 chemical substances or controlled substances at the time
265 alleged, as shown by chemical analysis of his or her blood or
266 urine, or by chemical or physical test of his or her breath. The
267 failure or inability to obtain an independent test by a person

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268 | does not preclude the admissibility in evidence of the test
269 | taken at the direction of the law enforcement officer. The law
270 | enforcement officer shall not interfere with the person's
271 | opportunity to obtain the independent test and shall provide the
272 | person with timely telephone access to secure the test, but the
273 | burden is on the person to arrange and secure the test at the
274 | person's own expense.

275 | 4. Upon the request of the person tested, full information
276 | concerning the results of the test taken at the direction of the
277 | law enforcement officer shall be made available to the person or
278 | his or her attorney. Full information is limited to the
279 | following:

280 | a. The type of test administered and the procedures
281 | followed.

282 | b. The time of the collection of the blood or breath
283 | sample analyzed.

284 | c. The numerical results of the test indicating the
285 | alcohol content of the blood and breath.

286 | d. The type and status of any permit issued by the
287 | Department of Law Enforcement which was held by the person who
288 | performed the test.

289 | e. If the test was administered by means of a breath
290 | testing instrument, the date of performance of the most recent
291 | required inspection of such instrument.

292 |
293 | Full information does not include manuals, schematics, or
294 | software of the instrument used to test the person or any other

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295 material that is not in the actual possession of the state.
 296 Additionally, full information does not include information in
 297 the possession of the manufacturer of the test instrument.

298 5. A hospital, clinical laboratory, medical clinic, or
 299 similar medical institution or physician, certified paramedic,
 300 registered nurse, licensed practical nurse, other personnel
 301 authorized by a hospital to draw blood, or duly licensed
 302 clinical laboratory director, supervisor, technologist, or
 303 technician, or other person assisting a law enforcement officer
 304 does not incur any civil or criminal liability as a result of
 305 the withdrawal or analysis of a blood or urine specimen, or the
 306 chemical or physical test of a person's breath pursuant to
 307 accepted medical standards when requested by a law enforcement
 308 officer, regardless of whether or not the subject resisted
 309 administration of the test.

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

312 327.352 Tests for alcohol, chemical substances, or
 313 controlled substances; implied consent; refusal.--

314 (1)(a)1. The Legislature declares that the operation of a
 315 vessel is a privilege that must be exercised in a reasonable
 316 manner. In order to protect the public health and safety, it is
 317 essential that a lawful and effective means of reducing the
 318 incidence of boating while impaired or intoxicated be
 319 established. Therefore, any person who accepts the privilege
 320 extended by the laws of this state of operating a vessel within
 321 this state is, by so operating such vessel, deemed to have given

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322 | his or her consent to submit to an approved chemical test or
323 | physical test including, but not limited to, an infrared light
324 | test of his or her breath for the purpose of determining the
325 | alcoholic content of his or her blood or breath if the person is
326 | lawfully arrested for any offense allegedly committed while the
327 | person was operating a vessel while under the influence of
328 | alcoholic beverages. The chemical or physical breath test must
329 | be incidental to a lawful arrest and administered at the request
330 | of a law enforcement officer who has reasonable cause to believe
331 | such person was operating the vessel within this state while
332 | under the influence of alcoholic beverages. The administration
333 | of a breath test does not preclude the administration of another
334 | type of test. The person shall be told that his or her failure
335 | to submit to any lawful test of his or her breath will result in
336 | a civil penalty of \$500, and shall also be told that if he or
337 | she refuses to submit to a lawful test of his or her breath and
338 | he or she has been previously fined for refusal to submit to any
339 | lawful test of his or her breath, urine, or blood, he or she
340 | commits a misdemeanor in addition to any other penalties. The
341 | refusal to submit to a chemical or physical breath test upon the
342 | request of a law enforcement officer as provided in this section
343 | is admissible into evidence in any criminal proceeding.

344 | 2. Any person who accepts the privilege extended by the
345 | laws of this state of operating a vessel within this state is,
346 | by so operating such vessel, deemed to have given his or her
347 | consent to submit to a urine test for the purpose of detecting
348 | the presence of chemical substances as set forth in s. 877.111

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349 or controlled substances if the person is lawfully arrested for
350 any offense allegedly committed while the person was operating a
351 vessel while under the influence of chemical substances or
352 controlled substances. The urine test must be incidental to a
353 lawful arrest and administered at a detention facility or any
354 other facility, mobile or otherwise, which is equipped to
355 administer such tests at the request of a law enforcement
356 officer who has reasonable cause to believe such person was
357 operating a vessel within this state while under the influence
358 of chemical substances or controlled substances. The urine test
359 shall be administered at a detention facility or any other
360 facility, mobile or otherwise, which is equipped to administer
361 such test in a reasonable manner that will ensure the accuracy
362 of the specimen and maintain the privacy of the individual
363 involved. The administration of a urine test does not preclude
364 the administration of another type of test. The person shall be
365 told that his or her failure to submit to any lawful test of his
366 or her urine will result in a civil penalty of \$500, and shall
367 also be told that if he or she refuses to submit to a lawful
368 test of his or her urine and he or she has been previously fined
369 for refusal to submit to any lawful test of his or her breath,
370 urine, or blood, he or she commits a misdemeanor in addition to
371 any other penalties. The refusal to submit to a urine test upon
372 the request of a law enforcement officer as provided in this
373 section is admissible into evidence in any criminal proceeding.

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

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376 | by operating such vessel, deemed to have given his or her
377 | consent to submit to an approved blood test for the purpose of
378 | determining the alcoholic content of the blood or a blood test
379 | for the purpose of determining the presence of chemical
380 | substances or controlled substances as provided in this section
381 | if there is reasonable cause to believe the person was operating
382 | a vessel while under the influence of alcoholic beverages or
383 | chemical or controlled substances and the person appears for
384 | treatment at a hospital, clinic, or other medical facility and
385 | the administration of a breath or urine test is impractical or
386 | impossible. As used in this paragraph, the term "other medical
387 | facility" includes an ambulance or other medical emergency
388 | vehicle. The blood test shall be performed in a reasonable
389 | manner. Any person who is incapable of refusal by reason of
390 | unconsciousness or other mental or physical condition is deemed
391 | not to have withdrawn his or her consent to such test. Any
392 | person who is capable of refusal shall be told that his or her
393 | failure to submit to such a blood test will result in a civil
394 | penalty of \$500 and that a refusal to submit to a lawful test of
395 | his or her blood, if he or she has previously been fined for
396 | refusal to submit to any lawful test of his or her breath,
397 | urine, or blood, is a misdemeanor. The refusal to submit to a
398 | blood test upon the request of a law enforcement officer shall
399 | be admissible in evidence in any criminal proceeding.

400 | (e)1. The tests determining the weight of alcohol in the
401 | defendant's blood or breath shall be administered at the request
402 | of a law enforcement officer substantially in accordance with

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403 rules of the Department of Law Enforcement. However, the failure
404 of a law enforcement officer to request the withdrawal of blood
405 does not affect the admissibility of a test of blood withdrawn
406 for medical purposes.

407 2. Only a physician, certified paramedic, registered
408 nurse, licensed practical nurse, other personnel authorized by a
409 hospital to draw blood, or duly licensed clinical laboratory
410 director, supervisor, technologist, or technician, acting at the
411 request of a law enforcement officer, may withdraw blood for the
412 purpose of determining its alcoholic content or the presence of
413 chemical substances or controlled substances therein. However,
414 the failure of a law enforcement officer to request the
415 withdrawal of blood does not affect the admissibility of a test
416 of blood withdrawn for medical purposes.

417 3. The person tested may, at his or her own expense, have
418 a physician, registered nurse, other personnel authorized by a
419 hospital to draw blood, or duly licensed clinical laboratory
420 director, supervisor, technologist, or technician, or other
421 person of his or her own choosing administer an independent test
422 in addition to the test administered at the direction of the law
423 enforcement officer for the purpose of determining the amount of
424 alcohol in the person's blood or breath or the presence of
425 chemical substances or controlled substances at the time
426 alleged, as shown by chemical analysis of his or her blood or
427 urine, or by chemical or physical test of his or her breath. The
428 failure or inability to obtain an independent test by a person
429 does not preclude the admissibility in evidence of the test

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430 taken at the direction of the law enforcement officer. The law
431 enforcement officer shall not interfere with the person's
432 opportunity to obtain the independent test and shall provide the
433 person with timely telephone access to secure the test, but the
434 burden is on the person to arrange and secure the test at the
435 person's own expense.

436 4. Upon the request of the person tested, full information
437 concerning the results of the test taken at the direction of the
438 law enforcement officer shall be made available to the person or
439 his or her attorney. Full information is limited to the
440 following:

441 a. The type of test administered and the procedures
442 followed.

443 b. The time of the collection of the blood or breath
444 sample analyzed.

445 c. The numerical results of the test indicating the
446 alcohol content of the blood and breath.

447 d. The type and status of any permit issued by the
448 Department of Law Enforcement which was held by the person who
449 performed the test.

450 e. If the test was administered by means of a breath
451 testing instrument, the date of performance of the most recent
452 required inspection of such instrument.

453
454 Full information does not include manuals, schematics, or
455 software of the instrument used to test the person or any other
456 material that is not in the actual possession of the state.

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457 | Additionally, full information does not include information in
458 | the possession of the manufacturer of the test instrument.

459 | 5. A hospital, clinical laboratory, medical clinic, or
460 | similar medical institution or physician, certified paramedic,
461 | registered nurse, licensed practical nurse, other personnel
462 | authorized by a hospital to draw blood, or duly licensed
463 | clinical laboratory director, supervisor, technologist, or
464 | technician, or other person assisting a law enforcement officer
465 | does not incur any civil or criminal liability as a result of
466 | the withdrawal or analysis of a blood or urine specimen, or the
467 | chemical or physical test of a person's breath pursuant to
468 | accepted medical standards when requested by a law enforcement
469 | officer, regardless of whether or not the subject resisted
470 | administration of the test.

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