

By the Committee on Criminal Justice and Senator Brown-Waite

307-2018-00

1                                   A bill to be entitled  
2           An act relating to rulemaking authority of the  
3           Department of Law Enforcement (RAB); amending  
4           ss. 316.1932, 322.63, and 327.352, F.S.;  
5           specifying the responsibilities of the Alcohol  
6           Testing Program of the Department of Law  
7           Enforcement with respect to breath test  
8           instruments, persons who operate, inspect, and  
9           instruct on such instruments, and blood  
10          analysts who conduct blood testing, in  
11          connection with testing pursuant to the driving  
12          or boating under the influence provisions of  
13          chapters 316, 322, and 327, F.S., and providing  
14          for rules with respect thereto; removing  
15          references to department authority and  
16          rulemaking with respect to such testing;  
17          amending s. 943.03, F.S.; revising the  
18          department's rulemaking authority; authorizing  
19          rules relating to employee misconduct and  
20          discipline; amending s. 943.131, F.S.;  
21          directing the Criminal Justice Standards and  
22          Training Commission to adopt rules relating to  
23          determination of an applicant's eligibility for  
24          exemption from completing the basic recruit  
25          training program; amending s. 943.14, F.S.;  
26          directing the commission to establish  
27          procedures for discipline of criminal justice  
28          training school instructors by rule; providing  
29          an effective date.

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

1           Section 1. Paragraph (a) of subsection (1) of section  
2 316.1932, Florida Statutes, is amended to read:

3           316.1932 Breath, blood, and urine tests for alcohol,  
4 chemical substances, or controlled substances; implied  
5 consent; right to refuse.--

6           (1)(a)1. Any person who accepts the privilege extended  
7 by the laws of this state of operating a motor vehicle within  
8 this state is, by so operating such vehicle, deemed to have  
9 given his or her consent to submit to an approved chemical  
10 test or physical test including, but not limited to, an  
11 infrared light test of his or her breath for the purpose of  
12 determining the alcoholic content of his or her blood or  
13 breath, and to a urine test for the purpose of detecting the  
14 presence of chemical substances as set forth in s. 877.111 or  
15 controlled substances, if the person is lawfully arrested for  
16 any offense allegedly committed while the person was driving  
17 or was in actual physical control of a motor vehicle while  
18 under the influence of alcoholic beverages, chemical  
19 substances, or controlled substances. The chemical or  
20 physical breath test must be incidental to a lawful arrest and  
21 administered at the request of a law enforcement officer who  
22 has reasonable cause to believe such person was driving or was  
23 in actual physical control of the motor vehicle within this  
24 state while under the influence of alcoholic beverages. The  
25 urine test must be incidental to a lawful arrest and  
26 administered at a detention facility or any other facility,  
27 mobile or otherwise, which is equipped to administer such  
28 tests at the request of a law enforcement officer who has  
29 reasonable cause to believe such person was driving or was in  
30 actual physical control of a motor vehicle within this state  
31 while under the influence of controlled substances. The urine

1 test shall be administered at a detention facility or any  
2 other facility, mobile or otherwise, which is equipped to  
3 administer such tests in a reasonable manner that will ensure  
4 the accuracy of the specimen and maintain the privacy of the  
5 individual involved. The administration of one type of test  
6 does not preclude the administration of another type of test.  
7 The person shall be told that his or her failure to submit to  
8 any lawful test of his or her breath or urine, or both, will  
9 result in the suspension of the person's privilege to operate  
10 a motor vehicle for a period of 1 year for a first refusal, or  
11 for a period of 18 months if the driving privilege of such  
12 person has been previously suspended as a result of a refusal  
13 to submit to such a test or tests. The refusal to submit to a  
14 chemical or physical breath test or to a urine test upon the  
15 request of a law enforcement officer as provided in this  
16 section is admissible into evidence in any criminal  
17 proceeding.

18 2. The Alcohol Testing Program within the Department  
19 of Law Enforcement is responsible for the regulation of the  
20 operation, inspection, and registration of breath test  
21 instruments utilized under the driving and boating under the  
22 influence provisions and related provisions located in this  
23 chapter and chapters 322 and 327. The program is responsible  
24 for the regulation of the individuals who operate, inspect,  
25 and instruct on the breath test instruments utilized in the  
26 driving and boating under the influence provisions and related  
27 provisions located in this chapter and chapters 322 and 327.  
28 The program is further responsible for the regulation of blood  
29 analysts who conduct blood testing to be utilized under the  
30 driving and boating under the influence provisions and related  
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1 provisions located in this chapter and chapters 322 and 327.  
2 The program shall:  
3       a. Establish uniform criteria for the issuance of  
4 permits to breath test operators, agency inspectors,  
5 instructors, blood analysts, and instruments.  
6       b. Have the authority to permit breath test operators,  
7 agency inspectors, instructors, blood analysts, and  
8 instruments.  
9       c. Have the authority to discipline and suspend,  
10 revoke, or renew the permits of breath test operators, agency  
11 inspectors, instructors, blood analysts, and instruments.  
12       d. Establish uniform requirements for instruction and  
13 curricula for the operation and inspection of approved  
14 instruments.  
15       e. Have the authority to specify one approved  
16 curriculum for the operation and inspection of approved  
17 instruments.  
18       f. Establish a procedure for the approval of breath  
19 test operator and agency inspector classes.  
20       g. Have the authority to approve or disapprove breath  
21 test instruments and accompanying paraphernalia for use  
22 pursuant to the driving and boating under the influence  
23 provisions and related provisions located in this chapter and  
24 chapters 322 and 327.  
25       h. With the approval of the executive director of the  
26 Department of Law Enforcement, make and enter into contracts  
27 and agreements with other agencies, organizations,  
28 associations, corporations, individuals, or federal agencies  
29 as are necessary, expedient, or incidental to the performance  
30 of duties.  
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1            i. Issue final orders which include findings of fact  
2 and conclusions of law and which constitute final agency  
3 action for the purpose of chapter 120.

4            j. Enforce compliance with the provisions of this  
5 section through civil or administrative proceedings.

6            k. Make recommendations concerning any matter within  
7 the purview of this section, this chapter, chapter 322, or  
8 chapter 327.

9            l. Adopt rules for the administration and  
10 implementation of this section, including definitions of  
11 terms.

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

14            n. Have the authority to approve the type of blood  
15 test utilized under the driving and boating under the  
16 influence provisions and related provisions located in this  
17 chapter and chapters 322 and 327.

18            o. Have the authority to specify techniques and  
19 methods for breath alcohol testing and blood testing utilized  
20 under the driving and boating under the influence provisions  
21 and related provisions located in this chapter and chapters  
22 322 and 327.

23            p. Have the authority to approve repair facilities for  
24 the approved breath test instruments, including the authority  
25 to set criteria for approval.

26  
27 Nothing in this section shall be construed to supersede  
28 provisions in this chapter and chapters 322 and 327. The  
29 specifications in this section are derived from the power and  
30 authority previously and currently possessed by the Department  
31

1 of Law Enforcement and are enumerated to conform with the  
2 mandates of chapter 99-379, Laws of Florida.

3 Section 2. Subsection (3) of section 322.63, Florida  
4 Statutes, is amended to read:

5 322.63 Alcohol or drug testing; commercial motor  
6 vehicle operators.--

7 (3)(a) The physical and chemical tests authorized in  
8 this section shall be administered substantially in accordance  
9 with rules adopted by the Department of Law Enforcement. ~~Such~~  
10 ~~rules shall be adopted after public hearing, shall specify the~~  
11 ~~tests that are approved, and shall provide an approved method~~  
12 ~~of administration.~~

13 (b) The Alcohol Testing Program within the Department  
14 of Law Enforcement is responsible for the regulation of the  
15 operation, inspection, and registration of breath test  
16 instruments utilized under the driving and boating under the  
17 influence provisions and related provisions located in this  
18 chapter and chapters 316 and 327. The program is responsible  
19 for the regulation of the individuals who operate, inspect,  
20 and instruct on the breath test instruments utilized in the  
21 driving and boating under the influence provisions and related  
22 provisions located in this chapter and chapters 316 and 327.  
23 The program is further responsible for the regulation of blood  
24 analysts who conduct blood testing to be utilized under the  
25 driving and boating under the influence provisions and related  
26 provisions located in this chapter and chapters 316 and 327.

27 The program shall:

28 1. Establish uniform criteria for the issuance of  
29 permits to breath test operators, agency inspectors,  
30 instructors, blood analysts, and instruments.

31

1           2. Have the authority to permit breath test operators,  
2 agency inspectors, instructors, blood analysts, and  
3 instruments.

4           3. Have the authority to discipline and suspend,  
5 revoke, or renew the permits of breath test operators, agency  
6 inspectors, instructors, blood analysts, and instruments.

7           4. Establish uniform requirements for instruction and  
8 curricula for the operation and inspection of approved  
9 instruments.

10           5. Have the authority to specify one approved  
11 curriculum for the operation and inspection of approved  
12 instruments.

13           6. Establish a procedure for the approval of breath  
14 test operator and agency inspector classes.

15           7. Have the authority to approve or disapprove breath  
16 test instruments and accompanying paraphernalia for use  
17 pursuant to the driving and boating under the influence  
18 provisions and related provisions located in this chapter and  
19 chapters 316 and 327.

20           8. With the approval of the executive director of the  
21 Department of Law Enforcement, make and enter into contracts  
22 and agreements with other agencies, organizations,  
23 associations, corporations, individuals, or federal agencies  
24 as are necessary, expedient, or incidental to the performance  
25 of duties.

26           9. Issue final orders which include findings of fact  
27 and conclusions of law and which constitute final agency  
28 action for the purpose of chapter 120.

29           10. Enforce compliance with the provisions of this  
30 section through civil or administrative proceedings.

31

1           11. Make recommendations concerning any matter within  
2 the purview of this section, this chapter, chapter 316, or  
3 chapter 327.

4           12. Adopt rules for the administration and  
5 implementation of this section, including definitions of  
6 terms.

7           13. Consult and cooperate with other entities for the  
8 purpose of implementing the mandates of this section.

9           14. Have the authority to approve the type of blood  
10 test utilized under the driving and boating under the  
11 influence provisions and related provisions located in this  
12 chapter and chapters 316 and 327.

13           15. Have the authority to specify techniques and  
14 methods for breath alcohol testing and blood testing utilized  
15 under the driving and boating under the influence provisions  
16 and related provisions located in this chapter and chapters  
17 316 and 327.

18           16. Have the authority to approve repair facilities  
19 for the approved breath test instruments including the  
20 authority to set criteria for approval.

21  
22 Nothing in this section shall be construed to supersede  
23 provisions in this chapter and chapters 316 and 327. The  
24 specifications in this section are derived from the power and  
25 authority previously and currently possessed by the Department  
26 of Law Enforcement and are enumerated to conform with the  
27 mandates of chapter 99-379, Laws of Florida.~~The Department of~~  
28 ~~Law Enforcement is authorized to approve techniques or methods~~  
29 ~~for administering such physical and chemical tests.~~

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1           (c) Any insubstantial differences between approved  
2 techniques and actual testing procedures in any individual  
3 case does not render the test or tests results invalid.

4           (d)~~(c)~~ Notwithstanding any other provision of this  
5 section, the failure of a law enforcement officer to request  
6 the withdrawal of blood shall not affect the admissibility of  
7 a test of blood withdrawn for medical purposes.

8           Section 3. Paragraphs (b) and (e) of subsection (1) of  
9 section 327.352, Florida Statutes, are amended to read:

10           327.352 Breath, blood, and urine tests for alcohol,  
11 chemical substances, or controlled substances; implied  
12 consent; right to refuse.--

13           (1)

14           (b)1. The blood-alcohol level must be based upon grams  
15 of alcohol per 100 milliliters of blood. The breath-alcohol  
16 level must be based upon grams of alcohol per 210 liters of  
17 breath.

18           2. An analysis of a person's breath, in order to be  
19 considered valid under this section, must have been performed  
20 substantially according to methods approved by the Department  
21 of Law Enforcement. ~~For this purpose, the department may~~  
22 ~~approve satisfactory techniques or methods.~~ Any insubstantial  
23 differences between approved techniques and actual testing  
24 procedures in any individual case do not render the test or  
25 test results invalid.

26           3. The Alcohol Testing Program within the Department  
27 of Law Enforcement is responsible for the regulation of the  
28 operation, inspection, and registration of breath test  
29 instruments utilized under the driving and boating under the  
30 influence provisions and related provisions located in this  
31 chapter and chapters 316 and 322. The program is responsible

1 for the regulation of the individuals who operate, inspect,  
2 and instruct on the breath test instruments utilized in the  
3 driving and boating under the influence provisions and related  
4 provisions located in this chapter and chapters 316 and 322.  
5 The program is further responsible for the regulation of blood  
6 analysts who conduct blood testing to be utilized under the  
7 driving and boating under the influence provisions and related  
8 provisions located in this chapter and chapters 316 and 322.  
9 The program shall:  
10 a. Establish uniform criteria for the issuance of  
11 permits to breath test operators, agency inspectors,  
12 instructors, blood analysts, and instruments.  
13 b. Have the authority to permit breath test operators,  
14 agency inspectors, instructors, blood analysts, and  
15 instruments.  
16 c. Have the authority to discipline and suspend,  
17 revoke, or renew the permits of breath test operators, agency  
18 inspectors, instructors, blood analysts, and instruments.  
19 d. Establish uniform requirements for instruction and  
20 curricula for the operation and inspection of approved  
21 instruments.  
22 e. Have the authority to specify one approved  
23 curriculum for the operation and inspection of approved  
24 instruments.  
25 f. Establish a procedure for the approval of breath  
26 test operator and agency inspector classes.  
27 g. Have the authority to approve or disapprove breath  
28 test instruments and accompanying paraphernalia for use  
29 pursuant to the driving and boating under the influence  
30 provisions and related provisions located in this chapter and  
31 chapters 316 and 322.

1           h. With the approval of the executive director of the  
2 Department of Law Enforcement, make and enter into contracts  
3 and agreements with other agencies, organizations,  
4 associations, corporations, individuals, or federal agencies  
5 as are necessary, expedient, or incidental to the performance  
6 of duties.

7           i. Issue final orders which include findings of fact  
8 and conclusions of law and which constitute final agency  
9 action for the purpose of chapter 120.

10           j. Enforce compliance with the provisions of this  
11 section through civil or administrative proceedings.

12           k. Make recommendations concerning any matter within  
13 the purview of this section, this chapter, chapter 316, or  
14 chapter 322.

15           l. Adopt rules for the administration and  
16 implementation of this section, including definitions of  
17 terms.

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

20           n. Have the authority to approve the type of blood  
21 test utilized under the driving and boating under the  
22 influence provisions and related provisions located in this  
23 chapter and chapters 316 and 322.

24           o. Have the authority to specify techniques and  
25 methods for breath alcohol testing and blood testing utilized  
26 under the driving and boating under the influence provisions  
27 and related provisions located in this chapter and chapters  
28 316 and 322.

29           p. Have the authority to approve repair facilities for  
30 the approved breath test instruments, including the authority  
31 to set criteria for approval.

1  
2 Nothing in this section shall be construed to supersede  
3 provisions in this chapter and chapters 316 and 322. The  
4 specifications in this section are derived from the power and  
5 authority previously and currently possessed by the Department  
6 of Law Enforcement and are enumerated to conform with the  
7 mandates of chapter 99-379, Laws of Florida.

8 (e)1. The tests determining the weight of alcohol in  
9 the defendant's blood or breath shall be administered at the  
10 request of a law enforcement officer substantially in  
11 accordance with rules of the Department of Law Enforcement.  
12 ~~Such rules must specify precisely the test or tests that are~~  
13 ~~approved by the Department of Law Enforcement for reliability~~  
14 ~~of result and ease of administration, and must provide an~~  
15 ~~approved method of administration which must be followed in~~  
16 ~~all such tests given under this section. However, the failure~~  
17 ~~of a law enforcement officer to request the withdrawal of~~  
18 ~~blood does not affect the admissibility of a test of blood~~  
19 ~~withdrawn for medical purposes.~~

20 2. Only a physician, certified paramedic, registered  
21 nurse, licensed practical nurse, other personnel authorized by  
22 a hospital to draw blood, or duly licensed clinical laboratory  
23 director, supervisor, technologist, or technician, acting at  
24 the request of a law enforcement officer, may withdraw blood  
25 for the purpose of determining its alcoholic content or the  
26 presence of chemical substances or controlled substances  
27 therein. However, the failure of a law enforcement officer to  
28 request the withdrawal of blood does not affect the  
29 admissibility of a test of blood withdrawn for medical  
30 purposes.

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

21           4. Upon the request of the person tested, full  
22 information concerning the test taken at the direction of the  
23 law enforcement officer shall be made available to the person  
24 or his or her attorney.

25           5. A hospital, clinical laboratory, medical clinic, or  
26 similar medical institution or physician, certified paramedic,  
27 registered nurse, licensed practical nurse, other personnel  
28 authorized by a hospital to draw blood, or duly licensed  
29 clinical laboratory director, supervisor, technologist, or  
30 technician, or other person assisting a law enforcement  
31 officer does not incur any civil or criminal liability as a

1 result of the withdrawal or analysis of a blood or urine  
2 specimen, or the chemical or physical test of a person's  
3 breath pursuant to accepted medical standards when requested  
4 by a law enforcement officer, regardless of whether or not the  
5 subject resisted administration of the test.

6 Section 4. Subsection (4) of section 943.03, Florida  
7 Statutes, is amended to read:

8 943.03 Department of Law Enforcement.--

9 (4) The department shall adopt rules pursuant to ss.  
10 120.536(1) and 120.54 to implement the provisions of law this  
11 chapter conferring powers or duties upon it. The department  
12 may adopt rules defining acts of misconduct and setting  
13 standards of disciplinary action for its employees.

14 Section 5. Subsection (2) of section 943.131, Florida  
15 Statutes, is amended to read:

16 943.131 Temporary employment or appointment; minimum  
17 basic recruit training exemption.--

18 (2) If an applicant seeks an exemption from completing  
19 a commission-approved basic recruit training program, the  
20 employing agency must verify that the applicant has  
21 successfully completed a comparable basic recruit training  
22 program in another state or for the Federal Government.  
23 Further, the employing agency must verify that the applicant  
24 has served as a full-time sworn officer in another state or  
25 for the Federal Government for at least one year. When the  
26 employing agency obtains written documentation regarding the  
27 applicant's criminal justice experience, the documentation  
28 must be submitted to the commission. The commission shall  
29 adopt rules that establish criteria and procedures to  
30 determine if the applicant is exempt from completing the  
31 commission-approved basic recruit training program, and, upon

1 making a determination, shall notify the employing agency. If  
2 the applicant is exempt from completing the  
3 commission-approved basic recruit training program, the  
4 applicant must complete training, as required by the  
5 commission by rule, in areas which include, but are not  
6 limited to, defensive driving, defensive tactics, firearms  
7 training, and first responder training. Except as provided in  
8 subsection (1), before the employing agency may employ or  
9 appoint the applicant as an officer, the applicant must meet  
10 the minimum qualifications described in s. 943.13(1)-(8), and  
11 must fulfill the requirements of s. 943.13(10).

12 Section 6. Subsection (3) of section 943.14, Florida  
13 Statutes, is amended to read:

14 943.14 Criminal justice training schools; certificates  
15 and diplomas; exemptions; injunctive relief; fines.--

16 (3) The commission shall establish, by rule,  
17 ~~certification~~ procedures for the certification and discipline  
18 of for all instructors in any criminal justice training  
19 school.

20 Section 7. This act shall take effect upon becoming a  
21 law.

22  
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
24 COMMITTEE SUBSTITUTE FOR  
25 Senate Bill 1546

26 Provides that the CS shall take effect upon becoming a law.  
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31