

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.; revising provisions to notify a person  
5       that refusal to submit to a lawful test of the person's  
6       breath, urine, or blood is a misdemeanor, to conform to  
7       changes made by the act; revising language relating to  
8       presumption of consent to submit to a blood test; removing  
9       reference to treatment at a medical facility; amending s.  
10      316.1933, F.S.; directing a law enforcement officer to  
11      require a person driving or in actual physical control of  
12      the motor vehicle to submit to a blood test for the  
13      purpose of determining alcoholic content of the blood or  
14      the presence of specified chemical or controlled  
15      substances if that person has refused or failed to submit  
16      to a lawful urine test; amending s. 316.1939, F.S.;  
17      removing prior suspension as a condition for the  
18      commission of a misdemeanor by refusal to submit to a  
19      lawful test of breath, urine, or blood; amending s.  
20      327.352, F.S.; revising provisions to notify a person that  
21      refusal to submit to a lawful test of the person's breath,  
22      urine, or blood is a misdemeanor, to conform to changes  
23      made by the act; revising language relating to presumption  
24      of consent to submit to a blood test; removing reference  
25      to treatment at a medical facility; amending s. 327.353,  
26      F.S.; directing a law enforcement officer to require a  
27      person operating or in actual physical control of the  
28      vessel to submit to a blood test for the purpose of

29 determining alcoholic content of the blood or the presence  
 30 of specified chemical or controlled substances if that  
 31 person has refused or failed to submit to a lawful urine  
 32 test; amending s. 327.359, F.S.; removing prior suspension  
 33 as a condition for the commission of a misdemeanor by  
 34 refusal to submit to a lawful test of breath, urine, or  
 35 blood; providing an effective date.

36

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

38

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

41 316.1932 Tests for alcohol, chemical substances, or  
 42 controlled substances; implied consent; refusal.--

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

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

75 |       b. Any person who accepts the privilege extended by the  
76 | laws of this state of operating a motor vehicle within this  
77 | state is, by so operating such vehicle, deemed to have given his  
78 | or her consent to submit to a urine test for the purpose of  
79 | detecting the presence of chemical substances as set forth in s.  
80 | 877.111 or controlled substances if the person is lawfully  
81 | arrested for any offense allegedly committed while the person  
82 | was driving or was in actual physical control of a motor vehicle  
83 | while under the influence of chemical substances or controlled  
84 | substances. The urine test must be incidental to a lawful arrest

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

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

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

126 a. Establish uniform criteria for the issuance of permits  
127 to breath test operators, agency inspectors, instructors, blood  
128 analysts, and instruments.

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

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

134 d. Establish uniform requirements for instruction and  
135 curricula for the operation and inspection of approved  
136 instruments.

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

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

141 g. Have the authority to approve or disapprove breath test  
 142 instruments and accompanying paraphernalia for use pursuant to  
 143 the driving and boating under the influence provisions and  
 144 related provisions located in this chapter and chapters 322 and  
 145 327.

146 h. With the approval of the executive director of the  
 147 Department of Law Enforcement, make and enter into contracts and  
 148 agreements with other agencies, organizations, associations,  
 149 corporations, individuals, or federal agencies as are necessary,  
 150 expedient, or incidental to the performance of duties.

151 i. Issue final orders which include findings of fact and  
 152 conclusions of law and which constitute final agency action for  
 153 the purpose of chapter 120.

154 j. Enforce compliance with the provisions of this section  
 155 through civil or administrative proceedings.

156 k. Make recommendations concerning any matter within the  
 157 purview of this section, this chapter, chapter 322, or chapter  
 158 327.

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

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

163 n. Have the authority to approve the type of blood test  
 164 utilized under the driving and boating under the influence  
 165 provisions and related provisions located in this chapter and  
 166 chapters 322 and 327.

167 o. Have the authority to specify techniques and methods  
 168 for breath alcohol testing and blood testing utilized under the

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

171 p. Have the authority to approve repair facilities for the  
 172 approved breath test instruments, including the authority to set  
 173 criteria for approval.

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

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

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

220 Section 2. Paragraph (a) of subsection (1) of section  
 221 316.1933, Florida Statutes, is amended to read:

222 316.1933 Blood test for alcohol, chemical substances, or  
 223 controlled substances ~~impairment or intoxication in cases of~~  
 224 ~~death or serious bodily injury~~; right to use reasonable force.--



225 (1)(a) If a law enforcement officer has probable cause to  
 226 believe that a motor vehicle driven by or in the actual physical  
 227 control of a person under the influence of alcoholic beverages,  
 228 any chemical substances, or any controlled substances has caused  
 229 the death or serious bodily injury of a human being, or if the  
 230 person driving or in actual physical control of a motor vehicle  
 231 has refused or failed to submit to a urine test requested  
 232 pursuant to s. 316.1932(1)(a)1.b., a law enforcement officer  
 233 shall require the person driving or in actual physical control  
 234 of the motor vehicle to submit to a test of the person's blood  
 235 for the purpose of determining the alcoholic content thereof or  
 236 the presence of chemical substances as set forth in s. 877.111  
 237 or any substance controlled under chapter 893. The law  
 238 enforcement officer may use reasonable force if necessary to  
 239 require such person to submit to the administration of the blood  
 240 test. The blood test shall be performed in a reasonable manner.  
 241 Notwithstanding s. 316.1932, the testing required by this  
 242 paragraph need not be incidental to a lawful arrest of the  
 243 person unless the testing is required because the person refused  
 244 or failed to submit to a urine test requested pursuant to s.  
 245 316.1932(1)(a)1.b.

246 Section 3. Section 316.1939, Florida Statutes, is amended  
 247 to read:

248 316.1939 Refusal to submit to testing; penalties.--

249 (1) Any person who has refused to submit to a chemical or  
 250 physical test of his or her breath, blood, or urine, as  
 251 described in s. 316.1932, ~~and whose driving privilege was~~

252 ~~previously suspended for a prior refusal to submit to a lawful~~  
 253 ~~test of his or her breath, urine, or blood, and:~~

254 (a) Who the arresting law enforcement officer had probable  
 255 cause to believe was driving or in actual physical control of a  
 256 motor vehicle in this state while under the influence of  
 257 alcoholic beverages, chemical substances, or controlled  
 258 substances;

259 (b) Who was placed under lawful arrest for a violation of  
 260 s. 316.193 unless such test was requested pursuant to s.  
 261 316.1932(1)(c);

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

266 (d) Who was informed that a refusal to submit to a lawful  
 267 test of his or her breath, urine, or blood, ~~if his or her~~  
 268 ~~driving privilege has been previously suspended for a prior~~  
 269 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
 270 ~~or blood,~~ is a misdemeanor; and

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

274  
 275 commits a misdemeanor of the first degree, punishable ~~and is~~  
 276 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

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

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

287 Section 4. Paragraphs (a) and (c) of subsection (1) of  
 288 section 327.352, Florida Statutes, are amended to read:

289 327.352 Tests for alcohol, chemical substances, or  
 290 controlled substances; implied consent; refusal.--

291 (1)(a)1. The Legislature declares that the operation of a  
 292 vessel is a privilege that must be exercised in a reasonable  
 293 manner. In order to protect the public health and safety, it is  
 294 essential that a lawful and effective means of reducing the  
 295 incidence of boating while impaired or intoxicated be  
 296 established. Therefore, any person who accepts the privilege  
 297 extended by the laws of this state of operating a vessel within  
 298 this state is, by so operating such vessel, deemed to have given  
 299 his or her consent to submit to an approved chemical test or  
 300 physical test including, but not limited to, an infrared light  
 301 test of his or her breath for the purpose of determining the  
 302 alcoholic content of his or her blood or breath if the person is  
 303 lawfully arrested for any offense allegedly committed while the  
 304 person was operating a vessel while under the influence of  
 305 alcoholic beverages. The chemical or physical breath test must  
 306 be incidental to a lawful arrest and administered at the request  
 307 of a law enforcement officer who has reasonable cause to believe

308 such person was operating the vessel within this state while  
309 under the influence of alcoholic beverages. The administration  
310 of a breath test does not preclude the administration of another  
311 type of test. The person shall be told that his or her failure  
312 to submit to any lawful test of his or her breath will result in  
313 a civil penalty of \$500~~7~~, and shall also be told that if he or  
314 she refuses to submit to a lawful test of his or her breath ~~and~~  
315 ~~he or she has been previously fined for refusal to submit to any~~  
316 ~~lawful test of his or her breath, urine, or blood,~~ he or she  
317 commits a misdemeanor in addition to any other penalties. The  
318 refusal to submit to a chemical or physical breath test upon the  
319 request of a law enforcement officer as provided in this section  
320 is admissible into evidence in any criminal proceeding.

321 2. Any person who accepts the privilege extended by the  
322 laws of this state of operating a vessel within this state is,  
323 by so operating such vessel, deemed to have given his or her  
324 consent to submit to a urine test for the purpose of detecting  
325 the presence of chemical substances as set forth in s. 877.111  
326 or controlled substances if the person is lawfully arrested for  
327 any offense allegedly committed while the person was operating a  
328 vessel while under the influence of chemical substances or  
329 controlled substances. The urine test must be incidental to a  
330 lawful arrest and administered at a detention facility or any  
331 other facility, mobile or otherwise, which is equipped to  
332 administer such tests at the request of a law enforcement  
333 officer who has reasonable cause to believe such person was  
334 operating a vessel within this state while under the influence  
335 of chemical substances or controlled substances. The urine test

336 shall be administered at a detention facility or any other  
 337 facility, mobile or otherwise, which is equipped to administer  
 338 such test in a reasonable manner that will ensure the accuracy  
 339 of the specimen and maintain the privacy of the individual  
 340 involved. The administration of a urine test does not preclude  
 341 the administration of another type of test. The person shall be  
 342 told that his or her failure to submit to any lawful test of his  
 343 or her urine will result in a civil penalty of \$500~~7~~ and shall  
 344 also be told that if he or she refuses to submit to a lawful  
 345 test of his or her urine ~~and he or she has been previously fined~~  
 346 ~~for refusal to submit to any lawful test of his or her breath,~~  
 347 ~~urine, or blood,~~ he or she commits a misdemeanor in addition to  
 348 any other penalties. The refusal to submit to a urine test upon  
 349 the request of a law enforcement officer as provided in this  
 350 section is admissible into evidence in any criminal proceeding.

351 (c) Any person who accepts the privilege extended by the  
 352 laws of this state of operating a vessel within this state is,  
 353 by operating such vessel, deemed to have given his or her  
 354 consent to submit to an approved blood test for the purpose of  
 355 determining the alcoholic content of the blood or a blood test  
 356 for the purpose of determining the presence of chemical  
 357 substances or controlled substances as provided in this section  
 358 if there is reasonable cause to believe the person was operating  
 359 a vessel while under the influence of alcoholic beverages or  
 360 chemical or controlled substances and ~~the person appears for~~  
 361 ~~treatment at a hospital, clinic, or other medical facility and~~  
 362 the administration of a breath or urine test is impractical or  
 363 impossible. ~~As used in this paragraph, the term "other medical~~

364 ~~facility" includes an ambulance or other medical emergency~~  
 365 ~~vehicle.~~ The blood test shall be performed in a reasonable  
 366 manner. Any person who is incapable of refusal by reason of  
 367 unconsciousness or other mental or physical condition is deemed  
 368 not to have withdrawn his or her consent to such test. Any  
 369 person who is capable of refusal shall be told that his or her  
 370 failure to submit to such a blood test will result in a civil  
 371 penalty of \$500 and that a refusal to submit to a lawful test of  
 372 his or her blood, ~~if he or she has previously been fined for~~  
 373 ~~refusal to submit to any lawful test of his or her breath,~~  
 374 ~~urine, or blood,~~ is a misdemeanor. The refusal to submit to a  
 375 blood test upon the request of a law enforcement officer shall  
 376 be admissible in evidence in any criminal proceeding.

377 Section 5. Paragraph (a) of subsection (1) of section  
 378 327.353, Florida Statutes, is amended to read:

379 327.353 Blood test for alcohol, chemical substances, or  
 380 controlled substances ~~impairment or intoxication in cases of~~  
 381 ~~death or serious bodily injury~~; right to use reasonable force.--

382 (1)(a) If a law enforcement officer has probable cause to  
 383 believe that a vessel operated by a person under the influence  
 384 of alcoholic beverages, any chemical substances, or any  
 385 controlled substances has caused the death or serious bodily  
 386 injury of a human being, or if the person operating or in actual  
 387 physical control of a vessel has refused or failed to submit to  
 388 a urine test requested pursuant to s. 327.352(1)(a)2., a law  
 389 enforcement officer shall require the person operating or in  
 390 actual physical control of the vessel to submit to a test of the  
 391 person's blood for the purpose of determining the alcoholic

392 content thereof or the presence of chemical substances as set  
 393 forth in s. 877.111 or any substance controlled under chapter  
 394 893. The law enforcement officer may use reasonable force if  
 395 necessary to require the person to submit to the administration  
 396 of the blood test. The blood test shall be performed in a  
 397 reasonable manner. Notwithstanding s. 327.352, the testing  
 398 required by this paragraph need not be incidental to a lawful  
 399 arrest of the person unless the testing is required because the  
 400 person refused or failed to submit to a urine test requested  
 401 pursuant to s. 327.352(1)(a)2.

402 Section 6. Section 327.359, Florida Statutes, is amended  
 403 to read:

404 327.359 Refusal to submit to testing; penalties.--Any  
 405 person who has refused to submit to a chemical or physical test  
 406 of his or her breath, blood, or urine, as described in s.  
 407 327.352, ~~and who has been previously fined for refusal to submit~~  
 408 ~~to a lawful test of his or her breath, urine, or blood,~~ and:

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

413 (2) Who was placed under lawful arrest for a violation of  
 414 s. 327.35 unless such test was requested pursuant to s.  
 415 327.352(1)(c);

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

418 (4) Who was informed that a refusal to submit to a lawful  
 419 test of his or her breath, urine, or blood, ~~if he or she has~~

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420 ~~been previously fined for refusal to submit to a lawful test of~~  
421 ~~his or her breath, urine, or blood,~~ is a misdemeanor; and

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

425  
426 commits a misdemeanor of the first degree, punishable ~~and is~~  
427 ~~subject to punishment~~ as provided in s. 775.082 or s. 775.083.

428 Section 7. This act shall take effect October 1, 2006.