

House Bill No. 2111

An act relating to rulemaking; amending ss. 316.1932, 322.63, and 327.352, F.S.; specifying the responsibilities of the Alcohol Testing Program of the Department of Law Enforcement with respect to breath test instruments, persons who operate, inspect, and instruct on such instruments, and blood analysts who conduct blood testing, in connection with testing pursuant to the driving or boating under the influence provisions of chapters 316, 322, and 327, F.S., and providing for rules with respect thereto; removing references to department authority and rulemaking with respect to such testing; amending s. 943.03, F.S.; revising the department's rulemaking authority; authorizing rules relating to employee misconduct and discipline; amending s. 943.131, F.S.; directing the Criminal Justice Standards and Training Commission to adopt rules relating to determination of an applicant's eligibility for exemption from completing the basic recruit training program; amending s. 943.14, F.S.; directing the commission to establish procedures for discipline of criminal justice training school instructors by rule; providing an effective date.

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

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

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

(1)(a)1. Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath, and to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances, if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages, chemical substances, or controlled substances. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of controlled substances. The urine test shall be administered at a detention facility or any

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

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program shall:

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

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

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

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

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

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

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

h. With the approval of the executive director of the Department of Law Enforcement, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal

agencies as are necessary, expedient, or incidental to the performance of duties.

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

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

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

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

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

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

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

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

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

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

322.63 Alcohol or drug testing; commercial motor vehicle operators.—

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

(b) The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 327. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and

related provisions located in this chapter and chapters 316 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 327. The program shall:

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

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

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

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

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

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

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

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

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

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

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

12. Promulgate rules for the administration and implementation of this section, including definitions of terms.

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

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

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

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

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

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

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

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

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

(1)

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

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

3. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program is responsible for the regulation of the individuals who operate, inspect, and instruct on the breath test instruments utilized in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the

influence provisions and related provisions located in this chapter and chapters 316 and 322. The program shall:

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

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

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

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

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

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

g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 316 and 322.

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

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

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

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

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

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

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

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

the influence provisions and related provisions located in this chapter and chapters 316 and 322.

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

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

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

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

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

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

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

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

943.03 Department of Law Enforcement.—

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

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

943.131 Temporary employment or appointment; minimum basic recruit training exemption.—

(2) If an applicant seeks an exemption from completing a commission-approved basic recruit training program, the employing agency must verify that the applicant has successfully completed a comparable basic recruit training program in another state or for the Federal Government. Further, the employing agency must verify that the applicant has served as a full-time sworn officer in another state or for the Federal Government for at least one year. When the employing agency obtains written documentation regarding the applicant's criminal justice experience, the documentation must be submitted to the commission. The commission shall adopt rules that establish criteria and procedures to determine if the applicant is exempt from completing the commission-approved basic recruit training program, and, upon making a determination, shall notify the employing agency. If the applicant is exempt from completing the commission-approved basic recruit training program, the applicant must complete training, as required by the commission by rule, in areas which include, but are not limited to, defensive driving, defensive tactics, firearms training, and first responder training. Except as provided in subsection (1), before the employing agency may employ or appoint the applicant as an officer, the applicant must meet the minimum qualifications described in s. 943.13(1)-(8), and must fulfill the requirements of s. 943.13(10).

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

943.14 Criminal justice training schools; certificates and diplomas; exemptions; injunctive relief; fines.—

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

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

Approved by the Governor June 5, 2000.

Filed in Office Secretary of State June 5, 2000.