

By Senator Brown-Waite

10-1193A-98

1 A bill to be entitled
2 An act relating to the offense of driving under
3 the influence of alcoholic beverages; amending
4 s. 322.2616, F.S.; clarifying that it is
5 unlawful for a person under 21 years of age to
6 operate a motor vehicle with a blood-alcohol
7 level above a specified amount; providing for a
8 temporary driving permit to become effective
9 after a specified period has elapsed following
10 issuance of the permit; authorizing the use of
11 a blood test obtained pursuant to certain other
12 investigations to be used for purposes of s.
13 322.2616, F.S.; providing an effective date.

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

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17 Section 1. Section 322.2616, Florida Statutes, is
18 amended to read:

19 322.2616 Suspension of license; persons under 21 years
20 of age; right to review.--

21 (1)(a) Notwithstanding s. 316.193, it is unlawful for
22 a person under the age of 21 who has a blood-alcohol or
23 breath-alcohol level of 0.02 ~~percent~~ or higher to drive or be
24 in actual physical control of a motor vehicle.

25 (b) A law enforcement officer who has probable cause
26 to believe that a motor vehicle is being driven by or is in
27 the actual physical control of a person who is under the age
28 of 21 while under the influence of alcoholic beverages or who
29 has any breath-alcohol level may lawfully detain such a person
30 and may request that person to submit to a test to determine
31 his or her breath-alcohol level.

1 (2)(a) A law enforcement officer or correctional
2 officer shall, on behalf of the department, suspend the
3 driving privilege of such person if the person has a
4 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
5 higher. The officer shall also suspend, on behalf of the
6 department, the driving privilege of a person who has refused
7 to submit to a test as provided by paragraph (b). The officer
8 shall take the person's driver's license and issue the person
9 a 10-day temporary driving permit if the person is otherwise
10 eligible for the driving privilege and shall issue the person
11 a notice of suspension.

12 (b) The suspension under paragraph (a) must be
13 pursuant to, and the notice of suspension must inform the
14 driver of, the following:

15 1.a. The driver refused to submit to a lawful breath
16 test and his or her driving privilege is suspended for a
17 period of 1 year for a first refusal or for a period of 18
18 months if his or her driving privilege has been previously
19 suspended as provided in this section as a result of a refusal
20 to submit to a test; or

21 b. The driver was under the age of 21 and was driving
22 or in actual physical control of a motor vehicle while having
23 a blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
24 higher; and the person's driving privilege is suspended for a
25 period of 6 months for a first violation, or for a period of 1
26 year if his or her driving privilege has been previously
27 suspended as provided in this section for driving or being in
28 actual physical control of a motor vehicle with a
29 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
30 higher.

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1 2. The suspension period commences on the date of
2 issuance of the notice of suspension.

3 3. The driver may request a formal or informal review
4 of the suspension by the department within 10 days after the
5 issuance of the notice of suspension.

6 4. A temporary permit issued at the time of the
7 issuance of the notice of suspension does not become effective
8 until after 12 hours have elapsed and will expire at midnight
9 of the 10th day following the date of issuance.

10 5. The driver may submit to the department any
11 materials relevant to the suspension of his or her license.

12 (3) The law enforcement officer shall forward to the
13 department, within 5 days after the date of the issuance of
14 the notice of suspension, a copy of the notice of suspension,
15 the driver's license of the person receiving the notice of
16 suspension, and an affidavit stating the officer's grounds for
17 belief that the person was under the age of 21 and was driving
18 or in actual physical control of a motor vehicle with any
19 breath-alcohol level, and the results of any breath test or an
20 affidavit stating that a breath test was requested by a law
21 enforcement officer or correctional officer and that the
22 person refused to submit to such test. The failure of the
23 officer to submit materials within the 5-day period specified
24 in this subsection does not bar the department from
25 considering any materials submitted at or before the hearing.

26 (4) If the department finds that the license of the
27 person should be suspended under this section and if the
28 notice of suspension has not already been served upon the
29 person by a law enforcement officer or correctional officer as
30 provided in subsection (2), the department shall issue a
31 notice of suspension and, unless the notice is mailed under s.

1 322.251, a temporary driving permit that expires 10 days after
2 the date of issuance if the driver is otherwise eligible.

3 (5) If the person whose license is suspended requests
4 an informal review under subparagraph (2)(b)3., the department
5 shall conduct the informal review by a hearing officer
6 employed by the department within 30 days after the request is
7 received by the department and shall issue such person a
8 temporary driving permit for business purposes only to expire
9 on the date that such review is scheduled to be conducted if
10 the person is otherwise eligible. The informal review hearing
11 must consist solely of an examination by the department of the
12 materials submitted by a law enforcement officer or
13 correctional officer and by the person whose license is
14 suspended, and the presence of an officer or witness is not
15 required.

16 (6) After completion of the informal review, notice of
17 the department's decision sustaining, amending, or
18 invalidating the suspension of the driver's license must be
19 provided to the person. The notice must be mailed to the
20 person at the last known address shown on the department's
21 records, or to the address provided in the law enforcement
22 officer's report if such address differs from the address of
23 record, within 7 days after completing the review.

24 (7)(a) If the person whose license is suspended
25 requests a formal review, the department must schedule a
26 hearing to be held within 30 days after the request is
27 received by the department and must notify the person of the
28 date, time, and place of the hearing and shall issue such
29 person a temporary driving permit for business purposes only
30 to expire on the date that such review is scheduled to be
31 conducted if the person is otherwise eligible.

1 (b) The formal review hearing must be held before a
2 hearing officer employed by the department, and the hearing
3 officer may administer oaths, examine witnesses and take
4 testimony, receive relevant evidence, issue subpoenas,
5 regulate the course and conduct of the hearing, and make a
6 ruling on the suspension. The department and the person whose
7 license was suspended may subpoena witnesses, and the party
8 requesting the presence of a witness is responsible for paying
9 any witness fees and for notifying in writing the state
10 attorney's office in the appropriate circuit of the issuance
11 of the subpoena. If the person who requests a formal review
12 hearing fails to appear and the hearing officer finds the
13 failure to be without just cause, the right to a formal
14 hearing is waived and the suspension is sustained.

15 (c) A party may seek enforcement of a subpoena under
16 paragraph (b) by filing a petition for enforcement in the
17 circuit court of the judicial circuit in which the person
18 failing to comply with the subpoena resides. A failure to
19 comply with an order of the court constitutes contempt of
20 court. However, a person may not be held in contempt while a
21 subpoena is being challenged.

22 (d) The department must, within 7 days after a formal
23 review hearing, send notice to the person of the hearing
24 officer's decision as to whether sufficient cause exists to
25 sustain, amend, or invalidate the suspension.

26 (8) In a formal review hearing under subsection (7) or
27 an informal review hearing under subsection (5), the hearing
28 officer shall determine by a preponderance of the evidence
29 whether sufficient cause exists to sustain, amend, or
30 invalidate the suspension. The scope of the review is limited
31 to the following issues:

1 (a) If the license was suspended because the
2 individual, then under the age of 21, drove with a
3 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
4 higher:

5 1. Whether the law enforcement officer had probable
6 cause to believe that the person was under the age of 21 and
7 was driving or in actual physical control of a motor vehicle
8 in this state with any blood-alcohol or breath-alcohol level
9 or while under the influence of alcoholic beverages.

10 2. Whether the person was under the age of 21.

11 3. Whether the person had a blood-alcohol or
12 breath-alcohol level of 0.02 ~~percent~~ or higher.

13 (b) If the license was suspended because of the
14 individual's refusal to submit to a breath test:

15 1. Whether the law enforcement officer had probable
16 cause to believe that the person was under the age of 21 and
17 was driving or in actual physical control of a motor vehicle
18 in this state with any blood-alcohol or breath-alcohol level
19 or while under the influence of alcoholic beverages.

20 2. Whether the person was under the age of 21.

21 3. Whether the person refused to submit to a breath
22 test after being requested to do so by a law enforcement
23 officer or correctional officer.

24 4. Whether the person was told that if he or she
25 refused to submit to a breath test his or her privilege to
26 operate a motor vehicle would be suspended for a period of 1
27 year or, in the case of a second or subsequent refusal, for a
28 period of 18 months.

29 (9) Based on the determination of the hearing officer
30 under subsection (8) for both informal hearings under
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1 subsection (5) and formal hearings under subsection (7), the
2 department shall:

3 (a) Sustain the suspension of the person's driving
4 privilege for a period of 1 year for a first refusal, or for a
5 period of 18 months if the driving privilege of the person has
6 been previously suspended, as provided in this section, as a
7 result of a refusal to submit to a test. The suspension
8 period commences on the date of the issuance of the notice of
9 suspension.

10 (b) Sustain the suspension of the person's driving
11 privilege for a period of 6 months for driving or being in
12 actual physical control of a motor vehicle while under the age
13 of 21 with a blood-alcohol or breath-alcohol level of 0.02
14 ~~percent~~ or higher, or for a period of 1 year if the driving
15 privilege of such person has been previously suspended under
16 this section ~~as a result of driving a motor vehicle while~~
17 ~~under the age of 21 with a breath-alcohol level of at least~~
18 ~~0.02 percent but less than 0.08 percent~~. The suspension period
19 commences on the date of the issuance of the notice of
20 suspension.

21 (10) A request for a formal review hearing or an
22 informal review hearing shall not stay the suspension of the
23 person's driver's license. If the department fails to
24 schedule the formal review hearing to be held within 30 days
25 after receipt of the request therefor, the department shall
26 invalidate the suspension. If the scheduled hearing is
27 continued at the department's initiative, the department shall
28 issue a temporary driving permit that is valid until the
29 hearing is conducted if the person is otherwise eligible for
30 the driving privilege. The permit shall not be issued to a
31 person who requested a continuance of the hearing. The permit

1 issued under this subsection authorizes driving for business
2 or employment use only.

3 (11) A person whose driver's license is suspended
4 under subsection (2) or subsection (4) may apply for issuance
5 of a license for business or employment purposes only,
6 pursuant to s. 322.271, if the person is otherwise eligible
7 for the driving privilege. However, such a license may not be
8 issued until 30 days have elapsed after the expiration of the
9 last temporary driving permit issued under this section.

10 (12) The formal review hearing may be conducted upon a
11 review of the reports of a law enforcement officer or
12 correctional officer, including documents relating to the
13 administration of a breath test or the refusal to take a test.
14 However, as provided in subsection (7), the driver may
15 subpoena the officer or any person who administered a breath
16 test.

17 (13) The formal review hearing and the informal review
18 hearing are exempt from chapter 120. The department may adopt
19 rules for conducting reviews under this section.

20 (14) A person may appeal any decision of the
21 department sustaining a suspension of his or her driver's
22 license by a petition for writ of certiorari to the circuit
23 court in the county wherein such person resides or wherein a
24 formal or informal review was conducted under s. 322.31.
25 However, an appeal does not stay the suspension. This
26 subsection does not provide for a de novo appeal.

27 (15) The decision of the department under this section
28 shall not be considered in any trial for a violation of s.
29 316.193, nor shall any written statement submitted by a person
30 in his or her request for departmental review under this
31 section be admissible into evidence against him or her in any

1 such trial. The disposition of any related criminal
2 proceedings shall not affect a suspension imposed under this
3 section.

4 (16) By applying for and accepting and using a
5 driver's license, a person under the age of 21 years who holds
6 the driver's license is deemed to have expressed his or her
7 consent to the provisions of this section.

8 (17) A breath test to determine breath-alcohol level
9 pursuant to this section may be conducted as authorized by s.
10 316.1932 or by a breath-alcohol ~~preliminary alcohol screening~~
11 test device listed in the United States Department of
12 Transportation's conforming-product list of evidential
13 breath-measurement devices. The reading from such a device is
14 presumed accurate and is admissible in evidence in any
15 administrative hearing conducted under this section.

16 (18) The result of a blood test obtained during an
17 investigation conducted under s. 316.1932 or s. 316.1933 may
18 be used to suspend the driving privilege of a person under
19 this section.

20 (19)~~(18)~~ A violation of this section is neither a
21 traffic infraction nor a criminal offense, nor does being
22 detained pursuant to this section constitute an arrest. A
23 violation of this section is subject to the administrative
24 action provisions of this section, which are administered by
25 the department through its administrative processes.
26 Administrative actions taken pursuant to this section shall be
27 recorded in the motor vehicle records maintained by the
28 department. This section does not bar prosecution under s.
29 316.193. However, if the department suspends a person's
30 license under s. 322.2615 for a violation of s. 316.193, it
31 may not also suspend the person's license under this section

1 for the same episode that was the basis for the suspension
2 under s. 322.2615.

3 Section 2. This act shall take effect July 1, 1998.

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6 SENATE SUMMARY

7 Clarifies that it is unlawful for a person under 21 years
8 of age who has a blood-alcohol level of 0.02 or higher to
9 operate a motor vehicle. Provides that a temporary
10 driving permit issued following the suspension of a
11 person's driving privilege becomes effective only after
12 12 hours have elapsed following the suspension. Provides
13 that the results of a blood test obtained for purposes of
14 certain other investigations may be used to suspend a
15 person's driving privilege under s. 322.2616, F.S.

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