

By the Committee on Criminal Justice and Senator Webster

307-2113-99

1 A bill to be entitled
 2 An act relating to suspension of driver's
 3 licenses; amending s. 316.1937, F.S.; requiring
 4 the use of an ignition interlock device for
 5 persons convicted a second or subsequent time
 6 for driving under the influence; providing for
 7 a license suspension under certain
 8 circumstances; amending s. 322.2616, F.S.;
 9 clarifying the blood-alcohol and breath-alcohol
 10 levels that are unlawful; prescribing a waiting
 11 period before a temporary driving permit
 12 becomes effective; providing notice
 13 requirements with respect to the department's
 14 decision to sustain, amend, or invalidate a
 15 driver's license suspension; authorizing the
 16 use of blood tests obtained pursuant to other
 17 investigations for purposes of license
 18 suspension under s. 322.2616, F.S.; prescribing
 19 law enforcement officers' immunity from civil
 20 liability; providing an effective date.

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

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 24 Section 1. Subsection (1) of section 316.1937, Florida
 25 Statutes, is amended to read:

26 316.1937 Ignition interlock devices, requiring;
 27 unlawful acts.--

28 (1)(a) In addition to any other authorized penalties,
 29 the court may require that any person who is convicted of
 30 driving under the influence in violation of s. 316.193, and
 31 who is granted probation, shall not operate a motor vehicle

1 during the period of probation unless that vehicle is equipped
2 with a functioning ignition interlock device certified by the
3 department as provided in s. 316.1938, and installed in such a
4 manner that the vehicle will not start if the operator's blood
5 alcohol level is in excess of 0.05 percent or as otherwise
6 specified by the court. The court may require the use of an
7 approved ignition interlock device for the period of
8 probation, said period to be for not less than 6 months, if
9 the person is permitted to operate a motor vehicle, whether
10 the privilege to operate a motor vehicle is restricted or not,
11 as determined by the court.

12 (b) In addition to any other authorized penalties the
13 court shall require that any person who is convicted for a
14 second or subsequent violation of driving under the influence
15 in violation of s. 316.193 shall not operate a motor vehicle
16 for a period of not less than 1 year unless the vehicle is
17 equipped with a functioning ignition interlock device
18 certified by the department as provided in s. 316.1938 and
19 installed in such a manner that the vehicle will not start if
20 the operator's blood-alcohol level is in excess of 0.05
21 percent or otherwise as specified by the court. The court
22 shall provide that if the person who is so convicted of a
23 second or subsequent violation for driving under the influence
24 tampers with the ignition interlock device or, except as
25 provided in subsection (7), drives a motor vehicle without
26 such device in violation of the order of the court, such
27 person shall, in addition to any other authorized penalty,
28 have his or her driver's license suspended for a minimum term
29 of 1 year.

30 Section 2. Section 322.2616, Florida Statutes, is
31 amended to read:

1 322.2616 Suspension of license; persons under 21 years
2 of age; right to review.--

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

7 (b) A law enforcement officer who has probable cause
8 to believe that a motor vehicle is being driven by or is in
9 the actual physical control of a person who is under the age
10 of 21 while under the influence of alcoholic beverages or who
11 has any blood-alcohol or breath-alcohol level may lawfully
12 detain such a person and may request that person to submit to
13 a test to determine his or her breath-alcohol level.

14 (2)(a) A law enforcement officer or correctional
15 officer shall, on behalf of the department, suspend the
16 driving privilege of such person if the person has a
17 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
18 higher. The officer shall also suspend, on behalf of the
19 department, the driving privilege of a person who has refused
20 to submit to a test as provided by paragraph (b). The officer
21 shall take the person's driver's license and issue the person
22 a 10-day temporary driving permit if the person is otherwise
23 eligible for the driving privilege and shall issue the person
24 a notice of suspension.

25 (b) The suspension under paragraph (a) must be
26 pursuant to, and the notice of suspension must inform the
27 driver of, the following:

28 1.a. The driver refused to submit to a lawful breath
29 test and his or her driving privilege is suspended for a
30 period of 1 year for a first refusal or for a period of 18
31 months if his or her driving privilege has been previously

1 suspended as provided in this section as a result of a refusal
2 to submit to a test; or

3 b. The driver was under the age of 21 and was driving
4 or in actual physical control of a motor vehicle while having
5 a blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
6 higher; and the person's driving privilege is suspended for a
7 period of 6 months for a first violation, or for a period of 1
8 year if his or her driving privilege has been previously
9 suspended as provided in this section for driving or being in
10 actual physical control of a motor vehicle with a
11 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
12 higher.

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

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

18 4. A temporary permit issued at the time of the
19 issuance of the notice of suspension shall not become
20 effective until after 12 hours have elapsed and will expire at
21 midnight of the 10th day following the date of issuance.

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

24 (3) The law enforcement officer shall forward to the
25 department, within 5 days after the date of the issuance of
26 the notice of suspension, a copy of the notice of suspension,
27 the driver's license of the person receiving the notice of
28 suspension, and an affidavit stating the officer's grounds for
29 belief that the person was under the age of 21 and was driving
30 or in actual physical control of a motor vehicle with any
31 blood-alcohol or breath-alcohol level, and the results of any

1 blood or breath test or an affidavit stating that a blood or
2 breath test was requested by a law enforcement officer or
3 correctional officer and that the person refused to submit to
4 such test. The failure of the officer to submit materials
5 within the 5-day period specified in this subsection does not
6 bar the department from considering any materials submitted at
7 or before the hearing.

8 (4) If the department finds that the license of the
9 person should be suspended under this section and if the
10 notice of suspension has not already been served upon the
11 person by a law enforcement officer or correctional officer as
12 provided in subsection (2), the department shall issue a
13 notice of suspension and, unless the notice is mailed under s.
14 322.251, a temporary driving permit that expires 10 days after
15 the date of issuance if the driver is otherwise eligible.

16 (5) If the person whose license is suspended requests
17 an informal review under subparagraph (2)(b)3., the department
18 shall conduct the informal review by a hearing officer
19 employed by the department within 30 days after the request is
20 received by the department and shall issue such person a
21 temporary driving permit for business purposes only to expire
22 on the date that such review is scheduled to be conducted if
23 the person is otherwise eligible. The informal review hearing
24 must consist solely of an examination by the department of the
25 materials submitted by a law enforcement officer or
26 correctional officer and by the person whose license is
27 suspended, and the presence of an officer or witness is not
28 required.

29 (6) After completion of the informal review, notice of
30 the department's decision sustaining, amending, or
31 invalidating the suspension of the driver's license must be

1 provided to the person. The notice must be mailed to the
2 person at the last known address shown on the department's
3 records, or to the address provided in the law enforcement
4 officer's report if such address differs from the address of
5 record, within 7 working days after completing the review.

6 (7)(a) If the person whose license is suspended
7 requests a formal review, the department must schedule a
8 hearing to be held within 30 days after the request is
9 received by the department and must notify the person of the
10 date, time, and place of the hearing and shall issue such
11 person a temporary driving permit for business purposes only
12 to expire on the date that such review is scheduled to be
13 conducted if the person is otherwise eligible.

14 (b) The formal review hearing must be held before a
15 hearing officer employed by the department, and the hearing
16 officer may administer oaths, examine witnesses and take
17 testimony, receive relevant evidence, issue subpoenas,
18 regulate the course and conduct of the hearing, and make a
19 ruling on the suspension. The department and the person whose
20 license was suspended may subpoena witnesses, and the party
21 requesting the presence of a witness is responsible for paying
22 any witness fees and for notifying in writing the state
23 attorney's office in the appropriate circuit of the issuance
24 of the subpoena. If the person who requests a formal review
25 hearing fails to appear and the hearing officer finds the
26 failure to be without just cause, the right to a formal
27 hearing is waived and the suspension is sustained.

28 (c) A party may seek enforcement of a subpoena under
29 paragraph (b) by filing a petition for enforcement in the
30 circuit court of the judicial circuit in which the person
31 failing to comply with the subpoena resides. A failure to

1 comply with an order of the court constitutes contempt of
2 court. However, a person may not be held in contempt while a
3 subpoena is being challenged.

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

8 (8) In a formal review hearing under subsection (7) or
9 an informal review hearing under subsection (5), the hearing
10 officer shall determine by a preponderance of the evidence
11 whether sufficient cause exists to sustain, amend, or
12 invalidate the suspension. The scope of the review is limited
13 to the following issues:

14 (a) If the license was suspended because the
15 individual, then under the age of 21, drove with a
16 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
17 higher:

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

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

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

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

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

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

4 3. Whether the person refused to submit to a breath
5 test after being requested to do so by a law enforcement
6 officer or correctional officer.

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

12 (9) Based on the determination of the hearing officer
13 under subsection (8) for both informal hearings under
14 subsection (5) and formal hearings under subsection (7), the
15 department shall:

16 (a) Sustain the suspension of the person's driving
17 privilege for a period of 1 year for a first refusal, or for a
18 period of 18 months if the driving privilege of the person has
19 been previously suspended, as provided in this section, as a
20 result of a refusal to submit to a test. The suspension
21 period commences on the date of the issuance of the notice of
22 suspension.

23 (b) Sustain the suspension of the person's driving
24 privilege for a period of 6 months for driving or being in
25 actual physical control of a motor vehicle while under the age
26 of 21 with a blood-alcohol or breath-alcohol level of 0.02
27 ~~percent~~ or higher, or for a period of 1 year if the driving
28 privilege of such person has been previously suspended under
29 this section ~~as a result of driving a motor vehicle while~~
30 ~~under the age of 21 with a breath-alcohol level of at least~~
31 ~~0.02 percent but less than 0.08 percent.~~ The suspension period

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

3 (10) A request for a formal review hearing or an
4 informal review hearing shall not stay the suspension of the
5 person's driver's license. If the department fails to
6 schedule the formal review hearing to be held within 30 days
7 after receipt of the request therefor, the department shall
8 invalidate the suspension. If the scheduled hearing is
9 continued at the department's initiative, the department shall
10 issue a temporary driving permit that is valid until the
11 hearing is conducted if the person is otherwise eligible for
12 the driving privilege. The permit shall not be issued to a
13 person who requested a continuance of the hearing. The permit
14 issued under this subsection authorizes driving for business
15 or employment use only.

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

23 (12) The formal review hearing may be conducted upon a
24 review of the reports of a law enforcement officer or
25 correctional officer, including documents relating to the
26 administration of a breath test or the refusal to take a test.
27 However, as provided in subsection (7), the driver may
28 subpoena the officer or any person who administered a breath
29 test.

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

4 (14) A person may appeal any decision of the
5 department sustaining a suspension of his or her driver's
6 license by a petition for writ of certiorari to the circuit
7 court in the county wherein such person resides or wherein a
8 formal or informal review was conducted under s. 322.31.
9 However, an appeal does not stay the suspension. This
10 subsection does not provide for a de novo appeal.

11 (15) The decision of the department under this section
12 shall not be considered in any trial for a violation of s.
13 316.193, nor shall any written statement submitted by a person
14 in his or her request for departmental review under this
15 section be admissible into evidence against him or her in any
16 such trial. The disposition of any related criminal
17 proceedings shall not affect a suspension imposed under this
18 section.

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

23 (17) A breath test to determine breath-alcohol level
24 pursuant to this section may be conducted as authorized by s.
25 316.1932 or by a breath-alcohol ~~preliminary alcohol screening~~
26 test device listed in the United States Department of
27 Transportation's conforming-product list of evidential
28 breath-measurement devices. The reading from such a device is
29 presumed accurate and is admissible in evidence in any
30 administrative hearing conducted under this section.

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

5 (19) A law enforcement officer who acts in good faith
6 and exercises due care in enforcing this section is immune
7 from civil liability that otherwise might result by reason of
8 his action.

9 (20)~~(18)~~ A violation of this section is neither a
10 traffic infraction nor a criminal offense, nor does being
11 detained pursuant to this section constitute an arrest. A
12 violation of this section is subject to the administrative
13 action provisions of this section, which are administered by
14 the department through its administrative processes.
15 Administrative actions taken pursuant to this section shall be
16 recorded in the motor vehicle records maintained by the
17 department. This section does not bar prosecution under s.
18 316.193. However, if the department suspends a person's
19 license under s. 322.2615 for a violation of s. 316.193, it
20 may not also suspend the person's license under this section
21 for the same episode that was the basis for the suspension
22 under s. 322.2615.

23 Section 3. This act shall take effect July 1, 1999.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1316

1. Adds that the court must require a person, who receives a second or subsequent driving under the influence conviction, to not operate a motor vehicle for a period of at least one year unless the vehicle is equipped with an ignition interlock device.
2. Adds that a court must require a person, who tampers with the device, or who drives a vehicle without the device, to have his or her driver's license suspended for at least one year.
3. Adds that notice of the department's decision to sustain, amend, or invalidate a driver's license suspension in certain circumstances must be sent to the offender within 7 working days.