

By Representative Merchant

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 a
5 certain time period for persons convicted of a
6 second or subsequent time for driving under the
7 influence; providing for a license suspension
8 under certain circumstances; amending s.
9 322.2616, F.S.; clarifying the blood-alcohol
10 and breath-alcohol levels that are unlawful;
11 prescribing a waiting period before a temporary
12 driving permit becomes effective; authorizing
13 the use of blood tests obtained pursuant to
14 other investigations for purposes of license
15 suspension under s. 322.2616, F.S.; prescribing
16 law enforcement officers' immunity from civil
17 liability; providing an effective date.

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

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

23 316.1937 Ignition interlock devices, requiring;
24 unlawful acts.--

25 (1)(a) In addition to any other authorized penalties,
26 the court may require that any person who is convicted of
27 driving under the influence in violation of s. 316.193, and
28 who is granted probation, shall not operate a motor vehicle
29 during the period of probation unless that vehicle is equipped
30 with a functioning ignition interlock device certified by the
31 department as provided in s. 316.1938, and installed in such a

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

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

26 Section 2. Section 322.2616, Florida Statutes, is
27 amended to read:

28 322.2616 Suspension of license; persons under 21 years
29 of age; right to review.--

30 (1)(a) Notwithstanding s. 316.193, it is unlawful for
31 a person under the age of 21 who has a blood-alcohol or

1 breath-alcohol level of 0.02 ~~percent~~ or higher to drive or be
2 in actual physical control of a motor vehicle.

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

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

21 (b) The suspension under paragraph (a) must be
22 pursuant to, and the notice of suspension must inform the
23 driver of, the following:

24 1.a. The driver refused to submit to a lawful breath
25 test and his or her driving privilege is suspended for a
26 period of 1 year for a first refusal or for a period of 18
27 months if his or her driving privilege has been previously
28 suspended as provided in this section as a result of a refusal
29 to submit to a test; or

30 b. The driver was under the age of 21 and was driving
31 or in actual physical control of a motor vehicle while having

1 a blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
2 higher; and the person's driving privilege is suspended for a
3 period of 6 months for a first violation, or for a period of 1
4 year if his or her driving privilege has been previously
5 suspended as provided in this section for driving or being in
6 actual physical control of a motor vehicle with a
7 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
8 higher.

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

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

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

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

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

1 within the 5-day period specified in this subsection does not
2 bar the department from considering any materials submitted at
3 or before the hearing.

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

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

25 (6) After completion of the informal review, notice of
26 the department's decision sustaining, amending, or
27 invalidating the suspension of the driver's license must be
28 provided to the person. The notice must be mailed to the
29 person at the last known address shown on the department's
30 records, or to the address provided in the law enforcement
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1 officer's report if such address differs from the address of
2 record, within 7 days after completing the review.

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

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

25 (c) A party may seek enforcement of a subpoena under
26 paragraph (b) by filing a petition for enforcement in the
27 circuit court of the judicial circuit in which the person
28 failing to comply with the subpoena resides. A failure to
29 comply with an order of the court constitutes contempt of
30 court. However, a person may not be held in contempt while a
31 subpoena is being challenged.

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

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

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

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 had a blood-alcohol or
22 breath-alcohol level of 0.02 ~~percent~~ or higher.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (15) The decision of the department under this section
9 shall not be considered in any trial for a violation of s.
10 316.193, nor shall any written statement submitted by a person
11 in his or her request for departmental review under this
12 section be admissible into evidence against him or her in any
13 such trial. The disposition of any related criminal
14 proceedings shall not affect a suspension imposed under this
15 section.

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

20 (17) A breath test to determine breath-alcohol level
21 pursuant to this section may be conducted as authorized by s.
22 316.1932 or by a breath-alcohol ~~preliminary alcohol screening~~
23 test device listed in the United States Department of
24 Transportation's conforming-product list of evidential
25 breath-measurement devices. The reading from such a device is
26 presumed accurate and is admissible in evidence in any
27 administrative hearing conducted under this section.

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

1 (19) A law enforcement officer who acts in good faith
2 and exercises due care in enforcing this section is immune
3 from civil liability that otherwise might result by reason of
4 his or her action.

5 (20)~~(18)~~ A violation of this section is neither a
6 traffic infraction nor a criminal offense, nor does being
7 detained pursuant to this section constitute an arrest. A
8 violation of this section is subject to the administrative
9 action provisions of this section, which are administered by
10 the department through its administrative processes.
11 Administrative actions taken pursuant to this section shall be
12 recorded in the motor vehicle records maintained by the
13 department. This section does not bar prosecution under s.
14 316.193. However, if the department suspends a person's
15 license under s. 322.2615 for a violation of s. 316.193, it
16 may not also suspend the person's license under this section
17 for the same episode that was the basis for the suspension
18 under s. 322.2615.

19 Section 3. This act shall take effect July 1, 1999.

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22 HOUSE SUMMARY

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24 Provides that the court shall require the use of an
25 ignition interlock device in the motor vehicle of a
26 person convicted of a second or subsequent conviction for
27 driving under the influence for a period of 1 year.
28 Provides for a minimum driver license suspension of 1
29 year for tampering with the device or driving without
30 such device as required by the court. Clarifies the
31 blood-alcohol levels and breath-alcohol levels that are
unlawful for purposes of suspending the driver's license
of a person under age 21. Provides that a temporary
driving permit issued at the time of a notice of
suspension does not become effective until 12 hours have
elapsed. Provides that the results of a blood test
conducted pursuant to s. 316.1932 or s. 316.1933, F.S.,
may be used to suspend a driving privilege under s.
322.2616, F.S. Immunizes law enforcement officers who
exercise due care from civil liability.