

By the Committees on Transportation, Judiciary and
Representatives Brummer and Fasano

1 A bill to be entitled
2 An act relating to driving under the influence;
3 amending s. 322.2616, F.S.; providing for the
4 requirement that certain license suspensions
5 shall remain in effect for a described time
6 period; providing for the assumption of the
7 costs for substance abuse education,
8 evaluation, and treatment; providing a
9 definition; providing for the admission of
10 certain minors into county addictions receiving
11 facilities under certain circumstances;
12 clarifying the blood-alcohol and breath-alcohol
13 level that is unlawful; providing for a
14 temporary driving permit to become effective
15 after a specified period has elapsed following
16 the issuance of the permit; authorizing the use
17 of a blood test obtained pursuant to certain
18 other investigations to be used for the
19 purposes of s. 322.2616, F.S.; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

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24 Section 1. Section 322.2616, Florida Statutes, is
25 amended to read:

26 322.2616 Suspension of license; persons under 21 years
27 of age; right to review.--

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

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

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

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

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

29 b. The driver was under the age of 21 and was driving
30 or in actual physical control of a motor vehicle while having
31 a blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or

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

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

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

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

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

19 (c) The suspension shall remain in effect until such
20 time as the driver has completed a substance abuse course
21 offered by a DUI program licensed by the department. The
22 program may refer the driver to an authorized service provider
23 for substance abuse evaluation and treatment. The driver
24 shall assume the reasonable costs for such education,
25 evaluation, and treatment. The term "substance abuse" means
26 the abuse of alcohol or any substance named or described in
27 Schedules I through V of s. 893.03. If a driver referred to
28 substance abuse evaluation and treatment under this subsection
29 fails to report for or complete such evaluation and treatment
30 or fails to complete the substance abuse education course, the
31 driver's license shall not be reinstated by the department.

1 The service provider that conducts the substance abuse
2 education course may not provide required substance abuse
3 evaluation and treatment unless a waiver has been granted to
4 that service provider by the department. A waiver may be
5 granted only if the department determines, in accordance with
6 department rules, that the service provider is the most
7 appropriate service provider and is licensed under chapter 397
8 or is exempt from such licensure requirement.

9 (d) A minor under the age of 18 years proven to be
10 driving with a blood-alcohol or breath-alcohol level of 0.02
11 or higher may be taken by a law enforcement officer to the
12 addictions receiving facility in the county in which the minor
13 is found to be so driving, if the county makes the addictions
14 receiving facility available for such purpose.

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

30 (4) If the department finds that the license of the
31 person should be suspended under this section and if the

1 notice of suspension has not already been served upon the
2 person by a law enforcement officer or correctional officer as
3 provided in subsection (2), the department shall issue a
4 notice of suspension and, unless the notice is mailed under s.
5 322.251, a temporary driving permit that expires 10 days after
6 the date of issuance if the driver is otherwise eligible.

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

20 (6) If a technical deficiency is found in the
21 materials submitted by the law enforcement officer during the
22 informal review, the hearing officer shall notify the law
23 enforcement officer or his or her agency of the deficiency
24 within 1 day. The law enforcement officer shall have 2 days
25 following notification to correct the deficiency.

26 (7)~~(6)~~ After completion of the informal review, notice
27 of the department's decision sustaining, amending, or
28 invalidating the suspension of the driver's license must be
29 provided to the person. The notice must be mailed to the
30 person at the last known address shown on the department's
31 records, or to the address provided in the law enforcement

1 officer's report if such address differs from the address of
2 record, within 7 days after completing the review.

3 (8)~~(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 (9)~~(8)~~ In a formal review hearing under subsection(8)
6 ~~(7)~~ or an informal review hearing under subsection (5), the
7 hearing officer shall determine by a preponderance of the
8 evidence 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 (10)~~(9)~~ Based on the determination of the hearing
10 officer under subsection(9)~~(8)~~ for both informal hearings
11 under subsection (5) and formal hearings under subsection(8)
12 ~~(7)~~, the 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 (11)~~(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 (12)~~(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 (13)~~(12)~~ The formal review hearing may be conducted
22 upon a 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 (8)~~(7)~~, the driver may
26 subpoena the officer or any person who administered a breath
27 or blood test.

28 (14)~~(13)~~ The formal review hearing and the informal
29 review hearing are exempt from chapter 120. The department
30 may adopt rules for conducting reviews under this section.

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1 (15)~~(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 (16)~~(15)~~ The decision of the department under this
9 section shall not be considered in any trial for a violation
10 of s. 316.193, nor shall any written statement submitted by a
11 person in his or her request for departmental review under
12 this section be admissible into evidence against him or her in
13 any such trial. The disposition of any related criminal
14 proceedings shall not affect a suspension imposed under this
15 section.

16 (17)~~(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 (18)~~(17)~~ A breath test to determine breath-alcohol
21 level pursuant to this section may be conducted as authorized
22 by s. 316.1932 or by a breath-alcohol ~~preliminary alcohol~~
23 ~~screening~~ test device listed in the United States Department
24 of 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 (19) 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 (20) 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 (21)~~(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 2. This act shall take effect July 1, 2000.
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