

By the Committee on Transportation and Senator Dyer

306-2138-00

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

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

21
22 Section 1. Section 322.2616, Florida Statutes, is
23 amended to read:

24 322.2616 Suspension of license; persons under 21 years
25 of age; right to review.--

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

30 (b) A law enforcement officer who has probable cause
31 to believe that a motor vehicle is being driven by or is in

1 the actual physical control of a person who is under the age
2 of 21 while under the influence of alcoholic beverages or who
3 has any blood-alcohol or breath-alcohol level may lawfully
4 detain such a person and may request that person to submit to
5 a test to determine his or her blood-alcohol or breath-alcohol
6 level.

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

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

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

27 b. The driver was under the age of 21 and was driving
28 or in actual physical control of a motor vehicle while having
29 a blood-alcohol or breath-alcohol level of 0.02 percent or
30 higher; and the person's driving privilege is suspended for a
31 period of 6 months for a first violation, or for a period of 1

1 year if his or her driving privilege has been previously
2 suspended as provided in this section for driving or being in
3 actual physical control of a motor vehicle with a
4 blood-alcohol or breath-alcohol level of 0.02 percent or
5 higher.

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

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

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

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

17 (c) When a driver subject to this section has a
18 blood-alcohol or breath-alcohol level of 0.05 or higher, the
19 suspension shall remain in effect until the driver has
20 completed a substance-abuse course offered by a DUI program
21 licensed by the department. The driver shall assume the
22 reasonable costs for the substance-abuse course. As part of
23 the substance-abuse course, the program shall conduct a
24 substance-abuse evaluation of the driver, and notify the
25 parents or legal guardians of a driver under the age of 19
26 years of the results of the evaluation. As used in this
27 paragraph, the term "substance abuse" means the abuse of
28 alcohol or any substance named or described in Schedules I
29 through V of s. 893.03. If a driver fails to complete the
30 substance-abuse education course and evaluation, the driver's
31 license shall not be reinstated by the department.

1 (d) A minor under the age of 18 years who is proven to
2 to have been driving with a blood-alcohol or breath-alcohol
3 level of 0.02 or higher may be taken by a law enforcement
4 officer to the addictions-receiving facility in the county in
5 which the minor was found to be so driving, if the county
6 makes the addictions-receiving facility available for such
7 purpose.

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

23 (4) If the department finds that the license of the
24 person should be suspended under this section and if the
25 notice of suspension has not already been served upon the
26 person by a law enforcement officer or correctional officer as
27 provided in subsection (2), the department shall issue a
28 notice of suspension and, unless the notice is mailed under s.
29 322.251, a temporary driving permit that expires 10 days after
30 the date of issuance if the driver is otherwise eligible.
31

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

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

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

30 (b) The formal review hearing must be held before a
31 hearing officer employed by the department, and the hearing

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

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

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

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

30 (a) If the license was suspended because the
31 individual, then under the age of 21, drove with a

1 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
2 higher:

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

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

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

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

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

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

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

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

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

31

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

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

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

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

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

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

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

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

1 proceedings shall not affect a suspension imposed under this
2 section.

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

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

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

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

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, 2000.
4

5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 SB 66

8 The CS provides that when a driver subject to s. 322.2615,
9 F.S., has a blood-alcohol or breath-alcohol level of 0.05 or
10 higher, the license suspension shall remain in effect until
the person completes a substance abuse course offered by a DUI
program licensed by DHSMV.

11 The CS deletes a provision in the bill authorizing an agency
12 conducting a substance abuse course to refer the person to
another entity for substance abuse evaluation and treatment.
13 The CS provides the DUI program shall conduct a substance
14 abuse evaluation of the driver, and notify the parents or
legal guardians of drivers under the age of 19 years, of the
results of the evaluation.

15 The CS also provides a temporary driving permit issued at the
16 time of issuance of the notice of suspension shall not be
effective until 12 hours after the notice of suspension is
issued.

17 The CS allows the use of results of a blood test obtained
18 during a traffic investigation to suspend a driver's license
under this section.

19 The CS makes a number of technical corrections including
20 deleting references to "percent" of alcohol level, and adding
21 appropriate references to "blood-alcohol" and "breath-alcohol"
levels.

22
23
24
25
26
27
28
29
30
31