

1  
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; providing  
8 a definition; providing for the admission of  
9 certain minors into county addictions receiving  
10 facilities under certain circumstances;  
11 clarifying the blood-alcohol and breath-alcohol  
12 level that is unlawful; providing for a  
13 temporary driving permit to become effective  
14 after a specified period has elapsed following  
15 the issuance of the permit; authorizing the use  
16 of a blood test obtained pursuant to certain  
17 other investigations to be used for the  
18 purposes of s. 322.2616, F.S.; providing an  
19 effective date.

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

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

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

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

31

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) When a driver subject to this section has a  
20 blood-alcohol or breath-alcohol level of 0.05 or higher, the  
21 suspension shall remain in effect until such time as the  
22 driver has completed a substance abuse course offered by a DUI  
23 program licensed by the department. The driver shall assume  
24 the reasonable costs for the substance abuse course. As part  
25 of the substance abuse course, the program shall conduct a  
26 substance abuse evaluation of the driver, and notify the  
27 parents or legal guardians of drivers under the age of 19  
28 years of the results of the evaluation. The term "substance  
29 abuse" means the abuse of alcohol or any substance named or  
30 described in Schedules I through V of s. 893.03. If a driver  
31 fails to complete the substance abuse education course and

1 evaluation, the driver's license shall not be reinstated by  
2 the department.

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

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

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

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, 2001.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31