

By Senator Dyer

14-492-01

See HB 29

1 A bill to be entitled
2 An act relating to driving under the influence;
3 amending s. 322.2616, F.S.; requiring that
4 certain license suspensions remain in effect
5 for a prescribed time period; providing for the
6 assumption of the costs for substance-abuse
7 education; defining the term "substance abuse";
8 providing for the admission of certain minors
9 into county addictions-receiving facilities
10 under certain circumstances; clarifying the
11 blood-alcohol and breath-alcohol level that is
12 unlawful; providing for a temporary driving
13 permit to become effective after a specified
14 period has elapsed following the issuance of
15 the permit; authorizing the use of a blood test
16 obtained pursuant to certain other
17 investigations to be used for the purposes of
18 s. 322.2616, F.S.; 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 such time as the
20 driver has completed a substance-abuse course offered by a DUI
21 program licensed by the department. The driver must assume
22 the reasonable costs for the substance-abuse course. As part
23 of 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 drivers 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 course and evaluation, the driver's license
31 shall not be reinstated by the department.

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

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

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

30 (5) If the person whose license is suspended requests
31 an informal review under subparagraph (2)(b)3., the department

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

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

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

28 (b) The formal review hearing must be held before a
29 hearing officer employed by the department, and the hearing
30 officer may administer oaths, examine witnesses and take
31 testimony, receive relevant evidence, issue subpoenas,

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

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

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

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

28 (a) If the license was suspended because the
29 individual, then under the age of 21, drove with a
30 blood-alcohol or breath-alcohol level of 0.02 ~~percent~~ or
31 higher:

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

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

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

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

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

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

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

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

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

29 (a) Sustain the suspension of the person's driving
30 privilege for a period of 1 year for a first refusal, or for a
31 period of 18 months if the driving privilege of the person has

1 | been previously suspended, as provided in this section, as a
2 | result of a refusal to submit to a test. The suspension
3 | period commences on the date of the issuance of the notice of
4 | suspension.

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

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

29 | (11) A person whose driver's license is suspended
30 | under subsection (2) or subsection (4) may apply for issuance
31 | of a license for business or employment purposes only,

1 pursuant to s. 322.271, if the person is otherwise eligible
2 for the driving privilege. However, such a license may not be
3 issued until 30 days have elapsed after the expiration of the
4 last temporary driving permit issued under this section.

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

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

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

22 (15) The decision of the department under this section
23 shall not be considered in any trial for a violation of s.
24 316.193, nor shall any written statement submitted by a person
25 in his or her request for departmental review under this
26 section be admissible into evidence against him or her in any
27 such trial. The disposition of any related criminal
28 proceedings shall not affect a suspension imposed under this
29 section.

30 (16) By applying for and accepting and using a
31 driver's license, a person under the age of 21 years who holds

1 the driver's license is deemed to have expressed his or her
2 consent to the provisions of this section.

3 (17) A breath test to determine breath-alcohol level
4 pursuant to this section may be conducted as authorized by s.
5 316.1932 or by a breath-alcohol ~~preliminary alcohol screening~~
6 test device listed in the United States Department of
7 Transportation's conforming-product list of evidential
8 breath-measurement devices. The reading from such a device is
9 presumed accurate and is admissible in evidence in any
10 administrative hearing conducted under this section.

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

15 (19)~~(18)~~ A violation of this section is neither a
16 traffic infraction nor a criminal offense, nor does being
17 detained pursuant to this section constitute an arrest. A
18 violation of this section is subject to the administrative
19 action provisions of this section, which are administered by
20 the department through its administrative processes.
21 Administrative actions taken pursuant to this section shall be
22 recorded in the motor vehicle records maintained by the
23 department. This section does not bar prosecution under s.
24 316.193. However, if the department suspends a person's
25 license under s. 322.2615 for a violation of s. 316.193, it
26 may not also suspend the person's license under this section
27 for the same episode that was the basis for the suspension
28 under s. 322.2615.

29 Section 2. This act shall take effect July 1, 2001.
30
31

1
2
3
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

LEGISLATIVE SUMMARY

Revises a provision of law governing driver's license suspensions to provide that such suspensions remain in effect with respect to drivers who have a blood-alcohol or breath-alcohol level of 0.05 or higher until the driver has completed a substance-abuse course. Provides that the driver must assume the reasonable costs for the substance-abuse course. Provides that a minor under 18 years of age who is driving with a blood-alcohol or breath-alcohol level of 0.02 or higher may be taken by a law enforcement officer to the addictions-receiving facility in the county where the offense occurs, if the county makes the facility available for such purpose. (See bill for details.)