

By Senator Alexander

17-1515-03

See HB

1                                   A bill to be entitled  
 2           An act relating to driving or boating under the  
 3           influence of controlled substances; amending s.  
 4           316.193, F.S.; providing that persons driving  
 5           with specified amounts of certain substances in  
 6           their blood or urine are guilty of the offense  
 7           of driving under the influence; providing an  
 8           exception; providing penalties; amending s.  
 9           327.35, F.S.; providing that persons operating  
 10          a vessel with specified amounts of certain  
 11          substances in their blood or urine are guilty  
 12          of the offense of boating under the influence;  
 13          providing an exception; providing penalties;  
 14          reenacting ss. 316.066, 316.072, 316.1932,  
 15          316.1933, 316.1934, 316.1937, 316.1939,  
 16          316.656, 318.143, 318.17, 322.03, 322.0602,  
 17          322.12, 322.25, 322.26, 322.2615, 322.2616,  
 18          322.264, 322.271, 322.28, 322.282, 322.291,  
 19          322.34, 322.44, 322.63, 322.64, 493.6106,  
 20          627.758, 790.06, 903.36, 907.041, 938.21,  
 21          938.23, 943.05, and 960.03, F.S.; incorporating  
 22          the amendment to s. 316.193, F.S., in  
 23          references thereto; reenacting ss. 327.352,  
 24          327.35215, 327.353, 327.354, 327.355, 327.359,  
 25          and 327.36, F.S.; incorporating the amendment  
 26          to s. 327.35, F.S., in references thereto;  
 27          providing an effective date.

28  
 29 Be It Enacted by the Legislature of the State of Florida:  
 30  
 31

1 Section 1. Section 316.193, Florida Statutes, is  
2 amended to read:

3 316.193 Driving under the influence; penalties.--

4 (1) A person is guilty of the offense of driving under  
5 the influence and is subject to punishment as provided in  
6 subsection (2) if the person is driving or in actual physical  
7 control of a vehicle within this state and:

8 (a) The person is under the influence of alcoholic  
9 beverages, any chemical substance set forth in s. 877.111, or  
10 any substance controlled under chapter 893, when affected to  
11 the extent that the person's normal faculties are impaired;

12 (b) The person has a blood-alcohol level of 0.08 or  
13 more grams of alcohol per 100 milliliters of blood; or

14 (c) The person has a breath-alcohol level of 0.08 or  
15 more grams of alcohol per 210 liters of breath.

16 (d) The person's urine contains:

17 1. Five hundred nanograms or more per milliliter of  
18 urine of the following:

19 a. 3,4-Methylenedioxymethamphetamine (MDMA);

20 b. 4-Bromo-2,5-dimethoxyamphetamine;

21 c. 4-Bromo-2,5-dimethoxyphenethylamine;

22 d. 2,5-Dimethoxyamphetamine;

23 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);

24 f. N-ethylamphetamine;

25 g. N-Hydroxy-3,4-methylenedioxyamphetamine;

26 h. 5-Methoxy-3,4-methylenedioxyamphetamine;

27 i. 4-methoxyamphetamine;

28 j. 4-methoxymethamphetamine;

29 k. 4-Methyl-2,5-dimethoxyamphetamine;

30 l. 3,4-Methylenedioxy-N-ethylamphetamine;

31 m. 3,4-Methylenedioxyamphetamine;

- 1           n. N,N-dimethylamphetamine; or  
2           o. 3,4,5-Trimethoxyamphetamine;  
3           2. One hundred fifty nanograms of cocaine or ecgonine,  
4 including any of their stereoisomers, and any salt, compound,  
5 derivative, or preparation of cocaine or ecgonine, per  
6 milliliter of urine;  
7           3. Two thousand nanograms of heroin or morphine per  
8 milliliter of urine;  
9           4. Ten nanograms of 6-monoacetyl morphine per  
10 milliliter of urine;  
11           5. Twenty-five nanograms of lysergic acid diethylamide  
12 (LSD) per milliliter of urine;  
13           6. Ten nanograms of cannabis per milliliter of urine;  
14 or  
15           7. Fifteen grams of cannabis metabolite per milliliter  
16 of urine.  
17           (e) The person's blood contains:  
18           1. One hundred nanograms or more per milliliter of  
19 blood of the following:  
20           a. 3,4-Methylenedioxymethamphetamine (MDMA);  
21           b. 4-Bromo-2,5-dimethoxyamphetamine;  
22           c. 4-Bromo-2,5-dimethoxyphenethylamine;  
23           d. 2,5-Dimethoxyamphetamine;  
24           e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);  
25           f. N-ethylamphetamine;  
26           g. N-Hydroxy-3,4-methylenedioxyamphetamine;  
27           h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
28           i. 4-methoxyamphetamine;  
29           j. 4-methoxymethamphetamine;  
30           k. 4-Methyl-2,5-dimethoxyamphetamine;  
31           l. 3,4-Methylenedioxy-N-ethylamphetamine;

- 1           m. 3,4-Methylenedioxyamphetamine;  
2           n. N,N-dimethylamphetamine; or  
3           o. 3,4,5-Trimethoxyamphetamine;  
4           2. Fifty nanograms of cocaine or ecgonine, including  
5 any of their stereoisomers, and any salt, compound,  
6 derivative, or preparation of cocaine or ecgonine, per  
7 milliliter of blood;  
8           3. Fifty nanograms of heroin or morphine per  
9 milliliter of blood;  
10          4. Ten nanograms of 6-monoacetyl morphine per  
11 milliliter of blood;  
12          5. Ten nanograms of lysergic acid diethylamide (LSD)  
13 per milliliter of blood;  
14          6. Two nanograms of cannabis per milliliter of blood;  
15 or  
16          7. Five grams of cannabis metabolite per milliliter of  
17 blood.

18  
19 The provisions of paragraphs (d) and (e) shall not apply to a  
20 person who holds a valid prescription for such controlled  
21 substance.

22           (2)(a) Except as provided in paragraph (b), subsection  
23 (3), or subsection (4), any person who is convicted of a  
24 violation of subsection (1) shall be punished:

25           1. By a fine of:

26           a. Not less than \$250 or more than \$500 for a first  
27 conviction.

28           b. Not less than \$500 or more than \$1,000 for a second  
29 conviction; and

30           2. By imprisonment for:

31           a. Not more than 6 months for a first conviction.

1           b. Not more than 9 months for a second conviction.

2           3. For a second conviction, by mandatory placement for  
3 a period of at least 1 year, at the convicted person' s sole  
4 expense, of an ignition interlock device approved by the  
5 department in accordance with s. 316.1938 upon all vehicles  
6 that are individually or jointly leased or owned and routinely  
7 operated by the convicted person, when the convicted person  
8 qualifies for a permanent or restricted license. The  
9 installation of such device may not occur before July 1, 2003.

10           (b)1. Any person who is convicted of a third violation  
11 of this section for an offense that occurs within 10 years  
12 after a prior conviction for a violation of this section  
13 commits a felony of the third degree, punishable as provided  
14 in s. 775.082, s. 775.083, or s. 775.084. In addition, the  
15 court shall order the mandatory placement for a period of not  
16 less than 2 years, at the convicted person's sole expense, of  
17 an ignition interlock device approved by the department in  
18 accordance with s. 316.1938 upon all vehicles that are  
19 individually or jointly leased or owned and routinely operated  
20 by the convicted person, when the convicted person qualifies  
21 for a permanent or restricted license. The installation of  
22 such device may not occur before July 1, 2003.

23           2. Any person who is convicted of a third violation of  
24 this section for an offense that occurs more than 10 years  
25 after the date of a prior conviction for a violation of this  
26 section shall be punished by a fine of not less than \$1,000 or  
27 more than \$2,500 and by imprisonment for not more than 12  
28 months. In addition, the court shall order the mandatory  
29 placement for a period of at least 2 years, at the convicted  
30 person's sole expense, of an ignition interlock device  
31 approved by the department in accordance with s. 316.1938 upon

1 all vehicles that are individually or jointly leased or owned  
2 and routinely operated by the convicted person, when the  
3 convicted person qualifies for a permanent or restricted  
4 license. The installation of such device may not occur before  
5 July 1, 2003.

6 3. Any person who is convicted of a fourth or  
7 subsequent violation of this section, regardless of when any  
8 prior conviction for a violation of this section occurred,  
9 commits a felony of the third degree, punishable as provided  
10 in s. 775.082, s. 775.083, or s. 775.084. However, the fine  
11 imposed for such fourth or subsequent violation may be not  
12 less than \$1,000.

13 (3) Any person:

14 (a) Who is in violation of subsection (1);

15 (b) Who operates a vehicle; and

16 (c) Who, by reason of such operation, causes or  
17 contributes to causing:

18 1. Damage to the property or person of another commits  
19 a misdemeanor of the first degree, punishable as provided in  
20 s. 775.082 or s. 775.083.

21 2. Serious bodily injury to another, as defined in s.  
22 316.1933, commits a felony of the third degree, punishable as  
23 provided in s. 775.082, s. 775.083, or s. 775.084.

24 3. The death of any human being commits DUI  
25 manslaughter, and commits:

26 a. A felony of the second degree, punishable as  
27 provided in s. 775.082, s. 775.083, or s. 775.084.

28 b. A felony of the first degree, punishable as  
29 provided in s. 775.082, s. 775.083, or s. 775.084, if:

30 (I) At the time of the crash, the person knew, or  
31 should have known, that the crash occurred; and

1 (II) The person failed to give information and render  
2 aid as required by s. 316.062.

3 (4) Any person who is convicted of a violation of  
4 subsection (1) and who has a blood-alcohol level or  
5 breath-alcohol level of 0.20 or higher, or any person who is  
6 convicted of a violation of subsection (1) and who at the time  
7 of the offense was accompanied in the vehicle by a person  
8 under the age of 18 years, shall be punished:

9 (a) By a fine of:

10 1. Not less than \$500 or more than \$1,000 for a first  
11 conviction.

12 2. Not less than \$1,000 or more than \$2,000 for a  
13 second conviction.

14 3. Not less than \$2,000 for a third or subsequent  
15 conviction.

16 (b) By imprisonment for:

17 1. Not more than 9 months for a first conviction.

18 2. Not more than 12 months for a second conviction.

19  
20 For the purposes of this subsection, only the instant offense  
21 is required to be a violation of subsection (1) by a person  
22 who has a blood-alcohol level or breath-alcohol level of 0.20  
23 or higher.

24 (c) In addition to the penalties in paragraphs (a) and  
25 (b), the court shall order the mandatory placement, at the  
26 convicted person's sole expense, of an ignition interlock  
27 device approved by the department in accordance with s.

28 316.1938 upon all vehicles that are individually or jointly  
29 leased or owned and routinely operated by the convicted person  
30 for up to 6 months for the first offense and for at least 2  
31 years for a second offense, when the convicted person

1 | qualifies for a permanent or restricted license. The  
2 | installation of such device may not occur before July 1, 2003.  
3 |         (5) The court shall place all offenders convicted of  
4 | violating this section on monthly reporting probation and  
5 | shall require completion of a substance abuse course conducted  
6 | by a DUI program licensed by the department under s. 322.292,  
7 | which must include a psychosocial evaluation of the offender.  
8 | If the DUI program refers the offender to an authorized  
9 | substance abuse treatment provider for substance abuse  
10 | treatment, in addition to any sentence or fine imposed under  
11 | this section, completion of all such education, evaluation,  
12 | and treatment is a condition of reporting probation. The  
13 | offender shall assume reasonable costs for such education,  
14 | evaluation, and treatment. The referral to treatment resulting  
15 | from a psychosocial evaluation shall not be waived without a  
16 | supporting independent psychosocial evaluation conducted by an  
17 | authorized substance abuse treatment provider appointed by the  
18 | court, which shall have access to the DUI program's  
19 | psychosocial evaluation before the independent psychosocial  
20 | evaluation is conducted. The court shall review the results  
21 | and recommendations of both evaluations before determining the  
22 | request for waiver. The offender shall bear the full cost of  
23 | this procedure. The term "substance abuse" means the abuse of  
24 | alcohol or any substance named or described in Schedules I  
25 | through V of s. 893.03. If an offender referred to treatment  
26 | under this subsection fails to report for or complete such  
27 | treatment or fails to complete the DUI program substance abuse  
28 | education course and evaluation, the DUI program shall notify  
29 | the court and the department of the failure. Upon receipt of  
30 | the notice, the department shall cancel the offender's driving  
31 | privilege, notwithstanding the terms of the court order or any



1 suspension or revocation of the driving privilege. The  
2 department may temporarily reinstate the driving privilege on  
3 a restricted basis upon verification from the DUI program that  
4 the offender is currently participating in treatment and the  
5 DUI education course and evaluation requirement has been  
6 completed. If the DUI program notifies the department of the  
7 second failure to complete treatment, the department shall  
8 reinstate the driving privilege only after notice of  
9 completion of treatment from the DUI program. The organization  
10 that conducts the substance abuse education and evaluation may  
11 not provide required substance abuse treatment unless a waiver  
12 has been granted to that organization by the department. A  
13 waiver may be granted only if the department determines, in  
14 accordance with its rules, that the service provider that  
15 conducts the substance abuse education and evaluation is the  
16 most appropriate service provider and is licensed under  
17 chapter 397 or is exempt from such licensure. A statistical  
18 referral report shall be submitted quarterly to the department  
19 by each organization authorized to provide services under this  
20 section.

21 (6) With respect to any person convicted of a  
22 violation of subsection (1), regardless of any penalty imposed  
23 pursuant to subsection (2), subsection (3), or subsection (4):

24 (a) For the first conviction, the court shall place  
25 the defendant on probation for a period not to exceed 1 year  
26 and, as a condition of such probation, shall order the  
27 defendant to participate in public service or a community work  
28 project for a minimum of 50 hours; or the court may order  
29 instead, that any defendant pay an additional fine of \$10 for  
30 each hour of public service or community work otherwise  
31 required, if, after consideration of the residence or location

1 of the defendant at the time public service or community work  
2 is required, payment of the fine is in the best interests of  
3 the state. However, the total period of probation and  
4 incarceration may not exceed 1 year. The court must also, as a  
5 condition of probation, order the impoundment or  
6 immobilization of the vehicle that was operated by or in the  
7 actual control of the defendant or any one vehicle registered  
8 in the defendant's name at the time of impoundment or  
9 immobilization, for a period of 10 days or for the unexpired  
10 term of any lease or rental agreement that expires within 10  
11 days. The impoundment or immobilization must not occur  
12 concurrently with the incarceration of the defendant. The  
13 impoundment or immobilization order may be dismissed in  
14 accordance with paragraph (e), paragraph (f), paragraph (g),  
15 or paragraph (h).

16 (b) For the second conviction for an offense that  
17 occurs within a period of 5 years after the date of a prior  
18 conviction for violation of this section, the court shall  
19 order imprisonment for not less than 10 days. The court must  
20 also, as a condition of probation, order the impoundment or  
21 immobilization of all vehicles owned by the defendant at the  
22 time of impoundment or immobilization, for a period of 30 days  
23 or for the unexpired term of any lease or rental agreement  
24 that expires within 30 days. The impoundment or immobilization  
25 must not occur concurrently with the incarceration of the  
26 defendant and must occur concurrently with the driver's  
27 license revocation imposed under s. 322.28(2)(a)2. The  
28 impoundment or immobilization order may be dismissed in  
29 accordance with paragraph (e), paragraph (f), paragraph (g),  
30 or paragraph (h). At least 48 hours of confinement must be  
31 consecutive.

1           (c) For the third or subsequent conviction for an  
2 offense that occurs within a period of 10 years after the date  
3 of a prior conviction for violation of this section, the court  
4 shall order imprisonment for not less than 30 days. The court  
5 must also, as a condition of probation, order the impoundment  
6 or immobilization of all vehicles owned by the defendant at  
7 the time of impoundment or immobilization, for a period of 90  
8 days or for the unexpired term of any lease or rental  
9 agreement that expires within 90 days. The impoundment or  
10 immobilization must not occur concurrently with the  
11 incarceration of the defendant and must occur concurrently  
12 with the driver's license revocation imposed under s.  
13 322.28(2)(a)3. The impoundment or immobilization order may be  
14 dismissed in accordance with paragraph (e), paragraph (f),  
15 paragraph (g), or paragraph (h). At least 48 hours of  
16 confinement must be consecutive.

17           (d) The court must at the time of sentencing the  
18 defendant issue an order for the impoundment or immobilization  
19 of a vehicle. Within 7 business days after the date that the  
20 court issues the order of impoundment or immobilization, the  
21 clerk of the court must send notice by certified mail, return  
22 receipt requested, to the registered owner of each vehicle, if  
23 the registered owner is a person other than the defendant, and  
24 to each person of record claiming a lien against the vehicle.

25           (e) A person who owns but was not operating the  
26 vehicle when the offense occurred may submit to the court a  
27 police report indicating that the vehicle was stolen at the  
28 time of the offense or documentation of having purchased the  
29 vehicle after the offense was committed from an entity other  
30 than the defendant or the defendant's agent. If the court  
31 finds that the vehicle was stolen or that the sale was not

1 made to circumvent the order and allow the defendant continued  
2 access to the vehicle, the order must be dismissed and the  
3 owner of the vehicle will incur no costs. If the court denies  
4 the request to dismiss the order of impoundment or  
5 immobilization, the petitioner may request an evidentiary  
6 hearing.

7 (f) A person who owns but was not operating the  
8 vehicle when the offense occurred, and whose vehicle was  
9 stolen or who purchased the vehicle after the offense was  
10 committed directly from the defendant or the defendant's  
11 agent, may request an evidentiary hearing to determine whether  
12 the impoundment or immobilization should occur. If the court  
13 finds that either the vehicle was stolen or the purchase was  
14 made without knowledge of the offense, that the purchaser had  
15 no relationship to the defendant other than through the  
16 transaction, and that such purchase would not circumvent the  
17 order and allow the defendant continued access to the vehicle,  
18 the order must be dismissed and the owner of the vehicle will  
19 incur no costs.

20 (g) The court shall also dismiss the order of  
21 impoundment or immobilization of the vehicle if the court  
22 finds that the family of the owner of the vehicle has no other  
23 private or public means of transportation.

24 (h) The court may also dismiss the order of  
25 impoundment or immobilization of any vehicles that are owned  
26 by the defendant but that are operated solely by the employees  
27 of the defendant or any business owned by the defendant.

28 (i) All costs and fees for the impoundment or  
29 immobilization, including the cost of notification, must be  
30 paid by the owner of the vehicle or, if the vehicle is leased  
31 or rented, by the person leasing or renting the vehicle,

1 unless the impoundment or immobilization order is dismissed.

2 All provisions of s. 713.78 shall apply.

3 (j) The person who owns a vehicle that is impounded or  
4 immobilized under this paragraph, or a person who has a lien  
5 of record against such a vehicle and who has not requested a  
6 review of the impoundment pursuant to paragraph (e), paragraph  
7 (f), or paragraph (g), may, within 10 days after the date that  
8 person has knowledge of the location of the vehicle, file a  
9 complaint in the county in which the owner resides to  
10 determine whether the vehicle was wrongfully taken or withheld  
11 from the owner or lienholder. Upon the filing of a complaint,  
12 the owner or lienholder may have the vehicle released by  
13 posting with the court a bond or other adequate security equal  
14 to the amount of the costs and fees for impoundment or  
15 immobilization, including towing or storage, to ensure the  
16 payment of such costs and fees if the owner or lienholder does  
17 not prevail. When the bond is posted and the fee is paid as  
18 set forth in s. 28.24, the clerk of the court shall issue a  
19 certificate releasing the vehicle. At the time of release,  
20 after reasonable inspection, the owner or lienholder must give  
21 a receipt to the towing or storage company indicating any loss  
22 or damage to the vehicle or to the contents of the vehicle.

23 (k) A defendant, in the court's discretion, may be  
24 required to serve all or any portion of a term of imprisonment  
25 to which the defendant has been sentenced pursuant to this  
26 section in a residential alcoholism treatment program or a  
27 residential drug abuse treatment program. Any time spent in  
28 such a program must be credited by the court toward the term  
29 of imprisonment.

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1 For the purposes of this section, any conviction for a  
2 violation of s. 327.35; a previous conviction for the  
3 violation of former s. 316.1931, former s. 860.01, or former  
4 s. 316.028; or a previous conviction outside this state for  
5 driving under the influence, driving while intoxicated,  
6 driving with an unlawful blood-alcohol level, driving with an  
7 unlawful breath-alcohol level, or any other similar  
8 alcohol-related or drug-related traffic offense, is also  
9 considered a previous conviction for violation of this  
10 section. However, in satisfaction of the fine imposed pursuant  
11 to this section, the court may, upon a finding that the  
12 defendant is financially unable to pay either all or part of  
13 the fine, order that the defendant participate for a specified  
14 additional period of time in public service or a community  
15 work project in lieu of payment of that portion of the fine  
16 which the court determines the defendant is unable to pay. In  
17 determining such additional sentence, the court shall consider  
18 the amount of the unpaid portion of the fine and the  
19 reasonable value of the services to be ordered; however, the  
20 court may not compute the reasonable value of services at a  
21 rate less than the federal minimum wage at the time of  
22 sentencing.

23 (7) A conviction under this section does not bar any  
24 civil suit for damages against the person so convicted.

25 (8) At the arraignment, or in conjunction with any  
26 notice of arraignment provided by the clerk of the court, the  
27 clerk shall provide any person charged with a violation of  
28 this section with notice that upon conviction the court shall  
29 suspend or revoke the offender's driver's license and that the  
30 offender should make arrangements for transportation at any  
31 proceeding in which the court may take such action. Failure to

1 provide such notice does not affect the court's suspension or  
2 revocation of the offender's driver's license.

3 (9) A person who is arrested for a violation of this  
4 section may not be released from custody:

5 (a) Until the person is no longer under the influence  
6 of alcoholic beverages, any chemical substance set forth in s.  
7 877.111, or any substance controlled under chapter 893 and  
8 affected to the extent that his or her normal faculties are  
9 impaired;

10 (b) Until the person's blood-alcohol level or  
11 breath-alcohol level is less than 0.05; or

12 (c) Until 8 hours have elapsed from the time the  
13 person was arrested.

14 (10) The rulings of the Department of Highway Safety  
15 and Motor Vehicles under s. 322.2615 shall not be considered  
16 in any trial for a violation of this section. Testimony or  
17 evidence from the administrative proceedings or any written  
18 statement submitted by a person in his or her request for  
19 administrative review is inadmissible into evidence or for any  
20 other purpose in any criminal proceeding, unless timely  
21 disclosed in criminal discovery pursuant to Rule 3.220,  
22 Florida Rules of Criminal Procedure.

23 (11) The Department of Highway Safety and Motor  
24 Vehicles is directed to adopt rules providing for the  
25 implementation of the use of ignition interlock devices.

26 Section 2. Section 327.35, Florida Statutes, is  
27 amended to read:

28 327.35 Boating under the influence; penalties;  
29 "designated drivers".--

30 (1) A person is guilty of the offense of boating under  
31 the influence and is subject to punishment as provided in

1 subsection (2) if the person is operating a vessel within this  
2 state and:  
3 (a) The person is under the influence of alcoholic  
4 beverages, any chemical substance set forth in s. 877.111, or  
5 any substance controlled under chapter 893, when affected to  
6 the extent that the person's normal faculties are impaired;  
7 (b) The person has a blood-alcohol level of 0.08 or  
8 more grams of alcohol per 100 milliliters of blood; or  
9 (c) The person has a breath-alcohol level of 0.08 or  
10 more grams of alcohol per 210 liters of breath.  
11 (d) The person's urine contains:  
12 1. Five hundred nanograms or more per milliliter of  
13 urine of the following:  
14 a. 3,4-Methylenedioxymethamphetamine (MDMA);  
15 b. 4-Bromo-2,5-dimethoxyamphetamine;  
16 c. 4-Bromo-2,5-dimethoxyphenethylamine;  
17 d. 2,5-Dimethoxyamphetamine;  
18 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);  
19 f. N-ethylamphetamine;  
20 g. N-Hydroxy-3,4-methylenedioxyamphetamine;  
21 h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
22 i. 4-methoxyamphetamine;  
23 j. 4-methoxymethamphetamine;  
24 k. 4-Methyl-2,5-dimethoxyamphetamine;  
25 l. 3,4-Methylenedioxy-N-ethylamphetamine;  
26 m. 3,4-Methylenedioxyamphetamine;  
27 n. N,N-dimethylamphetamine; or  
28 o. 3,4,5-Trimethoxyamphetamine;  
29 2. One hundred fifty nanograms of cocaine or ecgonine,  
30 including any of their stereoisomers, and any salt, compound,  
31



- 1 derivative, or preparation of cocaine or ecgonine, per  
2 milliliter of urine;  
3 3. Two thousand nanograms of heroin or morphine per  
4 milliliter of urine;  
5 4. Ten nanograms of 6-monoacetyl morphine per  
6 milliliter of urine;  
7 5. Twenty-five nanograms of lysergic acid diethylamide  
8 (LSD) per milliliter of urine;  
9 6. Ten nanograms of cannabis per milliliter of urine;  
10 or  
11 7. Fifteen grams of cannabis metabolite per milliliter  
12 of urine.  
13 (e) The person's blood contains:  
14 1. One hundred nanograms or more per milliliter of  
15 blood of the following:  
16 a. 3,4-Methylenedioxymethamphetamine (MDMA);  
17 b. 4-Bromo-2,5-dimethoxyamphetamine;  
18 c. 4-Bromo-2,5-dimethoxyphenethylamine;  
19 d. 2,5-Dimethoxyamphetamine;  
20 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);  
21 f. N-ethylamphetamine;  
22 g. N-Hydroxy-3,4-methylenedioxyamphetamine;  
23 h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
24 i. 4-methoxyamphetamine;  
25 j. 4-methoxymethamphetamine;  
26 k. 4-Methyl-2,5-dimethoxyamphetamine;  
27 l. 3,4-Methylenedioxy-N-ethylamphetamine;  
28 m. 3,4-Methylenedioxyamphetamine;  
29 n. N,N-dimethylamphetamine; or  
30 o. 3,4,5-Trimethoxyamphetamine;  
31

1           2. Fifty nanograms of cocaine or ecgonine, including  
2 any of their stereoisomers, and any salt, compound,  
3 derivative, or preparation of cocaine or ecgonine, per  
4 milliliter of blood;

5           3. Fifty nanograms of heroin or morphine per  
6 milliliter of blood;

7           4. Ten nanograms of 6-monoacetyl morphine per  
8 milliliter of blood;

9           5. Ten nanograms of lysergic acid diethylamide (LSD)  
10 per milliliter of blood;

11           6. Two nanograms of cannabis per milliliter of blood;  
12 or

13           7. Five grams of cannabis metabolite per milliliter of  
14 blood.

15  
16 The provisions of paragraphs (d) and (e) shall not apply to a  
17 person who holds a valid prescription for such controlled  
18 substance.

19           (2)(a) Except as provided in paragraph (b), subsection  
20 (3), or subsection (4), any person who is convicted of a  
21 violation of subsection (1) shall be punished:

22           1. By a fine of:

23           a. Not less than \$250 or more than \$500 for a first  
24 conviction.

25           b. Not less than \$500 or more than \$1,000 for a second  
26 conviction; and

27           2. By imprisonment for:

28           a. Not more than 6 months for a first conviction.

29           b. Not more than 9 months for a second conviction.

30           (b)1. Any person who is convicted of a third violation  
31 of this section for an offense that occurs within 10 years

1 after a prior conviction for a violation of this section  
2 commits a felony of the third degree, punishable as provided  
3 in s. 775.082, s. 775.083, or s. 775.084.

4         2. Any person who is convicted of a third violation of  
5 this section for an offense that occurs more than 10 years  
6 after the date of a prior conviction for a violation of this  
7 section shall be punished by a fine of not less than \$1,000 or  
8 more than \$2,500 and by imprisonment for not more than 12  
9 months.

10         3. Any person who is convicted of a fourth or  
11 subsequent violation of this section, regardless of when any  
12 prior conviction for a violation of this section occurred,  
13 commits a felony of the third degree, punishable as provided  
14 in s. 775.082, s. 775.083, or s. 775.084.

15  
16 However, the fine imposed for such fourth or subsequent  
17 violation may not be less than \$1,000.

18         (3) Any person:

19             (a) Who is in violation of subsection (1);

20             (b) Who operates a vessel; and

21             (c) Who, by reason of such operation, causes or  
22 contributes to causing:

23             1. Damage to the property or person of another commits  
24 a misdemeanor of the first degree, punishable as provided in  
25 s. 775.082 or s. 775.083.

26             2. Serious bodily injury to another, as defined in s.  
27 327.353, commits a felony of the third degree, punishable as  
28 provided in s. 775.082, s. 775.083, or s. 775.084.

29             3. The death of any human being commits BUI  
30 manslaughter, and commits:

31

1           a. A felony of the second degree, punishable as  
2 provided in s. 775.082, s. 775.083, or s. 775.084.

3           b. A felony of the first degree, punishable as  
4 provided in s. 775.082, s. 775.083, or s. 775.084, if:

5           (I) At the time of the accident, the person knew, or  
6 should have known, that the accident occurred; and

7           (II) The person failed to give information and render  
8 aid as required by s. 327.30.

9  
10 This sub-subparagraph does not require that the person knew  
11 that the accident resulted in injury or death.

12           (4) Any person who is convicted of a violation of  
13 subsection (1) and who has a blood-alcohol level or  
14 breath-alcohol level of 0.20 or higher, or any person who is  
15 convicted of a violation of subsection (1) and who at the time  
16 of the offense was accompanied in the vessel by a person under  
17 the age of 18 years, shall be punished:

18           (a) By a fine of:

19           1. Not less than \$500 or more than \$1,000 for a first  
20 conviction.

21           2. Not less than \$1,000 or more than \$2,000 for a  
22 second conviction.

23           3. Not less than \$2,000 for a third or subsequent  
24 conviction.

25           (b) By imprisonment for:

26           1. Not more than 9 months for a first conviction.

27           2. Not more than 12 months for a second conviction.

28  
29 For the purposes of this subsection, only the instant offense  
30 is required to be a violation of subsection (1) by a person  
31

1 who has a blood-alcohol level or breath-alcohol level of 0.20  
2 or higher.

3 (5) In addition to any sentence or fine, the court  
4 shall place any offender convicted of violating this section  
5 on monthly reporting probation and shall require attendance at  
6 a substance abuse course specified by the court; and the  
7 agency conducting the course may refer the offender to an  
8 authorized service provider for substance abuse evaluation and  
9 treatment, in addition to any sentence or fine imposed under  
10 this section. The offender shall assume reasonable costs for  
11 such education, evaluation, and treatment, with completion of  
12 all such education, evaluation, and treatment being a  
13 condition of reporting probation. Treatment resulting from a  
14 psychosocial evaluation may not be waived without a supporting  
15 psychosocial evaluation conducted by an agency appointed by  
16 the court and with access to the original evaluation. The  
17 offender shall bear the cost of this procedure. The term  
18 "substance abuse" means the abuse of alcohol or any substance  
19 named or described in Schedules I-V of s. 893.03.

20 (6) With respect to any person convicted of a  
21 violation of subsection (1), regardless of any other penalty  
22 imposed:

23 (a) For the first conviction, the court shall place  
24 the defendant on probation for a period not to exceed 1 year  
25 and, as a condition of such probation, shall order the  
26 defendant to participate in public service or a community work  
27 project for a minimum of 50 hours. The court must also, as a  
28 condition of probation, order the impoundment or  
29 immobilization of the vessel that was operated by or in the  
30 actual control of the defendant or any one vehicle registered  
31 in the defendant's name at the time of impoundment or

1 immobilization, for a period of 10 days or for the unexpired  
2 term of any lease or rental agreement that expires within 10  
3 days. The impoundment or immobilization must not occur  
4 concurrently with the incarceration of the defendant. The  
5 impoundment or immobilization order may be dismissed in  
6 accordance with paragraph (e) or paragraph (f). The total  
7 period of probation and incarceration may not exceed 1 year.

8 (b) For the second conviction for an offense that  
9 occurs within a period of 5 years after the date of a prior  
10 conviction for violation of this section, the court shall  
11 order imprisonment for not less than 10 days. The court must  
12 also, as a condition of probation, order the impoundment or  
13 immobilization of the vessel that was operated by or in the  
14 actual control of the defendant or any one vehicle registered  
15 in the defendant's name at the time of impoundment or  
16 immobilization, for a period of 30 days or for the unexpired  
17 term of any lease or rental agreement that expires within 30  
18 days. The impoundment or immobilization must not occur  
19 concurrently with the incarceration of the defendant. The  
20 impoundment or immobilization order may be dismissed in  
21 accordance with paragraph (e) or paragraph (f). At least 48  
22 hours of confinement must be consecutive.

23 (c) For the third or subsequent conviction for an  
24 offense that occurs within a period of 10 years after the date  
25 of a prior conviction for violation of this section, the court  
26 shall order imprisonment for not less than 30 days. The court  
27 must also, as a condition of probation, order the impoundment  
28 or immobilization of the vessel that was operated by or in the  
29 actual control of the defendant or any one vehicle registered  
30 in the defendant's name at the time of impoundment or  
31 immobilization, for a period of 90 days or for the unexpired

1 term of any lease or rental agreement that expires within 90  
2 days. The impoundment or immobilization must not occur  
3 concurrently with the incarceration of the defendant. The  
4 impoundment or immobilization order may be dismissed in  
5 accordance with paragraph (e) or paragraph (f). At least 48  
6 hours of confinement must be consecutive.

7 (d) The court must at the time of sentencing the  
8 defendant issue an order for the impoundment or immobilization  
9 of a vessel. Within 7 business days after the date that the  
10 court issues the order of impoundment, and once again 30  
11 business days before the actual impoundment or immobilization  
12 of the vessel, the clerk of the court must send notice by  
13 certified mail, return receipt requested, to the registered  
14 owner of each vessel, if the registered owner is a person  
15 other than the defendant, and to each person of record  
16 claiming a lien against the vessel.

17 (e) A person who owns but was not operating the vessel  
18 when the offense occurred may submit to the court a police  
19 report indicating that the vessel was stolen at the time of  
20 the offense or documentation of having purchased the vessel  
21 after the offense was committed from an entity other than the  
22 defendant or the defendant's agent. If the court finds that  
23 the vessel was stolen or that the sale was not made to  
24 circumvent the order and allow the defendant continued access  
25 to the vessel, the order must be dismissed and the owner of  
26 the vessel will incur no costs. If the court denies the  
27 request to dismiss the order of impoundment or immobilization,  
28 the petitioner may request an evidentiary hearing.

29 (f) A person who owns but was not operating the vessel  
30 when the offense occurred, and whose vessel was stolen or who  
31 purchased the vessel after the offense was committed directly

1 from the defendant or the defendant's agent, may request an  
2 evidentiary hearing to determine whether the impoundment or  
3 immobilization should occur. If the court finds that either  
4 the vessel was stolen or the purchase was made without  
5 knowledge of the offense, that the purchaser had no  
6 relationship to the defendant other than through the  
7 transaction, and that such purchase would not circumvent the  
8 order and allow the defendant continued access to the vessel,  
9 the order must be dismissed and the owner of the vessel will  
10 incur no costs.

11 (g) All costs and fees for the impoundment or  
12 immobilization, including the cost of notification, must be  
13 paid by the owner of the vessel or, if the vessel is leased or  
14 rented, by the person leasing or renting the vessel, unless  
15 the impoundment or immobilization order is dismissed.

16 (h) The person who owns a vessel that is impounded or  
17 immobilized under this paragraph, or a person who has a lien  
18 of record against such a vessel and who has not requested a  
19 review of the impoundment pursuant to paragraph (e) or  
20 paragraph (f), may, within 10 days after the date that person  
21 has knowledge of the location of the vessel, file a complaint  
22 in the county in which the owner resides to determine whether  
23 the vessel was wrongfully taken or withheld from the owner or  
24 lienholder. Upon the filing of a complaint, the owner or  
25 lienholder may have the vessel released by posting with the  
26 court a bond or other adequate security equal to the amount of  
27 the costs and fees for impoundment or immobilization,  
28 including towing or storage, to ensure the payment of the  
29 costs and fees if the owner or lienholder does not prevail.  
30 When the bond is posted and the fee is paid as set forth in s.  
31 28.24, the clerk of the court shall issue a certificate



1 releasing the vessel. At the time of release, after reasonable  
2 inspection, the owner or lienholder must give a receipt to the  
3 towing or storage company indicating any loss or damage to the  
4 vessel or to the contents of the vessel.

5 (i) A defendant, in the court's discretion, may be  
6 required to serve all or any portion of a term of imprisonment  
7 to which the defendant has been sentenced pursuant to this  
8 section in a residential alcoholism treatment program or a  
9 residential drug abuse treatment program. Any time spent in  
10 such a program must be credited by the court toward the term  
11 of imprisonment.

12  
13 For the purposes of this section, any conviction for a  
14 violation of s. 316.193, a previous conviction for the  
15 violation of former s. 316.1931, former s. 860.01, or former  
16 s. 316.028, or a previous conviction outside this state for  
17 driving under the influence, driving while intoxicated,  
18 driving with an unlawful blood-alcohol level, driving with an  
19 unlawful breath-alcohol level, or any other similar  
20 alcohol-related or drug-related traffic offense, is also  
21 considered a previous conviction for violation of this  
22 section.

23 (7) A conviction under this section does not bar any  
24 civil suit for damages against the person so convicted.

25 (8) A person who is arrested for a violation of this  
26 section may not be released from custody:

27 (a) Until the person is no longer under the influence  
28 of alcoholic beverages, any chemical substance set forth in s.  
29 877.111, or any substance controlled under chapter 893 and  
30 affected to the extent that his or her normal faculties are  
31 impaired;

1 (b) Until the person's blood-alcohol level or  
2 breath-alcohol level is less than 0.05; or

3 (c) Until 8 hours have elapsed from the time the  
4 person was arrested.

5 (9) Notwithstanding any other provision of this  
6 section, for any person convicted of a violation of subsection  
7 (1), in addition to the fines set forth in subsections (2) and  
8 (4), an additional fine of \$60 shall be assessed and collected  
9 in the same manner as the fines set forth in subsections (2)  
10 and (4). All fines collected under this subsection shall be  
11 remitted by the clerk of the court to the Department of  
12 Revenue for deposit into the Brain and Spinal Cord Injury  
13 Rehabilitation Trust Fund and used for the purposes set forth  
14 in s. 381.79, after 5 percent is deducted therefrom by the  
15 clerk of the court for administrative costs.

16 (10) It is the intent of the Legislature to encourage  
17 boaters to have a "designated driver" who does not consume  
18 alcoholic beverages.

19 Section 3. For the purpose of incorporating the  
20 amendment to section 316.193, Florida Statutes, in references  
21 thereto, paragraph (a) of subsection (3) of section 316.066,  
22 Florida Statutes, is reenacted to read:

23 316.066 Written reports of crashes.--

24 (3)(a) Every law enforcement officer who in the  
25 regular course of duty investigates a motor vehicle crash:

26 1. Which crash resulted in death or personal injury  
27 shall, within 10 days after completing the investigation,  
28 forward a written report of the crash to the department or  
29 traffic records center.

30 2. Which crash involved a violation of s. 316.061(1)  
31 or s. 316.193 shall, within 10 days after completing the

1 investigation, forward a written report of the crash to the  
2 department or traffic records center.

3           3. In which crash a vehicle was rendered inoperative  
4 to a degree which required a wrecker to remove it from traffic  
5 may, within 10 days after completing the investigation,  
6 forward a written report of the crash to the department or  
7 traffic records center if such action is appropriate, in the  
8 officer's discretion.

9  
10 However, in every case in which a crash report is required by  
11 this section and a written report to a law enforcement officer  
12 is not prepared, the law enforcement officer shall provide  
13 each party involved in the crash a short-form report,  
14 prescribed by the state, to be completed by the party. The  
15 short-form report must include, but is not limited to: the  
16 date, time, and location of the crash; a description of the  
17 vehicles involved; the names and addresses of the parties  
18 involved; the names and addresses of witnesses; the name,  
19 badge number, and law enforcement agency of the officer  
20 investigating the crash; and the names of the insurance  
21 companies for the respective parties involved in the crash.  
22 Each party to the crash shall provide the law enforcement  
23 officer with proof of insurance to be included in the crash  
24 report. If a law enforcement officer submits a report on the  
25 accident, proof of insurance must be provided to the officer  
26 by each party involved in the crash. Any party who fails to  
27 provide the required information is guilty of an infraction  
28 for a nonmoving violation, punishable as provided in chapter  
29 318 unless the officer determines that due to injuries or  
30 other special circumstances such insurance information cannot  
31 be provided immediately. If the person provides the law

1 enforcement agency, within 24 hours after the crash, proof of  
2 insurance that was valid at the time of the crash, the law  
3 enforcement agency may void the citation.

4 Section 4. For the purpose of incorporating the  
5 amendment to section 316.193, Florida Statutes, in references  
6 thereto, paragraph (b) of subsection (4) of section 316.072,  
7 Florida Statutes, is reenacted to read:

8 316.072 Obedience to and effect of traffic laws.--

9 (4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER;  
10 EXCEPTIONS.--

11 (b) Unless specifically made applicable, the  
12 provisions of this chapter, except those contained in ss.  
13 316.192, 316.1925, and 316.193, shall not apply to persons,  
14 teams, or motor vehicles and other equipment while actually  
15 engaged in work upon the surface of a highway, but shall apply  
16 to such persons and vehicles when traveling to or from such  
17 work.

18 Section 5. For the purpose of incorporating the  
19 amendment to section 316.193, Florida Statutes, in references  
20 thereto, subsection (3) of section 316.1932, Florida Statutes,  
21 is reenacted to read:

22 316.1932 Breath, blood, and urine tests for alcohol,  
23 chemical substances, or controlled substances; implied  
24 consent; refusal.--

25 (3) Notwithstanding any provision of law pertaining to  
26 the confidentiality of hospital records or other medical  
27 records, information relating to the alcoholic content of the  
28 blood or breath or the presence of chemical substances or  
29 controlled substances in the blood obtained pursuant to this  
30 section shall be released to a court, prosecuting attorney,  
31 defense attorney, or law enforcement officer in connection

1 with an alleged violation of s. 316.193 upon request for such  
2 information.

3 Section 6. For the purpose of incorporating the  
4 amendment to section 316.193, Florida Statutes, in references  
5 thereto, subsection (4) of section 316.1933, Florida Statutes,  
6 is reenacted to read:

7 316.1933 Blood test for impairment or intoxication in  
8 cases of death or serious bodily injury; right to use  
9 reasonable force.--

10 (4) Notwithstanding any provision of law pertaining to  
11 the confidentiality of hospital records or other medical  
12 records, information relating to the alcoholic content of the  
13 blood or the presence of chemical substances or controlled  
14 substances in the blood obtained pursuant to this section  
15 shall be released to a court, prosecuting attorney, defense  
16 attorney, or law enforcement officer in connection with an  
17 alleged violation of s. 316.193 upon request for such  
18 information.

19 Section 7. For the purpose of incorporating the  
20 amendment to section 316.193, Florida Statutes, in references  
21 thereto, subsections (1) and (4) of section 316.1934, Florida  
22 Statutes, are reenacted to read:

23 316.1934 Presumption of impairment; testing methods.--

24 (1) It is unlawful and punishable as provided in  
25 chapter 322 and in s. 316.193 for any person who is under the  
26 influence of alcoholic beverages or controlled substances,  
27 when affected to the extent that the person's normal faculties  
28 are impaired or to the extent that the person is deprived of  
29 full possession of normal faculties, to drive or be in actual  
30 physical control of any motor vehicle within this state. Such  
31 normal faculties include, but are not limited to, the ability

1 to see, hear, walk, talk, judge distances, drive an  
2 automobile, make judgments, act in emergencies, and, in  
3 general, normally perform the many mental and physical acts of  
4 daily life.

5 (4) Any person charged with a violation of s. 316.193,  
6 whether in a municipality or not, is entitled to trial by jury  
7 according to the Florida Rules of Criminal Procedure.

8 Section 8. For the purpose of incorporating the  
9 amendment to section 316.193, Florida Statutes, in references  
10 thereto, section 316.1937, Florida Statutes, is reenacted to  
11 read:

12 316.1937 Ignition interlock devices, requiring;  
13 unlawful acts.--

14 (1) In addition to any other authorized penalties, the  
15 court may require that any person who is convicted of driving  
16 under the influence in violation of s. 316.193 shall not  
17 operate a motor vehicle unless that vehicle is equipped with a  
18 functioning ignition interlock device certified by the  
19 department as provided in s. 316.1938, and installed in such a  
20 manner that the vehicle will not start if the operator's blood  
21 alcohol level is in excess of 0.05 percent or as otherwise  
22 specified by the court. The court may require the use of an  
23 approved ignition interlock device for a period of not less  
24 than 6 months, if the person is permitted to operate a motor  
25 vehicle, whether or not the privilege to operate a motor  
26 vehicle is restricted, as determined by the court. The court,  
27 however, shall order placement of an ignition interlock device  
28 in those circumstances required by s. 316.193.

29 (2) If the court imposes the use of an ignition  
30 interlock device, the court shall:

31

1           (a) Stipulate on the record the requirement for, and  
2 the period of, the use of a certified ignition interlock  
3 device.

4           (b) Order that the records of the department reflect  
5 such requirement.

6           (c) Order that an ignition interlock device be  
7 installed, as the court may determine necessary, on any  
8 vehicle owned or operated by the person.

9           (d) Determine the person's ability to pay for  
10 installation of the device if the person claims inability to  
11 pay. If the court determines that the person is unable to pay  
12 for installation of the device, the court may order that any  
13 portion of a fine paid by the person for a violation of s.  
14 316.193 shall be allocated to defray the costs of installing  
15 the device.

16           (e) Require proof of installation of the device and  
17 periodic reporting to the department for verification of the  
18 operation of the device in the person's vehicle.

19           (3) If the court imposes the use of an ignition  
20 interlock device on a person whose driving privilege is not  
21 suspended or revoked, the court shall require the person to  
22 provide proof of compliance to the department within 30 days.  
23 If the person fails to provide proof of installation within  
24 that period, absent a finding by the court of good cause for  
25 that failure which is entered in the court record, the court  
26 shall notify the department.

27           (4) If the court imposes the use of an ignition  
28 interlock device on a person whose driving privilege is  
29 suspended or revoked for a period of less than 3 years, the  
30 department shall require proof of compliance before  
31 reinstatement of the person's driving privilege.

1           (5)(a) In addition to any other provision of law, upon  
2 conviction of a violation of this section the department shall  
3 revoke the person's driving privilege for 1 year from the date  
4 of conviction. Upon conviction of a separate violation of this  
5 section during the same period of required use of an ignition  
6 interlock device, the department shall revoke the person's  
7 driving privilege for 5 years from the date of conviction.

8           (b) Any person convicted of a violation of subsection  
9 (6) who does not have a driver's license shall, in addition to  
10 any other penalty provided by law, pay a fine of not less than  
11 \$250 or more than \$500 per each such violation. In the event  
12 that the person is unable to pay any such fine, the fine shall  
13 become a lien against the motor vehicle used in violation of  
14 subsection (6) and payment shall be made pursuant to s.  
15 316.3025(4).

16           (6)(a) It is unlawful to tamper with, or to circumvent  
17 the operation of, a court-ordered ignition interlock device.

18           (b) It is unlawful for any person whose driving  
19 privilege is restricted pursuant to this section to request or  
20 solicit any other person to blow into an ignition interlock  
21 device or to start a motor vehicle equipped with the device  
22 for the purpose of providing the person so restricted with an  
23 operable motor vehicle.

24           (c) It is unlawful to blow into an ignition interlock  
25 device or to start a motor vehicle equipped with the device  
26 for the purpose of providing an operable motor vehicle to a  
27 person whose driving privilege is restricted pursuant to this  
28 section.

29           (d) It is unlawful to knowingly lease or lend a motor  
30 vehicle to a person who has had his or her driving privilege  
31 restricted as provided in this section, unless the vehicle is



1 equipped with a functioning, certified ignition interlock  
2 device. Any person whose driving privilege is restricted under  
3 a condition of probation requiring an ignition interlock  
4 device shall notify any other person who leases or loans a  
5 motor vehicle to him or her of such driving restriction.

6 (7) Notwithstanding the provisions of this section, if  
7 a person is required to operate a motor vehicle in the course  
8 and scope of his or her employment and if the vehicle is owned  
9 by the employer, the person may operate that vehicle without  
10 installation of an approved ignition interlock device if the  
11 employer has been notified of such driving privilege  
12 restriction and if proof of that notification is with the  
13 vehicle. This employment exemption does not apply, however, if  
14 the business entity which owns the vehicle is owned or  
15 controlled by the person whose driving privilege has been  
16 restricted.

17 (8) In addition to the penalties provided in this  
18 section, a violation of this section is a noncriminal traffic  
19 infraction, punishable as a nonmoving violation as provided in  
20 chapter 318.

21 Section 9. For the purpose of incorporating the  
22 amendment to section 316.193, Florida Statutes, in references  
23 thereto, section 316.1939, Florida Statutes, is reenacted to  
24 read:

25 316.1939 Refusal to submit to testing; penalties.--

26 (1) Any person who has refused to submit to a chemical  
27 or physical test of his or her breath, blood, or urine, as  
28 described in s. 316.1932, and whose driving privilege was  
29 previously suspended for a prior refusal to submit to a lawful  
30 test of his or her breath, urine, or blood, and:

31

1 (a) Who the arresting law enforcement officer had  
2 probable cause to believe was driving or in actual physical  
3 control of a motor vehicle in this state while under the  
4 influence of alcoholic beverages, chemical substances, or  
5 controlled substances;

6 (b) Who was placed under lawful arrest for a violation  
7 of s. 316.193 unless such test was requested pursuant to s.  
8 316.1932(1)(c);

9 (c) Who was informed that, if he or she refused to  
10 submit to such test, his or her privilege to operate a motor  
11 vehicle would be suspended for a period of 1 year or, in the  
12 case of a second or subsequent refusal, for a period of 18  
13 months;

14 (d) Who was informed that a refusal to submit to a  
15 lawful test of his or her breath, urine, or blood, if his or  
16 her driving privilege has been previously suspended for a  
17 prior refusal to submit to a lawful test of his or her breath,  
18 urine, or blood, is a misdemeanor; and

19 (e) Who, after having been so informed, refused to  
20 submit to any such test when requested to do so by a law  
21 enforcement officer or correctional officer

22  
23 commits a misdemeanor of the first degree and is subject to  
24 punishment as provided in s. 775.082 or s. 775.083.

25 (2) The disposition of any administrative proceeding  
26 that relates to the suspension of a person's driving privilege  
27 does not affect a criminal action under this section.

28 (3) The disposition of a criminal action under this  
29 section does not affect any administrative proceeding that  
30 relates to the suspension of a person's driving privilege. The  
31 department's records showing that a person's license has been

1 previously suspended for a prior refusal to submit to a lawful  
2 test of his or her breath, urine, or blood shall be admissible  
3 and shall create a rebuttable presumption of such suspension.

4 Section 10. For the purpose of incorporating the  
5 amendment to section 316.193, Florida Statutes, in references  
6 thereto, section 316.656, Florida Statutes, is reenacted to  
7 read:

8 316.656 Mandatory adjudication; prohibition against  
9 accepting plea to lesser included offense.--

10 (1) Notwithstanding the provisions of s. 948.01, no  
11 court may suspend, defer, or withhold adjudication of guilt or  
12 imposition of sentence for any violation of s. 316.193, for  
13 manslaughter resulting from the operation of a motor vehicle,  
14 or for vehicular homicide.

15 (2)(a) No trial judge may accept a plea of guilty to a  
16 lesser offense from a person charged under the provisions of  
17 this act who has been given a breath or blood test to  
18 determine blood or breath alcohol content, the results of  
19 which show a blood or breath alcohol content by weight of 0.20  
20 percent or more.

21 (b) No trial judge may accept a plea of guilty to a  
22 lesser offense from a person charged with a violation of s.  
23 316.193(3), manslaughter resulting from the operation of a  
24 motor vehicle, or vehicular homicide.

25 Section 11. For the purpose of incorporating the  
26 amendment to section 316.193, Florida Statutes, in references  
27 thereto, subsections (4) and (5) of section 318.143, Florida  
28 Statutes, are reenacted to read:

29 318.143 Sanctions for infractions by minors.--

30 (4) For the first conviction for a violation of s.  
31 316.193, the court may order the Department of Highway Safety

1 and Motor Vehicles to revoke the minor's driver's license  
2 until the minor is 18 years of age. For a second or subsequent  
3 conviction for such a violation, the court may order the  
4 Department of Highway Safety and Motor Vehicles to revoke the  
5 minor's driver's license until the minor is 21 years of age.

6 (5) A minor who is arrested for a violation of s.  
7 316.193 may be released from custody as soon as:

8 (a) The minor is no longer under the influence of  
9 alcoholic beverages, of any chemical substance set forth in s.  
10 877.111, or of any substance controlled under chapter 893, and  
11 is not affected to the extent that his or her normal faculties  
12 are impaired;

13 (b) The minor's blood-alcohol level is less than 0.05  
14 percent; or

15 (c) Six hours have elapsed after the minor's arrest.

16 Section 12. For the purpose of incorporating the  
17 amendment to section 316.193, Florida Statutes, in references  
18 thereto, subsection (3) of section 318.17, Florida Statutes,  
19 is reenacted to read:

20 318.17 Offenses excepted.--No provision of this  
21 chapter is available to a person who is charged with any of  
22 the following offenses:

23 (3) Driving, or being in actual physical control of,  
24 any vehicle while under the influence of alcoholic beverages,  
25 any chemical substance set forth in s. 877.111, or any  
26 substance controlled under chapter 893, in violation of s.  
27 316.193, or driving with an unlawful blood-alcohol level;

28 Section 13. For the purpose of incorporating the  
29 amendment to section 316.193, Florida Statutes, in references  
30 thereto, subsection (2) of section 322.03, Florida Statutes,  
31 is reenacted to read:

1           322.03 Drivers must be licensed; penalties.--  
2           (2) Prior to issuing a driver's license, the  
3 department shall require any person who has been convicted two  
4 or more times of a violation of s. 316.193 or of a  
5 substantially similar alcohol-related or drug-related offense  
6 outside this state within the preceding 5 years, or who has  
7 been convicted of three or more such offenses within the  
8 preceding 10 years, to present proof of successful completion  
9 of or enrollment in a department-approved substance abuse  
10 education course. If the person fails to complete such  
11 education course within 90 days after issuance, the department  
12 shall cancel the license. Further, prior to issuing the  
13 driver's license the department shall require such person to  
14 present proof of financial responsibility as provided in s.  
15 324.031. For the purposes of this paragraph, a previous  
16 conviction for violation of former s. 316.028, former s.  
17 316.1931, or former s. 860.01 shall be considered a previous  
18 conviction for violation of s. 316.193.

19           Section 14. For the purpose of incorporating the  
20 amendment to section 316.193, Florida Statutes, in references  
21 thereto, paragraph (a) of subsection (2) of section 322.0602,  
22 Florida Statutes, is reenacted to read:

23           322.0602 Youthful Drunk Driver Visitation Program.--

24           (2) COURT-ORDERED PARTICIPATION IN PROGRAM; PREFERENCE  
25 FOR PARTICIPATION.--

26           (a) If a person is convicted of a violation of s.  
27 316.193, the court may order, as a term and condition of  
28 probation in addition to any other term or condition required  
29 or authorized by law, that the probationer participate in the  
30 Youthful Drunk Driver Visitation Program.

31

1           Section 15. For the purpose of incorporating the  
2 amendment to section 316.193, Florida Statutes, in references  
3 thereto, subsection (2) of section 322.12, Florida Statutes,  
4 is reenacted to read:

5           322.12 Examination of applicants.--

6           (2) The department shall examine every applicant for a  
7 driver's license, including an applicant who is licensed in  
8 another state or country, except as otherwise provided in this  
9 chapter. A person who holds a learner's driver's license as  
10 provided for in s. 322.1615 is not required to pay a fee for  
11 successfully completing the examination showing his or her  
12 ability to operate a motor vehicle as provided for herein and  
13 need not pay the fee for a replacement license as provided in  
14 s. 322.17(2). Any person who applies for reinstatement  
15 following the suspension or revocation of his or her driver's  
16 license shall pay a service fee of \$25 following a suspension,  
17 and \$50 following a revocation, which is in addition to the  
18 fee for a license. Any person who applies for reinstatement of  
19 a commercial driver's license following the disqualification  
20 of his or her privilege to operate a commercial motor vehicle  
21 shall pay a service fee of \$50, which is in addition to the  
22 fee for a license. The department shall collect all of these  
23 fees at the time of reinstatement. The department shall issue  
24 proper receipts for such fees and shall promptly transmit all  
25 funds received by it as follows:

26           (a) Of the \$25 fee received from a licensee for  
27 reinstatement following a suspension, the department shall  
28 deposit \$15 in the General Revenue Fund and the remaining \$10  
29 in the Highway Safety Operating Trust Fund.

30           (b) Of the \$50 fee received from a licensee for  
31 reinstatement following a revocation or disqualification, the

1 department shall deposit \$35 in the General Revenue Fund and  
2 the remaining \$15 in the Highway Safety Operating Trust Fund.

3  
4 If the revocation or suspension of the driver's license was  
5 for a violation of s. 316.193, or for refusal to submit to a  
6 lawful breath, blood, or urine test, an additional fee of \$105  
7 must be charged. However, only one such \$105 fee is to be  
8 collected from one person convicted of such violations arising  
9 out of the same incident. The department shall collect the  
10 \$105 fee and deposit it into the Highway Safety Operating  
11 Trust Fund at the time of reinstatement of the person's  
12 driver's license, but the fee must not be collected if the  
13 suspension or revocation was overturned.

14 Section 16. For the purpose of incorporating the  
15 amendment to section 316.193, Florida Statutes, in references  
16 thereto, section 322.25, Florida Statutes, is reenacted to  
17 read:

18 322.25 When court to forward license to department and  
19 report convictions; temporary reinstatement of driving  
20 privileges.--

21 (1) Whenever any person is convicted of any offense  
22 for which this chapter makes mandatory the revocation of the  
23 driver's license of such person by the department, the court  
24 in which such conviction is had shall require the surrender to  
25 it of all driver's licenses then held by the person so  
26 convicted, and the court shall thereupon forward the same,  
27 together with a record of such conviction, to the department.

28 (2) Every court having jurisdiction over offenses  
29 committed under this chapter, or any other law of this state  
30 regulating the operation of motor vehicles on highways, shall  
31 forward to the department a record of the conviction of any

1 person in said court for a violation of any said laws, and  
2 shall suspend or revoke in accordance with the provisions of  
3 this chapter the driver's license of the person so convicted.

4 (3) There shall be no notation made upon a license of  
5 either an arrest or warning until the holder of the license  
6 has been duly convicted or has forfeited bond.

7 (4) For the purpose of this chapter, a forfeiture of  
8 bail or collateral deposited to secure a defendant's  
9 appearance in court, which forfeiture has not been vacated,  
10 shall be equivalent to a conviction.

11 (5) For the purpose of this chapter, the entrance of a  
12 plea of nolo contendere by the defendant to a charge of  
13 driving while intoxicated, driving under the influence,  
14 driving with an unlawful blood-alcohol level, or any other  
15 alcohol-related or drug-related traffic offense similar to the  
16 offenses specified in s. 316.193, accepted by the court and  
17 under which plea the court has entered a fine or sentence,  
18 whether in this state or any other state or country, shall be  
19 equivalent to a conviction.

20 (6) The report of a judicial disposition of an offense  
21 committed under this chapter or of any traffic violation,  
22 including parking on a roadway outside the limits of a  
23 municipality, or of a violation of any law of this state  
24 regulating the operation of motor vehicles on highways shall  
25 be made by the court to the department on a standard form  
26 prescribed by the department. In addition, the court shall so  
27 report to the department any conviction of a person for felony  
28 possession of a controlled substance if such person was  
29 driving or in actual physical control of a motor vehicle at  
30 the time of such possession. The form shall be a copy of the  
31 uniform traffic citation and complaint as prescribed by s.



1 316.650 and shall include a place for the court to indicate  
2 clearly whether it recommends suspension or revocation of the  
3 offender's driving privilege. The report shall be signed by  
4 the judge or by facsimile signature. The clerks of the court  
5 may submit disposition data to the department in an automated  
6 fashion, in a form prescribed by the department.

7 (7) Any licensed driver convicted of driving, or being  
8 in the actual physical control of, a vehicle within this state  
9 while under the influence of alcoholic beverages, any chemical  
10 substance set forth in s. 877.111, or any substance controlled  
11 under chapter 893, when affected to the extent that his or her  
12 normal faculties are impaired, and whose license and driving  
13 privilege have been revoked as provided in subsection (1) may  
14 be issued a court order for reinstatement of a driving  
15 privilege on a temporary basis; provided that, as a part of  
16 the penalty, upon conviction, the defendant is required to  
17 enroll in and complete a driver improvement course for the  
18 rehabilitation of drinking drivers and the driver is otherwise  
19 eligible for reinstatement of the driving privilege as  
20 provided by s. 322.282. The court order for reinstatement  
21 shall be on a form provided by the department and must be  
22 taken by the person convicted to a Florida driver's license  
23 examining office, where a temporary driving permit may be  
24 issued. The period of time for which a temporary permit issued  
25 in accordance with this subsection is valid shall be deemed to  
26 be part of the period of revocation imposed by the court.

27 Section 17. For the purpose of incorporating the  
28 amendment to section 316.193, Florida Statutes, in references  
29 thereto, paragraph (a) of subsection (1) and subsection (2) of  
30 section 322.26, Florida Statutes, are reenacted to read:

31

1           322.26 Mandatory revocation of license by  
2 department.--The department shall forthwith revoke the license  
3 or driving privilege of any person upon receiving a record of  
4 such person's conviction of any of the following offenses:

5           (1)(a) Murder resulting from the operation of a motor  
6 vehicle, DUI manslaughter where the conviction represents a  
7 subsequent DUI-related conviction, or a fourth violation of s.  
8 316.193 or former s. 316.1931. For such cases, the revocation  
9 of the driver's license or driving privilege shall be  
10 permanent.

11           (2) Driving a motor vehicle or being in actual  
12 physical control thereof, or entering a plea of nolo  
13 contendere, said plea being accepted by the court and said  
14 court entering a fine or sentence to a charge of driving,  
15 while under the influence of alcoholic beverages or a  
16 substance controlled under chapter 893, or being in actual  
17 physical control of a motor vehicle while under the influence  
18 of alcoholic beverages or a substance controlled under chapter  
19 893. In any case where DUI manslaughter occurs and the person  
20 has no prior convictions for DUI-related offenses, the  
21 revocation of the license or driving privilege shall be  
22 permanent, except as provided for in s. 322.271(4).

23           Section 18. For the purpose of incorporating the  
24 amendment to section 316.193, Florida Statutes, in references  
25 thereto, subsections (1), (2), (7), (8), and (14) of section  
26 322.2615, Florida Statutes, are reenacted to read:

27           322.2615 Suspension of license; right to review.--

28           (1)(a) A law enforcement officer or correctional  
29 officer shall, on behalf of the department, suspend the  
30 driving privilege of a person who has been arrested by a law  
31 enforcement officer for a violation of s. 316.193, relating to

1 unlawful blood-alcohol level or breath-alcohol level, or of a  
2 person who has refused to submit to a breath, urine, or blood  
3 test authorized by s. 316.1932. The officer shall take the  
4 person's driver's license and issue the person a 10-day  
5 temporary permit if the person is otherwise eligible for the  
6 driving privilege and shall issue the person a notice of  
7 suspension. If a blood test has been administered, the results  
8 of which are not available to the officer at the time of the  
9 arrest, the agency employing the officer shall transmit such  
10 results to the department within 5 days after receipt of the  
11 results. If the department then determines that the person was  
12 arrested for a violation of s. 316.193 and that the person had  
13 a blood-alcohol level or breath-alcohol level of 0.08 or  
14 higher, the department shall suspend the person's driver's  
15 license pursuant to subsection (3).

16 (b) The suspension under paragraph (a) shall be  
17 pursuant to, and the notice of suspension shall inform the  
18 driver of, the following:

19 1.a. The driver refused to submit to a lawful breath,  
20 blood, or urine test and his or her driving privilege is  
21 suspended for a period of 1 year for a first refusal or for a  
22 period of 18 months if his or her driving privilege has been  
23 previously suspended as a result of a refusal to submit to  
24 such a test; or

25 b. The driver violated s. 316.193 by driving with an  
26 unlawful blood-alcohol level as provided in that section and  
27 his or her driving privilege is suspended for a period of 6  
28 months for a first offense or for a period of 1 year if his or  
29 her driving privilege has been previously suspended for a  
30 violation of s. 316.193.

31

1           2. The suspension period shall commence on the date of  
2 arrest or issuance of the notice of suspension, whichever is  
3 later.

4           3. The driver may request a formal or informal review  
5 of the suspension by the department within 10 days after the  
6 date of arrest or issuance of the notice of suspension,  
7 whichever is later.

8           4. The temporary permit issued at the time of arrest  
9 will expire at midnight of the 10th day following the date of  
10 arrest or issuance of the notice of suspension, whichever is  
11 later.

12           5. The driver may submit to the department any  
13 materials relevant to the arrest.

14           (2) Except as provided in paragraph (1)(a), the law  
15 enforcement officer shall forward to the department, within 5  
16 days after the date of the arrest, a copy of the notice of  
17 suspension, the driver's license of the person arrested, and a  
18 report of the arrest, including an affidavit stating the  
19 officer's grounds for belief that the person arrested was in  
20 violation of s. 316.193; the results of any breath or blood  
21 test or an affidavit stating that a breath, blood, or urine  
22 test was requested by a law enforcement officer or  
23 correctional officer and that the person arrested refused to  
24 submit; a copy of the citation issued to the person arrested;  
25 and the officer's description of the person's field sobriety  
26 test, if any. The failure of the officer to submit materials  
27 within the 5-day period specified in this subsection and in  
28 subsection (1) shall not affect the department's ability to  
29 consider any evidence submitted at or prior to the hearing.  
30 The officer may also submit a copy of a videotape of the field  
31 sobriety test or the attempt to administer such test.

1           (7) In a formal review hearing under subsection (6) or  
2 an informal review hearing under subsection (4), the hearing  
3 officer shall determine by a preponderance of the evidence  
4 whether sufficient cause exists to sustain, amend, or  
5 invalidate the suspension. The scope of the review shall be  
6 limited to the following issues:

7           (a) If the license was suspended for driving with an  
8 unlawful blood-alcohol level in violation of s. 316.193:

9           1. Whether the arresting law enforcement officer had  
10 probable cause to believe that the person was driving or in  
11 actual physical control of a motor vehicle in this state while  
12 under the influence of alcoholic beverages or controlled  
13 substances.

14           2. Whether the person was placed under lawful arrest  
15 for a violation of s. 316.193.

16           3. Whether the person had an unlawful blood-alcohol  
17 level as provided in s. 316.193.

18           (b) If the license was suspended for refusal to submit  
19 to a breath, blood, or urine test:

20           1. Whether the arresting law enforcement officer had  
21 probable cause to believe that the person was driving or in  
22 actual physical control of a motor vehicle in this state while  
23 under the influence of alcoholic beverages or controlled  
24 substances.

25           2. Whether the person was placed under lawful arrest  
26 for a violation of s. 316.193.

27           3. Whether the person refused to submit to any such  
28 test after being requested to do so by a law enforcement  
29 officer or correctional officer.

30           4. Whether the person was told that if he or she  
31 refused to submit to such test his or her privilege to operate

1 a motor vehicle would be suspended for a period of 1 year or,  
2 in the case of a second or subsequent refusal, for a period of  
3 18 months.

4 (8) Based on the determination of the hearing officer  
5 pursuant to subsection (7) for both informal hearings under  
6 subsection (4) and formal hearings under subsection (6), the  
7 department shall:

8 (a) Sustain the suspension of the person's driving  
9 privilege for a period of 1 year for a first refusal, or for a  
10 period of 18 months if the driving privilege of such person  
11 has been previously suspended as a result of a refusal to  
12 submit to such tests, if the arrested person refused to submit  
13 to a lawful breath, blood, or urine test. The suspension  
14 period commences on the date of the arrest or issuance of the  
15 notice of suspension, whichever is later.

16 (b) Sustain the suspension of the person's driving  
17 privilege for a period of 6 months for a violation of s.  
18 316.193, or for a period of 1 year if the driving privilege of  
19 such person has been previously suspended as a result of a  
20 violation of s. 316.193. The suspension period commences on  
21 the date of the arrest or issuance of the notice of  
22 suspension, whichever is later.

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

31

1           Section 19. For the purpose of incorporating the  
2 amendment to section 316.193, Florida Statutes, in references  
3 thereto, subsection (19) of section 322.2616, Florida  
4 Statutes, is reenacted to read:

5           322.2616 Suspension of license; persons under 21 years  
6 of age; right to review.--

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

21           Section 20. For the purpose of incorporating the  
22 amendment to section 316.193, Florida Statutes, in references  
23 thereto, paragraph (b) of subsection (1) of section 322.264,  
24 Florida Statutes, is reenacted to read:

25           322.264 "Habitual traffic offender" defined.--A  
26 "habitual traffic offender" is any person whose record, as  
27 maintained by the Department of Highway Safety and Motor  
28 Vehicles, shows that such person has accumulated the specified  
29 number of convictions for offenses described in subsection (1)  
30 or subsection (2) within a 5-year period:

31

1           (1) Three or more convictions of any one or more of  
2 the following offenses arising out of separate acts:

3           (b) Any violation of s. 316.193, former s. 316.1931,  
4 or former s. 860.01;

5  
6 Any violation of any federal law, any law of another state or  
7 country, or any valid ordinance of a municipality or county of  
8 another state similar to a statutory prohibition specified in  
9 subsection (1) or subsection (2) shall be counted as a  
10 violation of such prohibition. In computing the number of  
11 convictions, all convictions during the 5 years previous to  
12 July 1, 1972, will be used, provided at least one conviction  
13 occurs after that date. The fact that previous convictions may  
14 have resulted in suspension, revocation, or disqualification  
15 under another section does not exempt them from being used for  
16 suspension or revocation under this section as a habitual  
17 offender.

18           Section 21. For the purpose of incorporating the  
19 amendment to section 316.193, Florida Statutes, in references  
20 thereto, paragraphs (a) and (c) of subsection (2) and  
21 subsection (4) of section 322.271, Florida Statutes, are  
22 reenacted to read:

23           322.271 Authority to modify revocation, cancellation,  
24 or suspension order.--

25           (2)(a) Upon such hearing, the person whose license has  
26 been suspended, canceled, or revoked may show that such  
27 suspension, cancellation, or revocation of his or her license  
28 causes a serious hardship and precludes the person's carrying  
29 out his or her normal business occupation, trade, or  
30 employment and that the use of the person's license in the  
31 normal course of his or her business is necessary to the



1 proper support of the person or his or her family. Except as  
2 otherwise provided in this subsection, the department shall  
3 require proof of the successful completion of the applicable  
4 department-approved driver training course operating pursuant  
5 to s. 318.1451 or DUI program substance abuse education course  
6 and evaluation as provided in s. 316.193(5). Letters of  
7 recommendation from respected business persons in the  
8 community, law enforcement officers, or judicial officers may  
9 also be required to determine whether such person should be  
10 permitted to operate a motor vehicle on a restricted basis for  
11 business or employment use only and in determining whether  
12 such person can be trusted to so operate a motor vehicle. If a  
13 driver's license has been suspended under the point system or  
14 pursuant to s. 322.2615, the department shall require proof of  
15 enrollment in the applicable department-approved driver  
16 training course or licensed DUI program substance abuse  
17 education course, including evaluation and treatment, if  
18 referred, and may require letters of recommendation described  
19 in this subsection to determine if the driver should be  
20 reinstated on a restricted basis. If such person fails to  
21 complete the approved course within 90 days after  
22 reinstatement or subsequently fails to complete treatment, if  
23 applicable, the department shall cancel his or her driver's  
24 license until the course and treatment, if applicable, is  
25 successfully completed, notwithstanding the terms of the court  
26 order or any suspension or revocation of the driving  
27 privilege. The department may temporarily reinstate the  
28 driving privilege on a restricted basis upon verification from  
29 the DUI program that the offender has reentered and is  
30 currently participating in treatment and has completed the DUI  
31 education course and evaluation requirement. If the DUI

1 program notifies the department of the second failure to  
2 complete treatment, the department shall reinstate the driving  
3 privilege only after notice of completion of treatment from  
4 the DUI program. The privilege of driving on a limited or  
5 restricted basis for business or employment use shall not be  
6 granted to a person who has been convicted of a violation of  
7 s. 316.193 until completion of the DUI program substance abuse  
8 education course and evaluations as provided in s. 316.193(5).  
9 Except as provided in paragraph (b), the privilege of driving  
10 on a limited or restricted basis for business or employment  
11 use shall not be granted to a person whose license is revoked  
12 pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and  
13 who has been convicted of a violation of s. 316.193 two or  
14 more times or whose license has been suspended two or more  
15 times for refusal to submit to a test pursuant to s. 322.2615  
16 or former s. 322.261.

17 (c) For the purpose of this section, a previous  
18 conviction of driving under the influence, driving while  
19 intoxicated, driving with an unlawful blood-alcohol level, or  
20 any other similar alcohol-related or drug-related offense  
21 outside this state or a previous conviction of former s.  
22 316.1931, former s. 316.028, or former s. 860.01 shall be  
23 considered a previous conviction for violation of s. 316.193.

24 (4) Notwithstanding the provisions of s. 322.28(2)(e),  
25 a person whose driving privilege has been permanently revoked  
26 because he or she has been convicted of DUI manslaughter in  
27 violation of s. 316.193 and has no prior convictions for  
28 DUI-related offenses may, upon the expiration of 5 years after  
29 the date of such revocation or the expiration of 5 years after  
30 the termination of any term of incarceration under s. 316.193  
31

1 or former s. 316.1931, whichever date is later, petition the  
2 department for reinstatement of his or her driving privilege.

3 (a) Within 30 days after the receipt of such a  
4 petition, the department shall afford the petitioner an  
5 opportunity for a hearing. At the hearing, the petitioner must  
6 demonstrate to the department that he or she:

7 1. Has not been arrested for a drug-related offense  
8 during the 5 years preceding the filing of the petition;

9 2. Has not driven a motor vehicle without a license  
10 for at least 5 years prior to the hearing;

11 3. Has been drug-free for at least 5 years prior to  
12 the hearing; and

13 4. Has completed a DUI program licensed by the  
14 department.

15 (b) At such hearing, the department shall determine  
16 the petitioner's qualification, fitness, and need to drive.  
17 Upon such determination, the department may, in its  
18 discretion, reinstate the driver's license of the petitioner.  
19 Such reinstatement must be made subject to the following  
20 qualifications:

21 1. The license must be restricted for employment  
22 purposes for not less than 1 year; and

23 2. Such person must be supervised by a DUI program  
24 licensed by the department and report to the program for such  
25 supervision and education at least four times a year or  
26 additionally as required by the program for the remainder of  
27 the revocation period. Such supervision shall include  
28 evaluation, education, referral into treatment, and other  
29 activities required by the department.

30 (c) Such person must assume the reasonable costs of  
31 supervision. If such person fails to comply with the required

1 supervision, the program shall report the failure to the  
2 department, and the department shall cancel such person's  
3 driving privilege.

4 (d) If, after reinstatement, such person is convicted  
5 of an offense for which mandatory revocation of his or her  
6 license is required, the department shall revoke his or her  
7 driving privilege.

8 (e) The department shall adopt rules regulating the  
9 providing of services by DUI programs pursuant to this  
10 section.

11 Section 22. For the purpose of incorporating the  
12 amendment to section 316.193, Florida Statutes, in references  
13 thereto, subsection (2) and paragraph (a) of subsection (4) of  
14 section 322.28, Florida Statutes, are reenacted to read:

15 322.28 Period of suspension or revocation.--

16 (2) In a prosecution for a violation of s. 316.193 or  
17 former s. 316.1931, the following provisions apply:

18 (a) Upon conviction of the driver, the court, along  
19 with imposing sentence, shall revoke the driver's license or  
20 driving privilege of the person so convicted, effective on the  
21 date of conviction, and shall prescribe the period of such  
22 revocation in accordance with the following provisions:

23 1. Upon a first conviction for a violation of the  
24 provisions of s. 316.193, except a violation resulting in  
25 death, the driver's license or driving privilege shall be  
26 revoked for not less than 180 days or more than 1 year.

27 2. Upon a second conviction for an offense that occurs  
28 within a period of 5 years after the date of a prior  
29 conviction for a violation of the provisions of s. 316.193 or  
30 former s. 316.1931 or a combination of such sections, the  
31

1 driver's license or driving privilege shall be revoked for not  
2 less than 5 years.

3           3. Upon a third conviction for an offense that occurs  
4 within a period of 10 years after the date of a prior  
5 conviction for the violation of the provisions of s. 316.193  
6 or former s. 316.1931 or a combination of such sections, the  
7 driver's license or driving privilege shall be revoked for not  
8 less than 10 years.

9  
10 For the purposes of this paragraph, a previous conviction  
11 outside this state for driving under the influence, driving  
12 while intoxicated, driving with an unlawful blood-alcohol  
13 level, or any other alcohol-related or drug-related traffic  
14 offense similar to the offense of driving under the influence  
15 as proscribed by s. 316.193 will be considered a previous  
16 conviction for violation of s. 316.193, and a conviction for  
17 violation of former s. 316.028, former s. 316.1931, or former  
18 s. 860.01 is considered a conviction for violation of s.  
19 316.193.

20           (b) If the period of revocation was not specified by  
21 the court at the time of imposing sentence or within 30 days  
22 thereafter, and is not otherwise specified by law, the  
23 department shall forthwith revoke the driver' s license or  
24 driving privilege for the maximum period applicable under  
25 paragraph (a) for a first conviction and for the minimum  
26 period applicable under paragraph (a) for any subsequent  
27 convictions. The driver may, within 30 days after such  
28 revocation by the department, petition the court for further  
29 hearing on the period of revocation, and the court may reopen  
30 the case and determine the period of revocation within the  
31 limits specified in paragraph (a).

1           (c) The forfeiture of bail bond, not vacated within 20  
2 days, in any prosecution for the offense of driving while  
3 under the influence of alcoholic beverages, chemical  
4 substances, or controlled substances to the extent of  
5 depriving the defendant of his or her normal faculties shall  
6 be deemed equivalent to a conviction for the purposes of this  
7 paragraph, and the department shall forthwith revoke the  
8 defendant's driver's license or driving privilege for the  
9 maximum period applicable under paragraph (a) for a first  
10 conviction and for the minimum period applicable under  
11 paragraph (a) for a second or subsequent conviction; however,  
12 if the defendant is later convicted of the charge, the period  
13 of revocation imposed by the department for such conviction  
14 shall not exceed the difference between the applicable maximum  
15 for a first conviction or minimum for a second or subsequent  
16 conviction and the revocation period under this subsection  
17 that has actually elapsed; upon conviction of such charge, the  
18 court may impose revocation for a period of time as specified  
19 in paragraph (a). This paragraph does not apply if an  
20 appropriate motion contesting the forfeiture is filed within  
21 the 20-day period.

22           (d) When any driver's license or driving privilege has  
23 been revoked pursuant to the provisions of this section, the  
24 department shall not grant a new license, except upon  
25 reexamination of the licensee after the expiration of the  
26 period of revocation so prescribed. However, the court may, in  
27 its sound discretion, issue an order of reinstatement on a  
28 form furnished by the department which the person may take to  
29 any driver's license examining office for reinstatement by the  
30 department pursuant to s. 322.282.

31

1           (e) The court shall permanently revoke the driver's  
2 license or driving privilege of a person who has been  
3 convicted four times for violation of s. 316.193 or former s.  
4 316.1931 or a combination of such sections. The court shall  
5 permanently revoke the driver's license or driving privilege  
6 of any person who has been convicted of DUI manslaughter in  
7 violation of s. 316.193. If the court has not permanently  
8 revoked such driver's license or driving privilege within 30  
9 days after imposing sentence, the department shall permanently  
10 revoke the driver's license or driving privilege pursuant to  
11 this paragraph. No driver's license or driving privilege may  
12 be issued or granted to any such person. This paragraph  
13 applies only if at least one of the convictions for violation  
14 of s. 316.193 or former s. 316.1931 was for a violation that  
15 occurred after July 1, 1982. For the purposes of this  
16 paragraph, a conviction for violation of former s. 316.028,  
17 former s. 316.1931, or former s. 860.01 is also considered a  
18 conviction for violation of s. 316.193. Also, a conviction of  
19 driving under the influence, driving while intoxicated,  
20 driving with an unlawful blood-alcohol level, or any other  
21 similar alcohol-related or drug-related traffic offense  
22 outside this state is considered a conviction for the purposes  
23 of this paragraph.

24           (4)(a) Upon a conviction for a violation of s.  
25 316.193(3)(c)2., involving serious bodily injury, a conviction  
26 of manslaughter resulting from the operation of a motor  
27 vehicle, or a conviction of vehicular homicide, the court  
28 shall revoke the driver's license of the person convicted for  
29 a minimum period of 3 years. If a conviction under s.  
30 316.193(3)(c)2., involving serious bodily injury, is also a  
31 subsequent conviction as described under paragraph (2)(a), the

1 court shall revoke the driver's license or driving privilege  
2 of the person convicted for the period applicable as provided  
3 in paragraph (2)(a) or paragraph (2)(e).

4 Section 23. For the purpose of incorporating the  
5 amendment to section 316.193, Florida Statutes, in references  
6 thereto, paragraph (a) of subsection (2) of section 322.282,  
7 Florida Statutes, is reenacted to read:

8 322.282 Procedure when court revokes or suspends  
9 license or driving privilege and orders reinstatement.--When a  
10 court suspends or revokes a person's license or driving  
11 privilege and, in its discretion, orders reinstatement as  
12 provided by s. 322.28(2)(d) or former s. 322.261(5):

13 (2)(a) The court shall issue an order of  
14 reinstatement, on a form to be furnished by the department,  
15 which the person may take to any driver's license examining  
16 office. The department shall issue a temporary driver's permit  
17 to a licensee who presents the court's order of reinstatement,  
18 proof of completion of a department-approved driver training  
19 or substance abuse education course, and a written request for  
20 a hearing under s. 322.271. The permit shall not be issued if  
21 a record check by the department shows that the person has  
22 previously been convicted for a violation of s. 316.193,  
23 former s. 316.1931, former s. 316.028, former s. 860.01, or a  
24 previous conviction outside this state for driving under the  
25 influence, driving while intoxicated, driving with an unlawful  
26 blood-alcohol level, or any similar alcohol-related or  
27 drug-related traffic offense; that the person's driving  
28 privilege has been previously suspended for refusal to submit  
29 to a lawful test of breath, blood, or urine; or that the  
30 person is otherwise not entitled to issuance of a driver's  
31 license. This paragraph shall not be construed to prevent the



1 reinstatement of a license or driving privilege that is  
2 presently suspended for driving with an unlawful blood-alcohol  
3 level or a refusal to submit to a breath, urine, or blood test  
4 and is also revoked for a conviction for a violation of s.  
5 316.193 or former s. 316.1931, if the suspension and  
6 revocation arise out of the same incident.

7 Section 24. For the purpose of incorporating the  
8 amendment to section 316.193, Florida Statutes, in references  
9 thereto, section 322.291, Florida Statutes, is reenacted to  
10 read:

11 322.291 Driver improvement schools or DUI programs;  
12 required in certain suspension and revocation cases.--Except  
13 as provided in s. 322.03(2), any person:

14 (1) Whose driving privilege has been revoked:

15 (a) Upon conviction for:

16 1. Driving, or being in actual physical control of,  
17 any vehicle while under the influence of alcoholic beverages,  
18 any chemical substance set forth in s. 877.111, or any  
19 substance controlled under chapter 893, in violation of s.  
20 316.193;

21 2. Driving with an unlawful blood- or breath-alcohol  
22 level;

23 3. Manslaughter resulting from the operation of a  
24 motor vehicle;

25 4. Failure to stop and render aid as required under  
26 the laws of this state in the event of a motor vehicle crash  
27 resulting in the death or personal injury of another;

28 5. Reckless driving; or

29 (b) As an habitual offender;

30 (c) Upon direction of the court, if the court feels  
31 that the seriousness of the offense and the circumstances

1 surrounding the conviction warrant the revocation of the  
2 licensee's driving privilege; or  
3 (2) Whose license was suspended under the point  
4 system, was suspended for driving with an unlawful  
5 blood-alcohol level of 0.10 percent or higher before January  
6 1, 1994, was suspended for driving with an unlawful  
7 blood-alcohol level of 0.08 percent or higher after December  
8 31, 1993, was suspended for a violation of s. 316.193(1), or  
9 was suspended for refusing to submit to a lawful breath,  
10 blood, or urine test as provided in s. 322.2615  
11  
12 shall, before the driving privilege may be reinstated, present  
13 to the department proof of enrollment in a department-approved  
14 advanced driver improvement course operating pursuant to s.  
15 318.1451 or a substance abuse education course conducted by a  
16 DUI program licensed pursuant to s. 322.292, which shall  
17 include a psychosocial evaluation and treatment, if referred.  
18 If the person fails to complete such course or evaluation  
19 within 90 days after reinstatement, or subsequently fails to  
20 complete treatment, if referred, the DUI program shall notify  
21 the department of the failure. Upon receipt of the notice, the  
22 department shall cancel the offender's driving privilege,  
23 notwithstanding the expiration of the suspension or revocation  
24 of the driving privilege. The department may temporarily  
25 reinstate the driving privilege upon verification from the DUI  
26 program that the offender has completed the education course  
27 and evaluation requirement and has reentered and is currently  
28 participating in treatment. If the DUI program notifies the  
29 department of the second failure to complete treatment, the  
30 department shall reinstate the driving privilege only after  
31 notice of completion of treatment from the DUI program.



1 (b) Violation of such a law or ordinance is evidence  
2 that the violator engages in conduct which is likely to  
3 endanger the safety of persons and property;

4 (c) The continuance in force of a license to drive is  
5 predicated upon compliance with laws and ordinances relating  
6 to the operation of motor vehicles, in whichever jurisdiction  
7 the vehicle is operated.

8 (2) It is the policy of each of the party states to:

9 (a) Promote compliance with the laws, ordinances, and  
10 administrative rules and regulations relating to the operation  
11 of motor vehicles by their operators in each of the  
12 jurisdictions where such operators drive motor vehicles;

13 (b) Make the reciprocal recognition of licenses to  
14 drive and eligibility therefor more just and equitable by  
15 considering the overall compliance with motor vehicle laws,  
16 ordinances, and administrative rules and regulations as a  
17 condition precedent to the continuance or issuance of any  
18 license by reason of which the licensee is authorized or  
19 permitted to operate a motor vehicle in any of the party  
20 states.

21  
22 ARTICLE II  
23

24 DEFINITIONS.--As used in this compact:

25 (1) "State" means a state, territory or possession of  
26 the United States, the District of Columbia, or the  
27 Commonwealth of Puerto Rico.

28 (2) "Home state" means the state which has issued and  
29 has the power to suspend or revoke the use of the license or  
30 permit to operate a motor vehicle.

31



1 if such conduct had occurred in the home state, in the case of  
2 convictions for:

3 (a) Manslaughter or negligent homicide resulting from  
4 the operation of a motor vehicle, as provided by ss. 316.193  
5 and 322.26;

6 (b) Driving a motor vehicle while under the influence  
7 of alcoholic beverages or a narcotic drug, or under the  
8 influence of any other drug to a degree which renders the  
9 driver incapable of safely driving a motor vehicle, as  
10 provided by s. 316.193;

11 (c) Any felony in the commission of which a motor  
12 vehicle is used, as provided by s. 322.26; or

13 (d) Failure to stop and render aid in the event of a  
14 motor vehicle crash resulting in the death or personal injury  
15 of another, as provided by s. 322.26.

16 (2) As to other convictions, reported pursuant to  
17 article III, the licensing authority in the home state shall  
18 give such effect to the conduct as is provided by the laws of  
19 the home state.

20

21 ARTICLE V

22

23 APPLICATIONS FOR NEW LICENSES.--Upon application for a  
24 license to drive, the licensing authority in a party state  
25 shall ascertain whether the applicant has ever held, or is the  
26 holder of, a license to drive issued by any other party state.  
27 The licensing authority in the state where application is made  
28 shall not issue a license to drive to the applicant if:

29 (1) The applicant has held such a license, but the  
30 same has been suspended by reason, in whole or in part, of a  
31 violation and if such suspension period has not terminated.



1 power to formulate all necessary and proper procedures for the  
2 exchange of information under this compact.

3 (2) The administrator of each party state shall  
4 furnish to the administrator of each other party state any  
5 information or documents reasonably necessary to facilitate  
6 the administration of this compact.

7

8

ARTICLE VIII

9

10 ENTRY INTO FORCE AND WITHDRAWAL.--

11 (1) This compact shall enter into force and become  
12 effective as to any state when it has enacted the same into  
13 law.

14 (2) Any party state may withdraw from this compact by  
15 enacting a statute repealing the same, but no such withdrawal  
16 shall take effect until 6 months after the executive head of  
17 the withdrawing state has given notice of the withdrawal to  
18 the executive heads of all other party states. No withdrawal  
19 shall affect the validity or applicability by the licensing  
20 authorities of states remaining party to the compact of any  
21 report of conviction occurring prior to the withdrawal.

22

23

ARTICLE IX

24

25 CONSTRUCTION AND SEVERABILITY.--This compact shall be  
26 liberally construed so as to effectuate the purposes thereof.  
27 The provisions of this compact shall be severable; and if any  
28 phrase, clause, sentence, or provision of this compact is  
29 declared to be contrary to the constitution of any party state  
30 or of the United States or the applicability thereof to any  
31 government, agency, person, or circumstance is held invalid,



1 the validity of the remainder of this compact and the  
2 applicability thereof to any government, agency, person, or  
3 circumstance shall not be affected thereby. If this compact  
4 shall be held contrary to the constitution of any state party  
5 thereto, the compact shall remain in full force and effect as  
6 to the remaining states and in full force and effect as to the  
7 state affected as to all severable matters.

8 Section 27. For the purpose of incorporating the  
9 amendment to section 316.193, Florida Statutes, in references  
10 thereto, paragraph (d) of subsection (2) and subsection (6) of  
11 section 322.63, Florida Statutes, are reenacted to read:

12 322.63 Alcohol or drug testing; commercial motor  
13 vehicle operators.--

14 (2) The chemical and physical tests authorized by this  
15 section shall only be required if a law enforcement officer  
16 has reasonable cause to believe that a person driving a  
17 commercial motor vehicle has any alcohol, chemical substance,  
18 or controlled substance in his or her body.

19 (d) The administration of one test under paragraph  
20 (a), paragraph (b), or paragraph (c) shall not preclude the  
21 administration of a different test under paragraph (a),  
22 paragraph (b), or paragraph (c). However, a urine test may not  
23 be used to determine alcohol concentration and a breath test  
24 may not be used to determine the presence of controlled  
25 substances or chemical substances in a person's body.

26 Notwithstanding the provisions of this paragraph, in the event  
27 a Florida licensee has been convicted in another state for an  
28 offense substantially similar to s. 316.193 or to s. 322.62,  
29 which conviction was based upon evidence of test results  
30 prohibited by this paragraph, that out-of-state conviction  
31

1 shall constitute a conviction for the purposes of this  
2 chapter.

3 (6) Notwithstanding any provision of law pertaining to  
4 the confidentiality of hospital records or other medical  
5 records, information relating to the alcohol content of a  
6 person's blood or the presence of chemical substances or  
7 controlled substances in a person' s blood obtained pursuant  
8 to this section shall be released to a court, prosecuting  
9 attorney, defense attorney, or law enforcement officer in  
10 connection with an alleged violation of s. 316.193 or s.  
11 322.62 upon request for such information.

12 Section 28. For the purpose of incorporating the  
13 amendment to section 316.193, Florida Statutes, in references  
14 thereto, section 322.64, Florida Statutes, is reenacted to  
15 read:

16 322.64 Holder of commercial driver's license; driving  
17 with unlawful blood-alcohol level; refusal to submit to  
18 breath, urine, or blood test.--

19 (1)(a) A law enforcement officer or correctional  
20 officer shall, on behalf of the department, disqualify from  
21 operating any commercial motor vehicle a person who while  
22 operating or in actual physical control of a commercial motor  
23 vehicle is arrested for a violation of s. 316.193, relating to  
24 unlawful blood-alcohol level or breath-alcohol level, or a  
25 person who has refused to submit to a breath, urine, or blood  
26 test authorized by s. 322.63 arising out of the operation or  
27 actual physical control of a commercial motor vehicle. Upon  
28 disqualification of the person, the officer shall take the  
29 person's driver's license and issue the person a 10-day  
30 temporary permit if the person is otherwise eligible for the  
31 driving privilege and shall issue the person a notice of

1 disqualification. If the person has been given a blood,  
2 breath, or urine test, the results of which are not available  
3 to the officer at the time of the arrest, the agency employing  
4 the officer shall transmit such results to the department  
5 within 5 days after receipt of the results. If the department  
6 then determines that the person was arrested for a violation  
7 of s. 316.193 and that the person had a blood-alcohol level or  
8 breath-alcohol level of 0.08 or higher, the department shall  
9 disqualify the person from operating a commercial motor  
10 vehicle pursuant to subsection (3).

11 (b) The disqualification under paragraph (a) shall be  
12 pursuant to, and the notice of disqualification shall inform  
13 the driver of, the following:

14 1.a. The driver refused to submit to a lawful breath,  
15 blood, or urine test and he or she is disqualified from  
16 operating a commercial motor vehicle for a period of 1 year,  
17 for a first refusal, or permanently, if he or she has  
18 previously been disqualified as a result of a refusal to  
19 submit to such a test; or

20 b. The driver violated s. 316.193 by driving with an  
21 unlawful blood-alcohol level and he or she is disqualified  
22 from operating a commercial motor vehicle for a period of 6  
23 months for a first offense or for a period of 1 year if he or  
24 she has previously been disqualified, or his or her driving  
25 privilege has been previously suspended, for a violation of s.  
26 316.193.

27 2. The disqualification period shall commence on the  
28 date of arrest or issuance of notice of disqualification,  
29 whichever is later.

30 3. The driver may request a formal or informal review  
31 of the disqualification by the department within 10 days after

1 the date of arrest or issuance of notice of disqualification,  
2 whichever is later.

3 4. The temporary permit issued at the time of arrest  
4 or disqualification will expire at midnight of the 10th day  
5 following the date of disqualification.

6 5. The driver may submit to the department any  
7 materials relevant to the arrest.

8 (2) Except as provided in paragraph (1)(a), the law  
9 enforcement officer shall forward to the department, within 5  
10 days after the date of the arrest or the issuance of the  
11 notice of disqualification, whichever is later, a copy of the  
12 notice of disqualification, the driver's license of the person  
13 arrested, and a report of the arrest, including, if  
14 applicable, an affidavit stating the officer's grounds for  
15 belief that the person arrested was in violation of s.  
16 316.193; the results of any breath or blood test or an  
17 affidavit stating that a breath, blood, or urine test was  
18 requested by a law enforcement officer or correctional officer  
19 and that the person arrested refused to submit; a copy of the  
20 citation issued to the person arrested; and the officer's  
21 description of the person's field sobriety test, if any. The  
22 failure of the officer to submit materials within the 5-day  
23 period specified in this subsection or subsection (1) shall  
24 not affect the department's ability to consider any evidence  
25 submitted at or prior to the hearing. The officer may also  
26 submit a copy of a videotape of the field sobriety test or the  
27 attempt to administer such test.

28 (3) If the department determines that the person  
29 arrested should be disqualified from operating a commercial  
30 motor vehicle pursuant to this section and if the notice of  
31 disqualification has not already been served upon the person

1 by a law enforcement officer or correctional officer as  
2 provided in subsection (1), the department shall issue a  
3 notice of disqualification and, unless the notice is mailed  
4 pursuant to s. 322.251, a temporary permit which expires 10  
5 days after the date of issuance if the driver is otherwise  
6 eligible.

7 (4) If the person arrested requests an informal review  
8 pursuant to subparagraph (1)(b)3., the department shall  
9 conduct the informal review by a hearing officer employed by  
10 the department. Such informal review hearing shall consist  
11 solely of an examination by the department of the materials  
12 submitted by a law enforcement officer or correctional officer  
13 and by the person arrested, and the presence of an officer or  
14 witness is not required.

15 (5) After completion of the informal review, notice of  
16 the department's decision sustaining, amending, or  
17 invalidating the disqualification must be provided to the  
18 person. Such notice must be mailed to the person at the last  
19 known address shown on the department's records, and to the  
20 address provided in the law enforcement officer's report if  
21 such address differs from the address of record, within 21  
22 days after the expiration of the temporary permit issued  
23 pursuant to subsection (1) or subsection (3).

24 (6)(a) If the person arrested requests a formal  
25 review, the department must schedule a hearing to be held  
26 within 30 days after such request is received by the  
27 department and must notify the person of the date, time, and  
28 place of the hearing.

29 (b) Such formal review hearing shall be held before a  
30 hearing officer employed by the department, and the hearing  
31 officer shall be authorized to administer oaths, examine

1 witnesses and take testimony, receive relevant evidence, issue  
2 subpoenas, regulate the course and conduct of the hearing, and  
3 make a ruling on the disqualification. The department and the  
4 person arrested may subpoena witnesses, and the party  
5 requesting the presence of a witness shall be responsible for  
6 the payment of any witness fees. If the person who requests a  
7 formal review hearing fails to appear and the hearing officer  
8 finds such failure to be without just cause, the right to a  
9 formal hearing is waived and the department shall conduct an  
10 informal review of the disqualification under subsection (4).

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 shall result in a finding of  
16 contempt of court. However, a person shall not be in contempt  
17 while a 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 disqualification.

22 (7) In a formal review hearing under subsection (6) or  
23 an informal review hearing under subsection (4), the hearing  
24 officer shall determine by a preponderance of the evidence  
25 whether sufficient cause exists to sustain, amend, or  
26 invalidate the disqualification. The scope of the review shall  
27 be limited to the following issues:

28 (a) If the person was disqualified from operating a  
29 commercial motor vehicle for driving with an unlawful  
30 blood-alcohol level in violation of s. 316.193:

31

1           1. Whether the arresting law enforcement officer had  
2 probable cause to believe that the person was driving or in  
3 actual physical control of a commercial motor vehicle in this  
4 state while he or she had any alcohol, chemical substances, or  
5 controlled substances in his or her body.

6           2. Whether the person was placed under lawful arrest  
7 for a violation of s. 316.193.

8           3. Whether the person had an unlawful blood-alcohol  
9 level as provided in s. 316.193.

10           (b) If the person was disqualified from operating a  
11 commercial motor vehicle for refusal to submit to a breath,  
12 blood, or urine test:

13           1. Whether the law enforcement officer had probable  
14 cause to believe that the person was driving or in actual  
15 physical control of a commercial motor vehicle in this state  
16 while he or she had any alcohol, chemical substances, or  
17 controlled substances in his or her body.

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

21           3. Whether the person was told that if he or she  
22 refused to submit to such test he or she would be disqualified  
23 from operating a commercial motor vehicle for a period of 1  
24 year or, in the case of a second refusal, permanently.

25           (8) Based on the determination of the hearing officer  
26 pursuant to subsection (7) for both informal hearings under  
27 subsection (4) and formal hearings under subsection (6), the  
28 department shall:

29           (a) Sustain the disqualification for a period of 1  
30 year for a first refusal, or permanently if such person has  
31 been previously disqualified from operating a commercial motor

1 vehicle as a result of a refusal to submit to such tests. The  
2 disqualification period commences on the date of the arrest or  
3 issuance of the notice of disqualification, whichever is  
4 later.

5 (b) Sustain the disqualification for a period of 6  
6 months for a violation of s. 316.193 or for a period of 1 year  
7 if the person has been previously disqualified from operating  
8 a commercial motor vehicle or his or her driving privilege has  
9 been previously suspended as a result of a violation of s.  
10 316.193. The disqualification period commences on the date of  
11 the arrest or issuance of the notice of disqualification,  
12 whichever is later.

13 (9) A request for a formal review hearing or an  
14 informal review hearing shall not stay the disqualification.  
15 If the department fails to schedule the formal review hearing  
16 to be held within 30 days after receipt of the request  
17 therefor, the department shall invalidate the  
18 disqualification. If the scheduled hearing is continued at the  
19 department's initiative, the department shall issue a  
20 temporary driving permit which shall be valid until the  
21 hearing is conducted if the person is otherwise eligible for  
22 the driving privilege. Such permit shall not be issued to a  
23 person who sought and obtained a continuance of the hearing.  
24 The permit issued under this subsection shall authorize  
25 driving for business or employment use only.

26 (10) A person who is disqualified from operating a  
27 commercial motor vehicle under subsection (1) or subsection  
28 (3) is eligible for issuance of a license for business or  
29 employment purposes only under s. 322.271 if the person is  
30 otherwise eligible for the driving privilege. However, such

31



1 business or employment purposes license shall not authorize  
2 the driver to operate a commercial motor vehicle.

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

10 (12) The formal review hearing and the informal review  
11 hearing are exempt from the provisions of chapter 120. The  
12 department is authorized to adopt rules for the conduct of  
13 reviews under this section.

14 (13) A person may appeal any decision of the  
15 department sustaining the disqualification from operating a  
16 commercial motor vehicle by a petition for writ of certiorari  
17 to the circuit court in the county wherein such person resides  
18 or wherein a formal or informal review was conducted pursuant  
19 to s. 322.31. However, an appeal shall not stay the  
20 disqualification. This subsection shall not be construed to  
21 provide for a de novo appeal.

22 (14) The decision of the department under this section  
23 shall not be considered in any trial for a violation of s.  
24 316.193, s. 322.61, or s. 322.62, nor shall any written  
25 statement submitted by a person in his or her request for  
26 departmental review under this section be admissible into  
27 evidence against him or her in any such trial. The disposition  
28 of any related criminal proceedings shall not affect a  
29 disqualification imposed pursuant to this section.

30 (15) This section does not preclude the suspension of  
31 the driving privilege pursuant to s. 322.2615. The driving

1 | privilege of a person who has been disqualified from operating  
2 | a commercial motor vehicle also may be suspended for a  
3 | violation of s. 316.193.

4 |         Section 29. For the purpose of incorporating the  
5 | amendment to section 316.193, Florida Statutes, in references  
6 | thereto, paragraph (d) of subsection (1) of section 493.6106,  
7 | Florida Statutes, is reenacted to read:

8 |             493.6106 License requirements; posting.--

9 |             (1) Each individual licensed by the department must:

10 |             (d) Not be a chronic and habitual user of alcoholic  
11 | beverages to the extent that her or his normal faculties are  
12 | impaired; not have been committed under chapter 397, former  
13 | chapter 396, or a similar law in any other state; not have  
14 | been found to be a habitual offender under s. 856.011(3) or a  
15 | similar law in any other state; and not have had two or more  
16 | convictions under s. 316.193 or a similar law in any other  
17 | state within the 3-year period immediately preceding the date  
18 | the application was filed, unless the individual establishes  
19 | that she or he is not currently impaired and has successfully  
20 | completed a rehabilitation course.

21 |         Section 30. For the purpose of incorporating the  
22 | amendment to section 316.193, Florida Statutes, in references  
23 | thereto, subsection (4) of section 627.758, Florida Statutes,  
24 | is reenacted to read:

25 |             627.758 Surety on auto club traffic arrest bond;  
26 | conditions, limit; bail bond.--

27 |             (4) Notwithstanding the provisions of s. 626.311 or  
28 | chapter 648, any surety insurer identified in a guaranteed  
29 | traffic arrest bond certificate or any licensed general lines  
30 | agent of the surety insurer may execute a bail bond for the  
31 | automobile club or association member identified in the

1 guaranteed traffic arrest bond certificate in an amount not in  
2 excess of \$5,000 for any violation of chapter 316 or any  
3 similar traffic law or ordinance except for driving under the  
4 influence of alcoholic beverages, chemical substances, or  
5 controlled substances, as prohibited by s. 316.193.

6 Section 31. For the purpose of incorporating the  
7 amendment to section 316.193, Florida Statutes, in references  
8 thereto, paragraph (f) of subsection (2) and paragraph (f) of  
9 subsection (10) of section 790.06, Florida Statutes, are  
10 reenacted to read:

11 790.06 License to carry concealed weapon or firearm.--

12 (2) The Department of Agriculture and Consumer  
13 Services shall issue a license if the applicant:

14 (f) Does not chronically and habitually use alcoholic  
15 beverages or other substances to the extent that his or her  
16 normal faculties are impaired. It shall be presumed that an  
17 applicant chronically and habitually uses alcoholic beverages  
18 or other substances to the extent that his or her normal  
19 faculties are impaired if the applicant has been committed  
20 under chapter 397 or under the provisions of former chapter  
21 396 or has been convicted under s. 790.151 or has been deemed  
22 a habitual offender under s. 856.011(3), or has had two or  
23 more convictions under s. 316.193 or similar laws of any other  
24 state, within the 3-year period immediately preceding the date  
25 on which the application is submitted;

26 (10) A license issued under this section shall be  
27 suspended or revoked pursuant to chapter 120 if the licensee:

28 (f) Is convicted of a second violation of s. 316.193,  
29 or a similar law of another state, within 3 years of a  
30 previous conviction of such section, or similar law of another  
31

1 state, even though the first violation may have occurred prior  
2 to the date on which the application was submitted;

3 Section 32. For the purpose of incorporating the  
4 amendment to section 316.193, Florida Statutes, in references  
5 thereto, subsection (2) of section 903.36, Florida Statutes,  
6 is reenacted to read:

7 903.36 Guaranteed arrest bond certificates as cash  
8 bail.--

9 (2) The execution of a bail bond by a licensed general  
10 lines agent of a surety insurer for the automobile club or  
11 association member identified in the guaranteed traffic arrest  
12 bond certificate, as provided in s. 627.758(4), shall be  
13 accepted as bail in an amount not to exceed \$5,000 for the  
14 appearance of the person named in the certificate in any court  
15 to answer for the violation of a provision of chapter 316 or a  
16 similar traffic law or ordinance, except driving under the  
17 influence of alcoholic beverages, chemical substances, or  
18 controlled substances, as prohibited by s. 316.193.  
19 Presentation of the guaranteed traffic arrest bond certificate  
20 and a power of attorney from the surety insurer for its  
21 licensed general lines agents is authorization for such agent  
22 to execute the bail bond.

23 Section 33. For the purpose of incorporating the  
24 amendment to section 316.193, Florida Statutes, in references  
25 thereto, paragraph (c) of subsection (4) of section 907.041,  
26 Florida Statutes, is reenacted to read:

27 907.041 Pretrial detention and release.--

28 (4) PRETRIAL DETENTION.--

29 (c) The court may order pretrial detention if it finds  
30 a substantial probability, based on a defendant's past and  
31 present patterns of behavior, the criteria in s. 903.046, and

1 any other relevant facts, that any of the following  
2 circumstances exists:

3 1. The defendant has previously violated conditions of  
4 release and that no further conditions of release are  
5 reasonably likely to assure the defendant's appearance at  
6 subsequent proceedings;

7 2. The defendant, with the intent to obstruct the  
8 judicial process, has threatened, intimidated, or injured any  
9 victim, potential witness, juror, or judicial officer, or has  
10 attempted or conspired to do so, and that no condition of  
11 release will reasonably prevent the obstruction of the  
12 judicial process;

13 3. The defendant is charged with trafficking in  
14 controlled substances as defined by s. 893.135, that there is  
15 a substantial probability that the defendant has committed the  
16 offense, and that no conditions of release will reasonably  
17 assure the defendant's appearance at subsequent criminal  
18 proceedings; or

19 4. The defendant is charged with DUI manslaughter, as  
20 defined by s. 316.193, and that there is a substantial  
21 probability that the defendant committed the crime and that  
22 the defendant poses a threat of harm to the community;  
23 conditions that would support a finding by the court pursuant  
24 to this subparagraph that the defendant poses a threat of harm  
25 to the community include, but are not limited to, any of the  
26 following:

27 a. The defendant has previously been convicted of any  
28 crime under s. 316.193, or of any crime in any other state or  
29 territory of the United States that is substantially similar  
30 to any crime under s. 316.193;

31

1           b. The defendant was driving with a suspended driver'  
2 s license when the charged crime was committed; or

3           c. The defendant has previously been found guilty of,  
4 or has had adjudication of guilt withheld for, driving while  
5 the defendant's driver's license was suspended or revoked in  
6 violation of s. 322.34;

7           5. The defendant poses the threat of harm to the  
8 community. The court may so conclude, if it finds that the  
9 defendant is presently charged with a dangerous crime, that  
10 there is a substantial probability that the defendant  
11 committed such crime, that the factual circumstances of the  
12 crime indicate a disregard for the safety of the community,  
13 and that there are no conditions of release reasonably  
14 sufficient to protect the community from the risk of physical  
15 harm to persons.

16           6. The defendant was on probation, parole, or other  
17 release pending completion of sentence or on pretrial release  
18 for a dangerous crime at the time the current offense was  
19 committed; or

20           7. The defendant has violated one or more conditions  
21 of pretrial release or bond for the offense currently before  
22 the court and the violation, in the discretion of the court,  
23 supports a finding that no conditions of release can  
24 reasonably protect the community from risk of physical harm to  
25 persons or assure the presence of the accused at trial.

26           Section 34. For the purpose of incorporating the  
27 amendment to section 316.193, Florida Statutes, in references  
28 thereto, section 938.21, Florida Statutes, is reenacted to  
29 read:

30           938.21 Alcohol and drug abuse  
31 programs.--Notwithstanding any provision to the contrary of

1 the laws of this state, the court may assess for alcohol and  
2 other drug abuse programs as provided in s. 893.165 any  
3 defendant who pleads guilty or nolo contendere to, or is  
4 convicted of, a violation of any provision of chapter 893 or  
5 which involves a criminal violation of s. 316.193, s. 856.011,  
6 s. 856.015, or chapter 562, chapter 567, or chapter 568, in  
7 addition to any fine and other penalty provided by law, a  
8 court cost in an amount up to the amount of the fine  
9 authorized for the violation. The court is authorized to order  
10 a defendant to pay an additional assessment if it finds that  
11 the defendant has the ability to pay the fine and the  
12 additional assessment and will not be prevented thereby from  
13 being rehabilitated or from making restitution.

14 Section 35. For the purpose of incorporating the  
15 amendment to section 316.193, Florida Statutes, in references  
16 thereto, subsection (1) of section 938.23, Florida Statutes,  
17 is reenacted to read:

18 938.23 Assistance grants for alcohol and other drug  
19 abuse programs.--

20 (1) In addition to any fine imposed by law for any  
21 criminal offense under chapter 893 or for any criminal  
22 violation of s. 316.193, s. 856.011, s. 856.015, or chapter  
23 562, chapter 567, or chapter 568, the court shall be  
24 authorized, pursuant to the requirements of s. 938.21, to  
25 impose an additional assessment in an amount up to the amount  
26 of the fine authorized for the offense. Such additional  
27 assessments shall be deposited for the purpose of providing  
28 assistance grants to drug abuse treatment or alcohol treatment  
29 or education programs as provided in s. 893.165.

30 Section 36. For the purpose of incorporating the  
31 amendment to section 316.193, Florida Statutes, in references

1 thereto, paragraph (d) of subsection (2) of section 943.05,  
2 Florida Statutes, is reenacted to read:

3 943.05 Criminal Justice Information Program; duties;  
4 crime reports.--

5 (2) The program shall:

6 (d) Adopt rules to effectively and efficiently  
7 implement, administer, manage, maintain, and use the automated  
8 fingerprint identification system and uniform offense reports  
9 and arrest reports. The rules shall be considered minimum  
10 requirements and shall not preclude a criminal justice agency  
11 from implementing its own enhancements. However, rules and  
12 forms prescribing uniform arrest or probable cause affidavits  
13 and alcohol influence reports to be used by all law  
14 enforcement agencies in making DUI arrests under s. 316.193  
15 shall be adopted, and shall be used by all law enforcement  
16 agencies in this state. The rules and forms prescribing such  
17 uniform affidavits and reports shall be adopted and  
18 implemented by July 1, 2004. Failure to use these uniform  
19 affidavits and reports, however, shall not prohibit  
20 prosecution under s. 316.193.

21 Section 37. For the purpose of incorporating the  
22 amendment to section 316.193, Florida Statutes, in references  
23 thereto, paragraph (b) of subsection (3) of section 960.03,  
24 Florida Statutes, is reenacted to read:

25 960.03 Definitions; ss. 960.01-960.28.--As used in ss.  
26 960.01-960.28, unless the context otherwise requires, the  
27 term:

28 (3) "Crime" means:

29 (b) A violation of s. 316.193, s. 316.027(1), s.  
30 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results  
31 in physical injury or death; however, no other act involving



1 the operation of a motor vehicle, boat, or aircraft which  
2 results in injury or death shall constitute a crime for the  
3 purpose of this chapter unless the injury or death was  
4 intentionally inflicted through the use of such vehicle, boat,  
5 or aircraft or unless such vehicle, boat, or aircraft is an  
6 implement of a crime to which this act applies.

7 Section 38. For the purpose of incorporating the  
8 amendment to section 327.35, Florida Statutes, in references  
9 thereto, subsection (3) of section 327.352, Florida Statutes,  
10 is reenacted to read:

11 327.352 Breath, blood, and urine tests for alcohol,  
12 chemical substances, or controlled substances; implied  
13 consent; refusal.--

14 (3) Notwithstanding any provision of law pertaining to  
15 the confidentiality of hospital records or other medical  
16 records, information relating to the alcoholic content of the  
17 blood or breath or the presence of chemical substances or  
18 controlled substances in the blood obtained pursuant to this  
19 section shall be released to a court, prosecuting attorney,  
20 defense attorney, or law enforcement officer in connection  
21 with an alleged violation of s. 327.35 upon request for such  
22 information.

23 Section 39. For the purpose of incorporating the  
24 amendment to section 327.35, Florida Statutes, in references  
25 thereto, section 327.35215, Florida Statutes, is reenacted to  
26 read:

27 327.35215 Penalty for failure to submit to test.--

28 (1) A person who is lawfully arrested for an alleged  
29 violation of s. 327.35 and who refuses to submit to a blood  
30 test, breath test, or urine test pursuant to s. 327.352 is  
31 subject to a civil penalty of \$500.

1           (2) When a person refuses to submit to a blood test,  
2 breath test, or urine test pursuant to s. 327.352, a law  
3 enforcement officer who is authorized to make arrests for  
4 violations of this chapter shall file with the clerk of the  
5 court, on a form provided by the department, a certified  
6 statement that probable cause existed to arrest the person for  
7 a violation of s. 327.35 and that the person refused to submit  
8 to a test as required by s. 327.352. Along with the statement,  
9 the officer must also submit a sworn statement on a form  
10 provided by the department that the person has been advised of  
11 both the penalties for failure to submit to the blood, breath,  
12 or urine test and the procedure for requesting a hearing.

13           (3) A person who has been advised of the penalties  
14 pursuant to subsection (2) may, within 30 days afterwards,  
15 request a hearing before a county court judge. A request for a  
16 hearing tolls the period for payment of the civil penalty,  
17 and, if assessment of the civil penalty is sustained by the  
18 hearing and any subsequent judicial review, the civil penalty  
19 must be paid within 30 days after final disposition. The clerk  
20 of the court shall notify the department of the final  
21 disposition of all actions filed under this section.

22           (4) It is unlawful for any person who has not paid a  
23 civil penalty imposed pursuant to this section, or who has not  
24 requested a hearing with respect to the civil penalty, within  
25 30 calendar days after receipt of notice of the civil penalty  
26 to operate a vessel upon the waters of this state. Violation  
27 of this subsection is a misdemeanor of the first degree,  
28 punishable as provided in s. 775.082 or s. 775.083.

29           (5) Moneys collected by the clerk of the court  
30 pursuant to this section shall be disposed of in the following  
31 manner:

1 (a) If the arresting officer was employed or appointed  
2 by a state law enforcement agency except as a wildlife  
3 enforcement officer or a freshwater fisheries enforcement  
4 officer of the Fish and Wildlife Conservation Commission, the  
5 moneys shall be deposited into the Marine Resources  
6 Conservation Trust Fund.

7 (b) If the arresting officer was employed or appointed  
8 by a county or municipal law enforcement agency, the moneys  
9 shall be deposited into the law enforcement trust fund of that  
10 agency.

11 (c) If the arresting officer was employed or appointed  
12 by the Fish and Wildlife Conservation Commission as a wildlife  
13 enforcement officer or a freshwater fisheries enforcement  
14 officer, the money shall be deposited into the State Game  
15 Trust Fund.

16 Section 40. For the purpose of incorporating the  
17 amendment to section 327.35, Florida Statutes, in references  
18 thereto, subsection (4) of section 327.353, Florida Statutes,  
19 is reenacted to read:

20 327.353 Blood test for impairment or intoxication in  
21 cases of death or serious bodily injury; right to use  
22 reasonable force.--

23 (4) Notwithstanding any provision of law pertaining to  
24 the confidentiality of hospital records or other medical  
25 records, information relating to the alcoholic content of the  
26 blood or the presence of chemical substances or controlled  
27 substances in the blood obtained pursuant to this section  
28 shall be released to a court, prosecuting attorney, defense  
29 attorney, or law enforcement officer in connection with an  
30 alleged violation of s. 327.35 upon request for such  
31 information.

1           Section 41. For the purpose of incorporating the  
2 amendment to section 327.35, Florida Statutes, in references  
3 thereto, section 327.354, Florida Statutes, is reenacted to  
4 read:

5           327.354 Presumption of impairment; testing methods.--

6           (1) It is unlawful and punishable as provided in s.  
7 327.35 for any person who is under the influence of alcoholic  
8 beverages or controlled substances, when affected to the  
9 extent that the person's normal faculties are impaired or to  
10 the extent that the person is deprived of full possession of  
11 normal faculties, to operate any vessel within this state.  
12 Such normal faculties include, but are not limited to, the  
13 ability to see, hear, walk, talk, judge distances, drive an  
14 automobile, make judgments, act in emergencies, and, in  
15 general, normally perform the many mental and physical acts of  
16 daily life.

17           (2) At the trial of any civil or criminal action or  
18 proceeding arising out of acts alleged to have been committed  
19 by any person while operating a vessel while under the  
20 influence of alcoholic beverages or controlled substances,  
21 when affected to the extent that the person's normal faculties  
22 were impaired or to the extent that he or she was deprived of  
23 full possession of his or her normal faculties, the results of  
24 any test administered in accordance with s. 327.352 or s.  
25 327.353 and this section are admissible into evidence when  
26 otherwise admissible, and the amount of alcohol in the  
27 person's blood or breath at the time alleged, as shown by  
28 chemical analysis of the person's blood, or by chemical or  
29 physical test of the person's breath, gives rise to the  
30 following presumptions:

31

1 (a) If there was at that time a blood-alcohol level or  
2 breath-alcohol level of 0.05 or less, it is presumed that the  
3 person was not under the influence of alcoholic beverages to  
4 the extent that his or her normal faculties were impaired.

5 (b) If there was at that time a blood-alcohol level or  
6 breath-alcohol level in excess of 0.05 but less than 0.08,  
7 that fact does not give rise to any presumption that the  
8 person was or was not under the influence of alcoholic  
9 beverages to the extent that his or her normal faculties were  
10 impaired but may be considered with other competent evidence  
11 in determining whether the person was under the influence of  
12 alcoholic beverages to the extent that his or her normal  
13 faculties were impaired.

14 (c) If there was at that time a blood-alcohol level or  
15 breath-alcohol level of 0.08 or higher, that fact is prima  
16 facie evidence that the person was under the influence of  
17 alcoholic beverages to the extent that his or her normal  
18 faculties were impaired. Any person who operates a vessel and  
19 who has a blood-alcohol level or breath-alcohol level of 0.08  
20 or higher is guilty of operating a vessel with an unlawful  
21 blood-alcohol level or breath-alcohol level.

22  
23 The presumptions provided in this subsection do not limit the  
24 introduction of any other competent evidence bearing upon the  
25 question of whether the person was under the influence of  
26 alcoholic beverages to the extent that his or her normal  
27 faculties were impaired.

28 (3) A chemical analysis of a person's blood to  
29 determine alcoholic content or a chemical or physical test of  
30 a person's breath, in order to be considered valid under this  
31 section, must have been performed substantially in accordance

1 with methods approved by the Department of Law Enforcement and  
2 by an individual possessing a valid permit issued by the  
3 department for this purpose. Insubstantial differences between  
4 approved techniques and actual testing procedures or  
5 insubstantial defects concerning the permit issued by the  
6 department, in any individual case, do not render the test or  
7 test results invalid. The Department of Law Enforcement may  
8 approve satisfactory techniques or methods, ascertain the  
9 qualifications and competence of individuals to conduct such  
10 analyses, and issue permits subject to termination or  
11 revocation in accordance with rules adopted by the department.

12 (4) Any person charged with a violation of s. 327.35  
13 is entitled to trial by jury according to the Florida Rules of  
14 Criminal Procedure.

15 (5) An affidavit containing the results of any test of  
16 a person's blood or breath to determine its alcohol content,  
17 as authorized by s. 327.352 or s. 327.353, is admissible in  
18 evidence under the exception to the hearsay rule in s.  
19 90.803(8) for public records and reports. The affidavit is  
20 admissible without further authentication and is presumptive  
21 proof of the results of an authorized test to determine  
22 alcohol content of the blood or breath if the affidavit  
23 discloses:

24 (a) The type of test administered and the procedures  
25 followed;

26 (b) The time of the collection of the blood or breath  
27 sample analyzed;

28 (c) The numerical results of the test indicating the  
29 alcohol content of the blood or breath;

30  
31

1 (d) The type and status of any permit issued by the  
2 Department of Law Enforcement which was held by the person who  
3 performed the test; and

4 (e) If the test was administered by means of a breath  
5 testing instrument, the date of performance of the most recent  
6 required maintenance on such instrument.

7  
8 The Department of Law Enforcement shall provide a form for the  
9 affidavit. Admissibility of the affidavit does not abrogate  
10 the right of the person tested to subpoena the person who  
11 administered the test for examination as an adverse witness at  
12 a civil or criminal trial or other proceeding.

13 Section 42. For the purpose of incorporating the  
14 amendment to section 327.35, Florida Statutes, in references  
15 thereto, subsection (4) of section 327.355, Florida Statutes,  
16 is reenacted to read:

17 327.355 Operation of vessels by persons under 21 years  
18 of age who have consumed alcoholic beverages.--

19 (4) A violation of this section is a noncriminal  
20 infraction, and being detained pursuant to this section does  
21 not constitute an arrest. This section does not bar  
22 prosecution under s. 327.35, and the penalties provided herein  
23 shall be imposed in addition to any other penalty provided for  
24 boating under the influence or for refusal to submit to  
25 testing.

26 Section 43. For the purpose of incorporating the  
27 amendment to section 327.35, Florida Statutes, in references  
28 thereto, subsection (2) of section 327.359, Florida Statutes,  
29 is reenacted to read:

30 327.359 Refusal to submit to testing; penalties.--Any  
31 person who has refused to submit to a chemical or physical

1 test of his or her breath, blood, or urine, as described in s.  
2 327.352, and who has been previously fined for refusal to  
3 submit to a lawful test of his or her breath, urine, or blood,  
4 and:

5 (2) Who was placed under lawful arrest for a violation  
6 of s. 327.35 unless such test was requested pursuant to s.  
7 327.352(1)(c);

8  
9 commits a misdemeanor of the first degree and is subject to  
10 punishment as provided in s. 775.082 or s. 775.083.

11 Section 44. For the purpose of incorporating the  
12 amendment to section 327.35, Florida Statutes, in references  
13 thereto, section 327.36, Florida Statutes, is reenacted to  
14 read:

15 327.36 Mandatory adjudication; prohibition against  
16 accepting plea to lesser included offense.--

17 (1) Notwithstanding the provisions of s. 948.01, no  
18 court may suspend, defer, or withhold adjudication of guilt or  
19 imposition of sentence for any violation of s. 327.35, for  
20 manslaughter resulting from the operation of a vessel, or for  
21 vessel homicide.

22 (2)(a) No trial judge may accept a plea of guilty to a  
23 lesser offense from a person who is charged with a violation  
24 of s. 327.35, manslaughter resulting from the operation of a  
25 vessel, or vessel homicide and who has been given a breath or  
26 blood test to determine blood or breath alcohol content, the  
27 results of which show a blood-alcohol level or breath-alcohol  
28 level of 0.16 or more.

29 (b) A trial judge may not accept a plea of guilty to a  
30 lesser offense from a person charged with a felony violation  
31



1 of s. 327.35, manslaughter resulting from the operation of a  
2 vessel, or vessel homicide.  
3 Section 45. This act shall take effect upon becoming a  
4 law.  
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