

By Senator Smith

14-1602-04

See HB 307

1 A bill to be entitled
2 An act relating to driving or boating under the
3 influence; amending s. 316.193, F.S.; revising
4 level of alcohol content in blood or breath at
5 which certain penalties shall apply for the
6 offense of driving under the influence;
7 amending s. 316.656, F.S.; revising level of
8 alcohol content in blood or breath at which the
9 prohibition against accepting plea to lesser
10 offense shall apply; amending s. 327.35, F.S.;
11 revising level of alcohol content in blood or
12 breath at which certain penalties shall apply
13 for the offense of boating under the influence;
14 reenacting ss. 316.066(3)(a), 316.072(4)(b),
15 316.1932(3), 316.1933(4), 316.1934(1) and (4),
16 316.1937(1) and (2)(d), 316.1939(1)(b),
17 318.143(4) and (5), 318.17(3), 322.03(2),
18 322.0602(2)(a), 322.21(8), 322.25(5),
19 322.26(1)(a), 322.2615(1), (2), (7), (8)(b),
20 (10)(b), and (14), 322.2616(1)(a), (15), and
21 (19), 322.264(1)(b), 322.271(2)(a), (2)(c), and
22 (4), 322.28(2), 322.282(2)(a), 322.291(1)(a),
23 322.34(9)(a), 322.44, 322.62(3), 322.63(2)(d)
24 and (6), 322.64(1), (2), (7)(a), (8)(b), (14),
25 and (15), 323.001(4)(f), 327.35(6),
26 397.405(10), 440.02(17)(c), 440.09(7)(b),
27 493.6106(1)(d), 627.758(4), 790.06(2)(f) and
28 (10)(f), 903.36(2), 907.041(4)(c), 938.07,
29 938.21, 938.23(1), 943.05(2)(d), 948.03(8)(b),
30 and 960.03(3)(b), F.S.; incorporating the
31 amendment to s. 316.193, F.S., in references

1 thereto; reenacting ss. 327.352(3),
2 327.35215(1) and (2), 327.353(4), 327.354(1)
3 and (4), 327.355(1)(a) and (4), 327.359(2),
4 327.36, and 938.07, F.S.; incorporating the
5 amendment to s. 327.35, F.S., in references
6 thereto; providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

10 Section 1. Subsection (4) of section 316.193, Florida
11 Statutes, is amended to read:

12 316.193 Driving under the influence; penalties.--

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

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

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

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

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

28 1. By a fine of:

29 a. Not less than \$250 or more than \$500 for a first
30 conviction.
31

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

3 2. By imprisonment for:

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

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

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

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

27 2. Any person who is convicted of a third violation of
28 this section for an offense that occurs more than 10 years
29 after the date of a prior conviction for a violation of this
30 section shall be punished by a fine of not less than \$1,000 or
31 more than \$2,500 and by imprisonment for not more than 12

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

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

17 (3) Any person:

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

19 (b) Who operates a vehicle; and

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

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

25 2. Serious bodily injury to another, as defined in s.
26 316.1933, commits a felony of the third degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084.

28 3. The death of any human being commits DUI
29 manslaughter, and commits:

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

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

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

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

7 (4)(a) Any person who is convicted of a violation of
8 subsection (1) and who has a blood-alcohol level or
9 breath-alcohol level of 0.16 ~~0.20~~ or higher, or any person who
10 is convicted of a violation of subsection (1) and who at the
11 time of the offense was accompanied in the vehicle by a person
12 under the age of 18 years, shall be punished:

13 1.(a) By a fine of:

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

16 b.2. Not less than \$1,000 or more than \$2,000 for a
17 second conviction.

18 c.3. Not less than \$2,000 for a third or subsequent
19 conviction.

20 2.(b) By imprisonment for:

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

22 b.2. Not more than 12 months for a second conviction.

23

24 ~~For the purposes of this subsection, only the instant offense~~
25 ~~is required to be a violation of subsection (1) by a person~~
26 ~~who has a blood-alcohol level or breath-alcohol level of 0.20~~
27 ~~or higher.~~

28 (b)(c) In addition to the penalties in paragraph
29 ~~paragraphs (a) and (b)~~, the court shall order the mandatory
30 placement, at the convicted person's sole expense, of an
31 ignition interlock device approved by the department in

1 accordance with s. 316.1938 upon all vehicles that are
2 individually or jointly leased or owned and routinely operated
3 by the convicted person for up to 6 months for the first
4 offense and for at least 2 years for a second offense, when
5 the convicted person qualifies for a permanent or restricted
6 license. The installation of such device may not occur before
7 July 1, 2003.

8
9 For the purposes of this subsection, only the instant offense
10 is required to be a violation of subsection (1) by a person
11 who has a blood-alcohol level or breath-alcohol level of 0.16
12 or higher.

13 (5) The court shall place all offenders convicted of
14 violating this section on monthly reporting probation and
15 shall require completion of a substance abuse course conducted
16 by a DUI program licensed by the department under s. 322.292,
17 which must include a psychosocial evaluation of the offender.
18 If the DUI program refers the offender to an authorized
19 substance abuse treatment provider for substance abuse
20 treatment, in addition to any sentence or fine imposed under
21 this section, completion of all such education, evaluation,
22 and treatment is a condition of reporting probation. The
23 offender shall assume reasonable costs for such education,
24 evaluation, and treatment. The referral to treatment resulting
25 from a psychosocial evaluation shall not be waived without a
26 supporting independent psychosocial evaluation conducted by an
27 authorized substance abuse treatment provider appointed by the
28 court, which shall have access to the DUI program's
29 psychosocial evaluation before the independent psychosocial
30 evaluation is conducted. The court shall review the results
31 and recommendations of both evaluations before determining the

1 request for waiver. The offender shall bear the full cost of
2 this procedure. The term "substance abuse" means the abuse of
3 alcohol or any substance named or described in Schedules I
4 through V of s. 893.03. If an offender referred to treatment
5 under this subsection fails to report for or complete such
6 treatment or fails to complete the DUI program substance abuse
7 education course and evaluation, the DUI program shall notify
8 the court and the department of the failure. Upon receipt of
9 the notice, the department shall cancel the offender's driving
10 privilege, notwithstanding the terms of the court order or any
11 suspension or revocation of the driving privilege. The
12 department may temporarily reinstate the driving privilege on
13 a restricted basis upon verification from the DUI program that
14 the offender is currently participating in treatment and the
15 DUI education course and evaluation requirement has been
16 completed. If the DUI program notifies the department of the
17 second failure to complete treatment, the department shall
18 reinstate the driving privilege only after notice of
19 completion of treatment from the DUI program. The organization
20 that conducts the substance abuse education and evaluation may
21 not provide required substance abuse treatment unless a waiver
22 has been granted to that organization by the department. A
23 waiver may be granted only if the department determines, in
24 accordance with its rules, that the service provider that
25 conducts the substance abuse education and evaluation is the
26 most appropriate service provider and is licensed under
27 chapter 397 or is exempt from such licensure. A statistical
28 referral report shall be submitted quarterly to the department
29 by each organization authorized to provide services under this
30 section.
31

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

4 (a) For the first conviction, the court shall place
5 the defendant on probation for a period not to exceed 1 year
6 and, as a condition of such probation, shall order the
7 defendant to participate in public service or a community work
8 project for a minimum of 50 hours; or the court may order
9 instead, that any defendant pay an additional fine of \$10 for
10 each hour of public service or community work otherwise
11 required, if, after consideration of the residence or location
12 of the defendant at the time public service or community work
13 is required, payment of the fine is in the best interests of
14 the state. However, the total period of probation and
15 incarceration may not exceed 1 year. The court must also, as a
16 condition of probation, order the impoundment or
17 immobilization of the vehicle that was operated by or in the
18 actual control of the defendant or any one vehicle registered
19 in the defendant's name at the time of impoundment or
20 immobilization, for a period of 10 days or for the unexpired
21 term of any lease or rental agreement that expires within 10
22 days. The impoundment or immobilization must not occur
23 concurrently with the incarceration of the defendant. The
24 impoundment or immobilization order may be dismissed in
25 accordance with paragraph (e), paragraph (f), paragraph (g),
26 or paragraph (h).

27 (b) For the second conviction for an offense that
28 occurs within a period of 5 years after the date of a prior
29 conviction for violation of this section, the court shall
30 order imprisonment for not less than 10 days. The court must
31 also, as a condition of probation, order the impoundment or

1 immobilization of all vehicles owned by the defendant at the
2 time of impoundment or immobilization, for a period of 30 days
3 or for the unexpired term of any lease or rental agreement
4 that expires within 30 days. The impoundment or immobilization
5 must not occur concurrently with the incarceration of the
6 defendant and must occur concurrently with the driver's
7 license revocation imposed under s. 322.28(2)(a)2. The
8 impoundment or immobilization order may be dismissed in
9 accordance with paragraph (e), paragraph (f), paragraph (g),
10 or paragraph (h). At least 48 hours of confinement must be
11 consecutive.

12 (c) For the third or subsequent conviction for an
13 offense that occurs within a period of 10 years after the date
14 of a prior conviction for violation of this section, the court
15 shall order imprisonment for not less than 30 days. The court
16 must also, as a condition of probation, order the impoundment
17 or immobilization of all vehicles owned by the defendant at
18 the time of impoundment or immobilization, for a period of 90
19 days or for the unexpired term of any lease or rental
20 agreement that expires within 90 days. The impoundment or
21 immobilization must not occur concurrently with the
22 incarceration of the defendant and must occur concurrently
23 with the driver's license revocation imposed under s.
24 322.28(2)(a)3. The impoundment or immobilization order may be
25 dismissed in accordance with paragraph (e), paragraph (f),
26 paragraph (g), or paragraph (h). At least 48 hours of
27 confinement must be consecutive.

28 (d) The court must at the time of sentencing the
29 defendant issue an order for the impoundment or immobilization
30 of a vehicle. Within 7 business days after the date that the
31 court issues the order of impoundment or immobilization, the

1 clerk of the court must send notice by certified mail, return
2 receipt requested, to the registered owner of each vehicle, if
3 the registered owner is a person other than the defendant, and
4 to each person of record claiming a lien against the vehicle.

5 (e) A person who owns but was not operating the
6 vehicle when the offense occurred may submit to the court a
7 police report indicating that the vehicle was stolen at the
8 time of the offense or documentation of having purchased the
9 vehicle after the offense was committed from an entity other
10 than the defendant or the defendant's agent. If the court
11 finds that the vehicle was stolen or that the sale was not
12 made to circumvent the order and allow the defendant continued
13 access to the vehicle, the order must be dismissed and the
14 owner of the vehicle will incur no costs. If the court denies
15 the request to dismiss the order of impoundment or
16 immobilization, the petitioner may request an evidentiary
17 hearing.

18 (f) A person who owns but was not operating the
19 vehicle when the offense occurred, and whose vehicle was
20 stolen or who purchased the vehicle after the offense was
21 committed directly from the defendant or the defendant's
22 agent, may request an evidentiary hearing to determine whether
23 the impoundment or immobilization should occur. If the court
24 finds that either the vehicle was stolen or the purchase was
25 made without knowledge of the offense, that the purchaser had
26 no relationship to the defendant other than through the
27 transaction, and that such purchase would not circumvent the
28 order and allow the defendant continued access to the vehicle,
29 the order must be dismissed and the owner of the vehicle will
30 incur no costs.

31

1 (g) The court shall also dismiss the order of
2 impoundment or immobilization of the vehicle if the court
3 finds that the family of the owner of the vehicle has no other
4 private or public means of transportation.

5 (h) The court may also dismiss the order of
6 impoundment or immobilization of any vehicles that are owned
7 by the defendant but that are operated solely by the employees
8 of the defendant or any business owned by the defendant.

9 (i) All costs and fees for the impoundment or
10 immobilization, including the cost of notification, must be
11 paid by the owner of the vehicle or, if the vehicle is leased
12 or rented, by the person leasing or renting the vehicle,
13 unless the impoundment or immobilization order is dismissed.
14 All provisions of s. 713.78 shall apply.

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

1 after reasonable inspection, the owner or lienholder must give
2 a receipt to the towing or storage company indicating any loss
3 or damage to the vehicle or to the contents of the vehicle.

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

11

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

1 rate less than the federal minimum wage at the time of
2 sentencing.

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

5 (8) At the arraignment, or in conjunction with any
6 notice of arraignment provided by the clerk of the court, the
7 clerk shall provide any person charged with a violation of
8 this section with notice that upon conviction the court shall
9 suspend or revoke the offender's driver's license and that the
10 offender should make arrangements for transportation at any
11 proceeding in which the court may take such action. Failure to
12 provide such notice does not affect the court's suspension or
13 revocation of the offender's driver's license.

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

16 (a) Until the person is no longer under the influence
17 of alcoholic beverages, any chemical substance set forth in s.
18 877.111, or any substance controlled under chapter 893 and
19 affected to the extent that his or her normal faculties are
20 impaired;

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

23 (c) Until 8 hours have elapsed from the time the
24 person was arrested.

25 (10) The rulings of the Department of Highway Safety
26 and Motor Vehicles under s. 322.2615 shall not be considered
27 in any trial for a violation of this section. Testimony or
28 evidence from the administrative proceedings or any written
29 statement submitted by a person in his or her request for
30 administrative review is inadmissible into evidence or for any
31 other purpose in any criminal proceeding, unless timely

1 disclosed in criminal discovery pursuant to Rule 3.220,
2 Florida Rules of Criminal Procedure.

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

6 Section 2. Subsection (2) of section 316.656, Florida
7 Statutes, is amended to 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 0.16
20 ~~0.20~~ 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 3. Subsection (4) of section 327.35, Florida
26 Statutes, is amended to read:

27 327.35 Boating under the influence; penalties;
28 "designated drivers".--

29 (4) Any person who is convicted of a violation of
30 subsection (1) and who has a blood-alcohol level or
31 breath-alcohol level of 0.16 ~~0.20~~ or higher, or any person who

1 is convicted of a violation of subsection (1) and who at the
2 time of the offense was accompanied in the vessel by a person
3 under the age of 18 years, shall be punished:

4 (a) By a fine of:

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

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

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

11 (b) By imprisonment for:

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

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

14

15 For the purposes of this subsection, only the instant offense
16 is required to be a violation of subsection (1) by a person
17 who has a blood-alcohol level or breath-alcohol level of 0.16
18 ~~0.20~~ or higher.

19 Section 4. 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 5. 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 6. 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 Tests for alcohol, chemical substances, or
23 controlled substances; implied consent; refusal.--

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

31

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

3 Section 7. 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 8. 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 9. For the purpose of incorporating the
9 amendment to section 316.193, Florida Statutes, in references
10 thereto, subsection (1) and paragraph (d) of subsection (2) of
11 section 316.1937, Florida Statutes, are reenacted to 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 (d) Determine the person's ability to pay for
2 installation of the device if the person claims inability to
3 pay. If the court determines that the person is unable to pay
4 for installation of the device, the court may order that any
5 portion of a fine paid by the person for a violation of s.
6 316.193 shall be allocated to defray the costs of installing
7 the device.

8 Section 10. For the purpose of incorporating the
9 amendment to section 316.193, Florida Statutes, in references
10 thereto, paragraph (b) of subsection (1) of section 316.1939,
11 Florida Statutes, is reenacted to read:

12 316.1939 Refusal to submit to testing; penalties.--

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

18 (b) Who was placed under lawful arrest for a violation
19 of s. 316.193 unless such test was requested pursuant to s.
20 316.1932(1)(c);

21
22 commits a misdemeanor of the first degree and is subject to
23 punishment as provided in s. 775.082 or s. 775.083.

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

28 318.143 Sanctions for infractions by minors.--

29 (4) For the first conviction for a violation of s.
30 316.193, the court may order the Department of Highway Safety
31 and Motor Vehicles to revoke the minor's driver's license

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

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

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

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

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

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

19 318.17 Offenses excepted.--No provision of this
20 chapter is available to a person who is charged with any of
21 the following offenses:

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

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

31 322.03 Drivers must be licensed; penalties.--

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

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

22 322.0602 Youthful Drunk Driver Visitation Program.--

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

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

30 Section 15. For the purpose of incorporating the
31 amendment to section 316.193, Florida Statutes, in references

1 thereto, subsection (8) of section 322.21, Florida Statutes,
2 is reenacted to read:

3 322.21 License fees; procedure for handling and
4 collecting fees.--

5 (8) Any person who applies for reinstatement following
6 the suspension or revocation of the person's driver's license
7 shall pay a service fee of \$35 following a suspension, and \$60
8 following a revocation, which is in addition to the fee for a
9 license. Any person who applies for reinstatement of a
10 commercial driver's license following the disqualification of
11 the person's privilege to operate a commercial motor vehicle
12 shall pay a service fee of \$60, which is in addition to the
13 fee for a license. The department shall collect all of these
14 fees at the time of reinstatement. The department shall issue
15 proper receipts for such fees and shall promptly transmit all
16 funds received by it as follows:

17 (a) Of the \$35 fee received from a licensee for
18 reinstatement following a suspension, the department shall
19 deposit \$15 in the General Revenue Fund and \$20 in the Highway
20 Safety Operating Trust Fund.

21 (b) Of the \$60 fee received from a licensee for
22 reinstatement following a revocation or disqualification, the
23 department shall deposit \$35 in the General Revenue Fund and
24 \$25 in the Highway Safety Operating Trust Fund.

25
26 If the revocation or suspension of the driver's license was
27 for a violation of s. 316.193, or for refusal to submit to a
28 lawful breath, blood, or urine test, an additional fee of \$115
29 must be charged. However, only one \$115 fee may be collected
30 from one person convicted of violations arising out of the
31 same incident. The department shall collect the \$115 fee and

1 deposit the fee into the Highway Safety Operating Trust Fund
2 at the time of reinstatement of the person's driver's license,
3 but the fee may not be collected if the suspension or
4 revocation is overturned.

5 Section 16. For the purpose of incorporating the
6 amendment to section 316.193, Florida Statutes, in references
7 thereto, subsection (5) of section 322.25, Florida Statutes,
8 is reenacted to read:

9 322.25 When court to forward license to department and
10 report convictions; temporary reinstatement of driving
11 privileges.--

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

21 Section 17. For the purpose of incorporating the
22 amendment to section 316.193, Florida Statutes, in references
23 thereto, paragraph (a) of subsection (1) of section 322.26,
24 Florida Statutes, is reenacted to read:

25 322.26 Mandatory revocation of license by
26 department.--The department shall forthwith revoke the license
27 or driving privilege of any person upon receiving a record of
28 such person's conviction of any of the following offenses:

29 (1)(a) Murder resulting from the operation of a motor
30 vehicle, DUI manslaughter where the conviction represents a
31 subsequent DUI-related conviction, or a fourth violation of s.

1 316.193 or former s. 316.1931. For such cases, the revocation
2 of the driver's license or driving privilege shall be
3 permanent.

4 Section 18. For the purpose of incorporating the
5 amendment to section 316.193, Florida Statutes, in references
6 thereto, subsections (1), (2), and (7), paragraph (b) of
7 subsection (8), paragraph (b) of subsection (10), and
8 subsection (14) of section 322.2615, Florida Statutes, are
9 reenacted to read:

10 322.2615 Suspension of license; right to review.--

11 (1)(a) A law enforcement officer or correctional
12 officer shall, on behalf of the department, suspend the
13 driving privilege of a person who has been arrested by a law
14 enforcement officer for a violation of s. 316.193, relating to
15 unlawful blood-alcohol level or breath-alcohol level, or of a
16 person who has refused to submit to a breath, urine, or blood
17 test authorized by s. 316.1932. The officer shall take the
18 person's driver's license and issue the person a 10-day
19 temporary permit if the person is otherwise eligible for the
20 driving privilege and shall issue the person a notice of
21 suspension. If a blood test has been administered, the results
22 of which are not available to the officer at the time of the
23 arrest, the agency employing the officer shall transmit such
24 results to the department within 5 days after receipt of the
25 results. If the department then determines that the person was
26 arrested for a violation of s. 316.193 and that the person had
27 a blood-alcohol level or breath-alcohol level of 0.08 or
28 higher, the department shall suspend the person's driver's
29 license pursuant to subsection (3).

30
31

1 (b) The suspension under paragraph (a) shall be
2 pursuant to, and the notice of suspension shall inform the
3 driver of, the following:

4 1.a. The driver refused to submit to a lawful breath,
5 blood, or urine test and his or her driving privilege is
6 suspended for a period of 1 year for a first refusal or for a
7 period of 18 months if his or her driving privilege has been
8 previously suspended as a result of a refusal to submit to
9 such a test; or

10 b. The driver violated s. 316.193 by driving with an
11 unlawful blood-alcohol level as provided in that section and
12 his or her driving privilege is suspended for a period of 6
13 months for a first offense or for a period of 1 year if his or
14 her driving privilege has been previously suspended for a
15 violation of s. 316.193.

16 2. The suspension period shall commence on the date of
17 arrest or issuance of the notice of suspension, whichever is
18 later.

19 3. The driver may request a formal or informal review
20 of the suspension by the department within 10 days after the
21 date of arrest or issuance of the notice of suspension,
22 whichever is later.

23 4. The temporary permit issued at the time of arrest
24 will expire at midnight of the 10th day following the date of
25 arrest or issuance of the notice of suspension, whichever is
26 later.

27 5. The driver may submit to the department any
28 materials relevant to the arrest.

29 (2) Except as provided in paragraph (1)(a), the law
30 enforcement officer shall forward to the department, within 5
31 days after the date of the arrest, a copy of the notice of

1 suspension, the driver's license of the person arrested, and a
2 report of the arrest, including an affidavit stating the
3 officer's grounds for belief that the person arrested was in
4 violation of s. 316.193; the results of any breath or blood
5 test or an affidavit stating that a breath, blood, or urine
6 test was requested by a law enforcement officer or
7 correctional officer and that the person arrested refused to
8 submit; a copy of the citation issued to the person arrested;
9 and the officer's description of the person's field sobriety
10 test, if any. The failure of the officer to submit materials
11 within the 5-day period specified in this subsection and in
12 subsection (1) shall not affect the department's ability to
13 consider any evidence submitted at or prior to the hearing.
14 The officer may also submit a copy of a videotape of the field
15 sobriety test or the attempt to administer such test.

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

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

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

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

31

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

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

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

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

12 3. Whether the person refused to submit to any such
13 test after being requested to do so by a law enforcement
14 officer or correctional officer.

15 4. Whether the person was told that if he or she
16 refused to submit to such test his or her privilege to operate
17 a motor vehicle would be suspended for a period of 1 year or,
18 in the case of a second or subsequent refusal, for a period of
19 18 months.

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

24 (b) Sustain the suspension of the person's driving
25 privilege for a period of 6 months for a violation of s.
26 316.193, or for a period of 1 year if the driving privilege of
27 such person has been previously suspended as a result of a
28 violation of s. 316.193. The suspension period commences on
29 the date of the arrest or issuance of the notice of
30 suspension, whichever is later.

31

1 (10) A person whose driver's license is suspended
2 under subsection (1) or subsection (3) may apply for issuance
3 of a license for business or employment purposes only if the
4 person is otherwise eligible for the driving privilege
5 pursuant to s. 322.271.

6 (b) If the suspension of the driver's license of the
7 person arrested for a violation of s. 316.193, relating to
8 unlawful blood-alcohol level, is sustained, the person is not
9 eligible to receive a license for business or employment
10 purposes only pursuant to s. 322.271 until 30 days have
11 elapsed after the expiration of the last temporary permit
12 issued. If the driver is not issued a 10-day permit pursuant
13 to this section or s. 322.64 because he or she is ineligible
14 for the permit and the suspension for a violation of s.
15 316.193, relating to unlawful blood-alcohol level, is not
16 invalidated by the department, the driver is not eligible to
17 receive a business or employment license pursuant to s.
18 322.271 until 30 days have elapsed from the date of the
19 arrest.

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

28 Section 19. For the purpose of incorporating the
29 amendment to section 316.193, Florida Statutes, in references
30 thereto, paragraph (a) of subsection (1) and subsections (15)

31

1 and (19) of section 322.2616, Florida Statutes, are reenacted
2 to read:

3 322.2616 Suspension of license; persons under 21 years
4 of age; right to review.--

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

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

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

31

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

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

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

13 (b) Any violation of s. 316.193, former s. 316.1931,
14 or former s. 860.01;

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

28 Section 21. For the purpose of incorporating the
29 amendment to section 316.193, Florida Statutes, in references
30 thereto, paragraphs (a) and (c) of subsection (2) and
31

1 subsection (4) of section 322.271, Florida Statutes, are
2 reenacted to read:

3 322.271 Authority to modify revocation, cancellation,
4 or suspension order.--

5 (2)(a) Upon such hearing, the person whose license has
6 been suspended, canceled, or revoked may show that such
7 suspension, cancellation, or revocation of his or her license
8 causes a serious hardship and precludes the person's carrying
9 out his or her normal business occupation, trade, or
10 employment and that the use of the person's license in the
11 normal course of his or her business is necessary to the
12 proper support of the person or his or her family. Except as
13 otherwise provided in this subsection, the department shall
14 require proof of the successful completion of the applicable
15 department-approved driver training course operating pursuant
16 to s. 318.1451 or DUI program substance abuse education course
17 and evaluation as provided in s. 316.193(5). Letters of
18 recommendation from respected business persons in the
19 community, law enforcement officers, or judicial officers may
20 also be required to determine whether such person should be
21 permitted to operate a motor vehicle on a restricted basis for
22 business or employment use only and in determining whether
23 such person can be trusted to so operate a motor vehicle. If a
24 driver's license has been suspended under the point system or
25 pursuant to s. 322.2615, the department shall require proof of
26 enrollment in the applicable department-approved driver
27 training course or licensed DUI program substance abuse
28 education course, including evaluation and treatment, if
29 referred, and may require letters of recommendation described
30 in this subsection to determine if the driver should be
31 reinstated on a restricted basis. If such person fails to

1 complete the approved course within 90 days after
2 reinstatement or subsequently fails to complete treatment, if
3 applicable, the department shall cancel his or her driver's
4 license until the course and treatment, if applicable, is
5 successfully completed, notwithstanding the terms of the court
6 order or any suspension or revocation of the driving
7 privilege. The department may temporarily reinstate the
8 driving privilege on a restricted basis upon verification from
9 the DUI program that the offender has reentered and is
10 currently participating in treatment and has completed the DUI
11 education course and evaluation requirement. If the DUI
12 program notifies the department of the second failure to
13 complete treatment, the department shall reinstate the driving
14 privilege only after notice of completion of treatment from
15 the DUI program. The privilege of driving on a limited or
16 restricted basis for business or employment use shall not be
17 granted to a person who has been convicted of a violation of
18 s. 316.193 until completion of the DUI program substance abuse
19 education course and evaluations as provided in s. 316.193(5).
20 Except as provided in paragraph (b), the privilege of driving
21 on a limited or restricted basis for business or employment
22 use shall not be granted to a person whose license is revoked
23 pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and
24 who has been convicted of a violation of s. 316.193 two or
25 more times or whose license has been suspended two or more
26 times for refusal to submit to a test pursuant to s. 322.2615
27 or former s. 322.261.

28 (c) For the purpose of this section, a previous
29 conviction of driving under the influence, driving while
30 intoxicated, driving with an unlawful blood-alcohol level, or
31 any other similar alcohol-related or drug-related offense

1 outside this state or a previous conviction of former s.
2 316.1931, former s. 316.028, or former s. 860.01 shall be
3 considered a previous conviction for violation of s. 316.193.
4 (4) Notwithstanding the provisions of s. 322.28(2)(e),
5 a person whose driving privilege has been permanently revoked
6 because he or she has been convicted of DUI manslaughter in
7 violation of s. 316.193 and has no prior convictions for
8 DUI-related offenses may, upon the expiration of 5 years after
9 the date of such revocation or the expiration of 5 years after
10 the termination of any term of incarceration under s. 316.193
11 or former s. 316.1931, whichever date is later, petition the
12 department for reinstatement of his or her driving privilege.
13 (a) Within 30 days after the receipt of such a
14 petition, the department shall afford the petitioner an
15 opportunity for a hearing. At the hearing, the petitioner must
16 demonstrate to the department that he or she:
17 1. Has not been arrested for a drug-related offense
18 during the 5 years preceding the filing of the petition;
19 2. Has not driven a motor vehicle without a license
20 for at least 5 years prior to the hearing;
21 3. Has been drug-free for at least 5 years prior to
22 the hearing; and
23 4. Has completed a DUI program licensed by the
24 department.
25 (b) At such hearing, the department shall determine
26 the petitioner's qualification, fitness, and need to drive.
27 Upon such determination, the department may, in its
28 discretion, reinstate the driver's license of the petitioner.
29 Such reinstatement must be made subject to the following
30 qualifications:
31

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

3 2. Such person must be supervised by a DUI program
4 licensed by the department and report to the program for such
5 supervision and education at least four times a year or
6 additionally as required by the program for the remainder of
7 the revocation period. Such supervision shall include
8 evaluation, education, referral into treatment, and other
9 activities required by the department.

10 (c) Such person must assume the reasonable costs of
11 supervision. If such person fails to comply with the required
12 supervision, the program shall report the failure to the
13 department, and the department shall cancel such person's
14 driving privilege.

15 (d) If, after reinstatement, such person is convicted
16 of an offense for which mandatory revocation of his or her
17 license is required, the department shall revoke his or her
18 driving privilege.

19 (e) The department shall adopt rules regulating the
20 providing of services by DUI programs pursuant to this
21 section.

22 Section 22. For the purpose of incorporating the
23 amendment to section 316.193, Florida Statutes, in references
24 thereto, subsection (2) of section 322.28, Florida Statutes,
25 is reenacted to read:

26 322.28 Period of suspension or revocation.--

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

29 (a) Upon conviction of the driver, the court, along
30 with imposing sentence, shall revoke the driver's license or
31 driving privilege of the person so convicted, effective on the

1 date of conviction, and shall prescribe the period of such
2 revocation in accordance with the following provisions:

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

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

13 3. Upon a third conviction for an offense that occurs
14 within a period of 10 years after the date of a prior
15 conviction for the violation of the provisions of s. 316.193
16 or former s. 316.1931 or a combination of such sections, the
17 driver's license or driving privilege shall be revoked for not
18 less than 10 years.

19
20 For the purposes of this paragraph, a previous conviction
21 outside this state for driving under the influence, driving
22 while intoxicated, driving with an unlawful blood-alcohol
23 level, or any other alcohol-related or drug-related traffic
24 offense similar to the offense of driving under the influence
25 as proscribed by s. 316.193 will be considered a previous
26 conviction for violation of s. 316.193, and a conviction for
27 violation of former s. 316.028, former s. 316.1931, or former
28 s. 860.01 is considered a conviction for violation of s.
29 316.193.

30 (b) If the period of revocation was not specified by
31 the court at the time of imposing sentence or within 30 days

1 thereafter, and is not otherwise specified by law, the
2 department shall forthwith revoke the driver's license or
3 driving privilege for the maximum period applicable under
4 paragraph (a) for a first conviction and for the minimum
5 period applicable under paragraph (a) for any subsequent
6 convictions. The driver may, within 30 days after such
7 revocation by the department, petition the court for further
8 hearing on the period of revocation, and the court may reopen
9 the case and determine the period of revocation within the
10 limits specified in paragraph (a).

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

1 (d) When any driver's license or driving privilege has
2 been revoked pursuant to the provisions of this section, the
3 department shall not grant a new license, except upon
4 reexamination of the licensee after the expiration of the
5 period of revocation so prescribed. However, the court may, in
6 its sound discretion, issue an order of reinstatement on a
7 form furnished by the department which the person may take to
8 any driver's license examining office for reinstatement by the
9 department pursuant to s. 322.282.

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

31

1 outside this state is considered a conviction for the purposes
2 of this paragraph.

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

7 322.282 Procedure when court revokes or suspends
8 license or driving privilege and orders reinstatement.--When a
9 court suspends or revokes a person's license or driving
10 privilege and, in its discretion, orders reinstatement as
11 provided by s. 322.28(2)(d) or former s. 322.261(5):

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

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

6 Section 24. For the purpose of incorporating the
7 amendment to section 316.193, Florida Statutes, in references
8 thereto, paragraph (a) of subsection (1) of section 322.291,
9 Florida Statutes, is reenacted to read:

10 322.291 Driver improvement schools or DUI programs;
11 required in certain suspension and revocation cases.--Except
12 as provided in s. 322.03(2), any person:

13 (1) Whose driving privilege has been revoked:

14 (a) Upon conviction for:

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

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

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

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

27 5. Reckless driving; or

28

29 shall, before the driving privilege may be reinstated, present
30 to the department proof of enrollment in a department-approved
31 advanced driver improvement course operating pursuant to s.

1 318.1451 or a substance abuse education course conducted by a
2 DUI program licensed pursuant to s. 322.292, which shall
3 include a psychosocial evaluation and treatment, if referred.
4 If the person fails to complete such course or evaluation
5 within 90 days after reinstatement, or subsequently fails to
6 complete treatment, if referred, the DUI program shall notify
7 the department of the failure. Upon receipt of the notice, the
8 department shall cancel the offender's driving privilege,
9 notwithstanding the expiration of the suspension or revocation
10 of the driving privilege. The department may temporarily
11 reinstate the driving privilege upon verification from the DUI
12 program that the offender has completed the education course
13 and evaluation requirement and has reentered and is currently
14 participating in treatment. If the DUI program notifies the
15 department of the second failure to complete treatment, the
16 department shall reinstate the driving privilege only after
17 notice of completion of treatment from the DUI program.

18 Section 25. For the purpose of incorporating the
19 amendment to section 316.193, Florida Statutes, in references
20 thereto, paragraph (a) of subsection (9) of section 322.34,
21 Florida Statutes, is reenacted to read:

22 322.34 Driving while license suspended, revoked,
23 canceled, or disqualified.--

24 (9)(a) A motor vehicle that is driven by a person
25 under the influence of alcohol or drugs in violation of s.
26 316.193 is subject to seizure and forfeiture under ss.
27 932.701-932.707 and is subject to liens for recovering,
28 towing, or storing vehicles under s. 713.78 if, at the time of
29 the offense, the person's driver's license is suspended,
30 revoked, or canceled as a result of a prior conviction for
31 driving under the influence.

1 Section 26. For the purpose of incorporating the
2 amendment to section 316.193, Florida Statutes, in references
3 thereto, section 322.44, Florida Statutes, is reenacted to
4 read:

5 322.44 Driver License Compact.--The Driver License
6 Compact is hereby enacted into law and entered into with all
7 other jurisdictions legally joining therein in the form
8 substantially as follows:

9
10 ARTICLE I

11
12 FINDINGS AND DECLARATION OF POLICY.--

13 (1) The party states find that:

14 (a) The safety of their streets and highways is
15 materially affected by the degree of compliance with state
16 laws and local ordinances relating to the operation of motor
17 vehicles;

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

21 (c) The continuance in force of a license to drive is
22 predicated upon compliance with laws and ordinances relating
23 to the operation of motor vehicles, in whichever jurisdiction
24 the vehicle is operated.

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

26 (a) Promote compliance with the laws, ordinances, and
27 administrative rules and regulations relating to the operation
28 of motor vehicles by their operators in each of the
29 jurisdictions where such operators drive motor vehicles;

30 (b) Make the reciprocal recognition of licenses to
31 drive and eligibility therefor more just and equitable by

1 considering the overall compliance with motor vehicle laws,
2 ordinances, and administrative rules and regulations as a
3 condition precedent to the continuance or issuance of any
4 license by reason of which the licensee is authorized or
5 permitted to operate a motor vehicle in any of the party
6 states.

7

8

ARTICLE II

9

10 DEFINITIONS.--As used in this compact:

11 (1) "State" means a state, territory or possession of
12 the United States, the District of Columbia, or the
13 Commonwealth of Puerto Rico.

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

17 (3) "Conviction" means a conviction of any offense
18 related to the use or operation of a motor vehicle which is
19 prohibited by state law, municipal ordinance, or
20 administrative rule or regulation, or a forfeiture of bail,
21 bond, or other security deposited to secure appearance by a
22 person charged with having committed any such offense, and
23 which conviction or forfeiture is required to be reported to
24 the licensing authority.

25

26

ARTICLE III

27

28 REPORTS OF CONVICTION.--The licensing authority of a
29 party state shall report each conviction of a person from
30 another party state occurring within its jurisdiction to the
31 licensing authority of the home state of the licensee. Such

1 report shall clearly identify the person convicted; describe
2 the violation specifying the section of the statute, code, or
3 ordinance violated; identify the court in which action was
4 taken; indicate whether a plea of guilty or not guilty was
5 entered or the conviction was a result of the forfeiture of
6 bail, bond, or other security; and shall include any special
7 findings made in connection therewith.

8
9 ARTICLE IV

10
11 EFFECT OF CONVICTION.--

12 (1) The licensing authority in the home state, for the
13 purposes of suspension, revocation, or limitation of the
14 license to operate a motor vehicle, shall give the same effect
15 to the conduct reported, pursuant to article III, as it would
16 if such conduct had occurred in the home state, in the case of
17 convictions for:

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

21 (b) Driving a motor vehicle while under the influence
22 of alcoholic beverages or a narcotic drug, or under the
23 influence of any other drug to a degree which renders the
24 driver incapable of safely driving a motor vehicle, as
25 provided by s. 316.193;

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

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

31

1
2 APPLICABILITY OF OTHER LAWS.--Except as expressly
3 required by provisions of this compact, nothing contained
4 herein shall be construed to affect the right of any party
5 state to apply any of its other laws relating to licenses to
6 drive to any person or circumstance, nor to invalidate or
7 prevent any driver license agreement or other cooperative
8 arrangement between a party state and a nonparty state.

9
10 ARTICLE VII

11
12 COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION.--

13 (1) The head of the licensing authority of each party
14 state shall be the administrator of this compact for his or
15 her state. The administrators, acting jointly, shall have the
16 power to formulate all necessary and proper procedures for the
17 exchange of information under this compact.

18 (2) The administrator of each party state shall
19 furnish to the administrator of each other party state any
20 information or documents reasonably necessary to facilitate
21 the administration of this compact.

22
23 ARTICLE VIII

24
25 ENTRY INTO FORCE AND WITHDRAWAL.--

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

29 (2) Any party state may withdraw from this compact by
30 enacting a statute repealing the same, but no such withdrawal
31 shall take effect until 6 months after the executive head of

1 the withdrawing state has given notice of the withdrawal to
2 the executive heads of all other party states. No withdrawal
3 shall affect the validity or applicability by the licensing
4 authorities of states remaining party to the compact of any
5 report of conviction occurring prior to the withdrawal.

6
7 ARTICLE IX

8
9 CONSTRUCTION AND SEVERABILITY.--This compact shall be
10 liberally construed so as to effectuate the purposes thereof.
11 The provisions of this compact shall be severable; and if any
12 phrase, clause, sentence, or provision of this compact is
13 declared to be contrary to the constitution of any party state
14 or of the United States or the applicability thereof to any
15 government, agency, person, or circumstance is held invalid,
16 the validity of the remainder of this compact and the
17 applicability thereof to any government, agency, person, or
18 circumstance shall not be affected thereby. If this compact
19 shall be held contrary to the constitution of any state party
20 thereto, the compact shall remain in full force and effect as
21 to the remaining states and in full force and effect as to the
22 state affected as to all severable matters.

23 Section 27. For the purpose of incorporating the
24 amendment to section 316.193, Florida Statutes, in references
25 thereto, subsection (3) of section 322.62, Florida Statutes,
26 is reenacted to read:

27 322.62 Driving under the influence; commercial motor
28 vehicle operators.--

29 (3) This section does not supersede s. 316.193.
30 Nothing in this section prohibits the prosecution of a person
31 who drives a commercial motor vehicle for driving under the

1 influence of alcohol or controlled substances whether or not
2 such person is also prosecuted for a violation of this
3 section.

4 Section 28. For the purpose of incorporating the
5 amendment to section 316.193, Florida Statutes, in references
6 thereto, paragraph (d) of subsection (2) and subsection (6) of
7 section 322.63, Florida Statutes, are reenacted to read:

8 322.63 Alcohol or drug testing; commercial motor
9 vehicle operators.--

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

15 (d) The administration of one test under paragraph
16 (a), paragraph (b), or paragraph (c) shall not preclude the
17 administration of a different test under paragraph (a),
18 paragraph (b), or paragraph (c). However, a urine test may not
19 be used to determine alcohol concentration and a breath test
20 may not be used to determine the presence of controlled
21 substances or chemical substances in a person's body.
22 Notwithstanding the provisions of this paragraph, in the event
23 a Florida licensee has been convicted in another state for an
24 offense substantially similar to s. 316.193 or to s. 322.62,
25 which conviction was based upon evidence of test results
26 prohibited by this paragraph, that out-of-state conviction
27 shall constitute a conviction for the purposes of this
28 chapter.

29 (6) Notwithstanding any provision of law pertaining to
30 the confidentiality of hospital records or other medical
31 records, information relating to the alcohol content of a

1 person's blood or the presence of chemical substances or
2 controlled substances in a person's blood obtained pursuant to
3 this section shall be released to a court, prosecuting
4 attorney, defense attorney, or law enforcement officer in
5 connection with an alleged violation of s. 316.193 or s.
6 322.62 upon request for such information.

7 Section 29. For the purpose of incorporating the
8 amendment to section 316.193, Florida Statutes, in references
9 thereto, subsections (1) and (2), paragraph (a) of subsection
10 (7), paragraph (b) of subsection (8), and subsections (14) and
11 (15) of section 322.64, Florida Statutes, are reenacted to
12 read:

13 322.64 Holder of commercial driver's license; driving
14 with unlawful blood-alcohol level; refusal to submit to
15 breath, urine, or blood test.--

16 (1)(a) A law enforcement officer or correctional
17 officer shall, on behalf of the department, disqualify from
18 operating any commercial motor vehicle a person who while
19 operating or in actual physical control of a commercial motor
20 vehicle is arrested for a violation of s. 316.193, relating to
21 unlawful blood-alcohol level or breath-alcohol level, or a
22 person who has refused to submit to a breath, urine, or blood
23 test authorized by s. 322.63 arising out of the operation or
24 actual physical control of a commercial motor vehicle. Upon
25 disqualification of the person, the officer shall take the
26 person's driver's license and issue the person a 10-day
27 temporary permit if the person is otherwise eligible for the
28 driving privilege and shall issue the person a notice of
29 disqualification. If the person has been given a blood,
30 breath, or urine test, the results of which are not available
31 to the officer at the time of the arrest, the agency employing

1 the officer shall transmit such results to the department
2 within 5 days after receipt of the results. If the department
3 then determines that the person was arrested for a violation
4 of s. 316.193 and that the person had a blood-alcohol level or
5 breath-alcohol level of 0.08 or higher, the department shall
6 disqualify the person from operating a commercial motor
7 vehicle pursuant to subsection (3).

8 (b) The disqualification under paragraph (a) shall be
9 pursuant to, and the notice of disqualification shall inform
10 the driver of, the following:

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

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

24 2. The disqualification period shall commence on the
25 date of arrest or issuance of notice of disqualification,
26 whichever is later.

27 3. The driver may request a formal or informal review
28 of the disqualification by the department within 10 days after
29 the date of arrest or issuance of notice of disqualification,
30 whichever is later.

31

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

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

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

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

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

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

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

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

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

17 (b) Sustain the disqualification for a period of 6
18 months for a violation of s. 316.193 or for a period of 1 year
19 if the person has been previously disqualified from operating
20 a commercial motor vehicle or his or her driving privilege has
21 been previously suspended as a result of a violation of s.
22 316.193. The disqualification period commences on the date of
23 the arrest or issuance of the notice of disqualification,
24 whichever is later.

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

31

1 of any related criminal proceedings shall not affect a
2 disqualification imposed pursuant to this section.

3 (15) This section does not preclude the suspension of
4 the driving privilege pursuant to s. 322.2615. The driving
5 privilege of a person who has been disqualified from operating
6 a commercial motor vehicle also may be suspended for a
7 violation of s. 316.193.

8 Section 30. For the purpose of incorporating the
9 amendment to section 316.193, Florida Statutes, in references
10 thereto, paragraph (f) of subsection (4) of section 323.001,
11 Florida Statutes, is reenacted to read:

12 323.001 Wrecker operator storage facilities; vehicle
13 holds.--

14 (4) The requirements for a written hold apply when the
15 following conditions are present:

16 (f) The vehicle is impounded or immobilized pursuant
17 to s. 316.193 or s. 322.34; or

18 Section 31. For the purpose of incorporating the
19 amendment to section 316.193, Florida Statutes, in references
20 thereto, subsection (6) of section 327.35, Florida Statutes,
21 is reenacted to read:

22 327.35 Boating under the influence; penalties;
23 "designated drivers".--

24 (6) With respect to any person convicted of a
25 violation of subsection (1), regardless of any other penalty
26 imposed:

27 (a) For the first conviction, the court shall place
28 the defendant on probation for a period not to exceed 1 year
29 and, as a condition of such probation, shall order the
30 defendant to participate in public service or a community work
31 project for a minimum of 50 hours. The court must also, as a

1 condition of probation, order the impoundment or
2 immobilization of the vessel that was operated by or in the
3 actual control of the defendant or any one vehicle registered
4 in the defendant's name at the time of impoundment or
5 immobilization, for a period of 10 days or for the unexpired
6 term of any lease or rental agreement that expires within 10
7 days. The impoundment or immobilization must not occur
8 concurrently with the incarceration of the defendant. The
9 impoundment or immobilization order may be dismissed in
10 accordance with paragraph (e) or paragraph (f). The total
11 period of probation and incarceration may not exceed 1 year.

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

27 (c) For the third or subsequent conviction for an
28 offense that occurs within a period of 10 years after the date
29 of a prior conviction for violation of this section, the court
30 shall order imprisonment for not less than 30 days. The court
31 must also, as a condition of probation, order the impoundment

1 or immobilization of the vessel that was operated by or in the
2 actual control of the defendant or any one vehicle registered
3 in the defendant's name at the time of impoundment or
4 immobilization, for a period of 90 days or for the unexpired
5 term of any lease or rental agreement that expires within 90
6 days. The impoundment or immobilization must not occur
7 concurrently with the incarceration of the defendant. The
8 impoundment or immobilization order may be dismissed in
9 accordance with paragraph (e) or paragraph (f). At least 48
10 hours of confinement must be consecutive.

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

21 (e) A person who owns but was not operating the vessel
22 when the offense occurred may submit to the court a police
23 report indicating that the vessel was stolen at the time of
24 the offense or documentation of having purchased the vessel
25 after the offense was committed from an entity other than the
26 defendant or the defendant's agent. If the court finds that
27 the vessel was stolen or that the sale was not made to
28 circumvent the order and allow the defendant continued access
29 to the vessel, the order must be dismissed and the owner of
30 the vessel will incur no costs. If the court denies the
31

1 request to dismiss the order of impoundment or immobilization,
2 the petitioner may request an evidentiary hearing.

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

16 (g) All costs and fees for the impoundment or
17 immobilization, including the cost of notification, must be
18 paid by the owner of the vessel or, if the vessel is leased or
19 rented, by the person leasing or renting the vessel, unless
20 the impoundment or immobilization order is dismissed.

21 (h) The person who owns a vessel that is impounded or
22 immobilized under this paragraph, or a person who has a lien
23 of record against such a vessel and who has not requested a
24 review of the impoundment pursuant to paragraph (e) or
25 paragraph (f), may, within 10 days after the date that person
26 has knowledge of the location of the vessel, file a complaint
27 in the county in which the owner resides to determine whether
28 the vessel was wrongfully taken or withheld from the owner or
29 lienholder. Upon the filing of a complaint, the owner or
30 lienholder may have the vessel released by posting with the
31 court a bond or other adequate security equal to the amount of

1 the costs and fees for impoundment or immobilization,
2 including towing or storage, to ensure the payment of the
3 costs and fees if the owner or lienholder does not prevail.
4 When the bond is posted and the fee is paid as set forth in s.
5 28.24, the clerk of the court shall issue a certificate
6 releasing the vessel. At the time of release, after reasonable
7 inspection, the owner or lienholder must give a receipt to the
8 towing or storage company indicating any loss or damage to the
9 vessel or to the contents of the vessel.

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

17

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

28 Section 32. For the purpose of incorporating the
29 amendment to section 316.193, Florida Statutes, in references
30 thereto, subsection (10) of section 397.405, Florida Statutes,
31 is reenacted to read:

1 397.405 Exemptions from licensure.--The following are
2 exempt from the licensing provisions of this chapter:

3 (10) DUI education and screening services provided
4 pursuant to ss. 316.192, 316.193, 322.095, 322.271, and
5 322.291. Persons or entities providing treatment services must
6 be licensed under this chapter unless exempted from licensing
7 as provided in this section.

8
9 The exemptions from licensure in this section do not apply to
10 any service provider that receives an appropriation, grant, or
11 contract from the state to operate as a service provider as
12 defined in this chapter or to any substance abuse program
13 regulated pursuant to s. 397.406. Furthermore, this chapter
14 may not be construed to limit the practice of a physician
15 licensed under chapter 458 or chapter 459, a psychologist
16 licensed under chapter 490, or a psychotherapist licensed
17 under chapter 491 who provides substance abuse treatment, so
18 long as the physician, psychologist, or psychotherapist does
19 not represent to the public that he or she is a licensed
20 service provider and does not provide services to clients
21 pursuant to part V of this chapter. Failure to comply with any
22 requirement necessary to maintain an exempt status under this
23 section is a misdemeanor of the first degree, punishable as
24 provided in s. 775.082 or s. 775.083.

25 Section 33. For the purpose of incorporating the
26 amendment to section 316.193, Florida Statutes, in references
27 thereto, paragraph (c) of subsection (17) of section 440.02,
28 Florida Statutes, is reenacted to read:

29 440.02 Definitions.--When used in this chapter, unless
30 the context clearly requires otherwise, the following terms
31 shall have the following meanings:

1 (17)
2 (c) "Employment" does not include service performed by
3 or as:
4 1. Domestic servants in private homes.
5 2. Agricultural labor performed on a farm in the
6 employ of a bona fide farmer, or association of farmers, that
7 employs 5 or fewer regular employees and that employs fewer
8 than 12 other employees at one time for seasonal agricultural
9 labor that is completed in less than 30 days, provided such
10 seasonal employment does not exceed 45 days in the same
11 calendar year. The term "farm" includes stock, dairy, poultry,
12 fruit, fur-bearing animals, fish, and truck farms, ranches,
13 nurseries, and orchards. The term "agricultural labor"
14 includes field foremen, timekeepers, checkers, and other farm
15 labor supervisory personnel.
16 3. Professional athletes, such as professional boxers,
17 wrestlers, baseball, football, basketball, hockey, polo,
18 tennis, jai alai, and similar players, and motorsports teams
19 competing in a motor racing event as defined in s. 549.08.
20 4. Labor under a sentence of a court to perform
21 community services as provided in s. 316.193.
22 5. State prisoners or county inmates, except those
23 performing services for private employers or those enumerated
24 in s. 948.03(8)(a).
25 Section 34. For the purpose of incorporating the
26 amendment to section 316.193, Florida Statutes, in references
27 thereto, paragraph (b) of subsection (7) of section 440.09,
28 Florida Statutes, is reenacted to read:
29 440.09 Coverage.--
30 (7)
31

1 (b) If the employee has, at the time of the injury, a
2 blood alcohol level equal to or greater than the level
3 specified in s. 316.193, or if the employee has a positive
4 confirmation of a drug as defined in this act, it is presumed
5 that the injury was occasioned primarily by the intoxication
6 of, or by the influence of the drug upon, the employee. If the
7 employer has implemented a drug-free workplace, this
8 presumption may be rebutted only by evidence that there is no
9 reasonable hypothesis that the intoxication or drug influence
10 contributed to the injury. In the absence of a drug-free
11 workplace program, this presumption may be rebutted by clear
12 and convincing evidence that the intoxication or influence of
13 the drug did not contribute to the injury. Percent by weight
14 of alcohol in the blood must be based upon grams of alcohol
15 per 100 milliliters of blood. If the results are positive, the
16 testing facility must maintain the specimen for a minimum of
17 90 days. Blood serum may be used for testing purposes under
18 this chapter; however, if this test is used, the presumptions
19 under this section do not arise unless the blood alcohol level
20 is proved to be medically and scientifically equivalent to or
21 greater than the comparable blood alcohol level that would
22 have been obtained if the test were based on percent by weight
23 of alcohol in the blood. However, if, before the accident, the
24 employer had actual knowledge of and expressly acquiesced in
25 the employee's presence at the workplace while under the
26 influence of such alcohol or drug, the presumptions specified
27 in this subsection do not apply.

28 Section 35. For the purpose of incorporating the
29 amendment to section 316.193, Florida Statutes, in references
30 thereto, paragraph (d) of subsection (1) of section 493.6106,
31 Florida Statutes, is reenacted to read:

1 493.6106 License requirements; posting.--

2 (1) Each individual licensed by the department must:

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

14 Section 36. For the purpose of incorporating the
15 amendment to section 316.193, Florida Statutes, in references
16 thereto, subsection (4) of section 627.758, Florida Statutes,
17 is reenacted to read:

18 627.758 Surety on auto club traffic arrest bond;
19 conditions, limit; bail bond.--

20 (4) Notwithstanding the provisions of s. 626.311 or
21 chapter 648, any surety insurer identified in a guaranteed
22 traffic arrest bond certificate or any licensed general lines
23 agent of the surety insurer may execute a bail bond for the
24 automobile club or association member identified in the
25 guaranteed traffic arrest bond certificate in an amount not in
26 excess of \$5,000 for any violation of chapter 316 or any
27 similar traffic law or ordinance except for driving under the
28 influence of alcoholic beverages, chemical substances, or
29 controlled substances, as prohibited by s. 316.193.

30 Section 37. For the purpose of incorporating the
31 amendment to section 316.193, Florida Statutes, in references

1 thereto, paragraph (f) of subsection (2) and paragraph (f) of
2 subsection (10) of section 790.06, Florida Statutes, are
3 reenacted to read:

4 790.06 License to carry concealed weapon or firearm.--

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

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

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

21 (f) Is convicted of a second violation of s. 316.193,
22 or a similar law of another state, within 3 years of a
23 previous conviction of such section, or similar law of another
24 state, even though the first violation may have occurred prior
25 to the date on which the application was submitted;

26 Section 38. For the purpose of incorporating the
27 amendment to section 316.193, Florida Statutes, in references
28 thereto, subsection (2) of section 903.36, Florida Statutes,
29 is reenacted to read:

30 903.36 Guaranteed arrest bond certificates as cash
31 bail.--

1 (2) The execution of a bail bond by a licensed general
2 lines agent of a surety insurer for the automobile club or
3 association member identified in the guaranteed traffic arrest
4 bond certificate, as provided in s. 627.758(4), shall be
5 accepted as bail in an amount not to exceed \$5,000 for the
6 appearance of the person named in the certificate in any court
7 to answer for the violation of a provision of chapter 316 or a
8 similar traffic law or ordinance, except driving under the
9 influence of alcoholic beverages, chemical substances, or
10 controlled substances, as prohibited by s. 316.193.

11 Presentation of the guaranteed traffic arrest bond certificate
12 and a power of attorney from the surety insurer for its
13 licensed general lines agents is authorization for such agent
14 to execute the bail bond.

15 Section 39. For the purpose of incorporating the
16 amendment to section 316.193, Florida Statutes, in references
17 thereto, paragraph (c) of subsection (4) of section 907.041,
18 Florida Statutes, is reenacted to read:

19 907.041 Pretrial detention and release.--

20 (4) PRETRIAL DETENTION.--

21 (c) The court may order pretrial detention if it finds
22 a substantial probability, based on a defendant's past and
23 present patterns of behavior, the criteria in s. 903.046, and
24 any other relevant facts, that any of the following
25 circumstances exists:

26 1. The defendant has previously violated conditions of
27 release and that no further conditions of release are
28 reasonably likely to assure the defendant's appearance at
29 subsequent proceedings;

30 2. The defendant, with the intent to obstruct the
31 judicial process, has threatened, intimidated, or injured any

1 victim, potential witness, juror, or judicial officer, or has
2 attempted or conspired to do so, and that no condition of
3 release will reasonably prevent the obstruction of the
4 judicial process;

5 3. The defendant is charged with trafficking in
6 controlled substances as defined by s. 893.135, that there is
7 a substantial probability that the defendant has committed the
8 offense, and that no conditions of release will reasonably
9 assure the defendant's appearance at subsequent criminal
10 proceedings; or

11 4. The defendant is charged with DUI manslaughter, as
12 defined by s. 316.193, and that there is a substantial
13 probability that the defendant committed the crime and that
14 the defendant poses a threat of harm to the community;
15 conditions that would support a finding by the court pursuant
16 to this subparagraph that the defendant poses a threat of harm
17 to the community include, but are not limited to, any of the
18 following:

19 a. The defendant has previously been convicted of any
20 crime under s. 316.193, or of any crime in any other state or
21 territory of the United States that is substantially similar
22 to any crime under s. 316.193;

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

25 c. The defendant has previously been found guilty of,
26 or has had adjudication of guilt withheld for, driving while
27 the defendant's driver's license was suspended or revoked in
28 violation of s. 322.34;

29 5. The defendant poses the threat of harm to the
30 community. The court may so conclude, if it finds that the
31 defendant is presently charged with a dangerous crime, that

1 | there is a substantial probability that the defendant
2 | committed such crime, that the factual circumstances of the
3 | crime indicate a disregard for the safety of the community,
4 | and that there are no conditions of release reasonably
5 | sufficient to protect the community from the risk of physical
6 | harm to persons.

7 | 6. The defendant was on probation, parole, or other
8 | release pending completion of sentence or on pretrial release
9 | for a dangerous crime at the time the current offense was
10 | committed; or

11 | 7. The defendant has violated one or more conditions
12 | of pretrial release or bond for the offense currently before
13 | the court and the violation, in the discretion of the court,
14 | supports a finding that no conditions of release can
15 | reasonably protect the community from risk of physical harm to
16 | persons or assure the presence of the accused at trial.

17 | Section 40. For the purpose of incorporating the
18 | amendments to sections 316.193 and 327.35, Florida Statutes,
19 | in references thereto, section 938.07, Florida Statutes, is
20 | reenacted to read:

21 | 938.07 Driving or boating under the
22 | influence.--Notwithstanding any other provision of s. 316.193
23 | or s. 327.35, a court cost of \$135 shall be added to any fine
24 | imposed pursuant to s. 316.193 or s. 327.35. The clerks shall
25 | remit the funds to the Department of Revenue, \$25 of which
26 | shall be deposited in the Emergency Medical Services Trust
27 | Fund, \$50 shall be deposited in the Criminal Justice Standards
28 | and Training Trust Fund of the Department of Law Enforcement
29 | to be used for operational expenses in conducting the
30 | statewide criminal analysis laboratory system established in
31 |

1 s. 943.32, and \$60 shall be deposited in the Brain and Spinal
2 Cord Injury Rehabilitation Trust Fund created in s. 381.79.

3 Section 41. For the purpose of incorporating the
4 amendment to section 316.193, Florida Statutes, in references
5 thereto, section 938.21, Florida Statutes, is reenacted to
6 read:

7 938.21 Alcohol and drug abuse
8 programs.--Notwithstanding any provision to the contrary of
9 the laws of this state, the court may assess for alcohol and
10 other drug abuse programs as provided in s. 893.165 any
11 defendant who pleads guilty or nolo contendere to, or is
12 convicted of, a violation of any provision of chapter 893 or
13 which involves a criminal violation of s. 316.193, s. 856.011,
14 s. 856.015, or chapter 562, chapter 567, or chapter 568, in
15 addition to any fine and other penalty provided by law, a
16 court cost in an amount up to the amount of the fine
17 authorized for the violation. The court is authorized to order
18 a defendant to pay an additional assessment if it finds that
19 the defendant has the ability to pay the fine and the
20 additional assessment and will not be prevented thereby from
21 being rehabilitated or from making restitution.

22 Section 42. For the purpose of incorporating the
23 amendment to section 316.193, Florida Statutes, in references
24 thereto, subsection (1) of section 938.23, Florida Statutes,
25 is reenacted to read:

26 938.23 Assistance grants for alcohol and other drug
27 abuse programs.--

28 (1) In addition to any fine imposed by law for any
29 criminal offense under chapter 893 or for any criminal
30 violation of s. 316.193, s. 856.011, s. 856.015, or chapter
31 562, chapter 567, or chapter 568, the court shall be

1 authorized, pursuant to the requirements of s. 938.21, to
2 impose an additional assessment in an amount up to the amount
3 of the fine authorized for the offense. Such additional
4 assessments shall be deposited for the purpose of providing
5 assistance grants to drug abuse treatment or alcohol treatment
6 or education programs as provided in s. 893.165.

7 Section 43. For the purpose of incorporating the
8 amendment to section 316.193, Florida Statutes, in references
9 thereto, paragraph (d) of subsection (2) of section 943.05,
10 Florida Statutes, is reenacted to read:

11 943.05 Criminal Justice Information Program; duties;
12 crime reports.--

13 (2) The program shall:

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

29 Section 44. For the purpose of incorporating the
30 amendment to section 316.193, Florida Statutes, in references
31

1 thereto, paragraph (b) of subsection (8) of section 948.03,
2 Florida Statutes, is reenacted to read:

3 948.03 Terms and conditions of probation or community
4 control.--

5 (8)

6 (b) In determining the average weekly wage, unless
7 otherwise determined by a specific funding program, all
8 remuneration received from the employer shall be considered a
9 gratuity, and the offender shall not be entitled to any
10 benefits otherwise payable under s. 440.15, regardless of
11 whether the offender may be receiving wages and remuneration
12 from other employment with another employer and regardless of
13 his or her future wage-earning capacity. The provisions of
14 this subsection do not apply to any person performing labor
15 under a sentence of a court to perform community services as
16 provided in s. 316.193.

17 Section 45. For the purpose of incorporating the
18 amendment to section 316.193, Florida Statutes, in references
19 thereto, paragraph (b) of subsection (3) of section 960.03,
20 Florida Statutes, is reenacted to read:

21 960.03 Definitions; ss. 960.01-960.28.--As used in ss.
22 960.01-960.28, unless the context otherwise requires, the
23 term:

24 (3) "Crime" means:

25 (b) A violation of s. 316.193, s. 316.027(1), s.
26 327.35(1), s. 782.071(1)(b), or s. 860.13(1)(a) which results
27 in physical injury or death; however, no other act involving
28 the operation of a motor vehicle, boat, or aircraft which
29 results in injury or death shall constitute a crime for the
30 purpose of this chapter unless the injury or death was
31 intentionally inflicted through the use of such vehicle, boat,

1 or aircraft or unless such vehicle, boat, or aircraft is an
2 implement of a crime to which this act applies.

3 Section 46. For the purpose of incorporating the
4 amendment to section 327.35, Florida Statutes, in references
5 thereto, subsection (3) of section 327.352, Florida Statutes,
6 is reenacted to read:

7 327.352 Tests for alcohol, chemical substances, or
8 controlled substances; implied consent; refusal.--

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

18 Section 47. For the purpose of incorporating the
19 amendment to section 327.35, Florida Statutes, in references
20 thereto, subsections (1) and (2) of section 327.35215, Florida
21 Statutes, are reenacted to read:

22 327.35215 Penalty for failure to submit to test.--

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

27 (2) When a person refuses to submit to a blood test,
28 breath test, or urine test pursuant to s. 327.352, a law
29 enforcement officer who is authorized to make arrests for
30 violations of this chapter shall file with the clerk of the
31 court, on a form provided by the department, a certified

1 statement that probable cause existed to arrest the person for
2 a violation of s. 327.35 and that the person refused to submit
3 to a test as required by s. 327.352. Along with the statement,
4 the officer must also submit a sworn statement on a form
5 provided by the department that the person has been advised of
6 both the penalties for failure to submit to the blood, breath,
7 or urine test and the procedure for requesting a hearing.

8 Section 48. For the purpose of incorporating the
9 amendment to section 327.35, Florida Statutes, in references
10 thereto, subsection (4) of section 327.353, Florida Statutes,
11 is reenacted to read:

12 327.353 Blood test for impairment or intoxication in
13 cases of death or serious bodily injury; right to use
14 reasonable force.--

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

24 Section 49. For the purpose of incorporating the
25 amendment to section 327.35, Florida Statutes, in references
26 thereto, subsections (1) and (4) of section 327.354, Florida
27 Statutes, are reenacted to read:

28 327.354 Presumption of impairment; testing methods.--

29 (1) It is unlawful and punishable as provided in s.
30 327.35 for any person who is under the influence of alcoholic
31 beverages or controlled substances, when affected to the

1 extent that the person's normal faculties are impaired or to
2 the extent that the person is deprived of full possession of
3 normal faculties, to operate any vessel within this state.
4 Such normal faculties include, but are not limited to, the
5 ability to see, hear, walk, talk, judge distances, drive an
6 automobile, make judgments, act in emergencies, and, in
7 general, normally perform the many mental and physical acts of
8 daily life.

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

12 Section 50. For the purpose of incorporating the
13 amendment to section 327.35, Florida Statutes, in references
14 thereto, paragraph (a) of subsection (1) and subsection (4) of
15 section 327.355, Florida Statutes, are reenacted to read:

16 327.355 Operation of vessels by persons under 21 years
17 of age who have consumed alcoholic beverages.--

18 (1)(a) Notwithstanding s. 327.35, it is unlawful for a
19 person under the age of 21 who has a breath-alcohol level of
20 0.02 or higher to operate or be in actual physical control of
21 a vessel.

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

29 Section 51. For the purpose of incorporating the
30 amendment to section 327.35, Florida Statutes, in references
31

1 thereto, subsection (2) of section 327.359, Florida Statutes,
2 is reenacted to read:

3 327.359 Refusal to submit to testing; penalties.--Any
4 person who has refused to submit to a chemical or physical
5 test of his or her breath, blood, or urine, as described in s.
6 327.352, and who has been previously fined for refusal to
7 submit to a lawful test of his or her breath, urine, or blood,
8 and:

9 (2) Who was placed under lawful arrest for a violation
10 of s. 327.35 unless such test was requested pursuant to s.
11 327.352(1)(c);

12
13 commits a misdemeanor of the first degree and is subject to
14 punishment as provided in s. 775.082 or s. 775.083.

15 Section 52. For the purpose of incorporating the
16 amendment to section 327.35, Florida Statutes, in references
17 thereto, section 327.36, Florida Statutes, is reenacted to
18 read:

19 327.36 Mandatory adjudication; prohibition against
20 accepting plea to lesser included offense.--

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

26 (2)(a) No trial judge may accept a plea of guilty to a
27 lesser offense from a person who is charged with a violation
28 of s. 327.35, manslaughter resulting from the operation of a
29 vessel, or vessel homicide and who has been given a breath or
30 blood test to determine blood or breath alcohol content, the

31

1 results of which show a blood-alcohol level or breath-alcohol
2 level of 0.16 or more.

3 (b) A trial judge may not accept a plea of guilty to a
4 lesser offense from a person charged with a felony violation
5 of s. 327.35, manslaughter resulting from the operation of a
6 vessel, or vessel homicide.

7 Section 53. This act shall take effect October 1,
8 2004.

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