

1 custody any person operating a commercial motor
2 vehicle who refuses to submit to a lawful test
3 for alcohol, chemical substances, or controlled
4 substances under certain circumstances;
5 providing an effective date.
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7 Be It Enacted by the Legislature of the State of Florida:
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9 Section 1. Paragraphs (a) and (c) of subsection (1) of
10 section 316.1932, Florida Statutes, are amended to read:

11 316.1932 Tests for alcohol, chemical substances, or
12 controlled substances; implied consent; refusal.--

13 (1)(a)1.

14 a. Any person who accepts the privilege extended by
15 the laws of this state of operating a motor vehicle within
16 this state is, by so operating such vehicle, deemed to have
17 given his or her consent to submit to an approved chemical
18 test or physical test including, but not limited to, an
19 infrared light test of his or her breath for the purpose of
20 determining the alcoholic content of his or her blood or
21 breath if the person is lawfully arrested for any offense
22 allegedly committed while the person was driving or was in
23 actual physical control of a motor vehicle while under the
24 influence of alcoholic beverages. The chemical or physical
25 breath test must be incidental to a lawful arrest and
26 administered at the request of a law enforcement officer who
27 has reasonable cause to believe such person was driving or was
28 in actual physical control of the motor vehicle within this
29 state while under the influence of alcoholic beverages. The
30 administration of a breath test does not preclude the
31 administration of another type of test. The person shall be

1 | told that his or her failure to submit to any lawful test of
2 | his or her breath will result in the suspension of the
3 | person's privilege to operate a motor vehicle for a period of
4 | 1 year for a first refusal, or for a period of 18 months if
5 | the driving privilege of such person has been previously
6 | suspended as a result of a refusal to submit to such a test or
7 | tests, and shall also be told that if he or she refuses to
8 | submit to a lawful test of his or her breath and his or her
9 | driving privilege has been previously suspended for a prior
10 | refusal to submit to a lawful test of his or her breath,
11 | urine, or blood, he or she commits a misdemeanor in addition
12 | to any other penalties. The refusal to submit to a chemical or
13 | physical breath test upon the request of a law enforcement
14 | officer as provided in this section is admissible into
15 | evidence in any criminal proceeding.

16 | b. The person shall also be told that if he or she
17 | refuses to submit to a lawful test of his or her breath, he or
18 | she will be taken into immediate custody by the law
19 | enforcement officer having reasonable cause to believe that
20 | the person was driving or was in actual physical control of
21 | the motor vehicle within this state while under the influence
22 | of alcoholic beverages, chemical substances, or controlled
23 | substances.

24 | ~~c.b.~~ Any person who accepts the privilege extended by
25 | the laws of this state of operating a motor vehicle within
26 | this state is, by so operating such vehicle, deemed to have
27 | given his or her consent to submit to a urine test for the
28 | purpose of detecting the presence of chemical substances as
29 | set forth in s. 877.111 or controlled substances if the person
30 | is lawfully arrested for any offense allegedly committed while
31 | the person was driving or was in actual physical control of a

1 | motor vehicle while under the influence of chemical substances
2 | or controlled substances. The urine test must be incidental to
3 | a lawful arrest and administered at a detention facility or
4 | any other facility, mobile or otherwise, which is equipped to
5 | administer such tests at the request of a law enforcement
6 | officer who has reasonable cause to believe such person was
7 | driving or was in actual physical control of a motor vehicle
8 | within this state while under the influence of chemical
9 | substances or controlled substances. The urine test shall be
10 | administered at a detention facility or any other facility,
11 | mobile or otherwise, which is equipped to administer such test
12 | in a reasonable manner that will ensure the accuracy of the
13 | specimen and maintain the privacy of the individual involved.
14 | The administration of a urine test does not preclude the
15 | administration of another type of test. The person shall be
16 | told that his or her failure to submit to any lawful test of
17 | his or her urine will result in the suspension of the person's
18 | privilege to operate a motor vehicle for a period of 1 year
19 | for the first refusal, or for a period of 18 months if the
20 | driving privilege of such person has been previously suspended
21 | as a result of a refusal to submit to such a test or tests,
22 | and shall also be told that if he or she refuses to submit to
23 | a lawful test of his or her urine and his or her driving
24 | privilege has been previously suspended for a prior refusal to
25 | submit to a lawful test of his or her breath, urine, or blood,
26 | he or she commits a misdemeanor in addition to any other
27 | penalties. The person shall also be told that if he or she
28 | refuses to submit to a lawful test of his or her urine, he or
29 | she will be taken into immediate custody by the law
30 | enforcement officer having reasonable cause to believe that
31 | the person was driving or was in actual physical control of

1 the motor vehicle within this state while under the influence
2 of alcoholic beverages, chemical substances, or controlled
3 substances. The refusal to submit to a urine test upon the
4 request of a law enforcement officer as provided in this
5 section is admissible into evidence in any criminal
6 proceeding.

7 2. The Alcohol Testing Program within the Department
8 of Law Enforcement is responsible for the regulation of the
9 operation, inspection, and registration of breath test
10 instruments utilized under the driving and boating under the
11 influence provisions and related provisions located in this
12 chapter and chapters 322 and 327. The program is responsible
13 for the regulation of the individuals who operate, inspect,
14 and instruct on the breath test instruments utilized in the
15 driving and boating under the influence provisions and related
16 provisions located in this chapter and chapters 322 and 327.
17 The program is further responsible for the regulation of blood
18 analysts who conduct blood testing to be utilized under the
19 driving and boating under the influence provisions and related
20 provisions located in this chapter and chapters 322 and 327.
21 The program shall:

22 a. Establish uniform criteria for the issuance of
23 permits to breath test operators, agency inspectors,
24 instructors, blood analysts, and instruments.

25 b. Have the authority to permit breath test operators,
26 agency inspectors, instructors, blood analysts, and
27 instruments.

28 c. Have the authority to discipline and suspend,
29 revoke, or renew the permits of breath test operators, agency
30 inspectors, instructors, blood analysts, and instruments.

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1 d. Establish uniform requirements for instruction and
2 curricula for the operation and inspection of approved
3 instruments.

4 e. Have the authority to specify one approved
5 curriculum for the operation and inspection of approved
6 instruments.

7 f. Establish a procedure for the approval of breath
8 test operator and agency inspector classes.

9 g. Have the authority to approve or disapprove breath
10 test instruments and accompanying paraphernalia for use
11 pursuant to the driving and boating under the influence
12 provisions and related provisions located in this chapter and
13 chapters 322 and 327.

14 h. With the approval of the executive director of the
15 Department of Law Enforcement, make and enter into contracts
16 and agreements with other agencies, organizations,
17 associations, corporations, individuals, or federal agencies
18 as are necessary, expedient, or incidental to the performance
19 of duties.

20 i. Issue final orders which include findings of fact
21 and conclusions of law and which constitute final agency
22 action for the purpose of chapter 120.

23 j. Enforce compliance with the provisions of this
24 section through civil or administrative proceedings.

25 k. Make recommendations concerning any matter within
26 the purview of this section, this chapter, chapter 322, or
27 chapter 327.

28 l. Promulgate rules for the administration and
29 implementation of this section, including definitions of
30 terms.

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1 m. Consult and cooperate with other entities for the
2 purpose of implementing the mandates of this section.

3 n. Have the authority to approve the type of blood
4 test utilized under the driving and boating under the
5 influence provisions and related provisions located in this
6 chapter and chapters 322 and 327.

7 o. Have the authority to specify techniques and
8 methods for breath alcohol testing and blood testing utilized
9 under the driving and boating under the influence provisions
10 and related provisions located in this chapter and chapters
11 322 and 327.

12 p. Have the authority to approve repair facilities for
13 the approved breath test instruments, including the authority
14 to set criteria for approval.

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16 Nothing in this section shall be construed to supersede
17 provisions in this chapter and chapters 322 and 327. The
18 specifications in this section are derived from the power and
19 authority previously and currently possessed by the Department
20 of Law Enforcement and are enumerated to conform with the
21 mandates of chapter 99-379, Laws of Florida.

22 (c) Any person who accepts the privilege extended by
23 the laws of this state of operating a motor vehicle within
24 this state is, by operating such vehicle, deemed to have given
25 his or her consent to submit to an approved blood test for the
26 purpose of determining the alcoholic content of the blood or a
27 blood test for the purpose of determining the presence of
28 chemical substances or controlled substances as provided in
29 this section if there is reasonable cause to believe the
30 person was driving or in actual physical control of a motor
31 vehicle while under the influence of alcoholic beverages or

1 chemical or controlled substances and the person appears for
2 treatment at a hospital, clinic, or other medical facility and
3 the administration of a breath or urine test is impractical or
4 impossible. As used in this paragraph, the term "other medical
5 facility" includes an ambulance or other medical emergency
6 vehicle. The blood test shall be performed in a reasonable
7 manner. Any person who is incapable of refusal by reason of
8 unconsciousness or other mental or physical condition is
9 deemed not to have withdrawn his or her consent to such test.
10 A blood test may be administered whether or not the person is
11 told that his or her failure to submit to such a blood test
12 will result in the suspension of the person's privilege to
13 operate a motor vehicle upon the public highways of this state
14 and that a refusal to submit to a lawful test of his or her
15 blood, if his or her driving privilege has been previously
16 suspended for refusal to submit to a lawful test of his or her
17 breath, urine, or blood, is a misdemeanor. Any person who is
18 capable of refusal shall be told that his or her failure to
19 submit to such a blood test will result in the suspension of
20 the person's privilege to operate a motor vehicle for a period
21 of 1 year for a first refusal, or for a period of 18 months if
22 the driving privilege of the person has been suspended
23 previously as a result of a refusal to submit to such a test
24 or tests, and that a refusal to submit to a lawful test of his
25 or her blood, if his or her driving privilege has been
26 previously suspended for a prior refusal to submit to a lawful
27 test of his or her breath, urine, or blood, is a misdemeanor.
28 The person shall also be told that if he or she refuses to
29 submit to a lawful test of his or her blood, he or she will be
30 taken into immediate custody by the law enforcement officer
31 having reasonable cause to believe that the person was driving

1 or was in actual physical control of the motor vehicle within
2 this state while under the influence of alcoholic beverages,
3 chemical substances, or controlled substances. The refusal to
4 submit to a blood test upon the request of a law enforcement
5 officer is admissible in evidence in any criminal proceeding.

6 Section 2. Section 316.1939, Florida Statutes, is
7 amended to read:

8 316.1939 Refusal to submit to testing; penalties.--

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

14 (a) Who the arresting law enforcement officer had
15 probable cause to believe was driving or in actual physical
16 control of a motor vehicle in this state while under the
17 influence of alcoholic beverages, chemical substances, or
18 controlled substances;

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

22 (c) Who was informed that, if he or she refused to
23 submit to the ~~such~~ test, his or her privilege to operate a
24 motor vehicle would be suspended for a period of 1 year or, in
25 the case of a second or subsequent refusal, for a period of 18
26 months;

27 (d) Who was informed that a refusal to submit to a
28 lawful test of his or her breath, urine, or blood, if his or
29 her driving privilege has been previously suspended for a
30 prior refusal to submit to a lawful test of his or her breath,
31 urine, or blood, is a misdemeanor; and

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

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

7 (2) The arresting law enforcement officer shall
8 immediately take into custody any person whom the officer has
9 probable cause to believe was driving or was in actual
10 physical control of a motor vehicle in this state while under
11 the influence of alcoholic beverages, chemical substances, or
12 controlled substances, if that person refuses to submit to a
13 lawful test of his or her breath, blood, or urine, as
14 described in s. 316.1932, after being informed by the officer
15 that such refusal will result in the person being immediately
16 taken into custody.

17 ~~(3)(2)~~ The disposition of any administrative
18 proceeding that relates to the suspension of a person's
19 driving privilege does not affect a criminal action under this
20 section.

21 ~~(4)(3)~~ The disposition of a criminal action under this
22 section does not affect any administrative proceeding that
23 relates to the suspension of a person's driving privilege. The
24 department's records showing that a person's license has been
25 previously suspended for a prior refusal to submit to a lawful
26 test of his or her breath, urine, or blood shall be admissible
27 and shall create a rebuttable presumption of such suspension.

28 Section 3. Present subsections (5) and (6) of section
29 322.63, Florida Statutes, are redesignated as subsections (6)
30 and (7), respectively, and a new subsection (5) is added to
31 that section to read:

1 322.63 Alcohol or drug testing; commercial motor
2 vehicle operators.--

3 (5)(a) A person shall be told that if he or she
4 refuses to submit to a lawful test of his or her breath,
5 blood, or urine, he or she will be taken into immediate
6 custody by the law enforcement officer having reasonable cause
7 to believe that the person was operating a commercial motor
8 vehicle with alcohol or a chemical substance or controlled
9 substance in his or her body.

10 (b) The arresting law enforcement officer shall
11 immediately take into custody any person whom the officer has
12 probable cause to believe was driving or was in actual
13 physical control of a commercial motor vehicle in this state
14 while under the influence of alcoholic beverages, chemical
15 substances, or controlled substances, if that person refuses
16 to submit to a lawful test of his or her breath, blood, or
17 urine, as described in s. 316.1932, after being informed by
18 the officer that such refusal will result in the person being
19 immediately taken into custody.

20 Section 4. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Requires that a person who is operating a motor vehicle while under the influence be told that if he or she refuses to submit to a test of his or her breath, blood, or urine for alcohol or chemical or controlled substances, the refusal will result in the person being taken into immediate custody by a law enforcement officer. Directs any law enforcement officer to take into immediate custody any person who refuses to submit to a lawful test for alcohol or chemical or controlled substances under certain circumstances. Requires that a person who is operating a commercial motor vehicle while under the influence be told that if he or she refuses to submit to a test of his or her breath, blood, or urine for alcohol or chemical or controlled substances, the refusal will result in the person being taken into immediate custody by a law enforcement officer. Directs any law enforcement officer to take into immediate custody any person operating a commercial motor vehicle who refuses to submit to a lawful test for alcohol or chemical or controlled substances under certain circumstances.