

By Senator Altman

24-01651-09

20091382__

1 A bill to be entitled
2 An act relating to suspending a person's privilege to
3 operate a motor vehicle; amending s. 316.1932, F.S.;
4 increasing the period for suspending a person's
5 privilege to operate a motor vehicle from 1 year to 2
6 years if he or she refuses a lawful test of his or her
7 breath, urine, or blood the first time; increasing the
8 period for suspending a person's privilege to operate
9 a motor vehicle from 18 months to 3 years if he or she
10 refuses to submit to such a test or tests a second
11 time; increasing the suspension period to operate a
12 motor vehicle to 5 years if the person's driving
13 privilege has previously been suspended two or more
14 times as a result of refusing to submit to a lawful
15 breath, urine, or blood test; amending s. 316.1939,
16 F.S.; providing that if a person, having been told of
17 the increased periods of suspension of the driving
18 privilege, continues to refuse to submit to a lawful
19 breath, urine, or blood test, he or she commits a
20 misdemeanor of the first degree; amending s. 322.2615,
21 F.S.; revising provisions providing a right to review
22 the suspension of the person's privilege to operate a
23 motor vehicle in this state; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Paragraphs (a) and (c) of subsection (1) of
29 section 316.1932, Florida Statutes, are amended to read:

24-01651-09

20091382__

30 316.1932 Tests for alcohol, chemical substances, or
31 controlled substances; implied consent; refusal.—

32 (1) (a) 1.a. Any person who accepts the privilege extended by
33 the laws of this state of operating a motor vehicle within this
34 state is, by so operating such vehicle, deemed to have given his
35 or her consent to submit to an approved chemical test or
36 physical test including, but not limited to, an infrared light
37 test of his or her breath for the purpose of determining the
38 alcoholic content of his or her blood or breath if the person is
39 lawfully arrested for any offense allegedly committed while the
40 person was driving or was in actual physical control of a motor
41 vehicle while under the influence of alcoholic beverages. The
42 chemical or physical breath test must be incidental to a lawful
43 arrest and administered at the request of a law enforcement
44 officer who has reasonable cause to believe such person was
45 driving or was in actual physical control of the motor vehicle
46 within this state while under the influence of alcoholic
47 beverages. The administration of a breath test does not preclude
48 the administration of another type of test. The person shall be
49 told that his or her failure to submit to any lawful test of his
50 or her breath will result in the suspension of the person's
51 privilege to operate a motor vehicle for a period of 2 years ±
52 year for a first refusal, ~~or~~ for a period of 3 years for the
53 second refusal if the driving privilege of the person has been
54 previously suspended once as a result of a refusal to submit to
55 such a test or tests, or for a period of 5 years ~~18 months~~ if
56 the driving privilege of the ~~such~~ person has been previously
57 suspended two or more times as a result of a refusal to submit
58 to such a test or tests. The person, and shall also be told that

24-01651-09

20091382

59 if he or she refuses to submit to a lawful test of his or her
60 breath and his or her driving privilege has been previously
61 suspended for a prior refusal to submit to a lawful test of his
62 or her breath, urine, or blood, he or she commits a misdemeanor
63 in addition to any other penalties. The refusal to submit to a
64 chemical or physical breath test upon the request of a law
65 enforcement officer as provided in this section is admissible
66 into evidence in any criminal proceeding.

67 b. Any person who accepts the privilege extended by the
68 laws of this state of operating a motor vehicle within this
69 state is, by so operating such vehicle, deemed to have given his
70 or her consent to submit to a urine test for the purpose of
71 detecting the presence of chemical substances as set forth in s.
72 877.111 or controlled substances if the person is lawfully
73 arrested for any offense allegedly committed while the person
74 was driving or was in actual physical control of a motor vehicle
75 while under the influence of chemical substances or controlled
76 substances. The urine test must be incidental to a lawful arrest
77 and administered at a detention facility or any other facility,
78 mobile or otherwise, which is equipped to administer such tests
79 at the request of a law enforcement officer who has reasonable
80 cause to believe such person was driving or was in actual
81 physical control of a motor vehicle within this state while
82 under the influence of chemical substances or controlled
83 substances. The urine test shall be administered at a detention
84 facility or any other facility, mobile or otherwise, which is
85 equipped to administer such test in a reasonable manner that
86 will ensure the accuracy of the specimen and maintain the
87 privacy of the individual involved. The administration of a

24-01651-09

20091382__

88 urine test does not preclude the administration of another type
89 of test. The person shall be told that his or her failure to
90 submit to any lawful test of his or her urine will result in the
91 suspension of the person's privilege to operate a motor vehicle
92 for a period of 2 years ~~1 year~~ for the first refusal, ~~or~~ for a
93 period of 3 years for the second refusal if the driving
94 privilege of the person has been previously suspended once as a
95 result of a refusal to submit to such a test or tests, or for a
96 period of 5 years ~~18 months~~ if the driving privilege of such
97 person has been previously suspended two or more times as a
98 result of a refusal to submit to such a test or tests. The
99 person, ~~and~~ shall also be told that if he or she refuses to
100 submit to a lawful test of his or her urine and his or her
101 driving privilege has been previously suspended for a prior
102 refusal to submit to a lawful test of his or her breath, urine,
103 or blood, he or she commits a misdemeanor in addition to any
104 other penalties. The refusal to submit to a urine test upon the
105 request of a law enforcement officer as provided in this section
106 is admissible into evidence in any criminal proceeding.

107 2. The Alcohol Testing Program within the Department of Law
108 Enforcement is responsible for the regulation of the operation,
109 inspection, and registration of breath test instruments utilized
110 under the driving and boating under the influence provisions and
111 related provisions located in this chapter and chapters 322 and
112 327. The program is responsible for the regulation of the
113 individuals who operate, inspect, and instruct on the breath
114 test instruments utilized in the driving and boating under the
115 influence provisions and related provisions located in this
116 chapter and chapters 322 and 327. The program is further

24-01651-09

20091382__

117 responsible for the regulation of blood analysts who conduct
118 blood testing to be utilized under the driving and boating under
119 the influence provisions and related provisions located in this
120 chapter and chapters 322 and 327. The program shall:

121 a. Establish uniform criteria for the issuance of permits
122 to breath test operators, agency inspectors, instructors, blood
123 analysts, and instruments.

124 b. Have the authority to permit breath test operators,
125 agency inspectors, instructors, blood analysts, and instruments.

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

129 d. Establish uniform requirements for instruction and
130 curricula for the operation and inspection of approved
131 instruments.

132 e. Have the authority to specify one approved curriculum
133 for the operation and inspection of approved instruments.

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

136 g. Have the authority to approve or disapprove breath test
137 instruments and accompanying paraphernalia for use pursuant to
138 the driving and boating under the influence provisions and
139 related provisions located in this chapter and chapters 322 and
140 327.

141 h. With the approval of the executive director of the
142 Department of Law Enforcement, make and enter into contracts and
143 agreements with other agencies, organizations, associations,
144 corporations, individuals, or federal agencies as are necessary,
145 expedient, or incidental to the performance of duties.

24-01651-09

20091382__

146 i. Issue final orders which include findings of fact and
147 conclusions of law and which constitute final agency action for
148 the purpose of chapter 120.

149 j. Enforce compliance with the provisions of this section
150 through civil or administrative proceedings.

151 k. Make recommendations concerning any matter within the
152 purview of this section, this chapter, chapter 322, or chapter
153 327.

154 l. Promulgate rules for the administration and
155 implementation of this section, including definitions of terms.

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

158 n. Have the authority to approve the type of blood test
159 utilized under the driving and boating under the influence
160 provisions and related provisions located in this chapter and
161 chapters 322 and 327.

162 o. Have the authority to specify techniques and methods for
163 breath alcohol testing and blood testing utilized under the
164 driving and boating under the influence provisions and related
165 provisions located in this chapter and chapters 322 and 327.

166 p. Have the authority to approve repair facilities for the
167 approved breath test instruments, including the authority to set
168 criteria for approval.

169
170 ~~Nothing in~~ This section does not ~~shall be construed to~~ supersede
171 other provisions in this chapter and chapters 322 and 327. The
172 specifications in this section are derived from the power and
173 authority previously and currently possessed by the Department
174 of Law Enforcement and are enumerated to conform with the

24-01651-09

20091382__

175 mandates of chapter 99-379, Laws of Florida.

176 (c) Any person who accepts the privilege extended by the
177 laws of this state of operating a motor vehicle within this
178 state is, by operating such vehicle, deemed to have given his or
179 her consent to submit to an approved blood test for the purpose
180 of determining the alcoholic content of the blood or a blood
181 test for the purpose of determining the presence of chemical
182 substances or controlled substances as provided in this section
183 if there is reasonable cause to believe the person was driving
184 or in actual physical control of a motor vehicle while under the
185 influence of alcoholic beverages or chemical or controlled
186 substances and the person appears for treatment at a hospital,
187 clinic, or other medical facility and the administration of a
188 breath or urine test is impractical or impossible. As used in
189 this paragraph, the term "other medical facility" includes an
190 ambulance or other medical emergency vehicle. The blood test
191 shall be performed in a reasonable manner. Any person who is
192 incapable of refusal by reason of unconsciousness or other
193 mental or physical condition is deemed not to have withdrawn his
194 or her consent to such test. A blood test may be administered
195 whether or not the person is told that his or her failure to
196 submit to such a blood test will result in the suspension of the
197 person's privilege to operate a motor vehicle upon the public
198 highways of this state and that a refusal to submit to a lawful
199 test of his or her blood, if his or her driving privilege has
200 been previously suspended for refusal to submit to a lawful test
201 of his or her breath, urine, or blood, is a misdemeanor. Any
202 person who is capable of refusal shall be told that his or her
203 failure to submit to such a blood test will result in the

24-01651-09

20091382

204 suspension of the person's privilege to operate a motor vehicle
205 for a period of 2 years ~~1 year~~ for a first refusal, ~~or~~ for a
206 period of 3 years for the second refusal if the driving
207 privilege of the person has been previously suspended once as a
208 result of a refusal to submit to the test or tests, or for a
209 period of 5 years ~~18 months~~ if the driving privilege of the
210 person has been suspended two or more times previously as a
211 result of a refusal to submit to such a test or tests. The
212 person shall be informed, ~~and~~ that a refusal to submit to a
213 lawful test of his or her blood, if his or her driving privilege
214 has been previously suspended for a prior refusal to submit to a
215 lawful test of his or her breath, urine, or blood, is a
216 misdemeanor. The refusal to submit to a blood test upon the
217 request of a law enforcement officer is admissible in evidence
218 in any criminal proceeding.

219 Section 2. Subsection (1) of section 316.1939, Florida
220 Statutes, is amended to read:

221 316.1939 Refusal to submit to testing; penalties.—

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

227 (a) Who the arresting law enforcement officer had probable
228 cause to believe was driving or in actual physical control of a
229 motor vehicle in this state while under the influence of
230 alcoholic beverages, chemical substances, or controlled
231 substances;

232 (b) Who was placed under lawful arrest for a violation of

24-01651-09

20091382__

233 s. 316.193 unless such test was requested pursuant to s.
234 316.1932(1)(c);

235 (c) Who was informed that, if he or she refused to submit
236 to such test, his or her privilege to operate a motor vehicle
237 would be suspended for a period of 2 years ~~1 year~~ or, ~~in the~~
238 ~~ease of a second or subsequent refusal,~~ for a period of 3 years
239 for the second refusal if the driving privilege of the person
240 has been previously suspended once as a result of a refusal to
241 submit to such a test or tests or for a period of 5 years if the
242 driving privilege of the person has been previously suspended
243 two or more times as a result of a refusal to submit to a test
244 or tests ~~18 months~~;

245 (d) Who was informed that a refusal to submit to a lawful
246 test of his or her breath, urine, or blood, if his or her
247 driving privilege has been previously suspended for a prior
248 refusal to submit to a lawful test of his or her breath, urine,
249 or blood, is a misdemeanor; and

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

253
254 commits a misdemeanor of the first degree and is subject to
255 punishment as provided in s. 775.082 or s. 775.083.

256 Section 3. Paragraph (b) of subsection (1), paragraph (b)
257 of subsection (7), and subsections (8) and (10) of section
258 322.2615, Florida Statutes, are amended to read:

259 322.2615 Suspension of license; right to review.—

260 (1)

261 (b) The suspension under paragraph (a) shall be pursuant

24-01651-09

20091382__

262 to, and the notice of suspension shall inform the driver of, the
263 following:

264 1.a. The driver refused to submit to a lawful breath,
265 blood, or urine test and his or her driving privilege is
266 suspended for a period of 2 years ~~1 year~~ for a first refusal, ~~or~~
267 for a period of 3 years for the second refusal if the driving
268 privilege of the person has been previously suspended once as a
269 result of a refusal to submit to the test or tests, or for a
270 period of 5 years ~~18 months~~ if his or her driving privilege has
271 been previously suspended two or more times as a result of a
272 refusal to submit to such a test; or

273 b. The driver was driving or in actual physical control of
274 a motor vehicle and had an unlawful blood-alcohol level or
275 breath-alcohol level of 0.08 or higher and his or her driving
276 privilege is suspended for a period of 1 year ~~6 months~~ for a
277 first offense, ~~or~~ for a period of 2 years ~~1 year~~ if his or her
278 driving privilege has been previously suspended under this
279 section, or for a period of 5 years for a third or subsequent
280 suspension under this section.

281 2. The suspension period shall commence on the date of
282 issuance of the notice of suspension.

283 3. The driver may request a formal or informal review of
284 the suspension by the department within 10 days after the date
285 of issuance of the notice of suspension.

286 4. The temporary permit issued at the time of suspension
287 expires at midnight of the 10th day following the date of
288 issuance of the notice of suspension.

289 5. The driver may submit to the department any materials
290 relevant to the suspension.

24-01651-09

20091382__

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

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

299 1. Whether the law enforcement officer had probable cause
300 to believe that the person whose license was suspended was
301 driving or in actual physical control of a motor vehicle in this
302 state while under the influence of alcoholic beverages or
303 chemical or controlled substances.

304 2. Whether the person whose license was suspended refused
305 to submit to any such test after being requested to do so by a
306 law enforcement officer or correctional officer.

307 3. Whether the person whose license was suspended was told
308 that if he or she refused to submit to such test his or her
309 privilege to operate a motor vehicle would be suspended for a
310 period of 2 years ~~1 year or, in the case of a second or~~
311 ~~subsequent refusal,~~ for a period of 3 years for the second
312 refusal if the driving privilege of the person has been
313 previously suspended once as a result of a refusal to submit to
314 such a test or tests, or for a period of 5 years if the driving
315 privilege of the person has been previously suspended two or
316 more times as a result of a refusal to submit to the test or
317 tests ~~18 months.~~

318 (8) Based on the determination of the hearing officer
319 pursuant to subsection (7) for both informal hearings under

24-01651-09

20091382__

320 subsection (4) and formal hearings under subsection (6), the
321 department shall:

322 (a) Sustain the suspension of the person's driving
323 privilege for a period of 2 years ~~1 year~~ for a first refusal, ~~or~~
324 for a period of 3 years ~~18 months~~ if the driving privilege of
325 such person has been previously suspended once as a result of a
326 refusal to submit to such tests, or for a period of 5 years if
327 the driving privilege of the person has been previously
328 suspended two or more times as a result of a refusal to submit
329 to the test or tests if the person refused to submit to a lawful
330 ~~breath, blood, or urine test~~. The suspension period commences on
331 the date of issuance of the notice of suspension.

332 (b) Sustain the suspension of the person's driving
333 privilege for a period of 6 months for a blood-alcohol level or
334 breath-alcohol level of 0.08 or higher, or for a period of 1
335 year if the driving privilege of such person has been previously
336 suspended under this section as a result of driving with an
337 unlawful alcohol level. The suspension period commences on the
338 date of issuance of the notice of suspension.

339 (10) A person whose driver's license is suspended under
340 subsection (1) or subsection (3) may apply for issuance of a
341 license for business or employment purposes only if the person
342 is otherwise eligible for the driving privilege pursuant to s.
343 322.271.

344 (a) If the suspension of the driver's license of the person
345 for failure to submit to a breath, urine, or blood test is
346 sustained, the person is not eligible to receive a license for
347 business or employment purposes only, pursuant to s. 322.271,
348 until 1 year has ~~90 days have~~ elapsed after the expiration of

24-01651-09

20091382__

349 the last temporary permit issued. If the driver is not issued a
350 10-day permit pursuant to this section or s. 322.64 because he
351 or she is ineligible for the permit and the suspension for
352 failure to submit to a breath, urine, or blood test is not
353 invalidated by the department, the driver is not eligible to
354 receive a business or employment license pursuant to s. 322.271
355 until 1 year has ~~90 days~~ have elapsed from the date of the
356 suspension.

357 (b) If the suspension of the driver's license of the person
358 relating to unlawful blood-alcohol level or breath-alcohol level
359 of 0.08 or higher is sustained, the person is not eligible to
360 receive a license for business or employment purposes only
361 pursuant to s. 322.271 until 180 ~~30~~ days have elapsed after the
362 expiration of the last temporary permit issued. If the driver is
363 not issued a 10-day permit pursuant to this section or s. 322.64
364 because he or she is ineligible for the permit and the
365 suspension relating to unlawful blood-alcohol level or breath-
366 alcohol level of 0.08 or higher is not invalidated by the
367 department, the driver is not eligible to receive a business or
368 employment license pursuant to s. 322.271 until 180 ~~30~~ days have
369 elapsed from the date of the suspension.

370 Section 4. This act shall take effect July 1, 2009.