

By Senator DiCeglie

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1 A bill to be entitled

2 An act relating to a lawful breath test for alcohol;
3 amending s. 316.1932, F.S.; requiring that a person
4 arrested for driving under the influence who refuses
5 to submit to a lawful test of his or her breath be
6 told that he or she is subject to mandatory placement,
7 for a specified period of time and at his or her
8 expense, of an ignition interlock device on vehicles
9 he or she leases or owns and routinely operates;
10 amending s. 316.1939, F.S.; requiring that a person
11 arrested for driving under the influence who refuses
12 to submit to a lawful test of his or her breath
13 install an ignition interlock device, at his or her
14 expense, for a specified period of time; conforming a
15 provision to changes made by the act; providing an
16 effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (a) of subsection (1) of section
21 316.1932, Florida Statutes, is amended to read:

22 316.1932 Tests for alcohol, chemical substances, or
23 controlled substances; implied consent; refusal.—

24 (1) (a) 1.a. A person who accepts the privilege extended by
25 the laws of this state of operating a motor vehicle within this
26 state is, by operating such vehicle, deemed to have given his or
27 her consent to submit to an approved chemical test or physical
28 test including, but not limited to, an infrared light test of
29 his or her breath for the purpose of determining the alcoholic

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30 content of his or her blood or breath if the person is lawfully
31 arrested for any offense allegedly committed while the person
32 was driving or was in actual physical control of a motor vehicle
33 while under the influence of alcoholic beverages. The chemical
34 or physical breath test must be incidental to a lawful arrest
35 and administered at the request of a law enforcement officer who
36 has reasonable cause to believe such person was driving or was
37 in actual physical control of the motor vehicle within this
38 state while under the influence of alcoholic beverages. The
39 administration of a breath test does not preclude the
40 administration of another type of test. The person must ~~shall~~ be
41 told that his or her failure to submit to any lawful test of his
42 or her breath will result in the suspension of his or her
43 license ~~the person's privilege~~ to operate a motor vehicle as
44 provided in s. 322.2615(1)(a) for a period of 1 year for a first
45 refusal and mandatory placement for the duration of the
46 suspension, at his or her expense, of an ignition interlock
47 device approved by the department in accordance with s. 316.1938
48 on all vehicles individually or jointly leased or owned and
49 routinely operated by the person as provided in s. 316.1939(1).
50 If the person's license has been previously suspended, or if he
51 or she has previously been fined under s. 327.35215 as a result
52 of a refusal to submit to a test or tests required under this
53 chapter or chapter 327, he or she must be told that his or her
54 failure to submit to any lawful test of his or her breath will
55 result in the suspension of his or her license to operate a
56 motor vehicle as provided in s. 322.2615(1)(a) for a period of
57 18 months and mandatory placement for the duration of the
58 suspension, at his or her expense, of an ignition interlock

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59 device approved by the department in accordance with s. 316.1938
60 on all vehicles individually or jointly leased or owned and
61 routinely operated by him or her as provided in s. 316.1939(1).
62 The person must ~~, or for a period of 18 months if the driving~~
63 ~~privilege of such person has been previously suspended or if he~~
64 ~~or she has previously been fined under s. 327.35215 as a result~~
65 ~~of a refusal to submit to a test or tests required under this~~
66 ~~chapter or chapter 327, and shall also be told that if he or she~~
67 ~~refuses to submit to a lawful test of his or her breath and his~~
68 ~~or her driver license ~~driving privilege~~ has been previously~~
69 ~~suspended or if he or she has previously been fined under s.~~
70 ~~327.35215 for a prior refusal to submit to a lawful test of his~~
71 ~~or her breath, urine, or blood as required under this chapter or~~
72 ~~chapter 327, he or she commits a misdemeanor of the first~~
73 ~~degree, punishable as provided in s. 775.082 or s. 775.083, in~~
74 ~~addition to any other penalties provided by law. The refusal to~~
75 ~~submit to a chemical or physical breath test upon the request of~~
76 ~~a law enforcement officer as provided in this section is~~
77 ~~admissible into evidence in any criminal proceeding.~~

78 b. A person who accepts the privilege extended by the laws
79 of this state of operating a motor vehicle within this state is,
80 by operating such vehicle, deemed to have given his or her
81 consent to submit to a urine test for the purpose of detecting
82 the presence of chemical substances as set forth in s. 877.111
83 or controlled substances if the person is lawfully arrested for
84 any offense allegedly committed while the person was driving or
85 was in actual physical control of a motor vehicle while under
86 the influence of chemical substances or controlled substances.
87 The urine test must be incidental to a lawful arrest and

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88 administered at a detention facility or any other facility,
89 mobile or otherwise, which is equipped to administer such tests
90 at the request of a law enforcement officer who has reasonable
91 cause to believe such person was driving or was in actual
92 physical control of a motor vehicle within this state while
93 under the influence of chemical substances or controlled
94 substances. The urine test must ~~shall~~ be administered at a
95 detention facility or any other facility, mobile or otherwise,
96 which is equipped to administer such test in a reasonable manner
97 that will ensure the accuracy of the specimen and maintain the
98 privacy of the individual involved. The administration of a
99 urine test does not preclude the administration of another type
100 of test. The person must ~~shall~~ be told that his or her failure
101 to submit to any lawful test of his or her urine will result in
102 the suspension of his or her license ~~the person's privilege~~ to
103 operate a motor vehicle for a period of 1 year for the first
104 refusal, or for a period of 18 months if the driver license
105 ~~driving privilege~~ of such person has been previously suspended
106 or if he or she has previously been fined under s. 327.35215 as
107 a result of a refusal to submit to a test or tests required
108 under this chapter or chapter 327, and must ~~shall~~ also be told
109 that if he or she refuses to submit to a lawful test of his or
110 her urine and his or her driver license ~~driving privilege~~ has
111 been previously suspended or if he or she has previously been
112 fined under s. 327.35215 for a prior refusal to submit to a
113 lawful test of his or her breath, urine, or blood as required
114 under this chapter or chapter 327, he or she commits a
115 misdemeanor of the first degree, punishable as provided in s.
116 775.082 or s. 775.083, in addition to any other penalties

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117 provided by law. The refusal to submit to a urine test upon the
118 request of a law enforcement officer as provided in this section
119 is admissible into evidence in any criminal proceeding.

120 2. The Alcohol Testing Program within the Department of Law
121 Enforcement is responsible for the regulation of the operation,
122 inspection, and registration of breath test instruments utilized
123 under the driving and boating under the influence provisions and
124 related provisions located in this chapter and chapters 322 and
125 327. The program is responsible for the regulation of the
126 individuals who operate, inspect, and instruct on the breath
127 test instruments utilized in the driving and boating under the
128 influence provisions and related provisions located in this
129 chapter and chapters 322 and 327. The program is further
130 responsible for the regulation of blood analysts who conduct
131 blood testing to be utilized under the driving and boating under
132 the influence provisions and related provisions located in this
133 chapter and chapters 322 and 327. The program shall:

134 a. Establish uniform criteria for the issuance of permits
135 to breath test operators, agency inspectors, instructors, blood
136 analysts, and instruments.

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

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

142 d. Establish uniform requirements for instruction and
143 curricula for the operation and inspection of approved
144 instruments.

145 e. Have the authority to specify one approved curriculum

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146 for the operation and inspection of approved instruments.

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

149 g. Have the authority to approve or disapprove breath test
150 instruments and accompanying paraphernalia for use pursuant to
151 the driving and boating under the influence provisions and
152 related provisions located in this chapter and chapters 322 and
153 327.

154 h. With the approval of the executive director of the
155 Department of Law Enforcement, make and enter into contracts and
156 agreements with other agencies, organizations, associations,
157 corporations, individuals, or federal agencies as are necessary,
158 expedient, or incidental to the performance of duties.

159 i. Issue final orders which include findings of fact and
160 conclusions of law and which constitute final agency action for
161 the purpose of chapter 120.

162 j. Enforce compliance with this section through civil or
163 administrative proceedings.

164 k. Make recommendations concerning any matter within the
165 purview of this section, this chapter, chapter 322, or chapter
166 327.

167 l. Adopt ~~Promulgate~~ rules for the administration and
168 implementation of this section, including definitions of terms.

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

171 n. Have the authority to approve the type of blood test
172 utilized under the driving and boating under the influence
173 provisions and related provisions located in this chapter and
174 chapters 322 and 327.

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175 o. Have the authority to specify techniques and methods for
176 breath alcohol testing and blood testing utilized under the
177 driving and boating under the influence provisions and related
178 provisions located in this chapter and chapters 322 and 327.

179 p. Have the authority to approve repair facilities for the
180 approved breath test instruments, including the authority to set
181 criteria for approval.

182
183 Nothing in this paragraph ~~section~~ shall be construed to
184 supersede provisions in this chapter and chapters 322 and 327.
185 The specifications in this section are derived from the power
186 and authority previously and currently possessed by the
187 Department of Law Enforcement and are enumerated to conform with
188 the mandates of chapter 99-379, Laws of Florida.

189 Section 2. Section 316.1939, Florida Statutes, is amended
190 to read:

191 316.1939 Refusal to submit to testing; penalties.—

192 (1) If a person has refused to submit to a lawful test of
193 his or her breath as required under s. 316.1932(1)(a)1.a., he or
194 she must install, at his or her expense, an ignition interlock
195 device on all vehicles individually or jointly leased or owned
196 and routinely operated by him or her for the duration of the
197 suspension of his or her driver license as provided in s.
198 322.2615(1)(a).

199 (2) A person who has refused to submit to a chemical or
200 physical test of his or her breath or urine, as described in s.
201 316.1932, and whose driver license ~~driving privilege~~ was
202 previously suspended or who was previously fined under s.
203 327.35215 for a prior refusal to submit to a lawful test of his

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204 or her breath, urine, or blood required under this chapter or
205 chapter 327, and:

206 (a) Who the arresting law enforcement officer had probable
207 cause to believe was driving or in actual physical control of a
208 motor vehicle in this state while under the influence of
209 alcoholic beverages, chemical substances, or controlled
210 substances;

211 (b) Who was placed under lawful arrest for a violation of
212 s. 316.193 unless such test was requested pursuant to s.
213 316.1932(1)(c);

214 (c) Who was informed that, if he or she refused to submit
215 to such test, his or her license ~~privilege~~ to operate a motor
216 vehicle would be suspended for a period of 1 year or, in the
217 case of a second or subsequent refusal, for a period of 18
218 months;

219 (d) Who was informed that, if he or she refused to submit
220 to such test, he or she would be subject to mandatory placement,
221 for the duration of the suspension specified in paragraph (c)
222 and at his or her expense, of an ignition interlock device
223 approved by the department in accordance with s. 316.1938 on all
224 vehicles that he or she individually or jointly leases or owns
225 and routinely operates;

226 (e) Who was informed that a refusal to submit to a lawful
227 test of his or her breath or urine, if his or her driver license
228 ~~driving privilege~~ has been previously suspended or if he or she
229 has previously been fined under s. 327.35215 for a prior refusal
230 to submit to a lawful test of his or her breath, urine, or blood
231 as required under this chapter or chapter 327, is a misdemeanor
232 of the first degree, punishable as provided in s. 775.082 or s.

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233 775.083, in addition to any other penalties provided by law; and

234 (f)~~(e)~~ Who, after having been so informed, refused to
235 submit to any such test when requested to do so by a law
236 enforcement officer or correctional officer

237

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

240 (3)~~(2)~~ The disposition of any administrative proceeding
241 that relates to the suspension of a person's driver license
242 ~~driving privilege~~ does not affect a criminal action under this
243 section.

244 (4)~~(3)~~ The disposition of a criminal action under this
245 section does not affect any administrative proceeding that
246 relates to the suspension of a person's driver license ~~driving~~
247 ~~privilege~~. The department's records showing that a person's
248 license has been previously suspended for a prior refusal to
249 submit to a lawful test of his or her breath, urine, or blood is
250 ~~shall be~~ admissible and creates ~~shall create~~ a rebuttable
251 presumption of such suspension.

252 Section 3. This act shall take effect July 1, 2023.