

By the Committees on Criminal Justice; and Transportation; and
Senator DiCeglie

591-03485-23

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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; amending s.
16 322.2615, F.S.; decreasing the timeframe during which
17 a person whose license is suspended for failure to
18 submit to a breath, urine, or blood test is not
19 eligible to receive a license for business or
20 employment purposes only; amending s. 322.2715, F.S.;

21 requiring a driver who refuses to take a lawful test
22 of his or her breath to install an ignition interlock
23 device, upon a reinstatement of certain licenses and
24 for a specified time, on vehicles he or she leases or
25 owns and routinely operates; providing an effective
26 date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Paragraph (a) of subsection (1) of section
31 316.1932, Florida Statutes, is amended to read:

32 316.1932 Tests for alcohol, chemical substances, or
33 controlled substances; implied consent; refusal.—

34 (1) (a) 1.a. A person who accepts the privilege extended by
35 the laws of this state of operating a motor vehicle within this
36 state is, by operating such vehicle, deemed to have given his or
37 her consent to submit to an approved chemical test or physical
38 test including, but not limited to, an infrared light test of
39 his or her breath for the purpose of determining the alcoholic
40 content of his or her blood or breath if the person is lawfully
41 arrested for any offense allegedly committed while the person
42 was driving or was in actual physical control of a motor vehicle
43 while under the influence of alcoholic beverages. The chemical
44 or physical breath test must be incidental to a lawful arrest
45 and administered at the request of a law enforcement officer who
46 has reasonable cause to believe such person was driving or was
47 in actual physical control of the motor vehicle within this
48 state while under the influence of alcoholic beverages. The
49 administration of a breath test does not preclude the
50 administration of another type of test. The person must ~~shall~~ be
51 told that his or her failure to submit to any lawful test of his
52 or her breath will, for a first refusal, result in the
53 suspension of the person's privilege to operate a motor vehicle
54 for a period of 1 year and mandatory continuous placement for 1
55 year, at the person's expense, of an ignition interlock device
56 approved by the department in accordance with s. 316.1938 on all
57 vehicles individually or jointly leased or owned and routinely
58 operated by the person as provided in s. 316.1939(1). ~~for a~~

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

83 b. A person who accepts the privilege extended by the laws
84 of this state of operating a motor vehicle within this state is,
85 by operating such vehicle, deemed to have given his or her
86 consent to submit to a urine test for the purpose of detecting
87 the presence of chemical substances as set forth in s. 877.111

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

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117 lawful test of his or her breath, urine, or blood as required
118 under this chapter or chapter 327, he or she commits a
119 misdemeanor of the first degree, punishable as provided in s.
120 775.082 or s. 775.083, in addition to any other penalties
121 provided by law. The refusal to submit to a urine test upon the
122 request of a law enforcement officer as provided in this section
123 is admissible into evidence in any criminal proceeding.

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

139 a. Establish uniform criteria for the issuance of permits
140 to breath test operators, agency inspectors, instructors, blood
141 analysts, and instruments.

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

144 c. Have the authority to discipline and suspend, revoke, or
145 renew the permits of breath test operators, agency inspectors,

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146 instructors, blood analysts, and instruments.

147 d. Establish uniform requirements for instruction and
148 curricula for the operation and inspection of approved
149 instruments.

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

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

154 g. Have the authority to approve or disapprove breath test
155 instruments and accompanying paraphernalia for use pursuant to
156 the driving and boating under the influence provisions and
157 related provisions located in this chapter and chapters 322 and
158 327.

159 h. With the approval of the executive director of the
160 Department of Law Enforcement, make and enter into contracts and
161 agreements with other agencies, organizations, associations,
162 corporations, individuals, or federal agencies as are necessary,
163 expedient, or incidental to the performance of duties.

164 i. Issue final orders that ~~which~~ include findings of fact
165 and conclusions of law and that ~~which~~ constitute final agency
166 action for the purpose of chapter 120.

167 j. Enforce compliance with this section through civil or
168 administrative proceedings.

169 k. Make recommendations concerning any matter within the
170 purview of this section, this chapter, chapter 322, or chapter
171 327.

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

174 m. Consult and cooperate with other entities for the

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175 purpose of implementing ~~the mandates of~~ this section.

176 n. Have the authority to approve the type of blood test
177 used ~~utilized~~ under the driving and boating under the influence
178 provisions and related provisions located in this chapter and
179 chapters 322 and 327.

180 o. Have the authority to specify techniques and methods for
181 breath alcohol testing and blood testing used ~~utilized~~ under the
182 driving and boating under the influence provisions and related
183 provisions located in this chapter and chapters 322 and 327.

184 p. Have the authority to approve repair facilities for the
185 approved breath test instruments, including the authority to set
186 criteria for approval.

187
188 ~~Nothing in~~ This section does not ~~shall be construed to~~ supersede
189 provisions in this chapter and chapters 322 and 327. The
190 specifications in this section are derived from the power and
191 authority previously and currently possessed by the Department
192 of Law Enforcement and are enumerated to conform with the
193 mandates of chapter 99-379, Laws of Florida.

194 Section 2. Section 316.1939, Florida Statutes, is amended
195 to read:

196 316.1939 Refusal to submit to testing; penalties.—

197 (1) If a person has refused to submit to a lawful test of
198 his or her breath as required under s. 316.1932(1)(a)1.a., he or
199 she must install, at his or her expense, an ignition interlock
200 device on all vehicles individually or jointly leased or owned
201 and routinely operated by him or her for 1 continuous year for a
202 first refusal or 18 continuous months for a second or subsequent
203 refusal.

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204 (2) A person who has refused to submit to a chemical or
205 physical test of his or her breath or urine, as described in s.
206 316.1932, and whose driving privilege was previously suspended
207 or who was previously fined under s. 327.35215 for a prior
208 refusal to submit to a lawful test of his or her breath, urine,
209 or blood required under this chapter or chapter 327, and:

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

215 (b) Who was placed under lawful arrest for a violation of
216 s. 316.193 unless such test was requested pursuant to s.
217 316.1932(1)(c);

218 (c) Who was informed that:7

219 1. If he or she refused to submit to a lawful test of his
220 or her breath, his or her privilege to operate a motor vehicle
221 would be suspended for 1 year for a first refusal or 18 months
222 for a second or subsequent refusal, and that he or she would be
223 subject to mandatory continuous placement of an ignition
224 interlock device for 1 year for a first refusal or 18 months for
225 a second or subsequent refusal, at his or her expense, on all
226 vehicles that he or she individually or jointly leases or owns
227 and routinely operates; or

228 2. If he or she refused to submit to a lawful ~~such~~ test of
229 his or her urine, his or her privilege to operate a motor
230 vehicle would be suspended for a ~~period of~~ 1 year for a first
231 refusal or, in the case of a second or subsequent refusal, for a
232 period of 18 months for a second or subsequent refusal;

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233 (d) Who was informed that a refusal to submit to a lawful
234 test of his or her breath or urine, if his or her driving
235 privilege has been previously suspended or if he or she has
236 previously been fined under s. 327.35215 for a prior refusal to
237 submit to a lawful test of his or her breath, urine, or blood as
238 required under this chapter or chapter 327, is a misdemeanor of
239 the first degree, punishable as provided in s. 775.082 or s.
240 775.083, in addition to any other penalties provided by law; and

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

244
245 commits a misdemeanor of the first degree and is subject to
246 punishment as provided in s. 775.082 or s. 775.083.

247 (3)~~(2)~~ The disposition of any administrative proceeding
248 that relates to the suspension of a person's driving privilege
249 does not affect a criminal action under this section.

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

258 Section 3. Paragraph (a) of subsection (10) of section
259 322.2615, Florida Statutes, is amended to read:

260 322.2615 Suspension of license; right to review.—

261 (10) A person whose driver license is suspended under

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262 subsection (1) or subsection (3) may apply for issuance of a
263 license for business or employment purposes only if the person
264 is otherwise eligible for the driving privilege pursuant to s.
265 322.271.

266 (a) If the suspension of the driver license of the person
267 for failure to submit to a breath, urine, or blood test is
268 sustained, the person is not eligible to receive a license for
269 business or employment purposes only, pursuant to s. 322.271,
270 until 30 ~~90~~ days have elapsed after the expiration of the last
271 temporary permit issued. If the driver is not issued a 10-day
272 permit pursuant to this section or s. 322.64 because he or she
273 is ineligible for the permit and the suspension for failure to
274 submit to a breath, urine, or blood test is not invalidated by
275 the department, the driver is not eligible to receive a business
276 or employment license pursuant to s. 322.271 until 30 ~~90~~ days
277 have elapsed from the date of the suspension.

278 Section 4. Present subsections (4) and (5) of section
279 322.2715, Florida Statutes, are redesignated as subsections (5)
280 and (6), respectively, and a new subsection (4) is added to that
281 section, to read:

282 322.2715 Ignition interlock device.—

283 (4) If a driver refuses to take a lawful test of his or her
284 breath as required by s. 316.1932, he or she must install an
285 ignition interlock device on all vehicles individually or
286 jointly leased or owned and routinely operated by him or her for
287 1 continuous year for a first refusal or for 18 continuous
288 months for a second or subsequent refusal upon reinstatement of
289 a permanent or restricted license.

290 Section 5. This act shall take effect January 1, 2024.