

By Senator Wright

8-00349A-23

2023432__

1 A bill to be entitled
2 An act relating to driving under the influence;
3 amending s. 316.193, F.S.; prohibiting a trial court
4 from accepting specified pleas when a person is
5 charged with the offense of driving under the
6 influence unless specified conditions are met;
7 amending s. 316.1932, F.S.; requiring a person to be
8 told that his or her first failure to submit to a
9 lawful test of breath or urine is a second degree
10 misdemeanor and his or her second or subsequent
11 refusal is a first degree misdemeanor; making
12 technical changes; amending s. 316.1939, F.S.;
13 reclassifying a person's first failure to submit to a
14 lawful test of breath or urine as a second degree
15 misdemeanor; clarifying provisions related to a
16 person's second or subsequent failure to submit to a
17 lawful test of breath, urine, or blood; making
18 technical changes; creating s. 316.19395, F.S.;
19 authorizing judicial circuits to create a Driving
20 Under the Influence Diversion Program; requiring the
21 policies and procedures of the program to be published
22 on the website of a participating state attorney's
23 office; requiring each judicial circuit operating such
24 a program to submit participant information for
25 persons who successfully complete the program to the
26 Department of Highway Safety and Motor Vehicles;
27 requiring the department to notate the driver record
28 of such participants indicating successful completion;
29 requiring that a person's new driving-under-the-

8-00349A-23

2023432__

30 influence offense after successful program completion
31 be charged as though the person had a prior driving-
32 under-the-influence conviction; amending s. 316.656,
33 F.S.; prohibiting a court from suspending, deferring,
34 or withholding adjudication of guilt or imposition of
35 sentence for a specified violation; providing an
36 effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Subsection (15) is added to section 316.193,
41 Florida Statutes, to read:

42 316.193 Driving under the influence; penalties.-

43 (15) A trial court judge may not accept a plea of guilty or
44 no contest to a reduced charge, including reckless driving under
45 s. 316.192, from a person charged with a violation of subsection
46 (1) unless:

47 (a) The trial court determines there is a good faith basis
48 to believe a reduction in such charge is warranted; or

49 (b) The defendant successfully completes a Driving Under
50 the Influence Diversion Program in accordance with s. 316.19395.

51 Section 2. Paragraph (a) of subsection (1) of section
52 316.1932, Florida Statutes, is amended to read:

53 316.1932 Tests for alcohol, chemical substances, or
54 controlled substances; implied consent; refusal.-

55 (1) (a) 1.a. A person who accepts the privilege extended by
56 the laws of this state of operating a motor vehicle within this
57 state is, by operating such vehicle, deemed to have given his or
58 her consent to submit to an approved chemical test or physical

8-00349A-23

2023432__

59 test including, but not limited to, an infrared light test of
60 his or her breath for the purpose of determining the alcoholic
61 content of his or her blood or breath if the person is lawfully
62 arrested for any offense allegedly committed while the person
63 was driving or was in actual physical control of a motor vehicle
64 while under the influence of alcoholic beverages. The chemical
65 or physical breath test must be incidental to a lawful arrest
66 and administered at the request of a law enforcement officer who
67 has reasonable cause to believe such person was driving or was
68 in actual physical control of the motor vehicle within this
69 state while under the influence of alcoholic beverages. The
70 administration of a breath test does not preclude the
71 administration of another type of test. The person must ~~shall~~ be
72 told that his or her failure to submit to any lawful test of his
73 or her breath will result in the suspension of his or her
74 license ~~the person's privilege~~ to operate a motor vehicle as
75 provided in s. 322.2615(1) (a) for a period of 1 year for a first
76 refusal, or for a period of 18 months if the driver license
77 ~~driving privilege~~ of such person has been previously suspended
78 or if he or she has previously been fined under s. 327.35215 as
79 a result of a refusal to submit to a test or tests required
80 under this chapter or chapter 327, and must ~~shall~~ also be told
81 that if he or she refuses to submit to a lawful test of his or
82 her breath ~~and his or her driving privilege has been previously~~
83 ~~suspended or if he or she has previously been fined under s.~~
84 ~~327.35215 for a prior refusal to submit to a lawful test of his~~
85 ~~or her breath, urine, or blood as required under this chapter or~~
86 ~~chapter 327,~~ he or she commits a misdemeanor of the second ~~first~~
87 degree, punishable as provided in s. 775.082 or s. 775.083, for

8-00349A-23

2023432__

88 a first refusal and a misdemeanor of the first degree,
89 punishable as provided in s. 775.082 or s. 775.083, for a second
90 or subsequent refusal, in addition to any other penalties
91 provided by law. The refusal to submit to a chemical or physical
92 breath test upon the request of a law enforcement officer as
93 provided in this section is admissible into evidence in any
94 criminal proceeding.

95 b. A person who accepts the privilege extended by the laws
96 of this state of operating a motor vehicle within this state is,
97 by operating such vehicle, deemed to have given his or her
98 consent to submit to a urine test for the purpose of detecting
99 the presence of chemical substances as set forth in s. 877.111
100 or controlled substances if the person is lawfully arrested for
101 any offense allegedly committed while the person was driving or
102 was in actual physical control of a motor vehicle while under
103 the influence of chemical substances or controlled substances.
104 The urine test must be incidental to a lawful arrest and
105 administered at a detention facility or any other facility,
106 mobile or otherwise, which is equipped to administer such tests
107 at the request of a law enforcement officer who has reasonable
108 cause to believe such person was driving or was in actual
109 physical control of a motor vehicle within this state while
110 under the influence of chemical substances or controlled
111 substances. The urine test must ~~shall~~ be administered at a
112 detention facility or any other facility, mobile or otherwise,
113 which is equipped to administer such test in a reasonable manner
114 that will ensure the accuracy of the specimen and maintain the
115 privacy of the individual involved. The administration of a
116 urine test does not preclude the administration of another type

8-00349A-23

2023432__

117 of test. The person must ~~shall~~ be told that his or her failure
118 to submit to any lawful test of his or her urine will result in
119 the suspension of his or her license ~~the person's privilege~~ to
120 operate a motor vehicle for a period of 1 year for the first
121 refusal, or for a period of 18 months if the driver license
122 ~~driving privilege~~ of such person has been previously suspended
123 or if he or she has previously been fined under s. 327.35215 as
124 a result of a refusal to submit to a test or tests required
125 under this chapter or chapter 327, and must ~~shall~~ also be told
126 that if he or she refuses to submit to a lawful test of his or
127 her urine ~~and his or her driving privilege has been previously~~
128 ~~suspended or if he or she has previously been fined under s.~~
129 ~~327.35215 for a prior refusal to submit to a lawful test of his~~
130 ~~or her breath, urine, or blood as required under this chapter or~~
131 ~~chapter 327,~~ he or she commits a misdemeanor ~~of the first~~
132 ~~degree,~~ punishable as provided in s. 775.082 or s. 775.083, in
133 addition to any other penalties provided by law. The refusal to
134 submit to a urine test upon the request of a law enforcement
135 officer as provided in this section is admissible into evidence
136 in any criminal proceeding.

137 2. The Alcohol Testing Program within the Department of Law
138 Enforcement is responsible for the regulation of the operation,
139 inspection, and registration of breath test instruments utilized
140 under the driving and boating under the influence provisions and
141 related provisions located in this chapter and chapters 322 and
142 327. The program is responsible for the regulation of the
143 individuals who operate, inspect, and instruct on the breath
144 test instruments utilized in the driving and boating under the
145 influence provisions and related provisions located in this

8-00349A-23

2023432__

146 chapter and chapters 322 and 327. The program is further
147 responsible for the regulation of blood analysts who conduct
148 blood testing to be utilized under the driving and boating under
149 the influence provisions and related provisions located in this
150 chapter and chapters 322 and 327. The program shall:

151 a. Establish uniform criteria for the issuance of permits
152 to breath test operators, agency inspectors, instructors, blood
153 analysts, and instruments.

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

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

159 d. Establish uniform requirements for instruction and
160 curricula for the operation and inspection of approved
161 instruments.

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

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

166 g. Have the authority to approve or disapprove breath test
167 instruments and accompanying paraphernalia for use pursuant to
168 the driving and boating under the influence provisions and
169 related provisions located in this chapter and chapters 322 and
170 327.

171 h. With the approval of the executive director of the
172 Department of Law Enforcement, make and enter into contracts and
173 agreements with other agencies, organizations, associations,
174 corporations, individuals, or federal agencies as are necessary,

8-00349A-23

2023432__

175 expedient, or incidental to the performance of duties.

176 i. Issue final orders which include findings of fact and
177 conclusions of law and which constitute final agency action for
178 the purpose of chapter 120.

179 j. Enforce compliance with this section through civil or
180 administrative proceedings.

181 k. Make recommendations concerning any matter within the
182 purview of this section, this chapter, chapter 322, or chapter
183 327.

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

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

188 n. Have the authority to approve the type of blood test
189 utilized under the driving and boating under the influence
190 provisions and related provisions located in this chapter and
191 chapters 322 and 327.

192 o. Have the authority to specify techniques and methods for
193 breath alcohol testing and blood testing utilized under the
194 driving and boating under the influence provisions and related
195 provisions located in this chapter and chapters 322 and 327.

196 p. Have the authority to approve repair facilities for the
197 approved breath test instruments, including the authority to set
198 criteria for approval.

199
200 ~~Nothing in This paragraph may not section shall~~ be construed to
201 supersede provisions in this chapter and chapters 322 and 327.
202 The specifications in this section are derived from the power
203 and authority previously and currently possessed by the

8-00349A-23

2023432__

204 Department of Law Enforcement and are enumerated to conform with
205 the mandates of chapter 99-379, Laws of Florida.

206 Section 3. Section 316.1939, Florida Statutes, is amended
207 to read:

208 316.1939 Refusal to submit to testing; penalties.—

209 (1) A person who has refused to submit to a chemical or
210 physical test of his or her breath or urine, as described in s.
211 316.1932, commits a misdemeanor of the second degree, punishable
212 as provided in s. 775.082 or s. 775.083, in addition to any
213 other penalties provided by law, if and whose driving privilege
214 was previously suspended or who was previously fined under s.
215 327.35215 for a prior refusal to submit to a lawful test of his
216 or her breath, urine, or blood required under this chapter or
217 chapter 327, and:

218 (a) ~~Who~~ The arresting law enforcement officer had probable
219 cause to believe the person was driving or in actual physical
220 control of a motor vehicle in this state while under the
221 influence of alcoholic beverages, chemical substances, or
222 controlled substances;

223 (b) The person ~~who~~ was placed under lawful arrest for a
224 violation of s. 316.193, unless such test was requested pursuant
225 to s. 316.1932(1)(c);

226 (c) The person ~~who~~ was informed that, if he or she refused
227 to submit to such test, his or her license privilege to operate
228 a motor vehicle would be suspended for a period of 1 year or, in
229 the case of a second or subsequent refusal, for a period of 18
230 months; and

231 (d) The person, after having been so informed, still
232 refuses ~~who was informed that a refusal~~ to submit to a lawful

8-00349A-23

2023432__

233 test of his or her breath or urine when requested to do so by a
234 law enforcement or correctional officer.

235 (2) A second or subsequent refusal to submit to a lawful
236 test of breath, urine, or blood as specified in subsection (1)
237 is a misdemeanor of the first degree, punishable as provided in
238 s. 775.082 or s. 775.083, in addition to any other penalties
239 provided by law, if his or her driving privilege has been
240 previously suspended or if he or she has previously been fined
241 under s. 327.35215 for a prior refusal to submit to a lawful
242 test of his or her breath, urine, or blood as required under
243 this chapter or chapter 327, is a misdemeanor of the first
244 degree, punishable as provided in s. 775.082 or s. 775.083, in
245 addition to any other penalties provided by law; and

246 ~~(c) Who, after having been so informed, refused to submit~~
247 ~~to any such test when requested to do so by a law enforcement~~
248 ~~officer or correctional officer~~

249
250 ~~commits a misdemeanor of the first degree and is subject to~~
251 ~~punishment as provided in s. 775.082 or s. 775.083.~~

252 (3)~~(2)~~ The disposition of any administrative proceeding
253 that relates to the suspension of a person's driver license
254 ~~driving privilege~~ does not affect a criminal action under this
255 section.

256 (4)~~(3)~~ The disposition of a criminal action under this
257 section does not affect any administrative proceeding that
258 relates to the suspension of a person's driver license ~~driving~~
259 ~~privilege~~. The department's records showing that a person's
260 license has been previously suspended for a prior refusal to
261 submit to a lawful test of his or her breath, urine, or blood is

8-00349A-23

2023432__

262 ~~shall be~~ admissible and creates ~~shall create~~ a rebuttable
263 presumption of such suspension.

264 Section 4. Section 316.19395, Florida Statutes, is created
265 to read:

266 316.19395 Driving Under the Influence Diversion Programs.-

267 (1) Any judicial circuit may create a Driving Under the
268 Influence Diversion Program. A judicial circuit that creates
269 such a program shall publish the terms and conditions of the
270 program on the website of the office of the state attorney.

271 (2) Each judicial circuit operating a Driving Under the
272 Influence Diversion Program must report to the department
273 persons who have successfully completed the program. The
274 department shall notate the successful participation of the
275 diversion program on the driving record of such persons.

276 (3) If, after successfully completing a diversion program,
277 a person is charged with a new driving-under-the-influence
278 offense, the person must be charged for the new driving-under-
279 the-influence offense in the same manner as if the person had a
280 prior conviction for driving under the influence under s.
281 316.193(1).

282 Section 5. Subsection (1) of section 316.656, Florida
283 Statutes, is amended to read:

284 316.656 Mandatory adjudication; prohibition against
285 accepting plea to lesser included offense.-

286 (1) Notwithstanding ~~the provisions of~~ s. 948.01, a court
287 may not ~~no court may~~ suspend, defer, or withhold adjudication of
288 guilt or imposition of sentence for any violation of s. 316.193
289 or s. 316.1939, for manslaughter resulting from the operation of
290 a motor vehicle, or for vehicular homicide.

8-00349A-23

2023432__

291

Section 6. This act shall take effect October 1, 2023.