

By Senator Berman

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1 A bill to be entitled
2 An act relating to operating vehicles and vessels
3 under the influence; amending ss. 316.193 and 327.35,
4 F.S.; revising conditions under which a person commits
5 the offense of driving under the influence or boating
6 under the influence, respectively; providing an
7 affirmative defense; revising a condition that must be
8 met before a person arrested for driving under the
9 influence or boating under the influence,
10 respectively, may be released from custody; defining
11 the term "impairing substance"; providing
12 construction; amending s. 933.02, F.S.; adding
13 specified grounds for issuance of a search warrant;
14 amending ss. 316.1932 and 316.1933, F.S.; conforming
15 cross-references; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Present paragraphs (c) and (d) of subsection
20 (14) of section 316.193, Florida Statutes, are redesignated as
21 paragraphs (d) and (e), respectively, a new paragraph (c) is
22 added to that subsection, subsections (1) and (9) of that
23 section are amended, and subsection (2) of that section is
24 republished, to read:

25 316.193 Driving under the influence; penalties.—

26 (1) (a) A person commits ~~is guilty of~~ the offense of driving
27 under the influence and is subject to punishment as provided in
28 subsection (2) if the person is driving or in actual physical
29 control of a vehicle within this state and:

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30 1.~~(a)~~ The person is under the influence of alcoholic
31 beverages, any chemical substance set forth in s. 877.111, ~~or~~
32 any substance controlled under chapter 893, or any other
33 impairing substance, or any combination thereof, when affected
34 to the extent that the person's normal faculties are impaired;

35 2.~~(b)~~ The person has a blood-alcohol level of 0.08 or more
36 grams of alcohol per 100 milliliters of blood; ~~or~~

37 3.~~(c)~~ The person has a breath-alcohol level of 0.08 or more
38 grams of alcohol per 210 liters of breath; or

39 4. The person has in his or her blood any amount of a
40 chemical substance set forth in s. 877.111 or a substance
41 controlled under chapter 893, or such chemical or controlled
42 substance in any combination with alcohol as a result of
43 consuming alcohol before or during driving.

44 (b) It is an affirmative defense as to the presence of a
45 chemical or controlled substance under subparagraph (a)4. that
46 the person ingested, injected, or inhaled the substance in
47 accordance with a valid prescription issued pursuant to s.
48 893.04 by a practitioner as defined in s. 893.02, or pursuant to
49 s. 381.986, and in accordance with the practitioner's
50 directions. However, the fact that a person is or was legally
51 entitled to consume alcohol or any other chemical or controlled
52 substance, medication, drug, or other impairing substance is not
53 an affirmative defense to this section.

54 (2) (a) Except as provided in paragraph (b), subsection (3),
55 or subsection (4), any person who is convicted of a violation of
56 subsection (1) shall be punished:

57 1. By a fine of:

58 a. Not less than \$500 or more than \$1,000 for a first

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59 conviction.

60 b. Not less than \$1,000 or more than \$2,000 for a second
61 conviction; and

62 2. By imprisonment for:

63 a. Not more than 6 months for a first conviction.

64 b. Not more than 9 months for a second conviction.

65 3. For a second conviction, by mandatory placement for a
66 period of at least 1 year, at the convicted person's sole
67 expense, of an ignition interlock device approved by the
68 department in accordance with s. 316.1938 upon all vehicles that
69 are individually or jointly leased or owned and routinely
70 operated by the convicted person, when the convicted person
71 qualifies for a permanent or restricted license.

72

73 The portion of a fine imposed in excess of \$500 pursuant to sub-
74 subparagraph 1.a. and the portion of a fine imposed in excess of
75 \$1,000 pursuant to sub-subparagraph 1.b., shall be remitted by
76 the clerk to the Department of Revenue for deposit into the
77 General Revenue Fund.

78 (b)1. Any person who is convicted of a third violation of
79 this section for an offense that occurs within 10 years after a
80 prior conviction for a violation of this section commits a
81 felony of the third degree, punishable as provided in s.
82 775.082, s. 775.083, or s. 775.084. In addition, the court shall
83 order the mandatory placement for a period of not less than 2
84 years, at the convicted person's sole expense, of an ignition
85 interlock device approved by the department in accordance with
86 s. 316.1938 upon all vehicles that are individually or jointly
87 leased or owned and routinely operated by the convicted person,

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88 when the convicted person qualifies for a permanent or
89 restricted license.

90 2. Any person who is convicted of a third violation of this
91 section for an offense that occurs more than 10 years after the
92 date of a prior conviction for a violation of this section shall
93 be punished by a fine of not less than \$2,000 or more than
94 \$5,000 and by imprisonment for not more than 12 months. The
95 portion of a fine imposed in excess of \$2,500 pursuant to this
96 subparagraph shall be remitted by the clerk to the Department of
97 Revenue for deposit into the General Revenue Fund. In addition,
98 the court shall order the mandatory placement for a period of at
99 least 2 years, at the convicted person's sole expense, of an
100 ignition interlock device approved by the department in
101 accordance with s. 316.1938 upon all vehicles that are
102 individually or jointly leased or owned and routinely operated
103 by the convicted person, when the convicted person qualifies for
104 a permanent or restricted license.

105 3. Any person who is convicted of a fourth or subsequent
106 violation of this section, regardless of when any prior
107 conviction for a violation of this section occurred, commits a
108 felony of the third degree, punishable as provided in s.
109 775.082, s. 775.083, or s. 775.084. However, the fine imposed
110 for such fourth or subsequent violation may be not less than
111 \$2,000. The portion of a fine imposed in excess of \$1,000
112 pursuant to this subparagraph shall be remitted by the clerk to
113 the Department of Revenue for deposit into the General Revenue
114 Fund.

115 (c) In addition to the penalties in paragraph (a), the
116 court may order placement, at the convicted person's sole

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117 expense, of an ignition interlock device approved by the
118 department in accordance with s. 316.1938 for at least 6
119 continuous months upon all vehicles that are individually or
120 jointly leased or owned and routinely operated by the convicted
121 person if, at the time of the offense, the person had a blood-
122 alcohol level or breath-alcohol level of .08 or higher.

123 (9) A person ~~who is~~ arrested for a violation of this
124 section may not be released from custody:

125 (a) Until the person is no longer under the influence of
126 alcoholic beverages, any chemical substance set forth in s.
127 877.111, ~~or~~ any substance controlled under chapter 893, or any
128 other impairing substance, or any combination thereof, and
129 affected to the extent that his or her normal faculties are
130 impaired;

131 (b) Until the person's blood-alcohol level or breath-
132 alcohol level is less than 0.05; or

133 (c) Until 8 hours have elapsed from the time the person was
134 arrested.

135 (14) As used in this chapter, the term:

136 (c) "Impairing substance" means any substance that, when
137 taken into the human body, can impair, or diminish in some
138 material respect, a person's normal faculties. Such normal
139 faculties include, but are not limited to, the ability to see,
140 hear, walk, talk, judge distances, drive a motor vehicle, make
141 judgments, act in emergencies, and, in general, normally perform
142 the many mental and physical acts of daily life.

143 Section 2. Subsections (1) and (8) of section 327.35,
144 Florida Statutes, are amended, subsection (11) is added to that
145 section, and subsection (2) of that section is republished, to

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146 read:

147 327.35 Boating under the influence; penalties; "designated
148 drivers."—149 (1) (a) A person commits ~~is guilty of~~ the offense of boating
150 under the influence and is subject to punishment as provided in
151 subsection (2) if the person is operating a vessel within this
152 state and:153 1. (a) The person is under the influence of alcoholic
154 beverages, any chemical substance set forth in s. 877.111, ~~or~~
155 any substance controlled under chapter 893, or any other
156 impairing substance, or any combination thereof, when affected
157 to the extent that the person's normal faculties are impaired;158 2. (b) The person has a blood-alcohol level of 0.08 or more
159 grams of alcohol per 100 milliliters of blood; ~~or~~160 3. (e) The person has a breath-alcohol level of 0.08 or more
161 grams of alcohol per 210 liters of breath; or162 4. The person has in his or her blood any amount of a
163 chemical substance set forth in s. 877.111 or a substance
164 controlled under chapter 893, or such chemical or controlled
165 substance in any combination with alcohol as a result of
166 consuming alcohol before or during operating.167 (b) It is an affirmative defense as to the presence of a
168 chemical or controlled substance under subparagraph (a)4. that
169 the person ingested, injected, or inhaled the substance in
170 accordance with a valid prescription issued pursuant to s.
171 893.04 by a practitioner as defined in s. 893.02, or pursuant to
172 s. 381.986, and in accordance with the practitioner's
173 directions. However, the fact that a person is or was legally
174 entitled to consume alcohol or any other chemical or controlled

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175 substance, medication, drug, or other impairing substance is not
176 an affirmative defense to this section.

177 (2) (a) Except as provided in paragraph (b), subsection (3),
178 or subsection (4), any person who is convicted of a violation of
179 subsection (1) shall be punished:

180 1. By a fine of:

181 a. Not less than \$500 or more than \$1,000 for a first
182 conviction.

183 b. Not less than \$1,000 or more than \$2,000 for a second
184 conviction; and

185 2. By imprisonment for:

186 a. Not more than 6 months for a first conviction.

187 b. Not more than 9 months for a second conviction.

188

189 The portion of a fine imposed in excess of \$500 pursuant to sub-
190 subparagraph 1.a. and the portion of a fine imposed in excess of
191 \$1,000 pursuant to sub-subparagraph 1.b., shall be remitted by
192 the clerk to the Department of Revenue for deposit into the
193 General Revenue Fund.

194 (b)1. Any person who is convicted of a third violation of
195 this section for an offense that occurs within 10 years after a
196 prior conviction for a violation of this section commits a
197 felony of the third degree, punishable as provided in s.
198 775.082, s. 775.083, or s. 775.084.

199 2. Any person who is convicted of a third violation of this
200 section for an offense that occurs more than 10 years after the
201 date of a prior conviction for a violation of this section shall
202 be punished by a fine of not less than \$2,000 or more than
203 \$5,000 and by imprisonment for not more than 12 months. The

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204 portion of a fine imposed in excess of \$2,500 pursuant to this
205 subparagraph shall be remitted by the clerk to the Department of
206 Revenue for deposit into the General Revenue Fund.

207 3. Any person who is convicted of a fourth or subsequent
208 violation of this section, regardless of when any prior
209 conviction for a violation of this section occurred, commits a
210 felony of the third degree, punishable as provided in s.
211 775.082, s. 775.083, or s. 775.084.

212

213 However, the fine imposed for such fourth or subsequent
214 violation may not be less than \$2,000. The portion of such fine
215 imposed in excess of \$1,000 shall be remitted by the clerk to
216 the Department of Revenue for deposit into the General Revenue
217 Fund.

218 (8) A person ~~who is~~ arrested for a violation of this
219 section may not be released from custody:

220 (a) Until the person is no longer under the influence of
221 alcoholic beverages, any chemical substance set forth in s.
222 877.111, ~~or~~ any substance controlled under chapter 893, or any
223 other impairing substance, or any combination thereof, and
224 affected to the extent that his or her normal faculties are
225 impaired;

226 (b) Until the person's blood-alcohol level or breath-
227 alcohol level is less than 0.05; or

228 (c) Until 8 hours have elapsed from the time the person was
229 arrested.

230 (11) As used in this section, the term "impairing
231 substance" means any substance that, when taken into the human
232 body, can impair, or diminish in some material respect, a

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233 person's normal faculties. Such normal faculties include, but
234 are not limited to, the ability to see, hear, walk, talk, judge
235 distances, operate a vessel, make judgments, act in emergencies,
236 and, in general, normally perform the many mental and physical
237 acts of daily life.

238 Section 3. Section 933.02, Florida Statutes, is amended to
239 read:

240 933.02 Grounds for issuance of search warrant.—Upon proper
241 affidavits being made, a search warrant may be issued under the
242 provisions of this chapter upon any of the following grounds:

243 (1) When the property shall have been stolen or embezzled
244 in violation of law;

245 (2) When any property shall have been used:

246 (a) As a means to commit any crime;

247 (b) In connection with gambling, gambling implements and
248 appliances; or

249 (c) In violation of s. 847.011 or other laws in reference
250 to obscene prints and literature;

251 (3) When any property constitutes evidence relevant to
252 proving that a felony has been committed;

253 (4) When any property is being held or possessed:

254 (a) In violation of any of the laws prohibiting the
255 manufacture, sale, and transportation of intoxicating liquors;

256 (b) In violation of the fish and game laws;

257 (c) In violation of the laws relative to food and drug; or

258 (d) In violation of the laws relative to citrus disease
259 pursuant to s. 581.184; ~~or~~

260 (5) When the laws in relation to cruelty to animals, as
261 provided in chapter 828, have been or are violated in any

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262 particular building or place; or

263 (6) When a sample of the blood of a person constitutes
264 evidence relevant to proving that a violation of s. 316.193 or
265 s. 327.35 has been committed.

266
267 This section also applies to any papers or documents used as a
268 means of or in aid of the commission of any offense against the
269 laws of the state.

270 Section 4. Paragraph (f) of subsection (1) of section
271 316.1932, Florida Statutes, is amended to read:

272 316.1932 Tests for alcohol, chemical substances, or
273 controlled substances; implied consent; refusal.—

274 (1)

275 (f)1. The tests determining the weight of alcohol in the
276 defendant's blood or breath shall be administered at the request
277 of a law enforcement officer substantially in accordance with
278 rules of the Department of Law Enforcement. Such rules must
279 specify precisely the test or tests that are approved by the
280 Department of Law Enforcement for reliability of result and ease
281 of administration, and must provide an approved method of
282 administration which must be followed in all such tests given
283 under this section. However, the failure of a law enforcement
284 officer to request the withdrawal of blood does not affect the
285 admissibility of a test of blood withdrawn for medical purposes.

286 2.a. Only a physician, certified paramedic, registered
287 nurse, licensed practical nurse, other personnel authorized by a
288 hospital to draw blood, or duly licensed clinical laboratory
289 director, supervisor, technologist, or technician, acting at the
290 request of a law enforcement officer, may withdraw blood for the

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291 purpose of determining its alcoholic content or the presence of
292 chemical substances or controlled substances therein. However,
293 the failure of a law enforcement officer to request the
294 withdrawal of blood does not affect the admissibility of a test
295 of blood withdrawn for medical purposes.

296 b. Notwithstanding any provision of law pertaining to the
297 confidentiality of hospital records or other medical records, if
298 a health care provider, who is providing medical care in a
299 health care facility to a person injured in a motor vehicle
300 crash, becomes aware, as a result of any blood test performed in
301 the course of that medical treatment, that the person's blood-
302 alcohol level meets or exceeds the blood-alcohol level specified
303 in s. 316.193(1)(a)2. ~~s. 316.193(1)(b)~~, the health care provider
304 may notify any law enforcement officer or law enforcement
305 agency. Any such notice must be given within a reasonable time
306 after the health care provider receives the test result. Any
307 such notice shall be used only for the purpose of providing the
308 law enforcement officer with reasonable cause to request the
309 withdrawal of a blood sample pursuant to this section.

310 c. The notice must ~~shall~~ consist only of the name of the
311 person being treated, the name of the person who drew the blood,
312 the blood-alcohol level indicated by the test, and the date and
313 time of the administration of the test.

314 d. Nothing contained in s. 395.3025(4), s. 456.057, or any
315 applicable practice act affects the authority to provide notice
316 under this section, and the health care provider is not
317 considered to have breached any duty owed to the person under s.
318 395.3025(4), s. 456.057, or any applicable practice act by
319 providing notice or failing to provide notice. It is not ~~shall~~

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320 ~~not be~~ a breach of any ethical, moral, or legal duty for a
321 health care provider to provide notice or fail to provide
322 notice.

323 e. A civil, criminal, or administrative action may not be
324 brought against any person or health care provider participating
325 in good faith in the provision of notice or failure to provide
326 notice as provided in this section. Any person or health care
327 provider participating in the provision of notice or failure to
328 provide notice as provided in this section shall be immune from
329 any civil or criminal liability and from any professional
330 disciplinary action with respect to the provision of notice or
331 failure to provide notice under this section. Any such
332 participant has the same immunity with respect to participating
333 in any judicial proceedings resulting from the notice or failure
334 to provide notice.

335 3. The person tested may, at his or her own expense, have a
336 physician, registered nurse, other personnel authorized by a
337 hospital to draw blood, or duly licensed clinical laboratory
338 director, supervisor, technologist, or technician, or other
339 person of his or her own choosing administer an independent test
340 in addition to the test administered at the direction of the law
341 enforcement officer for the purpose of determining the amount of
342 alcohol in the person's blood or breath or the presence of
343 chemical substances or controlled substances at the time
344 alleged, as shown by chemical analysis of his or her blood or
345 urine, or by chemical or physical test of his or her breath. The
346 failure or inability to obtain an independent test by a person
347 does not preclude the admissibility in evidence of the test
348 taken at the direction of the law enforcement officer. The law

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349 enforcement officer shall not interfere with the person's
350 opportunity to obtain the independent test and shall provide the
351 person with timely telephone access to secure the test, but the
352 burden is on the person to arrange and secure the test at the
353 person's own expense.

354 4. Upon the request of the person tested, full information
355 concerning the results of the test taken at the direction of the
356 law enforcement officer shall be made available to the person or
357 his or her attorney. Full information is limited to the
358 following:

359 a. The type of test administered and the procedures
360 followed.

361 b. The time of the collection of the blood or breath sample
362 analyzed.

363 c. The numerical results of the test indicating the alcohol
364 content of the blood and breath.

365 d. The type and status of any permit issued by the
366 Department of Law Enforcement which was held by the person who
367 performed the test.

368 e. If the test was administered by means of a breath
369 testing instrument, the date of performance of the most recent
370 required inspection of such instrument.

371
372 Full information does not include manuals, schematics, or
373 software of the instrument used to test the person or any other
374 material that is not in the actual possession of the state.
375 Additionally, full information does not include information in
376 the possession of the manufacturer of the test instrument.

377 5. A hospital, clinical laboratory, medical clinic, or

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378 similar medical institution or physician, certified paramedic,
379 registered nurse, licensed practical nurse, other personnel
380 authorized by a hospital to draw blood, or duly licensed
381 clinical laboratory director, supervisor, technologist, or
382 technician, or other person assisting a law enforcement officer
383 does not incur any civil or criminal liability as a result of
384 the withdrawal or analysis of a blood or urine specimen, or the
385 chemical or physical test of a person's breath pursuant to
386 accepted medical standards when requested by a law enforcement
387 officer, regardless of whether or not the subject resisted
388 administration of the test.

389 Section 5. Paragraph (a) of subsection (2) of section
390 316.1933, Florida Statutes, is amended to read:

391 316.1933 Blood test for impairment or intoxication in cases
392 of death or serious bodily injury; right to use reasonable
393 force.—

394 (2) (a) Only a physician, certified paramedic, registered
395 nurse, licensed practical nurse, other personnel authorized by a
396 hospital to draw blood, or duly licensed clinical laboratory
397 director, supervisor, technologist, or technician, acting at the
398 request of a law enforcement officer, may withdraw blood for the
399 purpose of determining the alcoholic content thereof or the
400 presence of chemical substances or controlled substances
401 therein. However, the failure of a law enforcement officer to
402 request the withdrawal of blood does not ~~shall not~~ affect the
403 admissibility of a test of blood withdrawn for medical purposes.

404 1. Notwithstanding any provision of law pertaining to the
405 confidentiality of hospital records or other medical records, if
406 a health care provider, ~~who is~~ providing medical care in a

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407 health care facility to a person injured in a motor vehicle
408 crash, becomes aware, as a result of any blood test performed in
409 the course of that medical treatment, that the person's blood-
410 alcohol level meets or exceeds the blood-alcohol level specified
411 in s. 316.193(1)(a)2. ~~s. 316.193(1)(b)~~, the health care provider
412 may notify any law enforcement officer or law enforcement
413 agency. Any such notice must be given within a reasonable time
414 after the health care provider receives the test result. Any
415 such notice shall be used only for the purpose of providing the
416 law enforcement officer with reasonable cause to request the
417 withdrawal of a blood sample pursuant to this section.

418 2. The notice must ~~shall~~ consist only of the name of the
419 person being treated, the name of the person who drew the blood,
420 the blood-alcohol level indicated by the test, and the date and
421 time of the administration of the test.

422 3. Nothing contained in s. 395.3025(4), s. 456.057, or any
423 applicable practice act affects the authority to provide notice
424 under this section, and the health care provider is not
425 considered to have breached any duty owed to the person under s.
426 395.3025(4), s. 456.057, or any applicable practice act by
427 providing notice or failing to provide notice. It is not ~~shall~~
428 ~~not be~~ a breach of any ethical, moral, or legal duty for a
429 health care provider to provide notice or fail to provide
430 notice.

431 4. A civil, criminal, or administrative action may not be
432 brought against any person or health care provider participating
433 in good faith in the provision of notice or failure to provide
434 notice as provided in this section. Any person or health care
435 provider participating in the provision of notice or failure to

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436 provide notice as provided in this section shall be immune from
437 any civil or criminal liability and from any professional
438 disciplinary action with respect to the provision of notice or
439 failure to provide notice under this section. Any such
440 participant has the same immunity with respect to participating
441 in any judicial proceedings resulting from the notice or failure
442 to provide notice.

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