

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

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~~
 38 ~~more 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
 55 (3), or subsection (4), any person who is convicted of a
 56 violation of 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
 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,
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
91 | this section for an offense that occurs more than 10 years after
92 | the date of a prior conviction for a violation of this section
93 | shall 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
 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
 134 was 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
 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
 150 boating under the influence and is subject to punishment as

151 provided in subsection (2) if the person is operating a vessel
152 within this 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.-(c) The person has a breath-alcohol level of 0.08 or
161 more grams of alcohol per 210 liters of breath; or

162 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
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
178 | (3), or subsection (4), any person who is convicted of a
179 | violation of 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
200 | this section for an offense that occurs more than 10 years after

201 the date of a prior conviction for a violation of this section
 202 shall 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
 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
 229 was 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
 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, drive a motor vehicle, make judgments, act in
 236 emergencies, and, in general, normally perform the many mental
 237 and physical 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
 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
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~~
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
336 a 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
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
362 sample analyzed.

363 c. The numerical results of the test indicating the
364 alcohol 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
 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
 392 | cases 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
 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.

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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
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.