

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 refusal 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 or urine; creating s. 316.19395,
18 F.S.; authorizing judicial circuits to create a
19 Driving Under the Influence Diversion Program;
20 requiring the terms and conditions of the program to
21 be published on the website of a participating state
22 attorney's office; requiring each judicial circuit
23 operating such a program to submit participant
24 information for persons who successfully complete the
25 program to the Department of Highway Safety and Motor

26 Vehicles; requiring the department to notate the
 27 driving record of such participants indicating
 28 successful completion; requiring that a person's new
 29 offense of driving under the influence after
 30 successful program completion be charged as though the
 31 person had a prior conviction of driving under the
 32 influence; amending s. 316.656, F.S.; prohibiting a
 33 court from suspending, deferring, or withholding
 34 adjudication of guilt or imposition of sentence for a
 35 specified violation; providing an effective date.

36
 37 Be It Enacted by the Legislature of the State of Florida:

38
 39 Section 1. Subsection (15) is added to section 316.193,
 40 Florida Statutes, to read:

41 316.193 Driving under the influence; penalties.—

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

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

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

50 Section 2. Paragraph (a) of subsection (1) of section

HB 781

2023

51 316.1932, Florida Statutes, is amended to read:

52 316.1932 Tests for alcohol, chemical substances, or
53 controlled substances; implied consent; refusal.—

54 (1)(a)1.a. A person who accepts the privilege extended by
55 the laws of this state of operating a motor vehicle within this
56 state is, by operating such vehicle, deemed to have given his or
57 her consent to submit to an approved chemical test or physical
58 test including, but not limited to, an infrared light test of
59 his or her breath for the purpose of determining the alcoholic
60 content of his or her blood or breath if the person is lawfully
61 arrested for any offense allegedly committed while the person
62 was driving or was in actual physical control of a motor vehicle
63 while under the influence of alcoholic beverages. The chemical
64 or physical breath test must be incidental to a lawful arrest
65 and administered at the request of a law enforcement officer who
66 has reasonable cause to believe such person was driving or was
67 in actual physical control of the motor vehicle within this
68 state while under the influence of alcoholic beverages. The
69 administration of a breath test does not preclude the
70 administration of another type of test. The person must ~~shall~~ be
71 told that his or her failure to submit to any lawful test of his
72 or her breath will result in the suspension of his or her
73 license ~~the person's privilege~~ to operate a motor vehicle as
74 provided in s. 322.2615(1)(a) for a period of 1 year for a first
75 refusal, or for a period of 18 months if the driver license

HB 781

2023

76 ~~driving privilege~~ of such person has been previously suspended
77 or if he or she has previously been fined under s. 327.35215 as
78 a result of a refusal to submit to a test or tests required
79 under this chapter or chapter 327, and must ~~shall~~ also be told
80 that if he or she refuses to submit to a lawful test of his or
81 her breath ~~and his or her driving privilege has been previously~~
82 ~~suspended or if he or she has previously been fined under s.~~
83 ~~327.35215 for a prior refusal to submit to a lawful test of his~~
84 ~~or her breath, urine, or blood as required under this chapter or~~
85 ~~chapter 327,~~ he or she commits a misdemeanor of the second first
86 degree, punishable as provided in s. 775.082 or s. 775.083, for
87 a first refusal and a misdemeanor of the first degree,
88 punishable as provided in s. 775.082 or s. 775.083, for a second
89 or subsequent refusal, in addition to any other penalties
90 provided by law. The refusal to submit to a chemical or physical
91 breath test upon the request of a law enforcement officer as
92 provided in this section is admissible into evidence in any
93 criminal proceeding.

94 b. A person who accepts the privilege extended by the laws
95 of this state of operating a motor vehicle within this state is,
96 by operating such vehicle, deemed to have given his or her
97 consent to submit to a urine test for the purpose of detecting
98 the presence of chemical substances as set forth in s. 877.111
99 or controlled substances if the person is lawfully arrested for
100 any offense allegedly committed while the person was driving or

101 was in actual physical control of a motor vehicle while under
 102 the influence of chemical substances or controlled substances.
 103 The urine test must be incidental to a lawful arrest and
 104 administered at a detention facility or any other facility,
 105 mobile or otherwise, which is equipped to administer such tests
 106 at the request of a law enforcement officer who has reasonable
 107 cause to believe such person was driving or was in actual
 108 physical control of a motor vehicle within this state while
 109 under the influence of chemical substances or controlled
 110 substances. The urine test must ~~shall~~ be administered at a
 111 detention facility or any other facility, mobile or otherwise,
 112 which is equipped to administer such test in a reasonable manner
 113 that will ensure the accuracy of the specimen and maintain the
 114 privacy of the individual involved. The administration of a
 115 urine test does not preclude the administration of another type
 116 of test. The person must ~~shall~~ be told that his or her failure
 117 to submit to any lawful test of his or her urine will result in
 118 the suspension of his or her license ~~the person's privilege~~ to
 119 operate a motor vehicle as provided in s. 322.2615(1)(a) for a
 120 period of 1 year for the first refusal, or for a period of 18
 121 months if the driver license ~~driving privilege~~ of such person
 122 has been previously suspended or if he or she has previously
 123 been fined under s. 327.35215 as a result of a refusal to submit
 124 to a test or tests required under this chapter or chapter 327,
 125 and must ~~shall~~ also be told that if he or she refuses to submit

126 | to a lawful test of his or her urine ~~and his or her driving~~
127 | ~~privilege has been previously suspended or if he or she has~~
128 | ~~previously been fined under s. 327.35215 for a prior refusal to~~
129 | ~~submit to a lawful test of his or her breath, urine, or blood as~~
130 | ~~required under this chapter or chapter 327, he or she commits a~~
131 | misdemeanor of the second ~~first~~ degree, punishable as provided
132 | in s. 775.082 or s. 775.083, for a first refusal and a
133 | misdemeanor of the first degree, punishable as provided in s.
134 | 775.082 or s. 775.083, for a second or subsequent refusal, in
135 | addition to any other penalties provided by law. The refusal to
136 | submit to a urine test upon the request of a law enforcement
137 | officer as provided in this section is admissible into evidence
138 | in any criminal proceeding.

139 | 2. The Alcohol Testing Program within the Department of
140 | Law Enforcement is responsible for the regulation of the
141 | operation, inspection, and registration of breath test
142 | instruments utilized under the driving and boating under the
143 | influence provisions and related provisions located in this
144 | chapter and chapters 322 and 327. The program is responsible for
145 | the regulation of the individuals who operate, inspect, and
146 | instruct on the breath test instruments utilized in the driving
147 | and boating under the influence provisions and related
148 | provisions located in this chapter and chapters 322 and 327. The
149 | program is further responsible for the regulation of blood
150 | analysts who conduct blood testing to be utilized under the

151 driving and boating under the influence provisions and related
152 provisions located in this chapter and chapters 322 and 327. The
153 program shall:

154 a. Establish uniform criteria for the issuance of permits
155 to breath test operators, agency inspectors, instructors, blood
156 analysts, and instruments.

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

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

162 d. Establish uniform requirements for instruction and
163 curricula for the operation and inspection of approved
164 instruments.

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

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

169 g. Have the authority to approve or disapprove breath test
170 instruments and accompanying paraphernalia for use pursuant to
171 the driving and boating under the influence provisions and
172 related provisions located in this chapter and chapters 322 and
173 327.

174 h. With the approval of the executive director of the
175 Department of Law Enforcement, make and enter into contracts and

176 | agreements with other agencies, organizations, associations,
 177 | corporations, individuals, or federal agencies as are necessary,
 178 | expedient, or incidental to the performance of duties.

179 | i. Issue final orders which include findings of fact and
 180 | conclusions of law and which constitute final agency action for
 181 | the purpose of chapter 120.

182 | j. Enforce compliance with this section through civil or
 183 | administrative proceedings.

184 | k. Make recommendations concerning any matter within the
 185 | purview of this section, this chapter, chapter 322, or chapter
 186 | 327.

187 | l. Adopt ~~Promulgate~~ rules for the administration and
 188 | implementation of this section, including definitions of terms.

189 | m. Consult and cooperate with other entities for the
 190 | purpose of implementing the mandates of this section.

191 | n. Have the authority to approve the type of blood test
 192 | utilized under the driving and boating under the influence
 193 | provisions and related provisions located in this chapter and
 194 | chapters 322 and 327.

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

199 | p. Have the authority to approve repair facilities for the
 200 | approved breath test instruments, including the authority to set

201 criteria for approval.

202

203 ~~Nothing in~~ This paragraph may not ~~section shall~~ be construed to
 204 supersede provisions in this chapter and chapters 322 and 327.
 205 The specifications in this section are derived from the power
 206 and authority previously and currently possessed by the
 207 Department of Law Enforcement and are enumerated to conform with
 208 the mandates of chapter 99-379, Laws of Florida.

209 Section 3. Section 316.1939, Florida Statutes, is amended
 210 to read:

211 316.1939 Refusal to submit to testing; penalties.-

212 (1) A person who has refused to submit to a chemical or
 213 physical test of his or her breath or urine, as described in s.
 214 316.1932, commits a misdemeanor of the second degree, punishable
 215 as provided in s. 775.082 or s. 775.083, in addition to any
 216 other penalties provided by law, if ~~and whose driving privilege~~
 217 ~~was previously suspended or who was previously fined under s.~~
 218 ~~327.35215 for a prior refusal to submit to a lawful test of his~~
 219 ~~or her breath, urine, or blood required under this chapter or~~
 220 ~~chapter 327, and:~~

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

226 (b) The person ~~Who~~ was placed under lawful arrest for a
 227 violation of s. 316.193, unless such test was requested pursuant
 228 to s. 316.1932(1)(c);

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

234 (d) The person, after having been so informed, still
 235 refuses ~~Who was informed that a refusal~~ to submit to a lawful
 236 test of his or her breath or urine when requested to do so by a
 237 law enforcement or correctional officer.

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

249 ~~(e) Who, after having been so informed, refused to submit~~
 250 ~~to any such test when requested to do so by a law enforcement~~

HB 781

2023

251 ~~officer or correctional officer~~

252

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

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

259 (4)~~(3)~~ The disposition of a criminal action under this
260 section does not affect any administrative proceeding that
261 relates to the suspension of a person's driver license ~~driving~~
262 ~~privilege~~. The department's records showing that a person's
263 license has been previously suspended for a prior refusal to
264 submit to a lawful test of his or her breath, urine, or blood is
265 ~~shall be~~ admissible and creates ~~shall create~~ a rebuttable
266 presumption of such suspension.

267 Section 4. Section 316.19395, Florida Statutes, is created
268 to read:

269 316.19395 Driving Under the Influence Diversion Programs.—

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

274 (2) Each judicial circuit operating a Driving Under the
275 Influence Diversion Program must report to the department

HB781

2023

276 persons who have successfully completed the program. The
277 department shall notate the successful completion of the
278 diversion program on the driving record of such persons.

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

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

286 316.656 Mandatory adjudication; prohibition against
287 accepting plea to lesser included offense.—

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

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