

By the Committee on Criminal Justice; and Senator Wright

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1                   A bill to be entitled  
2           An act relating to driving under the influence;  
3           amending s. 316.1932, F.S.; requiring that a person be  
4           told that his or her failure to submit to a lawful  
5           test of breath or urine is a second degree misdemeanor  
6           or a first degree misdemeanor under certain  
7           circumstances; making technical changes; amending s.  
8           316.1939, F.S.; classifying a person's refusal to  
9           submit to a chemical or physical test of breath or  
10          urine as a second degree misdemeanor or a first degree  
11          misdemeanor under certain circumstances; making  
12          technical changes; creating s. 316.19395, F.S.;  
13          authorizing judicial circuits to create a driving  
14          under the influence diversion program; requiring that  
15          the policies and procedures of the diversion program  
16          be published on the website of the state attorney's  
17          office; requiring each judicial circuit operating such  
18          a diversion program to submit participant information  
19          for persons who successfully complete the program to  
20          the Department of Highway Safety and Motor Vehicles;  
21          requiring the department to notate successful  
22          completion on the driving record of such participants;  
23          providing that a person who successfully completes  
24          such a diversion program is ineligible for  
25          participation in such a program in the future;  
26          amending s. 316.656, F.S.; prohibiting a court from  
27          suspending, deferring, or withholding adjudication of  
28          guilt or imposition of sentence for a specified  
29          violation; amending s. 322.34, F.S.; providing

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30 penalties for specified violations of driving while a  
31 license or driving privilege is canceled, suspended,  
32 or revoked or under suspension or revocation  
33 equivalent status; making technical changes; providing  
34 an effective date.

35  
36 Be It Enacted by the Legislature of the State of Florida:

37  
38 Section 1. Paragraph (a) of subsection (1) of section  
39 316.1932, Florida Statutes, is amended to read:

40 316.1932 Tests for alcohol, chemical substances, or  
41 controlled substances; implied consent; refusal.—

42 (1) (a) 1.a. A person who accepts the privilege extended by  
43 the laws of this state of operating a motor vehicle within this  
44 state is, by operating such vehicle, deemed to have given his or  
45 her consent to submit to an approved chemical test or physical  
46 test including, but not limited to, an infrared light test of  
47 his or her breath for the purpose of determining the alcoholic  
48 content of his or her blood or breath if the person is lawfully  
49 arrested for any offense allegedly committed while the person  
50 was driving or was in actual physical control of a motor vehicle  
51 while under the influence of alcoholic beverages. The chemical  
52 or physical breath test must be incidental to a lawful arrest  
53 and administered at the request of a law enforcement officer who  
54 has reasonable cause to believe such person was driving or was  
55 in actual physical control of the motor vehicle within this  
56 state while under the influence of alcoholic beverages. The  
57 administration of a breath test does not preclude the  
58 administration of another type of test. The person must ~~shall~~ be

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59 told that his or her failure to submit to any lawful test of his  
60 or her breath will result in the suspension of his or her ~~the~~  
61 ~~person's~~ privilege to operate a motor vehicle as provided in s.  
62 322.2615(1)(a) for a period of 1 year for a first refusal, or  
63 for a period of 18 months if the driving privilege of such  
64 person has been previously suspended or if he or she has  
65 previously been fined under s. 327.35215 as a result of a  
66 refusal to submit to a test or tests required under this chapter  
67 or chapter 327, and must ~~shall~~ also be told that if he or she  
68 refuses to submit to a lawful test of his or her breath ~~and his~~  
69 ~~or her driving privilege has been previously suspended or if he~~  
70 ~~or she has previously been fined under s. 327.35215 for a prior~~  
71 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
72 ~~or blood as required under this chapter or chapter 327,~~ he or  
73 she commits a misdemeanor of the second ~~first~~ degree, punishable  
74 as provided in s. 775.082 or s. 775.083, or a misdemeanor of the  
75 first degree, punishable as provided in s. 775.082 or s.  
76 775.083, if his or her driving privilege has been previously  
77 suspended or if he or she has previously been fined under s.  
78 327.35215 for a prior refusal to submit to a lawful test of his  
79 or her breath, urine, or blood as required under this chapter or  
80 chapter 327, in addition to any other penalties provided by law.  
81 The refusal to submit to a chemical or physical breath test upon  
82 the request of a law enforcement officer as provided in this  
83 section is admissible into evidence in any criminal proceeding.  
84       b. A person who accepts the privilege extended by the laws  
85 of this state of operating a motor vehicle within this state is,  
86 by operating such vehicle, deemed to have given his or her  
87 consent to submit to a urine test for the purpose of detecting

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88 the presence of chemical substances as set forth in s. 877.111  
89 or controlled substances if the person is lawfully arrested for  
90 any offense allegedly committed while the person was driving or  
91 was in actual physical control of a motor vehicle while under  
92 the influence of chemical substances or controlled substances.  
93 The urine test must be incidental to a lawful arrest and  
94 administered at a detention facility or any other facility,  
95 mobile or otherwise, which is equipped to administer such tests  
96 at the request of a law enforcement officer who has reasonable  
97 cause to believe such person was driving or was in actual  
98 physical control of a motor vehicle within this state while  
99 under the influence of chemical substances or controlled  
100 substances. The urine test must ~~shall~~ be administered at a  
101 detention facility or any other facility, mobile or otherwise,  
102 which is equipped to administer such test in a reasonable manner  
103 that will ensure the accuracy of the specimen and maintain the  
104 privacy of the individual involved. The administration of a  
105 urine test does not preclude the administration of another type  
106 of test. The person must ~~shall~~ be told that his or her failure  
107 to submit to any lawful test of his or her urine will result in  
108 the suspension of his or her ~~the person's~~ privilege to operate a  
109 motor vehicle for a period of 1 year for the first refusal, or  
110 for a period of 18 months if the driving privilege of such  
111 person has been previously suspended or if he or she has  
112 previously been fined under s. 327.35215 as a result of a  
113 refusal to submit to a test or tests required under this chapter  
114 or chapter 327, and must ~~shall~~ also be told that if he or she  
115 refuses to submit to a lawful test of his or her urine ~~and his~~  
116 ~~or her driving privilege has been previously suspended or if he~~

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117 ~~or she has previously been fined under s. 327.35215 for a prior~~  
118 ~~refusal to submit to a lawful test of his or her breath, urine,~~  
119 ~~or blood as required under this chapter or chapter 327, he or~~  
120 she commits a misdemeanor of the second ~~first~~ degree, punishable  
121 as provided in s. 775.082 or s. 775.083, or a misdemeanor of the  
122 first degree, punishable as provided in s. 775.082 or s.  
123 775.083, if his or her driving privilege has been previously  
124 suspended or if he or she has previously been fined under s.  
125 327.35215 for a prior refusal to submit to a lawful test of his  
126 or her breath, urine, or blood as required under this chapter or  
127 chapter 327, in addition to any other penalties provided by law.  
128 The refusal to submit to a urine test upon the request of a law  
129 enforcement officer as provided in this section is admissible  
130 into evidence in any criminal proceeding.

131 2. The Alcohol Testing Program within the Department of Law  
132 Enforcement is responsible for the regulation of the operation,  
133 inspection, and registration of breath test instruments utilized  
134 under the driving and boating under the influence provisions and  
135 related provisions located in this chapter and chapters 322 and  
136 327. The program is responsible for the regulation of the  
137 individuals who operate, inspect, and instruct on the breath  
138 test instruments utilized in the driving and boating under the  
139 influence provisions and related provisions located in this  
140 chapter and chapters 322 and 327. The program is further  
141 responsible for the regulation of blood analysts who conduct  
142 blood testing to be utilized under the driving and boating under  
143 the influence provisions and related provisions located in this  
144 chapter and chapters 322 and 327. The program shall:

145 a. Establish uniform criteria for the issuance of permits

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146 to breath test operators, agency inspectors, instructors, blood  
147 analysts, and instruments.

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

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

153 d. Establish uniform requirements for instruction and  
154 curricula for the operation and inspection of approved  
155 instruments.

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

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

160 g. Have the authority to approve or disapprove breath test  
161 instruments and accompanying paraphernalia for use pursuant to  
162 the driving and boating under the influence provisions and  
163 related provisions located in this chapter and chapters 322 and  
164 327.

165 h. With the approval of the executive director of the  
166 Department of Law Enforcement, make and enter into contracts and  
167 agreements with other agencies, organizations, associations,  
168 corporations, individuals, or federal agencies as are necessary,  
169 expedient, or incidental to the performance of duties.

170 i. Issue final orders which include findings of fact and  
171 conclusions of law and which constitute final agency action for  
172 the purpose of chapter 120.

173 j. Enforce compliance with this section through civil or  
174 administrative proceedings.

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175 k. Make recommendations concerning any matter within the  
176 purview of this section, this chapter, chapter 322, or chapter  
177 327.

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

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

182 n. Have the authority to approve the type of blood test  
183 utilized under the driving and boating under the influence  
184 provisions and related provisions located in this chapter and  
185 chapters 322 and 327.

186 o. Have the authority to specify techniques and methods for  
187 breath alcohol testing and blood testing utilized under the  
188 driving and boating under the influence provisions and related  
189 provisions located in this chapter and chapters 322 and 327.

190 p. Have the authority to approve repair facilities for the  
191 approved breath test instruments, including the authority to set  
192 criteria for approval.

193

194 Nothing in this section shall be construed to supersede  
195 provisions in this chapter and chapters 322 and 327. The  
196 specifications in this section are derived from the power and  
197 authority previously and currently possessed by the Department  
198 of Law Enforcement and are enumerated to conform with the  
199 mandates of chapter 99-379, Laws of Florida.

200 Section 2. Section 316.1939, Florida Statutes, is amended  
201 to read:

202 316.1939 Refusal to submit to testing; penalties.—

203 (1) A person who has refused to submit to a chemical or

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204 physical test of his or her breath or urine, as described in s.  
205 316.1932, commits a misdemeanor of the second degree, punishable  
206 as provided in s. 775.082 or s. 775.083, in addition to any  
207 other penalties provided by law, and such person whose driving  
208 privilege was previously suspended or who was previously fined  
209 under s. 327.35215 for a prior refusal to submit to a lawful  
210 test of his or her breath, urine, or blood required under this  
211 chapter or chapter 327 commits a misdemeanor of the first  
212 degree, punishable as provided in s. 775.082 or s. 775.083, in  
213 addition to any other penalties provided by law if all of the  
214 following apply, and:

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

220 (b) The person ~~who~~ was placed under lawful arrest for a  
221 violation of s. 316.193, unless such test was requested pursuant  
222 to s. 316.1932(1)(c). ~~†~~

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

228 (d) The person, after having been informed as required in  
229 paragraph (c), still refuses ~~who was informed that a refusal to~~  
230 submit to a lawful test of his or her breath or urine as  
231 described in s. 316.1932, if his or her driving privilege has  
232 been previously suspended or if he or she has previously been



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233 ~~fined under s. 327.35215 for a prior refusal to submit to a~~  
234 ~~lawful test of his or her breath, urine, or blood as required~~  
235 ~~under this chapter or chapter 327, is a misdemeanor of the first~~  
236 ~~degree, punishable as provided in s. 775.082 or s. 775.083, in~~  
237 ~~addition to any other penalties provided by law; and~~

238 ~~(e) Who, after having been so informed, refused to submit~~  
239 ~~to any such test when requested to do so by a law enforcement~~  
240 ~~officer or correctional officer~~

241  
242 ~~commits a misdemeanor of the first degree and is subject to~~  
243 ~~punishment as provided in s. 775.082 or s. 775.083.~~

244 (2) The disposition of any administrative proceeding that  
245 relates to the suspension of a person's driving privilege does  
246 not affect a criminal action under this section.

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

254 Section 3. Section 316.19395, Florida Statutes, is created  
255 to read:

256 316.19395 Driving under the influence diversion programs.-

257 (1) Any judicial circuit may create a driving under the  
258 influence diversion program. A judicial circuit that creates  
259 such a diversion program shall publish the terms and conditions  
260 of the program on the website of the office of the state  
261 attorney for that circuit.

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262       (2) Each judicial circuit that offers a diversion program  
263 under this section shall notify the department of each person  
264 who successfully completes the program. The department shall  
265 notate the successful completion of participation in the  
266 diversion program on the driving record of each such person.

267       (3) A person who successfully completes such a diversion  
268 program is ineligible for future participation in such a  
269 program.

270       Section 4. Subsection (1) of section 316.656, Florida  
271 Statutes, is amended to read:

272       316.656 Mandatory adjudication; prohibition against  
273 accepting plea to lesser included offense.—

274       (1) Notwithstanding ~~the provisions of~~ s. 948.01, a court  
275 may not ~~no court may~~ suspend, defer, or withhold adjudication of  
276 guilt or imposition of sentence for any violation of s. 316.193  
277 or s. 316.1939, for manslaughter resulting from the operation of  
278 a motor vehicle, or for vehicular homicide.

279       Section 5. Subsection (2) of section 322.34, Florida  
280 Statutes, is amended to read:

281       322.34 Driving while license suspended, revoked, canceled,  
282 or disqualified.—

283       (2) Any person whose driver license or driving privilege  
284 has been canceled, suspended, or revoked as provided by law, or  
285 who does not have a driver license or driving privilege but is  
286 under suspension or revocation equivalent status as defined in  
287 s. 322.01(42), except persons defined in s. 322.264, who,  
288 knowing of such cancellation, suspension, revocation, or  
289 suspension or revocation equivalent status, drives any motor  
290 vehicle upon the highways of this state while such license or

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291 privilege is canceled, suspended, or revoked, or while under  
292 suspension or revocation equivalent status, commits:

293 (a) A misdemeanor of the second degree, punishable as  
294 provided in s. 775.082 or s. 775.083.

295 (b)~~1~~. A misdemeanor of the first degree, punishable as  
296 provided in s. 775.082 or s. 775.083, upon a second or  
297 subsequent conviction, except as provided in paragraph (c).

298 ~~2~~. A person convicted of a third or subsequent conviction,  
299 except as provided in paragraph (c), must serve a minimum of 10  
300 days in jail.

301 (c) A felony of the third degree, punishable as provided in  
302 s. 775.082, s. 775.083, or s. 775.084, upon a third or  
303 subsequent conviction if the current violation of this section  
304 or the most recent prior violation of the section is related to  
305 driving while license canceled, suspended, revoked, or  
306 suspension or revocation equivalent status resulting from a  
307 violation of:

308 1. Driving under the influence. A person to whom this  
309 subparagraph applies must serve a minimum of 30 days in jail  
310 upon a first conviction, a minimum of 60 days in jail upon a  
311 second conviction, and a minimum of 90 days in jail upon a third  
312 or subsequent conviction;

313 2. Refusal to submit to a urine, breath-alcohol, or blood  
314 alcohol test. A person to whom this subparagraph applies must  
315 serve a minimum of 30 days in jail upon a first conviction, a  
316 minimum of 60 days in jail upon a second conviction, and a  
317 minimum of 90 days in jail upon a third or subsequent  
318 conviction;

319 3. A traffic offense causing death or serious bodily

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320 injury; or

321 4. Fleeing or eluding.

322

323 The element of knowledge is satisfied if the person has been  
324 previously cited as provided in subsection (1); or the person  
325 admits to knowledge of the cancellation, suspension, or  
326 revocation, or suspension or revocation equivalent status; or  
327 the person received notice as provided in subsection (4). There  
328 is ~~shall be~~ a rebuttable presumption that the knowledge  
329 requirement is satisfied if a judgment or an order as provided  
330 in subsection (4) appears in the department's records for any  
331 case except for one involving a suspension by the department for  
332 failure to pay a traffic fine or for a financial responsibility  
333 violation.

334 Section 6. This act shall take effect October 1, 2024.