By Senator DiCeglie

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18-00283-24 2024260

A bill to be entitled

An act relating to refusal to submit to a breath, urine, or blood test; amending s. 316.1932, F.S.; requiring a person arrested for driving under the influence who refuses to submit to a lawful test of his or her breath to be told that he or she is subject to mandatory placement, at his or her own expense and for a specified period, of an ignition interlock device on all vehicles that are individually or jointly leased or owned and routinely operated by the person; making technical changes; amending s. 316.1939, F.S.; requiring a person who refuses to submit to a lawful test of his or her breath to be subject to mandatory placement, at his or her expense and for a specified period, of an ignition interlock device on all vehicles that are individually or jointly leased or owned and routinely operated by the person; providing applicability; conforming provisions to changes made by the act; amending s. 322.2615, F.S.; requiring certain information to be contained in a notice of suspension; decreasing the period during which a person whose driver license is suspended for failure to submit to a breath, urine, or blood test is not eligible to receive a license for business or employment purposes only; waiving the requirement to install an ignition interlock device under certain circumstances; amending s. 322.2616, F.S.; requiring certain information to be contained in a notice of suspension; waiving the requirement to install an

18-00283-24 2024260

ignition interlock device under certain circumstances; amending s. 322.2715, F.S.; directing the Department of Highway Safety and Motor Vehicles to require placement of an ignition interlock device before issuing a permanent or restricted driver license to a person who refused to submit to a lawful test of his or her breath; requiring the person to install the device at his or her own expense for a specified period; providing an effective date.

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

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

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

(1) (a) 1.a. A person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to an approved chemical test or physical test including, but not limited to, an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic beverages. The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who

has reasonable cause to believe such person was driving or was

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18-00283-24 2024260

in actual physical control of the motor vehicle within this state while under the influence of alcoholic beverages. The administration of a breath test does not preclude the administration of another type of test. The person must shall be told that his or her failure to submit to any lawful test of his or her breath will, for a first refusal, result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year and the person will be subject to mandatory placement for 1 continuous year, at his or her own expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the person, when the person qualifies for reinstatement of a permanent or restricted driver license. for a first refusal, or for a period of 18 months If the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to a test or tests required under this chapter or chapter 327, the person must be told that his or her failure to submit to any lawful test of his or her breath will result in the suspension of the person's privilege to operate a motor vehicle for 18 months and the person will be subject to mandatory placement for 18 continuous months, at his or her own expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 on all vehicles that are individually or jointly leased or owned and routinely operated by the person, when the person qualifies for reinstatement of a permanent or restricted driver license. The person must and shall also be told that if he or she refuses to

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18-00283-24 2024260

submit to a lawful test of his or her breath and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a chemical or physical breath test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

b. A person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by operating such vehicle, deemed to have given his or her consent to submit to a urine test for the purpose of detecting the presence of chemical substances as set forth in s. 877.111 or controlled substances if the person is lawfully arrested for any offense allegedly committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of chemical substances or controlled substances. The urine test must be incidental to a lawful arrest and administered at a detention facility or any other facility, mobile or otherwise, which is equipped to administer such tests at the request of a law enforcement officer who has reasonable cause to believe such person was driving or was in actual physical control of a motor vehicle within this state while under the influence of chemical substances or controlled substances. The urine test must shall be administered at a detention facility or any other facility, mobile or otherwise,

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18-00283-24 2024260

which is equipped to administer such test in a reasonable manner that will ensure the accuracy of the specimen and maintain the privacy of the individual involved. The administration of a urine test does not preclude the administration of another type of test. The person must shall be told that his or her failure to submit to any lawful test of his or her urine will result in the suspension of the person's privilege to operate a motor vehicle for a period of 1 year for the first refusal, or for a period of 18 months if the driving privilege of such person has been previously suspended or if he or she has previously been fined under s. 327.35215 as a result of a refusal to submit to a test or tests required under this chapter or chapter 327, and must shall also be told that if he or she refuses to submit to a lawful test of his or her urine and his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, he or she commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law. The refusal to submit to a urine test upon the request of a law enforcement officer as provided in this section is admissible into evidence in any criminal proceeding.

2. The Alcohol Testing Program within the Department of Law Enforcement is responsible for the regulation of the operation, inspection, and registration of breath test instruments <u>used utilized</u> under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is responsible for the

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18-00283-24 2024260

regulation of the individuals who operate, inspect, and instruct on the breath test instruments <u>used utilized</u> in the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program is further responsible for the regulation of blood analysts who conduct blood testing to be <u>used utilized</u> under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327. The program must <u>shall</u>:

- a. Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- b. Have the authority to permit breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- c. Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- d. Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.
- e. Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.
- f. Establish a procedure for the approval of breath test operator and agency inspector classes.
- g. Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.

18-00283-24 2024260

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

- i. Issue final orders  $\underline{\text{that}}$   $\underline{\text{which}}$  include findings of fact and conclusions of law and  $\underline{\text{that}}$   $\underline{\text{which}}$  constitute final agency action for the purpose of chapter 120.
- j. Enforce compliance with this section through civil or administrative proceedings.
- k. Make recommendations concerning any matter within the purview of this section, this chapter, chapter 322, or chapter 327.
- 1. Adopt Promulgate rules for the administration and implementation of this section, including definitions of terms.
- m. Consult and cooperate with other entities for the purpose of implementing the mandates of this section.
- n. Have the authority to approve the type of blood test used utilized under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.
- o. Have the authority to specify techniques and methods for breath alcohol testing and blood testing <u>used</u> under the driving and boating under the influence provisions and related provisions located in this chapter and chapters 322 and 327.
- p. Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

18-00283-24 2024260

Nothing in This section <u>does not</u> shall be construed to supersede provisions in this chapter and chapters 322 and 327. The specifications in this section are derived from the power and authority previously and currently possessed by the Department of Law Enforcement and are enumerated to conform with the mandates of chapter 99-379, Laws of Florida.

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

316.1939 Refusal to submit to testing; penalties.-

- (1) A person who refuses to submit to a lawful test of his or her breath as required under s. 316.1932(1)(a)1.a. is subject to mandatory placement, at his or her own expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 on all vehicles individually or jointly leased or owned and routinely operated by the person, for 1 continuous year for a first refusal, or 18 continuous months for a second or subsequent refusal, when the person qualifies for reinstatement of a permanent or restricted driver license. This subsection applies in addition to any other penalties authorized by this section.
- (2) (1) A person who has refused to submit to a chemical or physical test of his or her breath or urine, as described in s. 316.1932, and whose driving privilege was previously suspended or who was previously fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood required under this chapter or chapter 327, and:
- (a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of

18-00283-24 2024260

alcoholic beverages, chemical substances, or controlled substances;

- (b) Who was placed under lawful arrest for a violation of s. 316.193 unless such test was requested pursuant to s. 316.1932(1)(c);
  - (c) Who was informed that: 7
- 1. If he or she refused to submit to a lawful test of his or her breath, his or her privilege to operate a motor vehicle would be suspended for 1 year for a first refusal or 18 months for a second or subsequent refusal, and that he or she would be subject to mandatory placement, at his or her own expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 for 1 continuous year for a first refusal, or 18 continuous months for a second or subsequent refusal, on all vehicles that he or she individually or jointly leases or owns and routinely operates, when he or she qualifies for reinstatement of a permanent or restricted driver license; or
- 2. If he or she refused to submit to a lawful such test of his or her urine, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year for a first refusal or, in the case of a second or subsequent refusal, for a period of 18 months for a second or subsequent refusal;
- (d) Who was informed that a refusal to submit to a lawful test of his or her breath or urine, if his or her driving privilege has been previously suspended or if he or she has previously been fined under s. 327.35215 for a prior refusal to submit to a lawful test of his or her breath, urine, or blood as required under this chapter or chapter 327, is a misdemeanor of

18-00283-24 2024260

the first degree, punishable as provided in s. 775.082 or s. 775.083, in addition to any other penalties provided by law; and

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

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

 $\underline{(3)}$  (2) The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action under subsection (2) this section.

<u>(4) (3)</u> The disposition of a criminal action under <u>subsection (2)</u> this section does not affect any administrative proceeding that relates to the suspension of a person's driving privilege. The department's records showing that a person's license has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood <u>is shall be</u> admissible and <u>creates</u> shall create a rebuttable presumption of such suspension.

Section 3. Present subsections (12) through (16) of section 322.2615, Florida Statutes, are redesignated as subsections (13) through (17), respectively, a new subsection (12) is added to that section, and subsection (1) and paragraph (a) of subsection (10) of that section are amended, to read:

322.2615 Suspension of license; right to review.-

(1)(a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of a person who is driving or in actual physical

18-00283-24 2024260

control of a motor vehicle and who has an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher, or of a person who has refused to submit to a urine test or a test of his or her breath-alcohol or blood-alcohol level. The officer shall take the person's driver license and issue the person a 10-day temporary permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension. If a blood test has been administered, the officer or the agency employing the officer shall transmit such results to the department within 5 days after receipt of the results. If the department then determines that the person had a blood-alcohol level or breath-alcohol level of 0.08 or higher, the department shall suspend the person's driver license pursuant to subsection (3).

- (b) The suspension under paragraph (a) <u>must shall</u> be pursuant to, and the notice of suspension shall inform the driver of, the following:
- 1.a. The driver refused to submit to a lawful breath, blood, or urine test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test, and he or she is subject to mandatory placement, at his or her own expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 for 1 continuous year for a first refusal, or 18 continuous months for a second or subsequent refusal, on all vehicles that he or she individually or jointly leases or owns and routinely operates, when he or she qualifies for reinstatement of a permanent or

18-00283-24 2024260\_\_

restricted driver license;

b. The driver refused to submit to a lawful blood or urine test and his or her driving privilege is suspended for 1 year for a first refusal or for 18 months if his or her driving privilege has been previously suspended as a result of a refusal to submit to such a test; or

- c.b. The driver was driving or in actual physical control of a motor vehicle and had an unlawful blood-alcohol level or breath-alcohol level of 0.08 or higher and his or her driving privilege is suspended for a period of 6 months for a first offense or for a period of 1 year if his or her driving privilege has been previously suspended under this section.
- 2. The suspension period shall commence on the date of issuance of the notice of suspension.
- 3. The driver may request a formal or informal review of the suspension by the department within 10 days after the date of issuance of the notice of suspension or may request a review of eligibility for a restricted driving privilege under s. 322.271(7).
- 4. The temporary permit issued at the time of suspension expires at midnight of the 10th day following the date of issuance of the notice of suspension.
- 5. The driver may submit to the department any materials relevant to the suspension.
- (10) A person whose driver license is suspended under subsection (1) or subsection (3) may apply for issuance of a license for business or employment purposes only if the person is otherwise eligible for the driving privilege pursuant to s. 322.271.

18-00283-24 2024260

(a) If the suspension of the driver license of the person for failure to submit to a breath, urine, or blood test is sustained, the person is not eligible to receive a license for business or employment purposes only, pursuant to s. 322.271, until  $\underline{30}$   $\underline{90}$  days have elapsed after the expiration of the last temporary permit issued. If the driver is not issued a 10-day permit pursuant to this section or s. 322.64 because he or she is ineligible for the permit and the suspension for failure to submit to a breath, urine, or blood test is not invalidated by the department, the driver is not eligible to receive a business or employment license pursuant to s. 322.271 until  $\underline{30}$   $\underline{90}$  days have elapsed from the date of the suspension.

(12) If a person whose driver license is suspended for refusal to submit to a lawful breath test has his or her driver license suspension invalidated for any reason under this section, the requirement under s. 316.1939(1) that he or she install an ignition interlock device for refusal to submit to a lawful test of his or her breath is waived.

Section 4. Present subsections (13) through (19) of section 322.2616, Florida Statutes, are redesignated as subsections (14) through (20), respectively, a new subsection (13) is added to that section, and subsection (2) of that section is amended, to read:

322.2616 Suspension of license; persons under 21 years of age; right to review.—

(2)(a) A law enforcement officer or correctional officer shall, on behalf of the department, suspend the driving privilege of such person if the person has a blood-alcohol or breath-alcohol level of 0.02 or higher. The officer shall also

18-00283-24 2024260

suspend, on behalf of the department, the driving privilege of a person who has refused to submit to a test as provided by paragraph (b). The officer shall take the person's driver license and issue the person a 10-day temporary driving permit if the person is otherwise eligible for the driving privilege and shall issue the person a notice of suspension.

- (b) The suspension under paragraph (a) must be pursuant to, and the notice of suspension must inform the driver of, the following:
- 1.a. The driver refused to submit to a lawful breath test and his or her driving privilege is suspended for a period of 1 year for a first refusal or for a period of 18 months if his or her driving privilege has been previously suspended as provided in this section as a result of a refusal to submit to a test, and he or she is subject to mandatory placement, at his or her own expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 for 1 continuous year for a first refusal, or 18 continuous months for a second or subsequent refusal, on all vehicles that he or she individually or jointly leases or owns and routinely operates, when he or she qualifies for reinstatement of a permanent or restricted driver license; or
- b. The driver was under the age of 21 and was driving or in actual physical control of a motor vehicle while having a bloodalcohol or breath-alcohol level of 0.02 or higher; and the person's driving privilege is suspended for a period of 6 months for a first violation, or for a period of 1 year if his or her driving privilege has been previously suspended as provided in this section for driving or being in actual physical control of

18-00283-24 2024260

a motor vehicle with a blood-alcohol or breath-alcohol level of 0.02 or higher.

- 2. The suspension period commences on the date of issuance of the notice of suspension.
- 3. The driver may request a formal or informal review of the suspension by the department within 10 days after the issuance of the notice of suspension.
- 4. A temporary permit issued at the time of the issuance of the notice of suspension shall not become effective until after 12 hours have elapsed and will expire at midnight of the 10th day following the date of issuance.
- 5. The driver may submit to the department any materials relevant to the suspension of his or her license.
- (c) When a driver subject to this section has a bloodalcohol or breath-alcohol level of 0.05 or higher, the
  suspension shall remain in effect until such time as the driver
  has completed a substance abuse course offered by a DUI program
  licensed by the department. The driver shall assume the
  reasonable costs for the substance abuse course. As part of the
  substance abuse course, the program shall conduct a substance
  abuse evaluation of the driver, and notify the parents or legal
  guardians of drivers under the age of 19 years of the results of
  the evaluation. The term "substance abuse" means the abuse of
  alcohol or any substance named or described in Schedules I
  through V of s. 893.03. If a driver fails to complete the
  substance abuse education course and evaluation, the driver
  license shall not be reinstated by the department.
- (d) A minor under the age of 18 years proven to be driving with a blood-alcohol or breath-alcohol level of 0.02 or higher

18-00283-24 2024260

may be taken by a law enforcement officer to the addictions receiving facility in the county in which the minor is found to be so driving, if the county makes the addictions receiving facility available for such purpose.

(13) If a person whose driver license is suspended for refusal to submit to a lawful breath test has his or her driver license suspension invalidated for any reason under this section, the requirement under s. 316.1939(1) that he or she install an ignition interlock device for refusal to submit to a lawful test of his or her breath is waived.

Section 5. Present subsection (5) of section 322.2715, Florida Statutes, is redesignated as subsection (6), a new subsection (5) is added to that section, and subsection (1) of that section is amended, to read:

322.2715 Ignition interlock device.

(1) Before issuing a permanent or restricted driver license under this chapter, the department shall require the placement of a department-approved ignition interlock device for any person convicted of committing an offense of driving under the influence as specified in subsection (3), or for any person who refused to submit to a lawful test of his or her breath as specified in subsection (5), except that consideration may be given to those individuals having a documented medical condition that would prohibit the device from functioning normally. If a medical waiver has been granted for a convicted person seeking a restricted license, the convicted person shall not be entitled to a restricted license until the required ignition interlock device installation period under subsection (3) or subsection (5) expires, in addition to the time requirements under s.

18-00283-24 2024260

322.271. If a medical waiver has been approved for a convicted person seeking permanent reinstatement of the driver license, the convicted person must be restricted to an employment-purposes-only license and be supervised by a licensed DUI program until the required ignition interlock device installation period under subsection (3) or subsection (5) expires. An interlock device shall be placed on all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

(5) If a person refused to submit to a lawful test of his or her breath as required by s. 316.1932(1)(a)1.a., he or she must install, at his or her own expense, an ignition interlock device on all vehicles individually or jointly leased or owned and routinely operated by the person, for 1 continuous year for a first refusal or for 18 continuous months for a second or subsequent refusal, upon reinstatement of a permanent or restricted driver license.

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