

By Senator Childers

1-1414-98

1 A bill to be entitled
2 An act relating to ignition interlock devices;
3 amending s. 316.1937, F.S.; authorizing the
4 Department of Highway Safety and Motor Vehicles
5 to require persons who are convicted of driving
6 under the influence or who refuse to submit to
7 a breath, blood, or urine test to install a
8 functioning ignition interlock device in any
9 vehicle the person operates; requiring
10 compliance with operating and maintenance
11 instructions for department-certified breath
12 alcohol ignition interlock devices; providing
13 penalties; providing penalties for driving a
14 motor vehicle that is not equipped with a
15 required device under certain circumstances;
16 revising provisions with respect to penalties;
17 providing a penalty for preventing or
18 attempting to prevent any person legally
19 authorized by the court or the department from
20 installing, monitoring, or repairing a
21 department-certified breath alcohol ignition
22 interlock device; providing an exception for
23 certain persons to operate a vehicle while
24 conducting the employer's business under
25 certain circumstances; amending s. 316.1938,
26 F.S.; requiring that the department adopt
27 specifications for service providers; amending
28 s. 322.27, F.S.; providing an exception with
29 respect to the revocation of the driving
30 privilege; amending s. 322.271, F.S.;
31 decreasing the time period to petition for

1 restoration of the driving privilege; reducing
2 time periods for reinstatement; providing for
3 enrollment in the statewide interlock
4 supervision program; authorizing the department
5 to require that persons convicted of certain
6 offenses of driving under the influence install
7 an ignition interlock device; requiring the
8 department to adopt rules for a statewide
9 interlock supervision program in conjunction
10 with the DUI programs; amending s. 322.28,
11 F.S.; providing for restricted driving
12 privileges for business or employment if the
13 person installs a certified breath alcohol
14 ignition interlock device; amending s. 322.292,
15 F.S.; directing the department to regulate a
16 statewide interlock program; providing an
17 effective date.

18

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

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21 Section 1. Section 316.1937, Florida Statutes, is
22 amended to read:

23 316.1937 Ignition interlock devices, requiring;
24 unlawful acts.--

25 (1) In addition to any other authorized penalties, the
26 court or department may require that any person who is
27 convicted of driving under the influence in violation of s.
28 ~~316.193, and who is granted probation, shall not operate a~~
29 ~~motor vehicle for a period determined by the court or~~
30 ~~department during the period of probation~~ unless that vehicle
31 is equipped with a functioning ignition interlock device

1 certified by the department as provided in s. 316.1938, and
2 installed in such a manner that the vehicle will not start if
3 the operator's blood alcohol level is in excess of 0.05
4 percent or as otherwise specified by rule of the department
5 ~~the court~~. The court may require the use of a
6 department-certified breath alcohol ~~an approved~~ ignition
7 interlock device for the period of probation, said period of
8 installation to be for not less than 6 months, if the person
9 is permitted to operate a motor vehicle, whether the privilege
10 to operate a motor vehicle is restricted or not, as determined
11 by the court. In addition, the department may require that
12 any person described in paragraphs (a)-(c) have a functioning
13 ignition interlock device certified by the department as
14 provided in s. 316.1938 installed in any vehicle such person
15 operates as a condition of license reinstatement on a
16 restricted basis.

17 (a) Any person convicted of driving under the
18 influence in violation of s. 316.193.

19 (b) Any person whose license is suspended for refusing
20 to submit to a breath, blood, or urine test authorized by s.
21 316.1932 and in violation of s. 322.2615.

22 (c) Any person convicted of s. 316.192(4) prior to
23 completing a court-approved substance abuse course.

24 (2) If the court imposes the use of an ignition
25 interlock device as a condition of probation, the court shall:

26 (a) Stipulate on the record the requirement for, and
27 the period of, the use of a certified ignition interlock
28 device.

29 (b) Order that the records of the department reflect
30 such requirement.

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1 (c) Order that an ignition interlock device be
2 installed, as the court may determine necessary, on any
3 vehicle owned or operated by the probationer.

4 (d) Determine the probationer's ability to pay for
5 installation and monitoring of the device if the probationer
6 claims inability to pay. If the court determines that the
7 probationer is unable to pay for installation and monitoring
8 of the device, the court may order that any portion of a fine
9 paid by the probationer for a violation of s. 316.193 shall be
10 allocated to defray the costs of installing and monitoring the
11 device.

12 (e) Require proof of installation of the device within
13 30 days after conviction and also require periodic reporting
14 to an approved service provider or representative thereof at
15 least every 60 days for calibration of the device, monitoring
16 of the proper operation of the device, and physical inspection
17 of the device's wiring and the vehicle for tampering and
18 circumvention ~~the probation officer for verification of the~~
19 ~~operation of the device in the probationer's vehicle.~~

20 (3) If the court imposes the use of a
21 department-certified ~~an~~ ignition interlock device as a term of
22 probation on a person whose driving privilege is not suspended
23 or revoked, the court shall require the person to provide
24 proof of compliance to the probation officer within 30 days.
25 If the person fails to provide proof of installation within
26 that period, absent a finding by the court of good cause for
27 that failure which is entered in the court record, the court
28 shall revoke or terminate the person's probation.

29 (4)(a) If the court imposes the use of a
30 department-certified ~~an~~ ignition interlock device as a term of
31 probation on a person n whose driving privilege is suspended

1 or revoked for a period of less than 3 years, the department
2 shall require proof of compliance before reinstatement of the
3 person's driving privilege. If the period of probation
4 expires on a person whose license has been so suspended or
5 revoked, the department may not reinstate the person's driving
6 privilege unless that person has had a department-certified
7 breath alcohol ignition interlock device installed pursuant to
8 this section for a period of at least 6 months.

9 (b) In addition to any other provision of law, any
10 person ordered by the court as a condition of probation, or by
11 the department as a condition of reinstatement of restricted
12 driving privileges, to have a department-certified breath
13 alcohol ignition interlock device installed pursuant to this
14 section is required to comply with the operating and
15 maintenance instructions of any approved manufacturer,
16 manufacturer's agent, or service provider or representative
17 thereof, operating within the rules adopted by the department.
18 Any person who fails to comply with those operating and
19 maintenance instructions is guilty of a misdemeanor of the
20 second degree, punishable as provided in s. 775.082 or s.
21 775.083.

22 (5)(a) In addition to any other provision of law, upon
23 conviction of a violation of this section the department shall
24 revoke the person's driving privilege for 1 year from the date
25 of conviction, or extend the ignition interlock device
26 restriction for a minimum of 6 months to maintain the
27 restricted driving privilege. Upon conviction of a separate
28 violation of this section during the same period of required
29 use of a department-certified breath alcohol ~~an~~ ignition
30 interlock device, the department shall revoke the person's
31 driving privilege for 5 years from the date of conviction or

1 extend the ignition interlock device restriction for a minimum
2 of 12 months to maintain the restricted driving privilege.

3 (b) Any person convicted of a violation of subsection
4 (6), except paragraph (6)(e) who does not have a driver's
5 license shall, in addition to any other penalty provided by
6 law, is guilty of a misdemeanor of the first degree,
7 punishable as provided in s. 775.082 or s. 775.083 ~~pay a fine~~
8 ~~of not less than \$250 or more than \$500 per each such~~
9 ~~violation.~~ In the event that the person is fined and unable
10 to pay any such fine, the fine shall become a lien against the
11 motor vehicle used in violation of paragraphs subsection
12 (6)(a)-(d) and payment shall be made pursuant to s.
13 316.3025(4).

14 (c) In addition to any other provision of law, any
15 person convicted of violating the restrictions of a restricted
16 license pursuant to s. 322.16 or of driving with a suspended,
17 revoked, canceled, or disqualified license pursuant to s.
18 322.34 who, at the time of arrest for that offense, was under
19 order of the court or the department to operate only a motor
20 vehicle equipped with a department-certified breath alcohol
21 ignition interlock device, but who was not then operating a
22 vehicle so equipped, is guilty of a misdemeanor of the first
23 degree, punishable as provided in s. 775.082 or s. 775.083.

24 (d) In addition to any of the penalties in this
25 subsection, any individual who has been convicted of a
26 violation of this section, or who violates the rules of the
27 program pursuant to the rule of the department, may be
28 required by the department to extend the ignition interlock
29 device requirement in order to maintain that person's
30 restricted driving privilege.

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1 (6)(a) It is unlawful to tamper with, or to circumvent
2 the operation of, a department-certified breath alcohol
3 ~~court-ordered~~ ignition interlock device, whether installed by
4 order of the court as a condition of probation, or by the
5 department as a condition of license reinstatement.

6 (b) It is unlawful for any person who is required to
7 have a department-certified breath alcohol ignition interlock
8 device installed ~~whose driving privilege is restricted~~
9 pursuant to this section to request or solicit any other
10 person to blow into the ~~an ignition interlock~~ device or to
11 start a motor vehicle equipped with the device for the purpose
12 of providing the person so restricted with an operable motor
13 vehicle.

14 (c) It is unlawful to blow into a department-certified
15 breath alcohol ~~an~~ ignition interlock device or to start a
16 motor vehicle equipped with the device for the purpose of
17 providing an operable motor vehicle to a person ordered by the
18 court or the department to have this device installed ~~whose~~
19 ~~driving privilege is restricted~~ pursuant to this section.

20 (d) It is unlawful to knowingly lease or lend a motor
21 vehicle to a person who has been ordered by the court or the
22 department to have a department-certified breath alcohol
23 ignition interlock device installed pursuant to ~~had his or her~~
24 ~~driving privilege restricted under a condition of probation as~~
25 ~~provided in~~ this section, unless the vehicle is so equipped
26 with a functioning, ~~certified~~ ignition interlock device. Any
27 person who is required to have a department-certified breath
28 alcohol ~~whose driving privilege is restricted under a~~
29 ~~condition of probation requiring an~~ ignition interlock device
30 installed pursuant to this section must ~~shall~~ notify any other
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1 person who leases or loans a motor vehicle to him or her of
2 such driving restriction.

3 (e) It is unlawful to prevent or attempt to prevent
4 any person legally authorized by the court or the department
5 to install, monitor, or repair a department-certified breath
6 alcohol ignition interlock device from carrying out that
7 person's duties. Such legally authorized persons include all
8 manufacturer's agents, service providers, and service provider
9 representatives approved by the department. Any person who
10 knowingly and willfully violates the provisions of this
11 paragraph commits a misdemeanor of the first degree,
12 punishable as provided in s. 775.082 or s. 775.083.

13 (7) Notwithstanding the provisions of this section, if
14 a person is required to operate a motor vehicle in the course
15 and scope of his or her employment and if the vehicle is owned
16 by the employer, the person may operate that vehicle while
17 conducting the employer's business without installation of a
18 department-certified breath alcohol ~~an approved~~ ignition
19 interlock device if the employer has been notified of such
20 driving privilege restriction and if proof of that
21 notification is with the vehicle. This employment exemption
22 does not apply, however, if the business entity which owns the
23 vehicle is owned or controlled by the person whose driving
24 privilege has been restricted.

25 Section 2. Subsection (4) is added to section
26 316.1938, Florida Statutes, to read:

27 316.1938 Ignition interlock devices, certification;
28 warning label.--

29 (4) The department shall adopt by rule specifications
30 for service providers which govern qualifications of the
31 ignition interlock device vendors. In addition, the

1 department shall adopt by rule procedures for device
2 functions, reporting standards, and participant requirements.

3 Section 3. Subsection (6) of section 322.27, Florida
4 Statutes, is amended to read:

5 322.27 Authority of department to suspend or revoke
6 license.--

7 (6) The department shall revoke the driving privilege
8 of any person who is convicted of a felony for the possession
9 of a controlled substance if, at the time of such possession,
10 the person was driving or in actual physical control of a
11 motor vehicle. A person whose driving privilege has been
12 revoked pursuant to this subsection ~~is shall not be~~ eligible
13 to receive a limited business or employment purpose license
14 during the term of such revocation, unless that person
15 petitions the department and meets the requirements set forth
16 in s. 322.271.

17 Section 4. Paragraphs (b) and (c) of subsection (1)
18 and subsections (2) and (4) of section 322.271, Florida
19 Statutes, are amended to read:

20 322.271 Authority to modify revocation, cancellation,
21 or suspension order.--

22 (1)

23 (b) A person whose driving privilege has been revoked
24 under s. 322.27(5) may, upon expiration of 6 ~~12~~ months from
25 the date of such revocation, petition the department for
26 restoration of his or her driving privilege. Upon such
27 petition and after investigation of the person's
28 qualification, fitness, and need to drive, the department
29 shall hold a hearing pursuant to chapter 120 to determine
30 whether the driving privilege shall be restored on a
31 restricted basis solely for business or employment purposes.

1 (c)1. For the purposes of this section, the term:

2 a.1. "A driving privilege restricted to business
3 purposes only" means a driving privilege that is limited to
4 any driving necessary to maintain livelihood, including
5 driving to and from work, necessary on-the-job driving,
6 driving for educational purposes, and driving for church and
7 for medical purposes.

8 b.2. "A driving privilege restricted to employment
9 purposes only" means a driving privilege that is limited to
10 driving to and from work and any necessary on-the-job driving
11 required by an employer or occupation.

12 2. Driving for any purpose other than as provided by
13 this paragraph is not permitted by a person whose driving
14 privilege has been restricted to employment or business
15 purposes. In addition, a person whose driving privilege is
16 restricted to employment or business purposes remains subject
17 to any restriction that applied to the type of license which
18 the person held at the time of the order of suspension,
19 cancellation, or revocation.

20 (2)(a) Upon such hearing, the person whose license has
21 been suspended, canceled, or revoked may show that such
22 suspension, cancellation, or revocation of his or her license
23 causes a serious hardship and precludes the person's carrying
24 out his or her normal business occupation, trade, or
25 employment and that the use of the person's license in the
26 normal course of his or her business is necessary to the
27 proper support of the person or his or her family. Except as
28 otherwise provided in this subsection, the department shall
29 require proof of the successful completion of an approved
30 driver training or substance abuse education course and may
31 require letters of recommendation from respected

1 businesspersons in the community, law enforcement officers, or
2 judicial officers in determining whether such person should be
3 permitted to operate a motor vehicle on a restricted basis for
4 business or employment use only and in determining whether
5 such person can be trusted to so operate a motor vehicle. If a
6 driver's license has been suspended under the point system or
7 pursuant to s. 322.2615, the department shall require proof of
8 enrollment in an approved driver training course or substance
9 abuse education course, and may require the letters of
10 recommendation described in this subsection to determine if
11 the driver should be reinstated on a restricted basis; if such
12 person fails to complete the approved course within 90 days
13 after reinstatement, the department shall cancel his or her
14 driver's license until the course is successfully completed.
15 The privilege of driving on a limited or restricted basis for
16 business or employment use shall not be granted to a person
17 who has been convicted of a violation of s. 316.193 until
18 completion of such education or training course. Except as
19 provided in paragraph (b), the privilege of driving on a
20 limited or restricted basis for business or employment use
21 shall not be granted to a person whose license is revoked
22 pursuant to s. 322.28 or suspended pursuant to s. 322.2615 and
23 who has been convicted of a violation of s. 316.193 two or
24 more times or whose license has been suspended two or more
25 times for refusal to submit to a test pursuant to s. 322.2615
26 or former s. 322.261, except as provided in paragraph (b) or
27 in s. 322.28(2)(a)2.b.

28 (b) A person whose license has been revoked for a
29 period of 5 years or less pursuant to s. 322.28(2)(a) may,
30 upon the expiration of 6 ~~12~~ months after the date the ~~said~~
31 revocation was imposed, petition the department for

1 reinstatement of his or her driving privilege on a restricted
2 basis if approved by the department to enroll in the state
3 interlock supervision program in accordance with department
4 rule. A person whose license has been revoked for a period of
5 more than 5 years under s. 322.28(2)(a) may, upon the
6 expiration of 12 ~~24~~ months after the date the revocation was
7 imposed, petition the department for reinstatement of his or
8 her driving privilege on a restricted basis if approved by the
9 department to enroll in the state interlock supervision
10 program in accordance with department rule. ~~Reinstatement of~~
11 ~~the driving privilege pursuant to this subsection shall be~~
12 ~~restricted to business or employment purposes only.~~In
13 addition, the department shall require such persons upon
14 reinstatement to have not operated a motor vehicle while
15 consuming alcoholic beverages or controlled substances, or to
16 have not been arrested or convicted of a violation of s.
17 322.34 subsequent to the conviction date ~~driven and to have~~
18 ~~been drug free for at least 12 months~~ immediately prior to
19 such reinstatement, and to be supervised by a DUI program
20 licensed by the department, ~~and to report to the program at~~
21 ~~least three times a year as required by the program for the~~
22 ~~duration of the revocation period for supervision~~. Such
23 supervision must include installation and maintenance of an
24 approved ignition interlock device for a minimum of the
25 initial 12 months of license reinstatement on a restricted
26 basis, or longer if required by the department, and may ~~shall~~
27 include evaluation, education, referral into treatment, and
28 other activities required by the program ~~department~~. Such
29 persons shall assume reasonable costs of supervision. If such
30 person fails to comply with the required supervision, the
31 program shall report the failure to the department, and the

1 department may ~~shall~~ cancel such person's driving privilege.
2 This paragraph does not apply to any person whose driving
3 privilege has been permanently revoked.

4 (c) For the purpose of this section, a previous
5 conviction of driving under the influence, driving while
6 intoxicated, driving with an unlawful blood-alcohol level, or
7 any other similar alcohol-related or drug-related offense
8 outside this state or a previous conviction of former s.
9 316.1931, former s. 316.028, or former s. 860.01 shall be
10 considered a previous conviction for violation of s. 316.193.

11 (d) The department, based upon review of the
12 licensee's application for reinstatement, may require use of
13 an ignition interlock device pursuant to s. 316.1937. In
14 addition, the department may require that any person convicted
15 of s. 316.193, former s. 316.1931, former s. 316.028, or
16 former s. 860.01 have an ignition interlock device installed
17 as a condition of license reinstatement on a restricted basis.

18 (e) Any person whose license has been revoked pursuant
19 to s. 322.28(2) or (3), and whose revocation period has
20 expired, may not have his or her license reinstated unless
21 that person has successfully completed a minimum of 12 months
22 in the statewide interlock supervision program.

23 (4) Notwithstanding the provisions of s. 322.28(2)(e),
24 a person whose driving privilege has been permanently revoked
25 because he or she has been convicted four times of violating
26 s. 316.193 or former s. 316.1931 or because he or she has been
27 convicted of DUI manslaughter in violation of s. 316.193 may,
28 upon the expiration of 5 years after the date of such
29 revocation or the expiration of 5 years after the termination
30 of any term of incarceration under s. 316.193 or former s.
31 316.1931, whichever date is later, petition the department for

1 reinstatement of his or her driving privilege. However, a
2 person may, upon the expiration of 18 months after the date of
3 such revocation, petition the department for his or her
4 driving privilege on a restricted basis, if approved by the
5 department to enroll in the state interlock supervision
6 program in accordance with department rule.

7 (a) Within 30 days after the receipt of such a
8 petition, the department shall afford the petitioner an
9 opportunity for a hearing. At the hearing, the petitioner
10 must demonstrate to the department that he or she:

11 1. Has not been operating a vehicle while under the
12 influence of alcohol or controlled substances ~~arrested for a~~
13 ~~drug-related offense during the 5 years preceding the filing~~
14 ~~of the petition;~~

15 2. Has not been convicted of driving a motor vehicle
16 without a license subsequent to the previous conviction ~~driven~~
17 ~~a motor vehicle without a license for at least 5 years prior~~
18 ~~to the hearing;~~

19 3. Has been drug-free and has not tested positive for
20 drugs subsequent to the previous conviction ~~for at least 5~~
21 ~~years prior to the hearing;~~ and

22 4. Has completed a DUI program licensed by the
23 department.

24 (b) At such hearing, the department shall determine
25 the petitioner's qualification, fitness, and need to drive.
26 Upon such determination, the department may, in its
27 discretion, reinstate the driver's license of the petitioner.
28 Such reinstatement must be made subject to the following
29 qualifications:

30 1. The license must be restricted for employment
31 purposes for not less than 1 year; and

1 2. Such person must be supervised by a DUI program
2 licensed by the department and report to the program for such
3 supervision and education at least four times a year or
4 additionally as required by the program for the remainder of
5 the revocation period. Such supervision shall include
6 evaluation, education, referral into treatment, and other
7 activities required by the department.

8 (c) Such person must assume the reasonable costs of
9 supervision. If such person fails to comply with the required
10 supervision, the program shall report the failure to the
11 department, and the department may ~~shall~~ cancel such person's
12 driving privilege.

13 (d) If, after reinstatement, such person is convicted
14 of an offense for which mandatory revocation of his or her
15 license is required, the department shall revoke his or her
16 driving privilege.

17 (e) The department shall adopt rules regulating the
18 providing of services by DUI programs pursuant to this
19 section. In addition, the department shall adopt rules for a
20 statewide interlock supervision program to be operated in
21 conjunction with the DUI programs.

22 Section 5. Paragraph (a) of subsection (2) of section
23 322.28, Florida Statutes, is amended to read:

24 322.28 Period of suspension or revocation.--

25 (2) In a prosecution for a violation of s. 316.193 or
26 former s. 316.1931, the following provisions apply:

27 (a) Upon conviction of the driver, the court, along
28 with imposing sentence, shall revoke the driver's license or
29 driving privilege of the person so convicted, effective on the
30 date of conviction, and shall prescribe the period of such
31 revocation in accordance with the following provisions:

1 1. Upon a first conviction for a violation of the
2 provisions of s. 316.193, except a violation resulting in
3 death, the driver's license or driving privilege shall be
4 revoked for not less than 180 days or more than 1 year.

5 2.a. Upon a second conviction within a period of 5
6 years from the date of a prior conviction for a violation of
7 the provisions of s. 316.193 or former s. 316.1931 or a
8 combination of such sections, the driver's license or driving
9 privilege shall be revoked for not less than 5 years.

10 b. Upon a second conviction 5 years or more after the
11 date of any prior conviction for a violation of s. 316.193 or
12 former s. 316.1931, or a combination of such sections, the
13 person's driving privilege shall be revoked for at least 180
14 days but not more than 1 year. The department may grant the
15 person restricted driving privileges on a limited or
16 restricted basis for business or employment purposes if the
17 person has a functioning department-certified breath alcohol
18 ignition interlock device in his or her vehicle pursuant to s.
19 316.1937.

20 3. Upon a third conviction within a period of 10 years
21 from the date of conviction of the first of three or more
22 convictions for the violation of the provisions of s. 316.193
23 or former s. 316.1931 or a combination of such sections, the
24 driver's license or driving privilege shall be revoked for not
25 less than 10 years.

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27 For the purposes of this paragraph, a previous conviction
28 outside this state for driving under the influence, driving
29 while intoxicated, driving with an unlawful blood-alcohol
30 level, or any other alcohol-related or drug-related traffic
31 offense similar to the offense of driving under the influence

1 as proscribed by s. 316.193 will be considered a previous
2 conviction for violation of s. 316.193, and a conviction for
3 violation of former s. 316.028, former s. 316.1931, or former
4 s. 860.01 is considered a conviction for violation of s.
5 316.193.

6 Section 6. Subsection (1) of section 322.292, Florida
7 Statutes, is amended to read:

8 322.292 DUI programs supervision; powers and duties of
9 the department.--

10 (1) The Department of Highway Safety and Motor
11 Vehicles shall license and regulate all DUI programs, which
12 regulation shall include the certification of instructors,
13 evaluators, clinical supervisors, and evaluator supervisors.
14 The department shall, after consultation with the chief judge
15 of the affected judicial circuit, establish requirements
16 regarding the number of programs to be offered within a
17 judicial circuit. Such requirements shall address the number
18 of clients currently served in the circuit as well as
19 improvements in service that may be derived from operation of
20 an additional DUI program. DUI education and evaluation
21 services are exempt from licensure under chapters 396 and 397.
22 However, treatment programs must continue to be licensed under
23 chapters 396 and 397. In addition, the department shall
24 administer a statewide interlock supervision program in
25 conjunction with the DUI programs.

26 Section 7. This act shall take effect October 1, 1998.
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SENATE SUMMARY

Revises laws governing ignition interlock devices. Authorizes the Department of Highway Safety and Motor Vehicles to require certain persons convicted of driving under the influence or who refuse to submit to a breath, blood, or urine test to install ignition interlock devices in their vehicles. Requires that the department certify breath alcohol ignition interlock devices. Provides additional and revised penalties with respect to violations related to such devices. Requires that the department adopt specifications for service providers and qualifications for vendors of ignition interlock devices. Authorizes the department to adopt rules for a statewide interlock supervision program to be operated in conjunction with DUI programs. (See bill for details.)