

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1316

SPONSOR: Criminal Justice Committee and Senator Webster

SUBJECT: Suspension of Driver's Licenses

DATE: April 13, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/1 amendment</u>
2.	<u>White</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute (CS) for SB 1316 requires trial courts to order that an offender, who is convicted for a second or subsequent driving under the influence violation, cannot operate a vehicle for at least one year unless the vehicle is equipped with an ignition interlock device. The CS clarifies the blood-alcohol and breath-alcohol levels which are unlawful for purposes of suspending the driver's license of a person under 21 years of age. The CS provides that the temporary driving permit issued at the time of notice of suspension does not become effective until after 12 hours have elapsed. The CS also provides the results of a blood test conducted pursuant to law may be used to suspend a driving privilege. Finally, the CS immunizes law enforcement officers who exercise due care in the enforcement of this section from civil liability.

This CS substantially amends ss. 316.1937 and 322.2616 of the Florida Statutes.

II. Present Situation:

Ignition Interlock Device

Subsection (1) of s. 316.1937, F.S., provides that a court *may* order that a person, who has been convicted of driving under the influence in violation of s. 316.193, F.S. (Supp. 1998), and is placed on probation, shall not drive any vehicle during the period of probation unless the vehicle is equipped with an ignition interlock device. The required period for use of an ignition interlock may not be less than 6 months. The device must be paid for by the defendant (in Florida, installation of the device costs \$70 and the monthly maintenance fee is \$55), unless the court finds that the defendant is unable to pay. In this latter instance, the trial court may order that the defendant's fines be allocated to the cost of the device.

Driving under the influence by persons under 21 years of age

Subsection (1) of s. 322.2616, F.S., provides that it is unlawful for a person under 21 years of age who has a *breath-alcohol* level of .02 *percent* or higher to drive or be in actual physical control of a motor vehicle; however, other subsections reference both breath-alcohol and blood-alcohol levels. For example, subsection (2) provides that a law enforcement officer, on behalf of the Department of Highway Safety and Motor Vehicles (DHSMV), shall suspend the license of a person under age 21 if the person's *blood-alcohol* or *breath-alcohol* level is .02 percent or higher. Thus, existing s. 322.2616, F.S., inconsistently uses the terms breath and blood-alcohol, and as a result, it could be argued that a blood-alcohol level of .02 may not be used under the section. Moreover, the term percent used in the section is technically incorrect because breath-alcohol is measured in grams of alcohol per 210 liters of breath.

Subsection (2) provides that when an officer suspends a driver's license, he or she must take the person's license, and issue a 10-day temporary driving permit and notice of suspension. If the minor is otherwise eligible to drive, the minor is permitted to drive immediately following receipt of the temporary driving permit.

Subsection (9) adds that if the minor's violation consists of operating a motor vehicle with a blood or breath-alcohol level of .02, *but less than .08*, the minor's license suspension shall be for six months for a first violation, or for one year if the minor's license has previously been suspended for operating a motor vehicle with a blood or breath-alcohol level of .02, but less than .08. This subsection is inconsistent with subsection (2), which in providing for these same suspension time lengths defines a violation as being a blood or breath-alcohol level of .02 or higher, without reference to the .08 cap. As a result, the law is unclear as to whether a minor's license may be suspended if he or she has a blood or breath-alcohol level above .08.

Furthermore, subsection (17) provides that the test device used for breath-alcohol may be a "preliminary alcohol screening" device listed in the United States Department of Transportation's list of "evidential breath-measurement devices." The Department, however, has two lists, one for alcohol screening devices and one for evidential breath measurement devices. Thus, the use of both terms in subsection (17) is confusing.

Finally, the statutes do not specifically provide for the results of a blood test to be used to suspend the license of persons under age 21, who commit certain DUI violations. This issue arises in cases where the person suspected of a DUI violation is unconscious and unable to provide a breath-alcohol reading. Similarly, current statutes do not provide immunity from civil liability for a law enforcement officer's actions under this law.

III. Effect of Proposed Changes:

The CS amends s. 316.1937, F.S., to add that a trial court *must* require an offender, who is convicted for a second or subsequent driving under the influence violation, to not operate a vehicle for at least one year unless the vehicle is equipped with a functioning ignition interlock device. The offender's license shall be suspended for at least one year if the offender tampers with the device or drives a motor vehicle without the device.

The CS amends s. 316.2616, F.S., to consistently reference blood-alcohol levels so that it is clear that it is unlawful for a person under age 21 to operate a motor vehicle with either a .02 breath or blood-alcohol level. Moreover, the CS deletes the reference to the word “percent” in all of the section’s references to alcohol level.

The CS amends subsection (2) to provide that the 10-day temporary permit issued at the time a notice of suspension is issued does not become effective until after 12 hours have elapsed. Thus, minors will be prohibited from driving immediately following issuance of the suspension notice. The CS also adds that notice of the department’s decision to sustain, amend, or invalidate a driver’s license suspension must be provided to the offender within 7 *working* days.

The CS amends subsection (9) to eliminate its reference to a .08 cap on the blood or breath-alcohol level which will warrant the suspension of the minor’s license. In so providing, the CS makes all of the subsections of s. 316.2616, F.S., consistent with one another, and insures that any blood or breath-alcohol level above .02 constitutes a violation. Furthermore, the CS creates subsection (18) to specifically provide that a blood test taken during an investigation conducted under ss. 316.1932 and 316.1933, F.S., may be used for s. 316.2616, F.S., purposes.

The CS amends subsection (17) to clarify that the test device used for breath-alcohol may be a “breath alcohol test device” listed in the United States Department of Transportation’s list of “evidential breath-measurement devices,” and thereby, eliminates the confusion which could result from the conflicting terms used in existing subsection (17).

Finally, the CS provides law enforcement officers who enforce ss. 316.1932 or 316.1933, F.S., in good faith and who exercise due care are immune from civil liability. This provision represents a limited immunity for enforcement actions taken under this statute.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The changes made by the CS concerning the correction of technical deficiencies in s. 322.2616, F.S., will have no fiscal impact. However, according to the Department of Highway Safety and Motor Vehicles, the CS's requirement of a mandatory interlock device may have an \$18,000 impact on the department for data processing costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.