

STORAGE NAME: h1997.jud

DATE: April 1, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 1997

RELATING TO: DUI violations

SPONSOR(S): Representative Merchant

COMPANION BILL(S): SB 1316 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIARY
 - (2) CRIME & PUNISHMENT
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill requires a person convicted for a second or subsequent violation of driving under the influence in violation of s. 316.193, F.S., from operating a vehicle for a period of not less than one year unless the vehicle is equipped with an ignition interlock device installed such that the vehicle will not start if the operator's blood alcohol level is in excess of .05 percent. The bill also provides that a person who tampers with the interlock device or drives a vehicle without such device shall have his license suspended for a minimum term of 1 year.

The bill clarifies the blood alcohol and breath alcohol levels that are unlawful for purposes of suspension of the drivers license of a person who is under the age of 21. It also provides that a temporary driving permit issues at the time of a notice of suspension does not become effective until 12 hours have elapsed. The bill further provides that the results of a blood test may be used to suspend a driving privilege under s. 322.2616, F.S. Finally, the bill provides immunity for law enforcement officers who exercise due care.

The bill has an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 316.1937, F.S., presently give a court the discretion to require a person who is convicted of driving under the influence in violation of s. 316.193, F.S., and who is granted probation, to operate a motor vehicle only if the vehicle is equipped with an ignition interlock device. The court may require the use of such device for a period of not less than 6 months during the probationary period.

Section 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. A law enforcement officer, on behalf of the Department of Highway Safety and Motor Vehicles (DHSMV), shall suspend the license of a person under the age of 21 if the person's blood-alcohol or breath-alcohol level is .02 percent or higher. The officer is further directed to take the person's driver's license and issue a 10-day temporary driving permit. If the person is otherwise eligible to drive, the person is permitted to drive immediately following receipt of the temporary driving permit.

Subsection 322.2616(9), F.S., provides the DHSMV is to suspend a person's driving privilege for a period of 6 months for driving or being in actual physical control of a motor vehicle while under the age of 21 with a blood-alcohol or breath-alcohol level of .02 percent or higher, or for a period of 1 year if the driving privilege of such person has been previously suspended as a result of driving a motor vehicle while under the age of 21 with a breath-alcohol level of at least .02 percent but less than .08 percent.

Currently, statutes do not 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.

B. EFFECT OF PROPOSED CHANGES:

The bill **prohibits** a person convicted for a second or subsequent violation of driving under the influence in violation of s. 316.193, F.S., from operating a vehicle for a period of not less than one year unless the vehicle is equipped with an ignition interlock device installed such that the vehicle will not start if the operator's blood alcohol level is in excess of .05 percent. The bill also provides that a person who tampers with the interlock device or drives a vehicle without such device shall have his license suspended for a minimum term of 1 year. This effectively takes away a court's discretion to impose on a person convicted of a DUI the obligation to use an ignition interlock device.

The bill also clarifies the blood alcohol and breath alcohol levels that are unlawful for purposes of suspension of the drivers license of a person who is under the age of 21. It also provides that a temporary driving permit issues at the time of a notice of suspension does not become effective until 12 hours have elapsed. The bill further provides that the results of a blood test may be used to suspend a driving privilege under s. 322.2616, F.S. Finally, the bill provides immunity for law enforcement officers who exercise due care in enforcing s. 322.2616, F.S.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill requires persons who are convicted of a second or subsequent DUI to drive with an ignition interlock device.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

The bill does not affect an agency or program.

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The bill requires persons who might not otherwise be required by law to drive with ignition interlock devices in certain circumstances.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

The bill does not purport to provide services to families or children.

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

The bill does not create or change a program providing services to families or children.

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 316.1937 and 322.2616, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 prohibits a person convicted for a second or subsequent violation of driving under the influence in violation of s. 316.193, F.S., from operating a vehicle for a period of not less than one year unless the vehicle is equipped with an ignition interlock device installed such that the vehicle will not start if the operator's blood alcohol level is in excess of .05 percent. This section also provides that a person who

tampers with the interlock device or drives a vehicle without such device shall have his license suspended for a minimum term of 1 year.

Section 2 clarifies the blood alcohol and breath alcohol levels that are unlawful for purposes of suspension of the drivers license of a person who is under the age of 21. Also provides that a temporary driving permit issues at the time of a notice of suspension does not become effective until 12 hours have elapsed. Provides that the results of a blood test may be used to suspend a driving privilege under s. 322.2616, F.S. Provides immunity for law enforcement officers who exercise due care in enforcing s. 322.2616, F.S.

Section 3 provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not affect the revenue raising authority of a city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not affect the amount of state tax shared with a city or county.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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