

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2030

SPONSOR: Transportation Committee and Senator Smith

SUBJECT: Driving or Boating Under the Influence

DATE: April 19, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Duggar</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The CS lowers the blood and breath alcohol level (BAL) for purposes of triggering driving under the influence (DUI) and boating under the influence (BUI) enhanced penalties from 0.20 or more to 0.16 or more. (Currently, the unlawful blood and breath alcohol level is 0.08 or more and the BAL for enhanced penalties is 0.20 or more.) This change makes the enhanced penalties apply when the BAL is twice the legal limit of DUI or BUI (0.16 is twice the legal limit of 0.08). (Enhanced penalties currently apply when a person is convicted of DUI or BUI with a BAL of 0.20 or more, or when a person is DUI or BUI and is accompanied by a passenger under the age of 18 years).

The CS mandates the Florida Department of Highway Safety and Motor Vehicles (department) to require the placement of an approved ignition interlock device on specified DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. It also mandates the department to immediately require the device be installed if the court fails to so order such installation on an offender's vehicle. Finally, the CS specifies the duration of each installation period based upon the number of DUI convictions.

In addition, the CS requires the department to approve a DUI program provider, who has met certain criteria, to serve a county with fewer than 200 DUI convictions and no permanent satellite office, if the chief judge of the circuit recommends it. It also provides the provider is not required to have a satellite office in each county in the circuit.

This CS substantially amends sections 316.193, 316.656, 322.292 and 327.35; creates s. 322.2715; and reenacts the following sections of the Florida Statutes: 316.066, 316.072, 316.1932, 316.1933, 316.1934, 316.1937, 316.1939, 318.143, 318.17, 322.03, 322.0602, 322.21, 322.25, 322.26, 322.2615, 322.2616, 322.264, 322.271, 322.28, 322.282, 322.291, 322.34,

322.44, 322.62, 322.63, 322.64, 323.001, 327.35, 397.405, 440.02, 440.09, 493.6106, 627.758, 790.06, 903.36, 907.041, 938.07, 938.21, 938.23, 943.05, 948.03, 960.03, 327.352, 327.35215, 327.353, 327.354, 327.355, 327.359, 327.36 and 938.07.

## II. Present Situation:

Section 316.193, F.S., proscribes driving under the influence of alcohol or drugs to the extent normal faculties are impaired or driving with a blood alcohol level of 0.08 or more grams of alcohol per 100 millimeters of blood or with a breath alcohol level of 0.08 or more grams of alcohol per 210 liters of breath (DUI). Similarly, s. 327.35, F.S., proscribes boating under the influence of alcohol or drugs to the extent normal faculties are impaired or operating a vessel with an unlawful blood or breath alcohol level of 0.08 or more (BUI). Penalties for DUI and BUI vary according to the frequency of previous convictions, the offender's blood alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there is no property damage or personal injury and when there are fewer than three DUI or BUI convictions. For example, a first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to serving up to 6 months in county jail. He must also be on probation for up to 1 year and participate in 50 hours of community service.

*However, if the first-time offender's BAL is 0.20 or more, or if a passenger under 18 years of age is present in the vehicle or vessel while the driver is DUI or BUI, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months in jail.*

A second DUI or BUI conviction carries a fine ranging from \$500 to \$1,000 and imprisonment for a period of up to 9 months. However, if that offense occurs within 5 years of a previous DUI or BUI conviction, there is a mandatory imprisonment period of at least 10 days. At least 48 hours of this confinement must be consecutive.

*Enhanced penalties also apply when the second-time offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI or BUI. These penalties require a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.*

A third or subsequent DUI or BUI conviction occurring more than 10 years after a prior conviction carries a fine ranging from \$1,000 to \$2,500 and possible imprisonment of up to 12 months. However, if that offense occurs within 10 years of a previous DUI or BUI conviction, it is a third degree felony, punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years. There is also a 30-day minimum mandatory imprisonment period. At least 48 hours of this confinement must be consecutive.

*Enhanced penalties also apply when a third-time (or subsequent) offender's BAL is 0.20 or more, or when a passenger under the age of 18 is present in the vehicle or vessel while the driver is DUI or BUI. These penalties require a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.*

A fourth or subsequent DUI or BUI conviction is a third degree felony penalty, which is punishable by a minimum fine of \$1,000 but not exceeding \$5,000, and a term of imprisonment not to exceed 5 years.

**Penalties for DUI or BUI based on Convictions**

	<b>Maximum Incarceration</b>	<b>Incarceration Over .20 BAL or w/Minor</b>	<b>Fine</b>	<b>Fine Over .20 BAL or w/Minor</b>
<b>1<sup>st</sup> Offense</b>	6 months jail	9 months jail	\$250-\$500	\$500-\$1,000
<b>2<sup>nd</sup> Offense</b>	9 months jail	12 months jail	\$500-\$1,000	\$1,000-\$2,000
<b>3<sup>rd</sup> Offense more than 10 years after prior offense</b>	12 months jail	12 months jail	\$1,000-\$2,500	\$2,000-\$5,000
<b>3<sup>rd</sup> Offense within 10 years or prior offense</b>	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000
<b>4<sup>th</sup> Offense (3<sup>rd</sup> degree felony)</b>	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000

In addition, the placement of an ignition interlock device for up to six months is required for a first DUI offense and for up to two years for a second DUI offense where the person had a blood alcohol level in excess of .20.

If a DUI or BUI offense involves property damage, it is a first degree misdemeanor, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI or BUI offense involving serious injury is a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI or BUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

Initially, when the Legislature provided enhanced DUI and BUI penalty provisions for persons with a BAL of 0.20 or more, the unlawful BAL for purposes of charging DUI or BUI was 0.10 or more, not 0.08 or more. The enhanced penalties were triggered when the BAL reached twice the legal limit (0.20 or more). When the Legislature later lowered the unlawful BAL to 0.08 or more, it did not also lower the BAL that triggered enhanced penalties from 0.20 to 0.16.

The department has encountered some adverse court rulings as to their ability to require convicted drunk drivers to obtain ignition interlocking devices on their cars, when the court has not specifically ordered the placement of the device statutorily mandated by s. 316.193(2)(a) and (4)(c), F.S. in an individual case. Some courts have not ordered the statutory mandatory provisions requiring such devices, and a circuit court has recently held that the department had no independent authority under s. 316.193, F.S. to require such devices.

Section 322.292, F.S., provides the department must license and regulate all DUI programs. DUI programs are private and professional non-profit organizations that are required to provide education, a psychosocial evaluation and treatment referral services to DUI offenders to satisfy judicial and driver licensing requirements. The department provides for the programs by administrative rule. Specifically, under the department's requirements for initial licensure, a DUI program provider must have a satellite office for registration of DUI offenders in each county in the circuit which is located in a permanent structure and readily accessible by public transportation. However, a satellite office is not required in any county where the total number of DUI convictions per year is less than 200.

### **III. Effect of Proposed Changes:**

The CS would lower the blood and breath alcohol level for purposes of triggering DUI and BUI enhanced penalties from 0.20 or more to 0.16 or more. (Currently, the unlawful blood and breath alcohol level is 0.08 or more and the BAL for enhanced penalties is 0.20 or more.) This change would make the enhanced penalties apply when the BAL is twice the legal limit of DUI or BUI (0.16 is twice the legal limit of 0.08). (Enhanced penalties currently apply when a person is convicted of DUI or BUI with a BAL of 0.20 or more, or when a person is DUI or BUI and such person is accompanied by a passenger under the age of 18 years).

The CS creates s. 322.2715, F.S., which mandates the department to require the placement of an approved ignition interlock device on specified DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. It also mandates the department to immediately require the device be installed if the court fails to so order such installation on an offender's vehicle. Finally, the CS specifies the duration of each installation period based upon the number of DUI convictions.

In addition, the CS amends s. 322.292, F.S., to require the department to approve a DUI program provider, who has met certain criteria, to serve a county with fewer than 200 DUI convictions and no permanent satellite office, if the chief judge of the circuit recommends it. It also provides the provider is not required to have a satellite office in each county in the circuit.

The CS would also reenact numerous sections that reference the statutes being amended for purposes of incorporating these changes into those sections of law.

### **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:**

Under the CS, persons convicted of DUI or BUI with a BAL of 0.16 or more will be subject to the enhanced penalties that currently only apply when the BAL is 0.20 or more.

**C. Government Sector Impact:**

Because the number of persons convicted of DUI or BUI with a BAL between 0.16 and 0.20 cannot be ascertained, any positive impact on state and local revenues because of increased fines is indeterminate.

The CS could impose an additional burden (indeterminate) on local jails if more offenders are sentenced to enhanced incarceration penalties of up to 12 months. The court system may also be impacted to the extent that a lower threshold for enhanced penalties may provide a greater incentive for an offender to use the courts to avoid such penalties.

The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this CS.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.