

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Planas offered the following:

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3 **Amendment (with title amendment)**

4 Remove lines 85-572 and insert:

5 qualifies for a permanent or restricted license. ~~The~~  
6 ~~installation of such device may not occur before July 1, 2003.~~

7 (b)1. Any person who is convicted of a third violation of  
8 this section for an offense that occurs within 10 years after a  
9 prior conviction for a violation of this section commits a  
10 felony of the third degree, punishable as provided in s.

11 775.082, s. 775.083, or s. 775.084. In addition, the court shall  
12 order the mandatory placement for a period of not less than 2  
13 years, at the convicted person's sole expense, of an ignition  
14 interlock device approved by the department in accordance with  
15 s. 316.1938 upon all vehicles that are individually or jointly  
16 leased or owned and routinely operated by the convicted person,

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17 when the convicted person qualifies for a permanent or  
18 restricted license. ~~The installation of such device may not~~  
19 ~~occur before July 1, 2003.~~

20 2. Any person who is convicted of a third violation of  
21 this section for an offense that occurs more than 10 years after  
22 the date of a prior conviction for a violation of this section  
23 shall be punished by a fine of not less than \$1,000 or more than  
24 \$2,500 and by imprisonment for not more than 12 months. In  
25 addition, the court shall order the mandatory placement for a  
26 period of not less than ~~at least~~ 2 years, at the convicted  
27 person's sole expense, of an ignition interlock device approved  
28 by the department in accordance with s. 316.1938 upon all  
29 vehicles that are individually or jointly leased or owned and  
30 routinely operated by the convicted person, when the convicted  
31 person qualifies for a permanent or restricted license. ~~The~~  
32 ~~installation of such device may not occur before July 1, 2003.~~

33 3. Any person who is convicted of a fourth or subsequent  
34 violation of this section, regardless of when any prior  
35 conviction for a violation of this section occurred, commits a  
36 felony of the third degree, punishable as provided in s.  
37 775.082, s. 775.083, or s. 775.084. However, the fine imposed  
38 for such fourth or subsequent violation may be not less than  
39 \$1,000.

40 (3) Any person:

41 (a) Who is in violation of subsection (1);

42 (b) Who operates a vehicle; and

43 (c) Who, by reason of such operation, causes or  
44 contributes to causing:

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45 1. Damage to the property or person of another commits a  
46 misdemeanor of the first degree, punishable as provided in s.  
47 775.082 or s. 775.083.

48 2. Serious bodily injury to another, as defined in s.  
49 316.1933, commits a felony of the third degree, punishable as  
50 provided in s. 775.082, s. 775.083, or s. 775.084.

51 3. The death of any human being commits DUI manslaughter,  
52 and commits:

53 a. A felony of the second degree, punishable as provided  
54 in s. 775.082, s. 775.083, or s. 775.084.

55 b. A felony of the first degree, punishable as provided in  
56 s. 775.082, s. 775.083, or s. 775.084, if:

57 (I) At the time of the crash, the person knew, or should  
58 have known, that the crash occurred; and

59 (II) The person failed to give information and render aid  
60 as required by s. 316.062.

61 (4)(a) Any person who is convicted of a violation of  
62 subsection (1) and who has a blood-alcohol level or breath-  
63 alcohol level of 0.16 ~~0.20~~ or higher, or any person who is  
64 convicted of a violation of subsection (1) and who at the time  
65 of the offense was accompanied in the vehicle by a person under  
66 the age of 18 years, shall be punished:

67 ~~1.(a)~~ By a fine of:

68 ~~a.1.~~ Not less than \$500 or more than \$1,000 for a first  
69 conviction.

70 ~~b.2.~~ Not less than \$1,000 or more than \$2,000 for a second  
71 conviction.

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72 ~~c.3.~~ Not less than \$2,000 for a third or subsequent  
73 conviction.

74 ~~2.(b)~~ By imprisonment for:

75 ~~a.1.~~ Not more than 9 months for a first conviction.

76 ~~b.2.~~ Not more than 12 months for a second conviction.  
77

78 ~~For the purposes of this subsection, only the instant offense is~~  
79 ~~required to be a violation of subsection (1) by a person who has~~  
80 ~~a blood-alcohol level or breath-alcohol level of 0.20 or higher.~~

81 ~~(b)(e)~~ In addition to the penalties in paragraph  
82 ~~paragraphs (a) and (b)~~, the court shall order the mandatory  
83 placement, at the convicted person's sole expense, of an  
84 ignition interlock device approved by the department in  
85 accordance with s. 316.1938 upon all vehicles that are  
86 individually or jointly leased or owned and routinely operated  
87 by the convicted person for up to 6 months for the first offense  
88 and for not less than ~~at least~~ 2 years for a second offense,  
89 when the convicted person qualifies for a permanent or  
90 restricted license. ~~The installation of such device may not~~  
91 ~~occur before July 1, 2003.~~

92  
93 For the purposes of this subsection, only the instant offense is  
94 required to be a violation of subsection (1) by a person who has  
95 a blood-alcohol level or breath-alcohol level of 0.16 or higher.

96 (5) The court shall place all offenders convicted of  
97 violating this section on monthly reporting probation and shall  
98 require completion of a substance abuse course conducted by a  
99 DUI program licensed by the department under s. 322.292, which

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100 must include a psychosocial evaluation of the offender. If the  
101 DUI program refers the offender to an authorized substance abuse  
102 treatment provider for substance abuse treatment, in addition to  
103 any sentence or fine imposed under this section, completion of  
104 all such education, evaluation, and treatment is a condition of  
105 reporting probation. The offender shall assume reasonable costs  
106 for such education, evaluation, and treatment. The referral to  
107 treatment resulting from a psychosocial evaluation shall not be  
108 waived without a supporting independent psychosocial evaluation  
109 conducted by an authorized substance abuse treatment provider  
110 appointed by the court, which shall have access to the DUI  
111 program's psychosocial evaluation before the independent  
112 psychosocial evaluation is conducted. The court shall review the  
113 results and recommendations of both evaluations before  
114 determining the request for waiver. The offender shall bear the  
115 full cost of this procedure. The term "substance abuse" means  
116 the abuse of alcohol or any substance named or described in  
117 Schedules I through V of s. 893.03. If an offender referred to  
118 treatment under this subsection fails to report for or complete  
119 such treatment or fails to complete the DUI program substance  
120 abuse education course and evaluation, the DUI program shall  
121 notify the court and the department of the failure. Upon receipt  
122 of the notice, the department shall cancel the offender's  
123 driving privilege, notwithstanding the terms of the court order  
124 or any suspension or revocation of the driving privilege. The  
125 department may temporarily reinstate the driving privilege on a  
126 restricted basis upon verification from the DUI program that the  
127 offender is currently participating in treatment and the DUI

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128 education course and evaluation requirement has been completed.  
129 If the DUI program notifies the department of the second failure  
130 to complete treatment, the department shall reinstate the  
131 driving privilege only after notice of completion of treatment  
132 from the DUI program. The organization that conducts the  
133 substance abuse education and evaluation may not provide  
134 required substance abuse treatment unless a waiver has been  
135 granted to that organization by the department. A waiver may be  
136 granted only if the department determines, in accordance with  
137 its rules, that the service provider that conducts the substance  
138 abuse education and evaluation is the most appropriate service  
139 provider and is licensed under chapter 397 or is exempt from  
140 such licensure. A statistical referral report shall be submitted  
141 quarterly to the department by each organization authorized to  
142 provide services under this section.

143 (6) With respect to any person convicted of a violation of  
144 subsection (1), regardless of any penalty imposed pursuant to  
145 subsection (2), subsection (3), or subsection (4):

146 (a) For the first conviction, the court shall place the  
147 defendant on probation for a period not to exceed 1 year and, as  
148 a condition of such probation, shall order the defendant to  
149 participate in public service or a community work project for a  
150 minimum of 50 hours; or the court may order instead, that any  
151 defendant pay an additional fine of \$10 for each hour of public  
152 service or community work otherwise required, if, after  
153 consideration of the residence or location of the defendant at  
154 the time public service or community work is required, payment  
155 of the fine is in the best interests of the state. However, the

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156 total period of probation and incarceration may not exceed 1  
157 year. The court must also, as a condition of probation, order  
158 the impoundment or immobilization of the vehicle that was  
159 operated by or in the actual control of the defendant or any one  
160 vehicle registered in the defendant's name at the time of  
161 impoundment or immobilization, for a period of 10 days or for  
162 the unexpired term of any lease or rental agreement that expires  
163 within 10 days. The impoundment or immobilization must not occur  
164 concurrently with the incarceration of the defendant. The  
165 impoundment or immobilization order may be dismissed in  
166 accordance with paragraph (e), paragraph (f), paragraph (g), or  
167 paragraph (h).

168 (b) For the second conviction for an offense that occurs  
169 within a period of 5 years after the date of a prior conviction  
170 for violation of this section, the court shall order  
171 imprisonment for not less than 10 days. The court must also, as  
172 a condition of probation, order the impoundment or  
173 immobilization of all vehicles owned by the defendant at the  
174 time of impoundment or immobilization, for a period of 30 days  
175 or for the unexpired term of any lease or rental agreement that  
176 expires within 30 days. The impoundment or immobilization must  
177 not occur concurrently with the incarceration of the defendant  
178 and must occur concurrently with the driver's license revocation  
179 imposed under s. 322.28(2)(a)2. The impoundment or  
180 immobilization order may be dismissed in accordance with  
181 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).  
182 At least 48 hours of confinement must be consecutive.

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183 (c) For the third or subsequent conviction for an offense  
184 that occurs within a period of 10 years after the date of a  
185 prior conviction for violation of this section, the court shall  
186 order imprisonment for not less than 30 days. The court must  
187 also, as a condition of probation, order the impoundment or  
188 immobilization of all vehicles owned by the defendant at the  
189 time of impoundment or immobilization, for a period of 90 days  
190 or for the unexpired term of any lease or rental agreement that  
191 expires within 90 days. The impoundment or immobilization must  
192 not occur concurrently with the incarceration of the defendant  
193 and must occur concurrently with the driver's license revocation  
194 imposed under s. 322.28(2)(a)3. The impoundment or  
195 immobilization order may be dismissed in accordance with  
196 paragraph (e), paragraph (f), paragraph (g), or paragraph (h).  
197 At least 48 hours of confinement must be consecutive.

198 (d) The court must at the time of sentencing the defendant  
199 issue an order for the impoundment or immobilization of a  
200 vehicle. Within 7 business days after the date that the court  
201 issues the order of impoundment or immobilization, the clerk of  
202 the court must send notice by certified mail, return receipt  
203 requested, to the registered owner of each vehicle, if the  
204 registered owner is a person other than the defendant, and to  
205 each person of record claiming a lien against the vehicle.

206 (e) A person who owns but was not operating the vehicle  
207 when the offense occurred may submit to the court a police  
208 report indicating that the vehicle was stolen at the time of the  
209 offense or documentation of having purchased the vehicle after  
210 the offense was committed from an entity other than the

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211 defendant or the defendant's agent. If the court finds that the  
212 vehicle was stolen or that the sale was not made to circumvent  
213 the order and allow the defendant continued access to the  
214 vehicle, the order must be dismissed and the owner of the  
215 vehicle will incur no costs. If the court denies the request to  
216 dismiss the order of impoundment or immobilization, the  
217 petitioner may request an evidentiary hearing.

218 (f) A person who owns but was not operating the vehicle  
219 when the offense occurred, and whose vehicle was stolen or who  
220 purchased the vehicle after the offense was committed directly  
221 from the defendant or the defendant's agent, may request an  
222 evidentiary hearing to determine whether the impoundment or  
223 immobilization should occur. If the court finds that either the  
224 vehicle was stolen or the purchase was made without knowledge of  
225 the offense, that the purchaser had no relationship to the  
226 defendant other than through the transaction, and that such  
227 purchase would not circumvent the order and allow the defendant  
228 continued access to the vehicle, the order must be dismissed and  
229 the owner of the vehicle will incur no costs.

230 (g) The court shall also dismiss the order of impoundment  
231 or immobilization of the vehicle if the court finds that the  
232 family of the owner of the vehicle has no other private or  
233 public means of transportation.

234 (h) The court may also dismiss the order of impoundment or  
235 immobilization of any vehicles that are owned by the defendant  
236 but that are operated solely by the employees of the defendant  
237 or any business owned by the defendant.

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238 (i) All costs and fees for the impoundment or  
239 immobilization, including the cost of notification, must be paid  
240 by the owner of the vehicle or, if the vehicle is leased or  
241 rented, by the person leasing or renting the vehicle, unless the  
242 impoundment or immobilization order is dismissed. All provisions  
243 of s. 713.78 shall apply.

244 (j) The person who owns a vehicle that is impounded or  
245 immobilized under this paragraph, or a person who has a lien of  
246 record against such a vehicle and who has not requested a review  
247 of the impoundment pursuant to paragraph (e), paragraph (f), or  
248 paragraph (g), may, within 10 days after the date that person  
249 has knowledge of the location of the vehicle, file a complaint  
250 in the county in which the owner resides to determine whether  
251 the vehicle was wrongfully taken or withheld from the owner or  
252 lienholder. Upon the filing of a complaint, the owner or  
253 lienholder may have the vehicle released by posting with the  
254 court a bond or other adequate security equal to the amount of  
255 the costs and fees for impoundment or immobilization, including  
256 towing or storage, to ensure the payment of such costs and fees  
257 if the owner or lienholder does not prevail. When the bond is  
258 posted and the fee is paid as set forth in s. 28.24, the clerk  
259 of the court shall issue a certificate releasing the vehicle. At  
260 the time of release, after reasonable inspection, the owner or  
261 lienholder must give a receipt to the towing or storage company  
262 indicating any loss or damage to the vehicle or to the contents  
263 of the vehicle.

264 (k) A defendant, in the court's discretion, may be  
265 required to serve all or any portion of a term of imprisonment

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266 to which the defendant has been sentenced pursuant to this  
267 section in a residential alcoholism treatment program or a  
268 residential drug abuse treatment program. Any time spent in such  
269 a program must be credited by the court toward the term of  
270 imprisonment.

271  
272 For the purposes of this section, any conviction for a violation  
273 of s. 327.35; a previous conviction for the violation of former  
274 s. 316.1931, former s. 860.01, or former s. 316.028; or a  
275 previous conviction outside this state for driving under the  
276 influence, driving while intoxicated, driving with an unlawful  
277 blood-alcohol level, driving with an unlawful breath-alcohol  
278 level, or any other similar alcohol-related or drug-related  
279 traffic offense, is also considered a previous conviction for  
280 violation of this section. However, in satisfaction of the fine  
281 imposed pursuant to this section, the court may, upon a finding  
282 that the defendant is financially unable to pay either all or  
283 part of the fine, order that the defendant participate for a  
284 specified additional period of time in public service or a  
285 community work project in lieu of payment of that portion of the  
286 fine which the court determines the defendant is unable to pay.  
287 In determining such additional sentence, the court shall  
288 consider the amount of the unpaid portion of the fine and the  
289 reasonable value of the services to be ordered; however, the  
290 court may not compute the reasonable value of services at a rate  
291 less than the federal minimum wage at the time of sentencing.

292 (7) A conviction under this section does not bar any civil  
293 suit for damages against the person so convicted.

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294 (8) At the arraignment, or in conjunction with any notice  
295 of arraignment provided by the clerk of the court, the clerk  
296 shall provide any person charged with a violation of this  
297 section with notice that upon conviction the court shall suspend  
298 or revoke the offender's driver's license and that the offender  
299 should make arrangements for transportation at any proceeding in  
300 which the court may take such action. Failure to provide such  
301 notice does not affect the court's suspension or revocation of  
302 the offender's driver's license.

303 (9) A person who is arrested for a violation of this  
304 section may not be released from custody:

305 (a) Until the person is no longer under the influence of  
306 alcoholic beverages, any chemical substance set forth in s.  
307 877.111, or any substance controlled under chapter 893 and  
308 affected to the extent that his or her normal faculties are  
309 impaired;

310 (b) Until the person's blood-alcohol level or breath-  
311 alcohol level is less than 0.05; or

312 (c) Until 8 hours have elapsed from the time the person  
313 was arrested.

314 (10) The rulings of the Department of Highway Safety and  
315 Motor Vehicles under s. 322.2615 shall not be considered in any  
316 trial for a violation of this section. Testimony or evidence  
317 from the administrative proceedings or any written statement  
318 submitted by a person in his or her request for administrative  
319 review is inadmissible into evidence or for any other purpose in  
320 any criminal proceeding, unless timely disclosed in criminal

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321 discovery pursuant to Rule 3.220, Florida Rules of Criminal  
322 Procedure.

323 (11) The Department of Highway Safety and Motor Vehicles  
324 is directed to adopt rules providing for the implementation of  
325 the use of ignition interlock devices.

326 Section 2. Subsection (2) of section 316.656, Florida  
327 Statutes, is amended to read:

328 316.656 Mandatory adjudication; prohibition against  
329 accepting plea to lesser included offense.--

330 (1) Notwithstanding the provisions of s. 948.01, no court  
331 may suspend, defer, or withhold adjudication of guilt or  
332 imposition of sentence for any violation of s. 316.193, for  
333 manslaughter resulting from the operation of a motor vehicle, or  
334 for vehicular homicide.

335 (2)(a) No trial judge may accept a plea of guilty to a  
336 lesser offense from a person charged under the provisions of  
337 this act who has been given a breath or blood test to determine  
338 blood or breath alcohol content, the results of which show a  
339 blood or breath alcohol content by weight of 0.16 ~~0.20~~ percent  
340 or more.

341 (b) No trial judge may accept a plea of guilty to a lesser  
342 offense from a person charged with a violation of s. 316.193(3),  
343 manslaughter resulting from the operation of a motor vehicle, or  
344 vehicular homicide.

345  
346  
347 ===== T I T L E A M E N D M E N T =====

348 Remove lines 8-23 and insert:

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HOUSE AMENDMENT

Bill No. HB 307 CS

Amendment No. (for drafter's use only)

349 amending s. 316.193, F.S.; revising level of alcohol content in  
350 blood or breath at which certain penalties shall apply for the  
351 offense of driving under the influence; amending s. 316.656,  
352 F.S.; revising level of alcohol content in blood or breath at  
353 which the prohibition against accepting plea to lesser offense  
354 shall apply; creating s.

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