

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 307 Driving or Boating Under the Influence  
**SPONSOR(S):** Planas  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2030

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Transportation		Garner	Miller
2) Public Safety & Crime Prevention			
3) Public Safety Appropriations (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

When the Legislature enacted enhanced DUI/BUI penalty provisions for persons with a blood or breath alcohol level of 0.20 or higher, the law at that time provided that such a person was guilty of DUI/BUI if the person driving or operating the vehicle or vessel was under the influence of alcoholic beverages when affected to the extent that normal faculties were impaired, or the person had a blood-alcohol level of 0.10 or more grams of alcohol per 100 milliliters of blood, or the person had a breath-alcohol level of 0.10 or more grams of alcohol per 210 liters of breath. Enhanced penalties were triggered when the blood or breath alcohol content reached twice the legal limit. When the Legislature later lowered the maximum legal blood or breath-alcohol level to 0.08, it did not change the levels at which enhanced penalties are triggered.

HB 307 lowers the blood or breath-alcohol level at which enhanced penalties are triggered from 0.20 to 0.16. The change pegs enhanced penalty provisions at twice the maximum legal blood or breath-alcohol level.

In addition, the bill re-enacts numerous sections of law for the purpose of incorporating these changes, and references to them.

HB 307 may place increased burdens on local jails and court systems, and may have a positive fiscal impact on state and local governments based on a greater number of offenders being subject to enhanced incarceration and monetary penalties. Because the number of offenders who would be subject to enhanced penalties is unknown, these impacts are indeterminate.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0307.tr.doc  
**DATE:** March 5, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A person is guilty of the offense of driving under the influence (DUI) if the person is driving or in actual physical control of a vehicle within Florida and is under the influence of alcoholic beverages when affected to the extent that the person's normal faculties are impaired, the person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or the person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

A person is guilty of the offense of boating under the influence (BUI) if the person is operating a vessel within Florida and is under the influence of alcoholic beverages when affected to the extent that the person's normal faculties are impaired, the person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or the person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

First, second and certain third DUI and BUI convictions are punishable by a jail sentence and a fine as indicated below. A third conviction within 10 years of the second, or a fourth or subsequent conviction for DUI/BUI is a third degree felony, punishable by up to five years in prison. The penalties for DUI/BUI and for DUI/BUI when the blood alcohol content level of the driver or operator is over 0.20 or for DUI when the driver is accompanied in the vehicle by a person under the age of 18 are:

	Maximum Incarceration	Incarceration Over .20 BAL or w/minor	Fine	Fine Over .20 BAL or w/minor
<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

Further, there are mandatory jail sentences associated with certain repeat DUI/BUI offenses. For example, if a person is convicted of a second DUI/BUI that occurred within 5 years after the date of the prior conviction, he or she must serve a mandatory minimum of 10 days in jail. For a third or subsequent DUI/BUI conviction for an offense that occurs within 10 years after the date of a prior conviction, the person must serve at least 30 days in jail.

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.

When the Legislature enacted enhanced penalty provisions for persons who have a blood or breath alcohol level of 0.20 or higher, the law provided that a person was guilty of DUI/BUI if the person is driving or operating the vehicle or vessel was under the influence of alcoholic beverages when affected to the extent that the person's normal faculties are impaired, or the person had a blood-alcohol level of 0.10 or more grams of alcohol per 100 milliliters of blood, or the person had a breath-alcohol level of 0.10 or more grams of alcohol per 210 liters of breath. Enhanced penalties were triggered when the blood or breath alcohol content reached twice the legal limit. When the Legislature later lowered the maximum legal blood or breath-alcohol level to 0.08, it did not change the levels at which enhanced penalties are triggered.

#### Effect of Proposed Changes

HB 307 lowers the blood or breath-alcohol level at which enhanced penalties are triggered from 0.20 to 0.16. The change pegs enhanced penalty provisions at twice the maximum legal blood or breath-alcohol level.

In addition, the bill re-enacts numerous sections of law for the purpose of incorporating these changes, and references to them.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 316.193, F.S., revising the blood and breath-alcohol content threshold triggering enhanced DUI penalties.

**Section 2.** Amends s. 316.656, F.S., revising the blood and breath-alcohol content threshold for a judge's authority to accept a plea to a lesser offense.

**Section 3.** Amends s. 327.35, F.S., revising the blood and breath-alcohol content threshold triggering enhanced BUI penalties.

**Section 4.** Re-enacts portions of s. 316.066, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 5.** Re-enacts portions of s. 316.072, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 6.** Re-enacts portions of s. 316.1932, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 7.** Re-enacts portions of s. 316.1933, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 8.** Re-enacts portions of s. 316.1934, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

- Section 9.** Re-enacts portions of s. 316.1937, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 10.** Re-enacts portions of s. 316.1939, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 11.** Re-enacts portions of s. 318.143, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 12.** Re-enacts portions of s. 318.17, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 13.** Re-enacts portions of s. 322.03, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 14.** Re-enacts portions of s. 322.0602, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 15.** Re-enacts portions of s. 322.21, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 16.** Re-enacts portions of s. 322.25, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 17.** Re-enacts portions of s. 322.26, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 18.** Re-enacts portions of s. 322.2615, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 19.** Re-enacts portions of s. 322.2616, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 20.** Re-enacts portions of s. 322.264, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 21.** Re-enacts portions of s. 322.271, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 22.** Re-enacts portions of s. 322.28, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 23.** Re-enacts portions of s. 322.282, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 24.** Re-enacts portions of s. 322.291, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 25.** Re-enacts portions of s. 322.34, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.
- Section 26.** Re-enacts s. 322.44, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 27.** Re-enacts portions of s. 322.62, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 28.** Re-enacts portions of s. 322.63, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 29.** Re-enacts portions of s. 322.64, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 30.** Re-enacts portions of s. 323.001, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 31.** Re-enacts portions of s. 327.35, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 32.** Re-enacts portions of s. 397.405, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 33.** Re-enacts portions of s. 440.02, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 34.** Re-enacts portions of s. 440.09, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 35.** Re-enacts portions of s. 493.6106, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 36.** Re-enacts portions of s. 627.758, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 37.** Re-enacts portions of s. 790.06, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 38.** Re-enacts portions of s. 903.36, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 39.** Re-enacts portions of s. 907.41, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 40.** Re-enacts s. 938.07, F.S., for the purpose of incorporating the amendment to ss. 316.193 and 327.35, F.S.

**Section 41.** Re-enacts s. 938.21, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 42.** Re-enacts portions of s. 938.23, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 43.** Re-enacts portions of s. 943.05, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 44.** Re-enacts portions of s. 948.03, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 45.** Re-enacts portions of s. 960.03, F.S., for the purpose of incorporating the amendment to s. 316.193, F.S.

**Section 46.** Re-enacts portions of s. 327.352, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 47.** Re-enacts portions of s. 327.35215, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 48.** Re-enacts portions of s. 327.353, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 49.** Re-enacts portions of s. 327.354, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 50.** Re-enacts portions of s. 327.355, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 51.** Re-enacts portions of s. 327.359, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 52.** Re-enacts s. 327.36, F.S., for the purpose of incorporating the amendment to s. 327.35, F.S.

**Section 53.** Provides an effective date of October 1, 2004.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS section, below.

#### **2. Expenditures:**

See FISCAL COMMENTS section, below.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See FISCAL COMMENTS section, below.

#### **2. Expenditures:**

See FISCAL COMMENTS section, below.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Under the bill persons convicted of DUI/BUI with a blood or breath-alcohol content of 0.16 up to 0.20 will be subject to the enhanced penalties provided by law. Under current law, these persons are subject only to the standard DUI/BUI penalties.

### **D. FISCAL COMMENTS:**

Because the number of persons convicted of DUI/BUI with blood or breath-alcohol levels below 0.20 but at 0.16 or above cannot be ascertained, any positive impact of the bill on state and local revenues is indeterminate at this time. The bill will impose an additional burden on local jails as more offenders will be subject to enhanced incarceration penalties up to 12 months in duration. Since the number of offenders subject to enhanced incarceration penalties cannot be ascertained, these burdens are indeterminate at this time. In addition, to the extent that a lower threshold for enhanced penalties provides greater incentives for offenders to use the courts to avoid such penalties, increased burdens may be placed on the court system.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

No additional rule-making authority is required to implement the provisions of this bill.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**