

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 397  
**SPONSOR(S):** Planas  
**TIED BILLS:**

Driving or Boating Under the Influence

**IDEN./SIM. BILLS:** SB 1642

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 0 N	Kramer	Kramer
2) Transportation Committee	14 Y, 0 N	St.Fleur	Miller
3) Justice Appropriations Committee			
4) Justice Council			
5) _____			

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**SUMMARY ANALYSIS**

Current law provides for increased sanctions when a person who is convicted of driving or boating under the influence had a blood alcohol or breath alcohol level of 0.20 or higher. HB 397 provides that the increased sanctions will apply when an offender's blood or breath alcohol level is 0.16 or more. The bill re-enacts numerous sections of law for the purpose of incorporating these changes, and references to them.

HB 397 may place increased burdens on local jails and court system 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. HB 397 becomes effective July 1, 2005.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: This bill will increase sanctions for offenders who commit the offense of DUI or BUI and have a blood or breath alcohol level of 0.16 or higher.

#### B. EFFECT OF PROPOSED CHANGES:

The offense of driving under the influence<sup>1</sup> is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance 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.

The offense is punishable as follows<sup>2</sup>:

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.<sup>3</sup>
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.

A third conviction that occurs within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail<sup>4</sup> and up to five years in prison and a fine of up to \$1000.<sup>5</sup> A fourth conviction, regardless of when it occurs, is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.<sup>6</sup>

If a person commits a DUI and has a blood-alcohol level or breath-alcohol level of 0.20 or higher, the offense is punishable by<sup>7</sup>:

- For a first conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months
- For a second conviction, by a fine of not less than \$1000 or more than \$2000 and by imprisonment for not more than 12 months.

The period of incarceration for a third DUI with a 0.20 blood or breath alcohol level is the same as it would be if the person had a blood or breath alcohol level of 0.08 or above. The fines are increased from a minimum of \$2,000 to a maximum of \$5,000. For the purposes of the provision, only the offense

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<sup>1</sup> s. 316.193(1), F.S.

<sup>2</sup> s. 316.193(2), F.S.

<sup>3</sup> s. 316.193(6)(b), F.S.

<sup>4</sup> s. 316.193(6)(c), F.S.

<sup>5</sup> s. 316.193(2)(b), F.S.

<sup>6</sup> Additionally, a person who has been convicted of DUI faces suspension of his or her driver's license and may be required to place an ignition interlock device on his or her vehicle. Section 316.193 also increases sanctions for DUI which results in damage to the property or person of another, serious bodily injury or the death of another person. s. 316.193(3)(c), F.S.

<sup>7</sup> s. 316.193(4), F.S.

for which the defendant is being sentenced must involve a blood or breath alcohol level of 0.20 or higher in order for the increased sanctions to apply.

Section 327.35, F.S. prohibits the offense of boating under the influence which has the same elements (other than the substitution of the word "vessel" for "vehicle") as the offense of driving under the influence. The fine and imprisonment provisions in the BUI statute are identical to those in the DUI statute.

During the 1993 session, the legislature lowered the blood or breath alcohol level required for DUI from 0.10 to 0.08.<sup>8</sup> Prior to this, the increased sanctions had applied when the offender's blood or breath alcohol level was double that of the statutory limit. When the legislature lowered the statutory limit to 0.08, they did not lower the level required to qualify for the increased sanctions but instead left it at 0.20. HB 397 amends the DUI and BUI statutes to lower the blood or breath alcohol level for which the increased sanctions will apply from 0.20 to 0.16 – double the amount of the current threshold for DUI or BUI.

HB 397 also makes corresponding changes to section 316.656, F.S. which provides that no trial judge may accept a plea of guilty to a lesser offense from a person charged with DUI who has a blood or breath alcohol level of 0.20 or more. The bill changes this provision to apply when a person has a blood or breath alcohol level of 0.16 or more.

#### C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S. to provide for enhanced sanctions for a person who is convicted of DUI and who had a blood or breath alcohol level of .16 or higher.

Section 2. Amends s. 316.656, F.S. to provide that trial judge may not accept a plea of guilty to a lesser offense from a person convicted of DUI who had a blood or breath alcohol level of .16 or higher.

Section 3. Amends s. 327.35, F.S. to provide for enhanced sanctions for a person convicted of BUI who had a blood or breath alcohol level of .16 or higher.

Sections 4-53: Reenacting sections of statute for the purpose of incorporating amendments to sections 316.193 and 327.35 by reference.

Section 54: Provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See Fiscal Comments.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See Fiscal Comments.

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<sup>8</sup> See 93-124, Laws of Florida.

2. Expenditures:

This bill provides for increased maximum jail sentences for a person who commits DUI or BUI and had a blood or breath alcohol level of 0.16 or higher, rather than 0.20 or higher. Because of this, more offenders may be subject to the increased maximum jail sentence and there may be a resulting impact on county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, persons convicted of DUI or 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 or BUI penalties.

D. FISCAL COMMENTS:

Because the number of persons convicted of DUI or 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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES