

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.)

Prepared By: Transportation Committee

BILL: SB 530

SPONSOR: Senator Wise

SUBJECT: DUI/Ignition Interlock Device

DATE: January 26, 2005

REVISED: 3/8/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Meyer	TR	Fav/4 amendments
2.			CJ	
3.			TA	
4.				
5.				
6.				

Please see last section for Summary of Amendments

Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Generally, the bill provides the Florida Department of Highway Safety and Motor Vehicles (department) administrative responsibility and authority to administer the ignition interlock program, which is currently administered by the courts under Chapter 316, Florida Statutes.

The bill authorizes the department to require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. The bill also permits 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 bill specifies the duration of each installation period based upon the number of DUI convictions.

This bill creates section 322.2715 of the Florida Statutes.

II. Present Situation:

Penalties for Persons Convicted of DUI

A conviction for DUI requires proof the person was driving or in actual physical control of a vehicle and either: (1) the person's blood-alcohol or breath-alcohol level at the time was .08 percent or greater; or (2) the person was under the influence of alcohol, a chemical substance or a

controlled substance to the extent their normal faculties were impaired. (See s. 316.193(1), F.S.) Penalties for DUI vary according to the frequency of previous convictions, the offender's blood-alcohol or breath-alcohol level (BAL) when arrested, and whether serious injury or death results.

Generally, modified misdemeanor penalties apply when there has been no property damage or personal injury and when there have been fewer than three DUI 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 convicted offender's BAL is .20 percent or higher, or if a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$500 to \$1,000 and imprisonment not exceeding 9 months.

A second DUI 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 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 offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle. These penalties require a fine ranging from \$1,000 to \$2,000, and imprisonment not exceeding 12 months.

A third or subsequent DUI 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 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. The offense of felony DUI for a third conviction within 10 years of a prior conviction is a level 3 offense in the offense severity ranking chart. 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. These penalties require a fine ranging from \$2,000 to \$5,000 and imprisonment not exceeding 12 months.

A fourth or subsequent DUI 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. The offense of felony DUI for a fourth or subsequent DUI offense is ranked within level 6 of the offense severity ranking chart.

Pursuant to s. 316.193(2), F.S., the penalties for DUI and for DUI with a blood alcohol level above .20 or when the driver was accompanied in the vehicle with a person under the age of 18 are summarized in the chart as follows:

Penalties for DUI based on Convictions

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

Section 316.193, F.S., also provides penalties for a person who operates a vehicle while under the influence and causes or contributes to damage to the property or person of another, serious bodily injury to another, or the death of another (DUI manslaughter). A DUI offense involving property damage results in a first degree misdemeanor penalty, punishable by a fine not exceeding \$1,000 and/or imprisonment up to 1 year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and/or imprisonment up to 5 years. A DUI offense resulting in death is a second-degree felony, punishable by a fine not exceeding \$10,000 and/or imprisonment up to 15 years.

In addition to these penalties, a DUI conviction also results in driver’s license revocation under s. 322.28, F.S., as follows: at least 180 days to 1 year for a first conviction; at least 5 years for a second conviction within 5 years of a prior conviction; at least 10 years for a third conviction within 10 years from the first of three or more prior convictions; and permanent revocation for a fourth conviction.

Implied Consent to Test

Section 316.1933, F.S., requires a person to submit to a blood test, upon request of a law enforcement officer, when a law enforcement officer has probable cause to believe the person was driving under the influence and caused death or serious bodily injury. The law requires the officer to order a blood test if there is probable cause and provides the testing need not be incidental to a lawful arrest of the person. If an offender refuses to submit to a breath, blood, or urine test after an arrest for DUI, the offender’s driver’s license is suspended. A person’s refusal to submit is also a first-degree misdemeanor, punishable by up to 1 year in jail, if the offender’s driver’s license has previously been suspended for a prior refusal to submit.

Ignition Interlock Devices

Section 316.193, F.S., also requires ignition interlock devices to be installed on the vehicles of certain persons convicted of DUI after July 1, 2002, and who qualify for a permanent or restricted license. Specifically, the court must order the placement of an interlock device for up to 6 months for a first DUI offense and for up to 2 years for a second DUI offense where the violator had a blood alcohol level above .20 or if a passenger under 18 years of age is present in the vehicle. Upon a second DUI conviction, the law requires the placement of an interlock device on all vehicles owned or leased by the offender for at least one year. Upon a third DUI conviction, the court must order an ignition interlock device to be installed for at least 2 years.

The ignition interlock device must be of a type approved by the department and must be placed at the offender’s sole expense. Additionally, the offender is not permitted to drive any motor vehicle that does not have a functioning interlock device.

Section 316.1937, F.S., allows a judge to prohibit any person who is convicted of DUI in violation of s. 316.193, F.S., from operating a motor vehicle during the period of probation unless the vehicle is equipped with a functioning interlock device certified by the department and installed in such a manner the vehicle will not start if the operator’s blood alcohol level is in excess of .05 percent or as otherwise specified by the court. However, the court is required to order the placement of an ignition interlock device in those circumstances required by s. 316.193, F.S. Violation of the conditions of s. 316.1937, F.S., will result in the revocation of the offender’s driving privilege and imposition of a fine.

If the court imposes the uses of an ignition interlock device, the court must: (1) stipulate on the record the requirement for, and the period of, the uses of a certified ignition interlock device; (2) order the records of the department reflect such requirement; (3) order an ignition interlock device be installed, as the court may determine necessary, on any vehicle owned or operated by the convicted person; (4) determine the convicted person’s ability to pay for installation of the device if the person claims inability to pay; and (5) require proof of installation of the device and periodic reporting to the department for verification of the operation of the device in the convicted person’s vehicle. The law does provide indigency guidelines. If the court determines the convicted person is unable to pay for the installation of the ignition interlock device, the court may order a portion of the fine paid by the person for a violation of s. 316.193, F.S., be allocated to defray the costs of installing the device. (See s. 316.1937(2)(d), F.S.)

Section 316.1938, F.S., requires the department to certify the accuracy and precision of ignition interlock devices.

Pursuant to s. 316.193(2) and (4), F.S., the ignition interlock device penalties for DUI and for DUI with a blood alcohol level above .20 or when the driver was accompanied in the vehicle with a person under the age of 18 are summarized in the chart as follows:

Ignition Interlock Device Penalties for DUI based on Convictions

DUI Conviction	Ignition Interlock Device Requirement
1st Conviction	If court ordered
1st Conviction if .20 BAL or w/Minor in Car	Up to 6 months
2nd Conviction	At least 1 year
2nd Conviction if .20 BAL or w/Minor in Car	At least 2 years
3rd Conviction	At least 2 years

The department has encountered some adverse court rulings as to its ability to require convicted DUI 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 the department had no independent authority under s. 316.193, F.S. to require such devices.

The current ignition interlock program has been in place since February 1, 2004. Since the program's inception, according to the department as of November 30, 2004, there have been 4,621 people who had an ignition interlock device installed. In an effort to determine the program's effectiveness, the department gathered the following information:

- There have been 4,035 reported initial 5-minute lockouts due to an alcohol reading above .05. Of this population, 1,211 clients produced these 4,035 reported lockouts; 672 were responsible for two or more of the 4,035 reported lockouts. In addition, 1,282 of the reported lockouts were recorded at a .08 or above reading.
- There were 1,524 reported secondary 30-minute lockouts based on two alcohol readings above .05 within a 3-hour period. There were 614 drivers who created these violations. Of the 614, there were 275 people who were responsible for 2 or more of the violations; 261 of these violations were recorded at a .08 or above reading.
- Since the inception of the program, 4 of the 4,621 participants have been arrested for a DUI while on the program (0.0009%). It is unclear if they were in a vehicle equipped with an interlock at the time of the arrest. Of the 4,621, there were 2 arrested for DUI after removing the device.

III. Effect of Proposed Changes:

The bill creates s. 322.2715, F.S., which permits the department to require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles prior to issuing such person a permanent or restricted driver's license. However, the bill is limited to the circumstances delineated in s. 316.193, F.S., where interlocks are mandatory.

The bill also specifies the duration of each installation period based upon the number of DUI convictions as required under s. 316.193, F.S. Specifically, the bill requires placement of an interlock device for up to 6 months for a first DUI offense and for up to 2 years for a second DUI offense where the violator had a blood alcohol level above .20 percent or if a passenger under 18 years of age is present in the vehicle. Upon a second DUI conviction, the placement of an interlock device is required on all vehicles owned or leased by the offender for at least one year. Upon a third DUI conviction, the ignition interlock device must be installed for at least 2 years.

In addition, the bill permits the department to immediately require the device be installed if the court fails to so order such installation on a convicted offender's vehicle. Finally, the bill clarifies the mandate of the department to require the placement of an approved ignition interlock device on specified convicted DUI offenders' vehicles applies to the reinstatement of the driving privilege following a revocation, suspension, or cancellation of a DUI offense occurring on or after July 1, 2005.

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:

According to the department, persons requiring the placement of an approved ignition interlock device, currently, must pay a \$70 installation fee, a deposit of \$100 paid upon installation (and returned at the end of the required duration if the device is not damaged), and a monthly fee of \$67.50.

During the ignition interlock program's first year of establishment, approximately 4500 persons were required to have the ignition interlock for some duration. The department anticipates the bill will not greatly impact the number of persons who are required to have the interlock device.

C. Government Sector Impact:

According to the department, the bill will require programming modifications to the Driver License Information System, which will be absorbed within existing resources; therefore, the department estimates the bill will have no fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 711642 by Transportation:

Modifies a cross reference regarding the department's authority to unilaterally require imposition of the interlock. (WITH TITLE AMENDMENT)

Barcode 334812 by Transportation:

Provides an exception for consideration to be given to individuals with a documented medical condition prohibiting the ignition interlock device from functioning normally when such persons are convicted of an offense of DUI requiring the placement of the device. (WITH TITLE AMENDMENT)

Barcode 443674 by Transportation:

Provides an exception for consideration to be given to individuals with a documented medical condition prohibiting the ignition interlock device from functioning normally when such persons are convicted of an offense of DUI requiring the placement of the device. (WITH TITLE AMENDMENT)

Barcode 432176 by Transportation:

Specifies the department is to require the installation of an ignition interlock device if the court fails to do so during the reinstatement of the driving privilege following a revocation, suspension or cancellation based on a conviction for the offense of DUI occurring on or after July 1, 2005.