

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 1424

INTRODUCER: Transportation Committee and Senator Wise

SUBJECT: Driving Privileges/Driving Under the Influence

DATE: April 8, 2008

REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill proposes to allow a person whose license has been revoked for a fourth or subsequent conviction of DUI to be considered to drive on a license restricted to business or employment purpose only and requires an ignition interlock device (IID) be installed for a minimum of 10 years. The bill requires an offender who is required to have an ignition interlock to pay a \$15 service fee which is to be deposited into the DUI Programs Coordination Trust Fund. This bill also requires "continuous alcohol monitoring" (CAM) of DUI offenders with four or more convictions as part of the application process under s. 322.271, F. S., and provides penalties for driving without an IID when required.

This bill substantially amends ss. 316.193, 322.21, 322.28, 322.271, 322.2715, and 322.16 of the Florida Statutes.

II. Present Situation:

Generally, for a first conviction of driving under the influence, an ignition interlock device (IID) is not statutorily required; however, a court may order IID placement at the judge's discretion. Statutes require an IID be installed on the vehicles of persons convicted of a second or third

offense of driving under the influence, and for first offenders if a minor was in the vehicle at the time of the offense, or the violator's blood alcohol level (BAL) was over 0.20 percent.

Driving Under the Influence (DUI)

The offense of DUI¹ 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 the person's normal faculties are impaired;
- The person has a BAL of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a BAL of 0.08 or more grams of alcohol per 210 liters of breath.

The DUI offense is punishable as follows:²

- 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.³
- 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.⁴

A third conviction for an offense occurring within 10 years of a prior conviction is a third degree felony, punishable by no less than 30 days in jail⁵ and up to five years in prison and a fine of up to \$1000.⁶ 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 \$5000.⁷ If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.⁸

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.⁹ Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles for various periods of time based on the number of DUI convictions.

This section requires the revocation of a driver's license:

¹s. 316.193(1), F.S.

²s. 316.193(2), F.S.

³s. 316.193(6)(b), F.S.

⁴s. 316.193(2)(b)2, F.S.

⁵s. 316.193(6)(c), F.S.

⁶s. 316.193(2)(b)1, F.S.

⁷s. 316.193(2)(b)3., F.S.

⁸s. 316.193(6)(c), F.S.

⁹s. 316.193(6)(k), F.S.

- for not less than 180 days and no more than 1 year for a first DUI conviction;¹⁰
- for not less than 5 years for a second conviction for an offense that occurs within 5 years after the date of a prior conviction;¹¹ and
- for not less than 10 years for a third conviction for an offense that occurs within 10 years of a prior conviction.¹²

A fourth DUI conviction results in permanent revocation of a person's driving privilege.¹³

Ignition Interlock Devices (IID)

As defined in Rule 15A-9.003, F.A.C., an IID is a "breath alcohol analyzer connected to a motor vehicle's ignition. In order to start the motor vehicle engine, a convicted person must blow a deep lung breath sample into the analyzer, which measures the breath alcohol concentration. If the breath alcohol concentration exceeds the fail point on the IID, the motor vehicle engine will not start." An IID currently disables a vehicle if the driver's BAL is 0.05 percent or higher or as otherwise specified by the court.

Section 316.193, F.S., requires an IID to be installed on the vehicles of certain persons convicted of DUI when they qualify for a permanent or restricted driver's license. Upon a first DUI conviction, no IID is required unless the person had a BAL of 0.20 percent or higher, or was accompanied by a minor at the time of the infraction. If these conditions are met, the court is mandated to require the placement of an IID for up to six months. Upon a second DUI conviction, the law requires the placement of an IID on all vehicles owned or leased by the offender for at least one year regardless of the violator's BAL or whether a minor was present in the vehicle. Upon a third DUI conviction, the court must order an IID to be installed for at least 2 years. The IID must be of a type approved by the Department of Highway Safety and Motor Vehicles (department) and must be placed and maintained 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.

Additionally, s. 316.1937, F.S., provides a judge the option of requiring an IID for first-time offenders. The court *may* 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 IID. However, the court *is required* to order the placement of an IID in those circumstances required by s. 316.193, F.S. 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 BAL of 0.20 percent or higher; or
- If a passenger under 18 years of age is present in the vehicle.

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 use of an IID, the court must: (1) stipulate on the record the requirement for, and the period of, the use of a certified IID; (2)

¹⁰s. 322.28(2)(a)1., F.S.

¹¹s. 322.28(2)(a)2., F.S.

¹²s. 322.28(2)(a)3., F.S.

¹³s. 322.28(2)(e), F.S.

order the records of the department reflect such requirement; (3) order an IID 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 IID, 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 IIDs.

Pursuant to s. 316.193(2) and (4), F.S., the IID penalties for DUI and for DUI with a BAL of 0.20 percent or higher, 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	IID Requirement
1st Conviction	Optional – Up to 6 months if court ordered
1st Conviction if 0.20 BAL or w/Minor in Car	Required - Up to 6 months
2nd Conviction	Required - At least 1 year
2nd Conviction if 0.20 BAL or w/Minor in Car	Required - At least 2 years
3rd Conviction	Required - At least 2 years

Section 322.271(2)(d), F.S., provides the department, based upon review of the licensee’s application for reinstatement, may require the uses of an IID under s. 322.2715, F.S.

Section 322.2715, F.S., directs the department to require placement of an IID for any person convicted or committing an offense of DUI as shown in the chart above, prior to issuing the person a permanent or restricted driver’s license.

The current IID program has been in place since February 1, 2004. Two IID vendors have been contracted by the department to install, inspect and service the ignition interlock devices in Florida. “Interlock Systems of Florida” is the vendor for south Florida counties and has eight installation locations. “Interlock Group of Florida” is the vendor for north Florida counties and has eight installation locations. The ignition device is programmed to require routine servicing at 30 to 60 day intervals. However, events involving misuse or non-compliance with program conditions may cause the service date to advance automatically. Service requirements must be strictly complied with; otherwise the interlock device will not allow the vehicle to be started, even if no alcohol is detected. As of March 3, 2008, there were 5,405 people across the state currently enrolled in the ignition interlock device program. According to the department, since the program began on February 1, 2004, there have been 13,990 people to successfully complete the program requirements. This population has a 4.7 percent overall recidivism rate, with 111 receiving a DUI during the program and 684 receiving a DUI after the program. Some 1,291 people have quit the program since February 1, 2004. This population has a 7.67 percent overall recidivism rate. When a person prematurely quits the ignition interlock device program, their license is cancelled indefinitely until they complete their interlock requirement.

III. Effect of Proposed Changes:

Section 1 amends s. 316.193, F.S., to require the court to order the mandatory placement for a period of at least 10 years, at the convicted person's sole expense, of an IID approved by the department on all vehicles individually or jointly owned and routinely operated by any person convicted for a fourth or subsequent offense if the convicted person obtains a restricted license or permit regardless of whether the convictions was for a misdemeanor or felony offense.

Section 2 amends s. 322.21, F.S., to require an offender who is required to have an IID to pay a \$15 service fee which is to be deposited into the DUI Programs Coordination Trust Fund.

Section 3 amends s. 322.28, F.S., to provide an exception allowing persons convicted a fourth time for DUI or convicted for DUI manslaughter (without any prior DUI-related convictions) to petition the department for reinstatement of a driver's license or driving privilege under certain circumstances.

Section 4 amends s. 322.271, F.S., to provide a person whose license has been revoked for a fourth or subsequent DUI conviction, may, upon the expiration of five years after the date on which the revocation was imposed, petition the department for reinstatement of his or her driving privilege on a restricted basis. Reinstatement of the driving privilege shall be restricted to business or employment purposes only. The department shall require the person to remain abstinent from alcohol or other drugs through the petition and approval process as demonstrated by CAM for a period of not less than 180 days as reported to the DUI program licensed by the department through which the petitioner applied for supervision services. In addition, the department must require the person refrain from driving and abstain from the use of alcohol or other drugs during the 12 months immediately preceding reinstatement, be supervised by a DUI program licensed by the department, and report to the program for supervision at least three times per year as required by the program for the duration of the revocation period. The supervision must include evaluation, education, referral into treatment, and other activities required by the department. Persons seeking reinstatement shall assume reasonable costs of supervision. If such person fails to comply with the required supervision, the program shall report the failure to the department and the department must cancel such person's driving privilege. The cancellation must remain in effect until the person has complied with the supervision requirements.

A person whose driving privilege has been permanently revoked due to a DUI manslaughter conviction and has no prior convictions for DUI related offenses may petition the department for reinstatement of his or her driving privileges. At the hearing, the petitioner must demonstrate to the department that he or she has, in addition to other requirements, abstained from consuming alcohol for 5 years as demonstrated by a period of not less than 180 days of CAM as reported to the licensed DUI program supervising the petitioner. As defined in s. 322.271(4)(a)4, F.S., the term "CAM" means automatically testing breath, blood, or transdermal alcohol concentration levels at least once every hour and detecting any attempts to tamper with or obstruct the testing process, regardless of the location of the person who is being monitored, and regularly transmitting the data to a licensed DUI supervision program provider.

Section 5 amends s. 322.2715, F.S., to authorize the department to require the installation of an IID for a period of not less than years 10 years on a DUI offenders' vehicle for a fourth or subsequent conviction, prior to issuing such person a permanent or restricted driver's license.

Section 6 amends s. 322.16, F.S., provide any person operating a motor vehicle in violation of an IID restriction commits an offense of the same degree and punishable in the same manner as described in s. 322.341, F.S., relating to driving while a license is permanently revoked.

Section 7 provides an effective date of October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will be increased costs to DUI drivers with the CAM type device requirement (approximately \$12/day). Increased cost to drivers with a fourth or subsequent DUI conviction since the minimum IID time is 10 years (approximately \$8170 or \$817 per year). In addition, there will be increased costs for DUI programs to monitor CAM on multiple offenders.

The bill may provide a potential market increase for IID and CAM vendors. The local DUI programs may see an increase in monitoring and Special Supervision Services income. DUI programs that do not currently monitoring based on CAM devices would have to establish this process with a vendor and apply to the department for an ancillary fee to cover this service.

C. Government Sector Impact:

According to the department, the provision of the bill will increase the number of hearings conducted by the Bureau of Administrative Reviews to cover existing and future populations. The department anticipates 12 additional positions, two Operations and

Management Consultant IIs in the Bureau of Driver Education and DUI Programs and 10 Field Hearing Officers in the Bureau of Administrative Reviews will be needed to handle the increased workload.

The department projects revenue collections of \$86,051 in the first year based on an October 1, 2008, implementation and \$133,785 and \$156,000 would be collected for the two subsequent years. These fees would be deposited into the DUI Program Coordination Trust Fund for support of two Operations and Management Consultant II positions. This projection is based on the \$15 fee collected from the installation of IIDs and a population of 7,649 estimated in the first year with a growth factor of 16.6% for subsequent years.

The total cost for the first year is estimated at \$473,427, which provides funding for twelve additional positions and related costs and assumes an October 1, 2008 implementation date. Of this cost, \$107,525 and two positions would be funded from the DUI Program Coordination Trust Fund and \$365,902 and ten positions would be funded from General Revenue. Recurring costs are estimated at \$566,907, of which \$131,665 would be funded from the DUI Program Coordination Trust Fund and the remainder would be funded from General Revenue. Programming will be required to the driver's license system, the cost of which can be absorbed within existing resources.

The fiscal impact to local governments, specifically with regard to violations for driving during the period that an IID is subject to being on the vehicle, is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department provided the following comments:

Section 4

Those seeking reinstatement from DUI manslaughter convictions will also be required to utilize the CAM. The CAM is better defined for this purpose, but the definition is limited to a subparagraph and should be expanded to apply to all references within this statute.

Although on a recurring basis there may only be approximately 1,800 - 2,000 additional hearings based on current conviction rate for four or more DUIs, with the potential to continue to drive, although on a restricted basis, it is difficult to estimate the growth in this population. Further, the current population under permanent revocation is 36,370. This would require a large number of officers to clear this backlog, since they would all require restricted licenses immediately. Based on all of these factors, it is estimated that at least 10 additional Hearing Officers would be needed permanently to implement the changes.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on April 8, 2008:

- Requires an offender who is required to have an ignition interlock to pay a \$15 service fee which is to be deposited into the DUI Programs Coordination Trust Fund.
- Deletes the requirements for Special Supervision Services for a driver with a 2nd or 3rd DUI conviction as part of the application process under s. 322.271, F. S.
- Specifies the department must cancel the driving privilege of an offender who fails to comply with the provision of the DUI supervision program, and the cancellation remains in effect until the person has complied with the supervision requirements.
- Deletes a reference to s. 322.34, F.S., as the criminal punishment for a person's violation of IID requirements.

- B. **Amendments:**

None.