

By Senator Wise

5-02985-08

20081424__

1 A bill to be entitled
2 An act relating to driving privileges for persons
3 convicted of driving under the influence; amending s.
4 316.193, F.S.; requiring that a court order the mandatory
5 placement for a specified period, at the convicted
6 person's sole expense, of an ignition interlock device
7 approved by the Department of Highway Safety and Motor
8 Vehicles upon all vehicles that are individually or
9 jointly leased or owned and routinely operated by any
10 person convicted for a fourth or subsequent offense of
11 driving under the influence if the convicted person
12 obtains a restricted license or permit, regardless of
13 whether the conviction was for a misdemeanor or felony;
14 amending s. 322.28, F.S.; providing that a driver's
15 license or driving privilege may be granted under certain
16 circumstances to a person convicted a fourth time for
17 driving under the influence or a conviction for DUI
18 manslaughter; amending s. 322.271, F.S.; providing
19 conditions under which a person convicted of a second DUI
20 within 5 years after the date of a prior conviction may
21 petition the department for reinstatement of his or her
22 driving privilege on a restricted basis; providing
23 conditions under which a person convicted of a third DUI
24 within 10 years after the date of a prior conviction may
25 petition the department for reinstatement of his or her
26 driving privilege on a restricted basis; providing
27 conditions under which a person convicted of a fourth or
28 subsequent DUI may petition the department for
29 reinstatement of his or her driving privilege on a

5-02985-08

20081424__

30 restricted basis; requiring that the department impose
31 certain requirements upon such persons; providing for the
32 cancellation of such person's driving privilege upon his
33 or her failure to adhere to such requirements; requiring
34 that a person convicted of DUI manslaughter seeking
35 reinstatement of his or her driving privilege demonstrate
36 to a court within a specified period after the filing of
37 his or her petition for reinstatement that he or she has
38 abstained from consuming alcohol for 5 years as
39 demonstrated by a specified period of continuous alcohol
40 monitoring as reported to the licensed DUI program
41 supervising the petitioner; defining the term "continuous
42 alcohol monitoring"; amending s. 322.2715, F.S.; requiring
43 that an ignition interlock device be installed for a
44 specified period on any vehicle that is individually or
45 jointly leased or owned and routinely operated by an
46 individual convicted of a fourth or subsequent offense of
47 driving under the influence; amending s. 322.16, F.S.;
48 correcting cross-references to conform to changes made by
49 the act; providing that any person operating a motor
50 vehicle in violation of an ignition interlock restriction
51 commits an offense of the same degree and punishable in
52 the same manner as provided by state law regarding driving
53 or being in actual physical control of a vehicle while his
54 or her license is suspended or revoked; providing an
55 effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
58

5-02985-08

20081424__

59 Section 1. Paragraph (b) of subsection (2) of section
60 316.193, Florida Statutes, is amended to read:

61 316.193 Driving under the influence; penalties.--
62 (2)

63 (b)1. Any person who is convicted of a third violation of
64 this section for an offense that occurs within 10 years after a
65 prior conviction for a violation of this section commits a felony
66 of the third degree, punishable as provided in s. 775.082, s.
67 775.083, or s. 775.084. In addition, the court shall order the
68 mandatory placement for a period of not less than 2 years, at the
69 convicted person's sole expense, of an ignition interlock device
70 approved by the department in accordance with s. 316.1938 upon
71 all vehicles that are individually or jointly leased or owned and
72 routinely operated by the convicted person, when the convicted
73 person qualifies for a permanent or restricted license. The
74 installation of such device may not occur before July 1, 2003.

75 2. Any person who is convicted of a third violation of this
76 section for an offense that occurs more than 10 years after the
77 date of a prior conviction for a violation of this section shall
78 be punished by a fine of not less than \$1,000 or more than \$2,500
79 and by imprisonment for not more than 12 months. In addition, the
80 court shall order the mandatory placement for a period of at
81 least 2 years, at the convicted person's sole expense, of an
82 ignition interlock device approved by the department in
83 accordance with s. 316.1938 upon all vehicles that are
84 individually or jointly leased or owned and routinely operated by
85 the convicted person, when the convicted person qualifies for a
86 permanent or restricted license. The installation of such device
87 may not occur before July 1, 2003.

5-02985-08

20081424__

88 3. Any person who is convicted of a fourth or subsequent
89 violation of this section, regardless of when any prior
90 conviction for a violation of this section occurred, commits a
91 felony of the third degree, punishable as provided in s. 775.082,
92 s. 775.083, or s. 775.084. However, the fine imposed for such
93 fourth or subsequent violation may be not less than \$1,000.

94 4. The court shall order the mandatory placement for a
95 period of at least 10 years, at the convicted person's sole
96 expense, of an ignition interlock device approved by the
97 department in accordance with s. 316.1938 upon all vehicles that
98 are individually or jointly leased or owned and routinely
99 operated by any person convicted for a fourth or subsequent
100 offense if the convicted person obtains a restricted license or
101 permit regardless of whether the conviction was for a misdemeanor
102 or felony offense.

103 Section 2. Paragraph (e) of subsection (2) of section
104 322.28, Florida Statutes, is amended to read:

105 322.28 Period of suspension or revocation.--

106 (2) In a prosecution for a violation of s. 316.193 or
107 former s. 316.1931, the following provisions apply:

108 (e) The court shall permanently revoke the driver's license
109 or driving privilege of a person who has been convicted four
110 times for violation of s. 316.193 or former s. 316.1931 or a
111 combination of such sections. The court shall permanently revoke
112 the driver's license or driving privilege of any person who has
113 been convicted of DUI manslaughter in violation of s. 316.193. If
114 the court has not permanently revoked such driver's license or
115 driving privilege within 30 days after imposing sentence, the
116 department shall permanently revoke the driver's license or

5-02985-08

20081424__

117 driving privilege pursuant to this paragraph. No driver's license
118 or driving privilege may be issued or granted to any such person
119 except as described in s. 322.271. This paragraph applies only if
120 at least one of the convictions for violation of s. 316.193 or
121 former s. 316.1931 was for a violation that occurred after July
122 1, 1982. For the purposes of this paragraph, a conviction for
123 violation of former s. 316.028, former s. 316.1931, or former s.
124 860.01 is also considered a conviction for violation of s.
125 316.193. Also, a conviction of driving under the influence,
126 driving while intoxicated, driving with an unlawful blood-alcohol
127 level, or any other similar alcohol-related or drug-related
128 traffic offense outside this state is considered a conviction for
129 the purposes of this paragraph.

130 Section 3. Paragraph (b) of subsection (2) and paragraph
131 (a) of subsection (4) of section 322.271, Florida Statutes, are
132 amended to read:

133 322.271 Authority to modify revocation, cancellation, or
134 suspension order.--

135 (2)

136 (b) A person whose license has been revoked ~~for a period of~~
137 ~~5 years or less~~ pursuant to s. 322.28(2)(a) or s. 322.28(2)(e):
138 ~~may, upon the expiration of 12 months after the date said~~
139 ~~revocation was imposed, petition the department for reinstatement~~
140 ~~of his or her driving privilege on a restricted basis. A person~~
141 ~~whose license has been revoked for a period of more than 5 years~~
142 ~~under s. 322.28(2)(a) may, upon the expiration of 24 months after~~
143 ~~the date the revocation was imposed, petition the department for~~
144 ~~reinstatement of his or her driving privilege on a restricted~~
145 ~~basis.~~

5-02985-08

20081424__

146 1. For a second conviction for an offense occurring within
147 a period of 5 years after the date of a prior conviction for a
148 violation of the provisions of s. 316.193, former s. 316.1931, or
149 a combination of those sections, may, upon the expiration of 12
150 months after the date on which the revocation was imposed,
151 petition the department for reinstatement of his or her driving
152 privilege on a restricted basis. Reinstatement of the driving
153 privilege pursuant to this subparagraph shall be restricted to
154 business or employment purposes only. The department shall
155 require the person to remain abstinent from alcohol or other
156 drugs through the petition and approval process as demonstrated
157 by continuous alcohol monitoring for a period of not less than 90
158 days as reported to the DUI program licensed by the department
159 through which the petitioner applied for supervision services. In
160 addition, the department shall require that the person refrain
161 from driving and abstain from the use of alcohol or other drugs
162 during the 12 months immediately preceding reinstatement, be
163 supervised by a DUI program licensed by the department, and
164 report to the program for supervision at least three times per
165 year as required by the program for the duration of the
166 revocation period. The supervision must include evaluation,
167 education, referral into treatment, and other activities required
168 by the department. Persons seeking reinstatement shall assume
169 reasonable costs of supervision. If such person fails to comply
170 with the required supervision, the program shall report the
171 failure to the department and the department shall cancel such
172 person's driving privilege.

173 2. For a third conviction for an offense occurring within a
174 period of 10 years after the date of a prior conviction for a

5-02985-08

20081424__

175 violation of the provisions of s. 316.193, former s. 316.1931, or
176 a combination of those sections, may, upon the expiration of 24
177 months after the date on which the revocation was imposed,
178 petition the department for reinstatement of his or her driving
179 privilege on a restricted basis. Reinstatement of the driving
180 privilege pursuant to this subparagraph shall be restricted to
181 business or employment purposes only. The department shall
182 require the person to remain abstinent from alcohol or other
183 drugs through the petition and approval process as demonstrated
184 by continuous alcohol monitoring for not less than 90 days as
185 reported to the DUI program licensed by the department through
186 which the petitioner applied for supervision services. In
187 addition, the department shall require that the person refrain
188 from driving and abstain from the use of alcohol or other drugs
189 during the 12 months immediately preceding reinstatement, be
190 supervised by a DUI program licensed by the department, and
191 report to the program for supervision at least three times a year
192 as required by the program for the duration of the revocation
193 period. The supervision must include evaluation, education,
194 referral into treatment, and other activities required by the
195 department. The person seeking reinstatement shall assume
196 reasonable costs of supervision. If the person fails to comply
197 with the required supervision, the program shall report the
198 failure to the department and the department shall cancel the
199 person's driving privilege.

200 3. For a fourth or subsequent conviction for a violation of
201 the provisions of s. 316.193, former s. 316.1931, or a
202 combination of those sections, may, upon the expiration of 5
203 years after the date on which the revocation was imposed,

5-02985-08

20081424__

204 petition the department for reinstatement of his or her driving
205 privilege on a restricted basis. Reinstatement of the driving
206 privilege pursuant to this subparagraph shall be restricted to
207 business or employment purposes only. The department shall
208 require the person to remain abstinent from alcohol and other
209 drugs through the petition and approval process as demonstrated
210 by continuous alcohol monitoring for not less than 180 days as
211 reported to the DUI program licensed by the department through
212 which the petitioner applied for supervision services. In
213 addition, the department shall require that the person refrain
214 from driving and abstain from the use of alcohol or other drugs
215 during the 12 months immediately preceding reinstatement, be
216 supervised by a DUI program licensed by the department, and
217 report to the program for supervision at least three times a year
218 as required by the program for the duration of the revocation
219 period. The supervision shall include evaluation, education,
220 referral into treatment, and other activities required by the
221 department. The person seeking reinstatement shall assume
222 reasonable costs of supervision. If the person fails to comply
223 with the required supervision, the program shall report the
224 failure to the department and the department shall cancel such
225 person's driving privilege.

226
227 Reinstatement of the driving privilege pursuant to this
228 subsection shall be restricted to business or employment purposes
229 only. In addition, the department shall require such persons upon
230 reinstatement to have not driven in violation of their
231 revocations, ~~and~~ to have been drug free for at least 12 months
232 immediately prior to such reinstatement, to be supervised by a

5-02985-08

20081424__

233 | DUI program licensed by the department, and to report to the
234 | program at least three times a year as required by the program
235 | for the duration of the revocation period for supervision. Such
236 | supervision shall include evaluation, education, referral into
237 | treatment, and other activities required by the department. Such
238 | persons shall assume reasonable costs of supervision. If such
239 | person fails to comply with the required supervision, the program
240 | shall report the failure to the department, and the department
241 | shall cancel such person's driving privilege. ~~This paragraph does~~
242 | ~~not apply to any person whose driving privilege has been~~
243 | ~~permanently revoked.~~

244 | (4) Notwithstanding the provisions of s. 322.28(2)(e), a
245 | person whose driving privilege has been permanently revoked
246 | because he or she has been convicted of DUI manslaughter in
247 | violation of s. 316.193 and has no prior convictions for DUI-
248 | related offenses may, upon the expiration of 5 years after the
249 | date of such revocation or the expiration of 5 years after the
250 | termination of any term of incarceration under s. 316.193 or
251 | former s. 316.1931, whichever date is later, petition the
252 | department for reinstatement of his or her driving privilege.

253 | (a) Within 30 days after the receipt of such a petition,
254 | the department shall afford the petitioner an opportunity for a
255 | hearing. At the hearing, the petitioner must demonstrate to the
256 | department that he or she:

- 257 | 1. Has not been arrested for a drug-related offense during
258 | the 5 years preceding the filing of the petition;
- 259 | 2. Has not driven a motor vehicle without a license for at
260 | least 5 years prior to the hearing;

5-02985-08

20081424__

261 3. Has been drug-free for at least 5 years prior to the
262 hearing; ~~and~~

263 4. Has abstained from consuming alcohol for 5 years as
264 demonstrated by a period of not less than 180 days of continuous
265 alcohol monitoring as reported to the licensed DUI program
266 supervising the petitioner. For purposes of this subparagraph,
267 the term "continuous alcohol monitoring" means automatically
268 testing breath, blood, or transdermal alcohol concentration
269 levels at least once every hour and detecting any attempts to
270 tamper with or obstruct the testing process, regardless of the
271 location of the person who is being monitored, and regularly
272 transmitting the data to a licensed DUI supervision program
273 provider; and

274 5. Has completed a DUI program licensed by the department.

275 Section 4. Paragraph (e) is added to subsection (3) of
276 section 322.2715, Florida Statutes, to read:

277 322.2715 Ignition interlock device.--

278 (3) If the person is convicted of:

279 (e) A fourth or subsequent offense of driving under the
280 influence, the ignition interlock device shall be installed for a
281 period of not less than 10 years.

282 Section 5. Subsection (5) of section 322.16, Florida
283 Statutes, is amended, and subsection (7) is added to that
284 section, to read:

285 322.16 License restrictions.--

286 (5) It is a misdemeanor of the second degree, punishable as
287 provided in s. 775.082 or s. 775.083, for any person to operate a
288 motor vehicle in any manner in violation of the restrictions
289 imposed in a license issued to him or her except as described in

5-02985-08

20081424__

290 subsections (6) and (7) for a violation of paragraph (1)(d),
291 subsection (2), or subsection (3).

292 (7) Any person operating a motor vehicle in violation of an
293 ignition interlock restriction commits an offense of the same
294 degree and punishable in the same manner as described in s.
295 322.34 or s. 322.341.

296 Section 6. This act shall take effect July 1, 2008.