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CHAMBER ACTION

| <u>Senate</u> | . | <u>House</u> |
|---------------|---|--------------|
| Comm: WD | . | |
| 4/16/2008 | . | |
| | . | |
| | . | |

1 The Committee on Criminal Justice (Wise) recommended the
2 following **amendment**:

3
4 **Senate Amendment (with title amendment)**

5 Delete line(s) 23-172

6 and insert:

7 Section 2. Subsection (2) and paragraph (c) of subsection
8 (4) of section 316.193, Florida Statutes, are amended to read:

9 316.193 Driving under the influence; penalties.--

10 (2) (a) Except as provided in paragraph (b), subsection (3),
11 or subsection (4), any person who is convicted of a violation of
12 subsection (1) shall be punished:

13 1. By a fine of:

14 a. Not less than \$250 or more than \$500 for a first
15 conviction; or.

16 b. Not less than \$500 or more than \$1,000 for a second
17 conviction; and



231166

18 2. By imprisonment for:
19 a. Not more than 6 months for a first conviction; or—
20 b. Not more than 9 months for a second conviction; and—
21 3. ~~For a second conviction,~~ By mandatory placement ~~for a~~
22 ~~period of at least 1 year,~~ at the convicted person's sole
23 expense, of an ignition interlock device approved by the
24 department in accordance with s. 316.1938 upon all vehicles that
25 are individually or jointly leased or owned and routinely
26 operated by the convicted person, when the convicted person
27 qualifies for a permanent or restricted license, for:

28 a. At least 6 months for a first conviction if the person
29 had a blood-alcohol level or breath-alcohol level of 0.15 or
30 higher but less than 0.20 at the time of the offense; or

31 b. At least 1 year for a second conviction. ~~The~~
32 ~~installation of such device may not occur before July 1, 2003.~~

33 (b)1. Any person who is convicted of a third violation of
34 this section for an offense that occurs within 10 years after a
35 prior conviction for a violation of this section commits a felony
36 of the third degree, punishable as provided in s. 775.082, s.
37 775.083, or s. 775.084. In addition, the court shall order the
38 mandatory placement for a period of not less than 2 years, at the
39 convicted person's sole expense, of an ignition interlock device
40 approved by the department in accordance with s. 316.1938 upon
41 all vehicles that are individually or jointly leased or owned and
42 routinely operated by the convicted person, when the convicted
43 person qualifies for a permanent or restricted license. ~~The~~
44 ~~installation of such device may not occur before July 1, 2003.~~

45 2. Any person who is convicted of a third violation of this
46 section for an offense that occurs more than 10 years after the
47 date of a prior conviction for a violation of this section shall



231166

48 | be punished by a fine of not less than \$1,000 or more than \$2,500
49 | and by imprisonment for not more than 12 months. In addition, the
50 | court shall order the mandatory placement for a period of at
51 | least 2 years, at the convicted person's sole expense, of an
52 | ignition interlock device approved by the department in
53 | accordance with s. 316.1938 upon all vehicles that are
54 | individually or jointly leased or owned and routinely operated by
55 | the convicted person, when the convicted person qualifies for a
56 | permanent or restricted license. ~~The installation of such device
57 | may not occur before July 1, 2003.~~

58 | 3. Any person who is convicted of a fourth or subsequent
59 | violation of this section, regardless of when any prior
60 | conviction for a violation of this section occurred, commits a
61 | felony of the third degree, punishable as provided in s. 775.082,
62 | s. 775.083, or s. 775.084. However, the fine imposed for such
63 | fourth or subsequent violation may be not less than \$1,000.

64 | 4. The court shall order the mandatory placement for a
65 | period of at least 10 years, at the convicted person's sole
66 | expense, of an ignition interlock device approved by the
67 | department in accordance with s. 316.1938 upon all vehicles that
68 | are individually or jointly leased or owned and routinely
69 | operated by any person convicted for a fourth or subsequent
70 | offense if the convicted person obtains a restricted license or
71 | permit regardless of whether the conviction was for a misdemeanor
72 | or felony offense.

73 | (4) Any person who is convicted of a violation of
74 | subsection (1) and who has a blood-alcohol level or breath-
75 | alcohol level of 0.20 or higher, or any person who is convicted
76 | of a violation of subsection (1) and who at the time of the



231166

77 offense was accompanied in the vehicle by a person under the age
78 of 18 years, shall be punished:

79 (c) In addition to the penalties in paragraphs (a) and (b),
80 the court shall order the mandatory placement, at the convicted
81 person's sole expense, of an ignition interlock device approved
82 by the department in accordance with s. 316.1938 upon all
83 vehicles that are individually or jointly leased or owned and
84 routinely operated by the convicted person for at least 1 year up
85 ~~to 6 months~~ for the first offense and for at least 2 years for a
86 second offense, when the convicted person qualifies for a
87 permanent or restricted license. ~~The installation of such device~~
88 ~~may not occur before July 1, 2003.~~

89 Section 3. Subsection (8) of section 322.21, Florida
90 Statutes, is amended to read:

91 322.21 License fees; procedure for handling and collecting
92 fees.--

93 (8) Any person who applies for reinstatement following the
94 suspension or revocation of the person's driver's license shall
95 pay a service fee of \$35 following a suspension, and \$60
96 following a revocation, which is in addition to the fee for a
97 license. Any such applicant required to have an ignition
98 interlock device installed under this chapter or chapter 316
99 shall also pay a service fee of \$15. Any person who applies for
100 reinstatement of a commercial driver's license following the
101 disqualification of the person's privilege to operate a
102 commercial motor vehicle shall pay a service fee of \$60, which is
103 in addition to the fee for a license. The department shall
104 collect all of these fees at the time of reinstatement. The
105 department shall issue proper receipts for such fees and shall
106 promptly transmit all funds received by it as follows:



231166

107 (a) Of the \$35 fee received from a licensee for
108 reinstatement following a suspension, the department shall
109 deposit \$15 in the General Revenue Fund and \$20 in the Highway
110 Safety Operating Trust Fund.

111 (b) Of the \$60 fee received from a licensee for
112 reinstatement following a revocation or disqualification, the
113 department shall deposit \$35 in the General Revenue Fund and \$25
114 in the Highway Safety Operating Trust Fund.

115 (c) The entire \$15 fee received from a licensee required to
116 have an interlock device installed shall be deposited by the
117 department into the DUI Programs Coordination Trust Fund.

118
119 If the revocation or suspension of the driver's license was for a
120 violation of s. 316.193, or for refusal to submit to a lawful
121 breath, blood, or urine test, an additional fee of \$115 must be
122 charged. However, only one \$115 fee may be collected from one
123 person convicted of violations arising out of the same incident.
124 The department shall collect the \$115 fee and deposit the fee
125 into the Highway Safety Operating Trust Fund at the time of
126 reinstatement of the person's driver's license, but the fee may
127 not be collected if the suspension or revocation is overturned.
128 If the revocation or suspension of the driver's license was for a
129 conviction for a violation of s. 817.234(8) or (9) or s. 817.505,
130 an additional fee of \$180 is imposed for each offense. The
131 department shall collect and deposit the additional fee into the
132 Highway Safety Operating Trust Fund at the time of reinstatement
133 of the person's driver's license.

134 Section 4. Subsections (1) and (3) of section 322.2715,
135 Florida Statutes, are amended to read:

136 322.2715 Ignition interlock device.--



231166

137 (1) Before issuing a permanent or restricted driver's
138 license under this chapter, the department shall require the
139 placement of a department-approved ignition interlock device,
140 installed in such a manner that the vehicle will not start if the
141 operator's blood-alcohol level is in excess of the level provided
142 in s. 316.1937(1), for any person convicted of committing an
143 offense of driving under the influence as specified in subsection
144 (3), except that consideration may be given to those individuals
145 having a documented medical condition that would prohibit the
146 device from functioning normally. An interlock device shall be
147 placed on all vehicles that are individually or jointly leased or
148 owned and routinely operated by the convicted person.

149 (3) If the person is convicted of:

150 (a) A first offense of driving under the influence under s.
151 316.193 and has an unlawful blood-alcohol level or breath-alcohol
152 level as specified in s. 316.193(4), or if a person is convicted
153 of a violation of s. 316.193 and was at the time of the offense
154 accompanied in the vehicle by a person younger than 18 years of
155 age, the person shall have the ignition interlock device
156 installed for at least 1 year ~~6 months~~ for the first offense and
157 for at least 2 years for a second offense. The ignition interlock
158 device shall be installed for at least 6 months for a first
159 conviction if the person had a blood-alcohol level or breath-
160 alcohol level of 0.15 or higher but less than 0.20 at the time of
161 the offense and at least 1 year for a second conviction as
162 specified in s. 316.193(2). If the court fails or neglects to
163 order the ignition interlock device to be installed pursuant to
164 this section, the department shall require the installation of
165 the device.



231166

166 (b) A second offense of driving under the influence, the
167 ignition interlock device shall be installed for a period of not
168 less than 1 year.

169 (c) A third offense of driving under the influence which
170 occurs within 10 years after a prior conviction for a violation
171 of s. 316.193, the ignition interlock device shall be installed
172 for a period of not less than 2 years.

173 (d) A third offense of driving under the influence which
174 occurs more than 10 years after the date of a prior conviction,
175 the ignition interlock device shall be installed for a period of
176 not less than 2 years.

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

180 Section 5. Paragraph (e) of subsection (2) of section
181 322.28, Florida Statutes, is amended to read:

182 322.28 Period of suspension or revocation.--

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

185 (e) The court shall permanently revoke the driver's license
186 or driving privilege of a person who has been convicted four
187 times for violation of s. 316.193 or former s. 316.1931 or a
188 combination of such sections. The court shall permanently revoke
189 the driver's license or driving privilege of any person who has
190 been convicted of DUI manslaughter in violation of s. 316.193. If
191 the court has not permanently revoked such driver's license or
192 driving privilege within 30 days after imposing sentence, the
193 department shall permanently revoke the driver's license or
194 driving privilege pursuant to this paragraph. No driver's license
195 or driving privilege may be issued or granted to any such person



231166

196 except as described in s. 322.271. This paragraph applies only if
197 at least one of the convictions for violation of s. 316.193 or
198 former s. 316.1931 was for a violation that occurred after July
199 1, 1982. For the purposes of this paragraph, a conviction for
200 violation of former s. 316.028, former s. 316.1931, or former s.
201 860.01 is also considered a conviction for violation of s.
202 316.193. Also, a conviction of driving under the influence,
203 driving while intoxicated, driving with an unlawful blood-alcohol
204 level, or any other similar alcohol-related or drug-related
205 traffic offense outside this state is considered a conviction for
206 the purposes of this paragraph.

207 Section 6. Paragraph (b) of subsection (2) and paragraph
208 (a) of subsection (4) of section 322.271, Florida Statutes, are
209 amended to read:

210 322.271 Authority to modify revocation, cancellation, or
211 suspension order.--

212 (2)

213 (b)1. A person whose license has been revoked for a period
214 of 5 years or less pursuant to s. 322.28(2)(a) or (e) may, upon
215 the expiration of 12 months after the date the ~~said~~ revocation
216 was imposed, petition the department for reinstatement of his or
217 her driving privilege on a restricted basis. A person whose
218 license has been revoked for a period of more than 5 years under
219 s. 322.28(2)(a) may, upon the expiration of 24 months after the
220 date the revocation was imposed, petition the department for
221 reinstatement of his or her driving privilege on a restricted
222 basis.

223 2. A person whose license has been revoked pursuant to s.
224 322.28(2)(a) or (e) for a fourth or subsequent conviction for a
225 violation of the provisions of s. 316.193, former s. 316.1931, or



231166

226 a combination of those sections may, upon the expiration of 5
227 years after the date on which the revocation was imposed,
228 petition the department for reinstatement of his or her driving
229 privilege on a restricted basis. Reinstatement of the driving
230 privilege pursuant to this subparagraph shall be restricted to
231 business or employment purposes only. The department shall
232 require the person to remain abstinent from alcohol and other
233 drugs through the petition and approval process as demonstrated
234 by continuous alcohol monitoring for not less than 180 days as
235 reported to the DUI program licensed by the department through
236 which the petitioner applied for supervision services. In
237 addition, the department shall require that the person refrain
238 from driving and abstain from the use of alcohol or other drugs
239 during the 12 months immediately preceding reinstatement, be
240 supervised by a DUI program licensed by the department, and
241 report to the program for supervision at least three times a year
242 as required by the program for the duration of the revocation
243 period. The supervision shall include evaluation, education,
244 referral into treatment, and other activities required by the
245 department. The person seeking reinstatement shall assume
246 reasonable costs of supervision. If the person fails to comply
247 with the required supervision, the program shall report the
248 failure to the department and the department shall cancel such
249 person's driving privilege. The cancellation shall remain in
250 effect until the person has complied with the supervision
251 requirements.

252
253 Reinstatement of the driving privilege pursuant to this
254 subsection shall be restricted to business or employment purposes
255 only. In addition, the department shall require such persons upon



231166

256 | reinstatement to have not driven in violation of their
257 | revocations, ~~and~~ to have been drug free for at least 12 months
258 | immediately prior to such reinstatement, to be supervised by a
259 | DUI program licensed by the department, and to report to the
260 | program at least three times a year as required by the program
261 | for the duration of the revocation period for supervision. Such
262 | supervision shall include evaluation, education, referral into
263 | treatment, and other activities required by the department. Such
264 | persons shall assume reasonable costs of supervision. If such
265 | person fails to comply with the required supervision, the program
266 | shall report the failure to the department, and the department
267 | shall cancel such person's driving privilege. ~~This paragraph does~~
268 | ~~not apply to any person whose driving privilege has been~~
269 | ~~permanently revoked.~~

270 | (4) Notwithstanding the provisions of s. 322.28(2)(e), a
271 | person whose driving privilege has been permanently revoked
272 | because he or she has been convicted of DUI manslaughter in
273 | violation of s. 316.193 and has no prior convictions for DUI-
274 | related offenses may, upon the expiration of 5 years after the
275 | date of such revocation or the expiration of 5 years after the
276 | termination of any term of incarceration under s. 316.193 or
277 | former s. 316.1931, whichever date is later, petition the
278 | department for reinstatement of his or her driving privilege.

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

283 | 1. Has not been arrested for a drug-related offense during
284 | the 5 years preceding the filing of the petition;



231166

285 2. Has not driven a motor vehicle without a license for at
286 least 5 years prior to the hearing;

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

289 4. Has abstained from consuming alcohol for 5 years as
290 demonstrated by a period of not less than 180 days of continuous
291 alcohol monitoring as reported to the licensed DUI program
292 supervising the petitioner. For purposes of this subparagraph,
293 the term "continuous alcohol monitoring" means automatically
294 testing breath, blood, or transdermal alcohol concentration
295 levels at least once every hour and detecting any attempts to
296 tamper with or obstruct the testing process, regardless of the
297 location of the person who is being monitored, and regularly
298 transmitting the data to a licensed DUI supervision program
299 provider; and

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

301 Section 7. Subsection (5) of section 322.16, Florida
302 Statutes, is amended, and subsection (7) is added to that
303 section, to read:

304 322.16 License restrictions.--

305 (5) It is a misdemeanor of the second degree, punishable as
306 provided in s. 775.082 or s. 775.083, for any person to operate a
307 motor vehicle in any manner in violation of the restrictions
308 imposed in a license issued to him or her except as described in
309 subsections (6) and (7) ~~for a violation of paragraph (1)(d),~~
310 ~~subsection (2), or subsection (3).~~

311 (7) Any person operating a motor vehicle in violation of an
312 ignition interlock restriction commits a felony of the third
313 degree, punishable as provided in s. 775.082, s. 775.083, or s.
314 775.084.



231166

315
316 ===== T I T L E A M E N D M E N T =====

317 And the title is amended as follows:

318 Delete line(s) 8-16

319 and insert:

320 of certain offenses; requiring the mandatory placement of
321 such devices for 10 years upon certain vehicles owned,
322 leased, or operated by a person convicted of a fourth or
323 subsequent offense under certain circumstances; amending
324 s. 322.21, F.S.; requiring a service fee for ignition
325 interlock devices; requiring that the service fee be
326 deposited into the DUI Programs Coordination Trust Fund;
327 amending s. 322.2715, F.S.; requiring that ignition
328 interlock devices be set to prevent the vehicle from
329 starting if the operator's blood-alcohol level exceeds a
330 specified amount; revising the time that ignition
331 interlock devices must be used after a first or certain
332 repeated conviction of certain offenses; amending s.
333 322.28, F.S.; providing that a driver's license or driving
334 privilege may be granted under certain circumstances to a
335 person convicted a fourth time for driving under the
336 influence or a conviction for DUI manslaughter; amending
337 s. 322.271, F.S.; providing conditions under which a
338 person convicted of a fourth or subsequent DUI may
339 petition the department for reinstatement of his or her
340 driving privilege on a restricted basis; requiring that
341 the department impose certain requirements upon such
342 persons; providing for the cancellation of such person's
343 driving privilege upon his or her failure to adhere to
344 such requirements; requiring that a person convicted of



231166

345 | DUI manslaughter seeking reinstatement of his or her
346 | driving privilege demonstrate to a court within a
347 | specified period after the filing of his or her petition
348 | for reinstatement that he or she has abstained from
349 | consuming alcohol for 5 years as demonstrated by a
350 | specified period of continuous alcohol monitoring as
351 | reported to the licensed DUI program supervising the
352 | petitioner; defining the term "continuous alcohol
353 | monitoring"; amending s. 322.16, F.S.; correcting cross-
354 | references to conform to changes made by the act;
355 | providing penalties if a person operates a motor vehicle
356 | in violation of an ignition interlock restriction;
357 | providing an