

1                   A bill to be entitled  
2           An act relating to driving under the influence; amending  
3           s. 316.193, F.S.; requiring placement of an ignition  
4           interlock device for a certain time period on the vehicles  
5           of a person convicted for a fourth or subsequent offense  
6           of driving under the influence if that person obtains a  
7           restricted license or permit; amending s. 322.01, F.S.;  
8           defining the term "continuous alcohol monitoring";  
9           amending s. 322.16, F.S.; providing for penalties for  
10          violating ignition interlock restrictions; amending s.  
11          322.271, F.S.; revising the authority of the Department of  
12          Highway Safety and Motor Vehicles to modify a driver  
13          license revocation, cancellation, or suspension order;  
14          revising requirements for reinstatement of driving  
15          privileges and issuance of a license on a restricted basis  
16          to a person whose license has been revoked for specified  
17          DUI offenses; providing requirements for reinstatement of  
18          driving privileges and issuance of a license on a  
19          restricted basis to a person whose license has been  
20          permanently revoked; revising requirements for  
21          reinstatement of driving privileges for certain persons  
22          convicted of DUI manslaughter whose driving privileges  
23          were permanently revoked; requiring demonstration of  
24          abstinence by use of continuous alcohol monitoring for a  
25          certain time period; amending s. 322.2715, F.S.; requiring  
26          installation of an ignition interlock device for a certain  
27          time period if a person is convicted of a fourth or  
28          subsequent offense; amending s. 322.28, F.S.; providing

29 | for exceptions to a prohibition against issuing a driver  
 30 | license or granting driving privileges to a person whose  
 31 | license was permanently revoked for certain DUI  
 32 | convictions; providing an effective date.

33 |  
 34 | Be It Enacted by the Legislature of the State of Florida:

35 |  
 36 | Section 1. Subsection (2) of section 316.193, Florida  
 37 | Statutes, is amended to read:

38 | 316.193 Driving under the influence; penalties.--

39 | (1) A person is guilty of the offense of driving under the  
 40 | influence and is subject to punishment as provided in subsection  
 41 | (2) if the person is driving or in actual physical control of a  
 42 | vehicle within this state and:

43 | (a) The person is under the influence of alcoholic  
 44 | beverages, any chemical substance set forth in s. 877.111, or  
 45 | any substance controlled under chapter 893, when affected to the  
 46 | extent that the person's normal faculties are impaired;

47 | (b) The person has a blood-alcohol level of 0.08 or more  
 48 | grams of alcohol per 100 milliliters of blood; or

49 | (c) The person has a breath-alcohol level of 0.08 or more  
 50 | grams of alcohol per 210 liters of breath.

51 | (2)(a) Except as provided in paragraph (b), subsection  
 52 | (3), or subsection (4), any person who is convicted of a  
 53 | violation of subsection (1) shall be punished:

54 | 1. By a fine of:

55 | a. Not less than \$250 or more than \$500 for a first  
 56 | conviction.

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

59           2. By imprisonment for:

60           a. Not more than 6 months for a first conviction.

61           b. Not more than 9 months for a second conviction.

62           3. For a second conviction, by mandatory placement for a  
63 period of at least 1 year, at the convicted person's sole  
64 expense, of an ignition interlock device approved by the  
65 department in accordance with s. 316.1938 upon all vehicles that  
66 are individually or jointly leased or owned and routinely  
67 operated by the convicted person, when the convicted person  
68 qualifies for a permanent or restricted license. The  
69 installation of such device may not occur before July 1, 2003.

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

83           2. Any person who is convicted of a third violation of  
84 this section for an offense that occurs more than 10 years after

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85 the date of a prior conviction for a violation of this section  
86 shall be punished by a fine of not less than \$1,000 or more than  
87 \$2,500 and by imprisonment for not more than 12 months. In  
88 addition, the court shall order the mandatory placement for a  
89 period of at least 2 years, at the convicted person's sole  
90 expense, of an ignition interlock device approved by the  
91 department in accordance with s. 316.1938 upon all vehicles that  
92 are individually or jointly leased or owned and routinely  
93 operated by the convicted person, when the convicted person  
94 qualifies for a permanent or restricted license. The  
95 installation of such device may not occur before July 1, 2003.

96 3. Any person who is convicted of a fourth or subsequent  
97 violation of this section, regardless of when any prior  
98 conviction for a violation of this section occurred, commits a  
99 felony of the third degree, punishable as provided in s.  
100 775.082, s. 775.083, or s. 775.084. However, the fine imposed  
101 for such fourth or subsequent violation may be not less than  
102 \$1,000. In addition, the court shall order the mandatory  
103 placement for a period of at least 10 years, at the convicted  
104 person's sole expense, of an ignition interlock device approved  
105 by the department in accordance with s. 316.1938 upon all  
106 vehicles that are individually or jointly leased or owned and  
107 routinely operated by the convicted person if he or she obtains  
108 a restricted license or permit regardless of whether the  
109 conviction was for a misdemeanor or a felony.

110 Section 2. Subsections (9) through (44) of section 322.01,  
111 Florida Statutes, are renumbered as subsections (10) through

112 (45), respectively, and a new subsection (9) is added to that  
 113 section to read:

114 322.01 Definitions.--As used in this chapter:

115 (9) "Continuous alcohol monitoring" means automatically  
 116 testing breath, blood, or transdermal alcohol concentration  
 117 levels and identifying any attempts to tamper or obstruct the  
 118 testing process at least once every hour, regardless of the  
 119 location of the person who is being monitored, and regularly  
 120 transmitting the data to a licensed DUI supervision program  
 121 provider.

122 Section 3. Subsection (5) of section 322.16, Florida  
 123 Statutes, is amended, and subsection (7) is added to that  
 124 section, to read:

125 322.16 License restrictions.--

126 (5) It is a misdemeanor of the second degree, punishable  
 127 as provided in s. 775.082 or s. 775.083, for any person to  
 128 operate a motor vehicle in any manner in violation of the  
 129 restrictions imposed in a license issued to him or her except as  
 130 described in subsection (6) or subsection (7) ~~for a violation of~~  
 131 paragraph (1)(d), subsection (2), or subsection (3).

132 (6) Any person who operates a motor vehicle in violation  
 133 of the restrictions imposed in subsection (2) or subsection (3)  
 134 will be charged with a moving violation and fined in accordance  
 135 with chapter 318.

136 (7) Any person who operates a motor vehicle in violation  
 137 of an ignition interlock restriction commits an offense of the  
 138 same degree and punishable in the same manner as driving or  
 139 being in actual physical control of a vehicle under the

140 suspension or revocation for which the permit or restricted  
 141 license was issued as described in s. 322.34 or s. 322.341.

142 Section 4. Paragraph (b) of subsection (2) and paragraph  
 143 (a) of subsection (4) of section 322.271, Florida Statutes, are  
 144 amended to read:

145 322.271 Authority to modify revocation, cancellation, or  
 146 suspension order.--

147 (2)

148 (b)1. A person whose license has been revoked ~~for a period~~  
 149 ~~of 5 years or less~~ pursuant to s. 322.28(2) (a) or (e):

150 a. For a second conviction for an offense that occurred  
 151 within a period of 5 years after the date of a prior conviction  
 152 for a violation of s. 316.193 or former s. 316.1931 or a  
 153 combination of such sections may, upon the expiration of 12  
 154 months after the date said revocation was imposed, petition the  
 155 department for reinstatement of his or her driving privilege on  
 156 a restricted basis. Reinstatement of the driving privilege  
 157 pursuant to this sub-subparagraph shall be restricted to  
 158 business or employment purposes only. The department shall  
 159 require the person to remain abstinent from alcohol and other  
 160 drugs through the petition and approval process as demonstrated  
 161 by continuous alcohol monitoring for not less than 90 days as  
 162 reported to the licensed DUI program to which the petitioner  
 163 applied for supervision services. In addition, the department  
 164 shall require the person to have not driven and to have  
 165 abstained from alcohol and other drugs for at least 12 months  
 166 prior to reinstatement, to be supervised by a DUI program  
 167 licensed by the department, and to report to the program at

168 least three times a year as required by the program for the  
 169 duration of the revocation period for supervision. The  
 170 supervision shall include evaluation, education, referral into  
 171 treatment, and other activities required by the department. The  
 172 person shall assume reasonable costs of supervision. If the  
 173 person fails to comply with the required supervision, the  
 174 program shall report the failure to the department, and the  
 175 department shall cancel the person's driving privilege.

176 b. For a third conviction for an offense that occurred  
 177 within a period of 10 years after the date of a prior conviction  
 178 for a violation of s. 316.193 or former s. 316.1931 or a  
 179 combination of such sections ~~A person whose license has been~~  
 180 ~~revoked for a period of more than 5 years under s. 322.28(2)(a)~~  
 181 may, upon the expiration of 24 months after the date the  
 182 revocation was imposed, petition the department for  
 183 reinstatement of his or her driving privilege on a restricted  
 184 basis. Reinstatement of the driving privilege pursuant to this  
 185 sub-subparagraph shall be restricted to business or employment  
 186 purposes only. The department shall require the person to remain  
 187 abstinent from alcohol and other drugs through the petition and  
 188 approval process as demonstrated by continuous alcohol  
 189 monitoring for not less than 90 days as reported to the licensed  
 190 DUI program to which the petitioner applied for supervision  
 191 services. In addition, the department shall require the person  
 192 to have not driven and to have abstained from alcohol and other  
 193 drugs for at least 12 months prior to reinstatement, to be  
 194 supervised by a DUI program licensed by the department, and to  
 195 report to the program at least three times a year as required by

196 the program for the duration of the revocation period for  
197 supervision. The supervision shall include evaluation,  
198 education, referral into treatment, and other activities  
199 required by the department. The person shall assume reasonable  
200 costs of supervision. If the person fails to comply with the  
201 required supervision, the program shall report the failure to  
202 the department, and the department shall cancel the person's  
203 driving privilege.

204 c. For a fourth or subsequent conviction for a violation  
205 of s. 316.193 or former s. 316.1931 or a combination of such  
206 sections may, upon the expiration of 5 years after the date said  
207 revocation was imposed, petition the department for  
208 reinstatement of his or her driving privilege on a restricted  
209 basis. Reinstatement of the driving privilege pursuant to this  
210 sub-subparagraph shall be restricted to business or employment  
211 purposes only. The department shall require the person to remain  
212 abstinent from alcohol and other drugs through the petition and  
213 approval process as demonstrated by continuous alcohol  
214 monitoring for not less than 180 days as reported to the  
215 licensed DUI program to which the petitioner applied for  
216 supervision services. In addition, the department shall require  
217 the person to have not driven and to have abstained from alcohol  
218 and other drugs for at least 5 years prior to reinstatement, to  
219 be supervised by a DUI program licensed by the department, and  
220 to report to the program at least three times a year as required  
221 by the program for the duration of the revocation period for  
222 supervision. The supervision shall include evaluation,  
223 education, referral into treatment, and other activities



224 required by the department. The person shall assume reasonable  
225 costs of supervision. If the person fails to comply with the  
226 required supervision, the program shall report the failure to  
227 the department, and the department shall cancel the person's  
228 driving privilege.

229       2. Reinstatement of the driving privilege pursuant to this  
230 subsection shall be restricted to business or employment  
231 purposes only. In addition, the department shall require such  
232 persons upon reinstatement to have not driven in violation of  
233 their revocations, ~~and~~ to have been drug free for at least 12  
234 months immediately prior to such reinstatement, to be supervised  
235 by a DUI program licensed by the department, and to report to  
236 the program at least three times a year as required by the  
237 program for the duration of the revocation period for  
238 supervision. Such supervision shall include evaluation,  
239 education, referral into treatment, and other activities  
240 required by the department. Such persons shall assume reasonable  
241 costs of supervision. If such person fails to comply with the  
242 required supervision, the program shall report the failure to  
243 the department, and the department shall cancel such person's  
244 driving privilege. ~~This paragraph does not apply to any person~~  
245 ~~whose driving privilege has been permanently revoked.~~

246       (4) Notwithstanding the provisions of s. 322.28(2)(e), a  
247 person whose driving privilege has been permanently revoked  
248 because he or she has been convicted of DUI manslaughter in  
249 violation of s. 316.193 and has no prior convictions for DUI-  
250 related offenses may, upon the expiration of 5 years after the  
251 date of such revocation or the expiration of 5 years after the

252 termination of any term of incarceration under s. 316.193 or  
 253 former s. 316.1931, whichever date is later, petition the  
 254 department for reinstatement of his or her driving privilege.

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

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

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

263 3. Has been drug-free for at least 5 years prior to the  
 264 hearing;

265 4. Has abstained from alcohol for at least 5 years prior  
 266 to the hearing as demonstrated by not less than 180 days of  
 267 continuous alcohol monitoring as reported to the petitioner's  
 268 licensed DUI program; and

269 ~~5.4-~~ Has completed a DUI program licensed by the  
 270 department.

271 Section 5. Section 322.2715, Florida Statutes, is amended  
 272 to read:

273 322.2715 Ignition interlock device.--

274 (1) Before issuing a permanent or restricted driver's  
 275 license under this chapter, the department shall require the  
 276 placement of a department-approved ignition interlock device for  
 277 any person convicted of committing an offense of driving under  
 278 the influence as specified in subsection (3), except that  
 279 consideration may be given to those individuals having a

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280 documented medical condition that would prohibit the device from  
281 functioning normally. An interlock device shall be placed on all  
282 vehicles that are individually or jointly leased or owned and  
283 routinely operated by the convicted person.

284 (2) For purposes of this section, any conviction for a  
285 violation of s. 316.193, a previous conviction for a violation  
286 of former s. 316.1931, or a conviction outside this state for  
287 driving under the influence, driving while intoxicated, driving  
288 with an unlawful blood-alcohol level, or any other similar  
289 alcohol-related or drug-related traffic offense is a conviction  
290 of driving under the influence.

291 (3) If the person is convicted of:

292 (a) A first offense of driving under the influence under  
293 s. 316.193 and has an unlawful blood-alcohol level or breath-  
294 alcohol level as specified in s. 316.193(4), or if a person is  
295 convicted of a violation of s. 316.193 and was at the time of  
296 the offense accompanied in the vehicle by a person younger than  
297 18 years of age, the person shall have the ignition interlock  
298 device installed for 6 months for the first offense and for at  
299 least 2 years for a second offense.

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

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

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

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

314 (4) If the court fails to order the mandatory placement of  
315 the ignition interlock device or fails to order for the  
316 applicable period the mandatory placement of an ignition  
317 interlock device under s. 316.193 or s. 316.1937 at the time of  
318 imposing sentence or within 30 days thereafter, the department  
319 shall immediately require that the ignition interlock device be  
320 installed as provided in this section, except that consideration  
321 may be given to those individuals having a documented medical  
322 condition that would prohibit the device from functioning  
323 normally. This subsection applies to the reinstatement of the  
324 driving privilege following a revocation, suspension, or  
325 cancellation that is based upon a conviction for the offense of  
326 driving under the influence which occurs on or after July 1,  
327 2005.

328 Section 6. Paragraph (e) of subsection (2) of section  
329 322.28, Florida Statutes, is amended to read:

330 322.28 Period of suspension or revocation.--

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

333 (e) The court shall permanently revoke the driver's  
334 license or driving privilege of a person who has been convicted

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335 four times for violation of s. 316.193 or former s. 316.1931 or  
336 a combination of such sections. The court shall permanently  
337 revoke the driver's license or driving privilege of any person  
338 who has been convicted of DUI manslaughter in violation of s.  
339 316.193. If the court has not permanently revoked such driver's  
340 license or driving privilege within 30 days after imposing  
341 sentence, the department shall permanently revoke the driver's  
342 license or driving privilege pursuant to this paragraph. No  
343 driver's license or driving privilege may be issued or granted  
344 to any such person except as described in s. 322.271. This  
345 paragraph applies only if at least one of the convictions for  
346 violation of s. 316.193 or former s. 316.1931 was for a  
347 violation that occurred after July 1, 1982. For the purposes of  
348 this paragraph, a conviction for violation of former s. 316.028,  
349 former s. 316.1931, or former s. 860.01 is also considered a  
350 conviction for violation of s. 316.193. Also, a conviction of  
351 driving under the influence, driving while intoxicated, driving  
352 with an unlawful blood-alcohol level, or any other similar  
353 alcohol-related or drug-related traffic offense outside this  
354 state is considered a conviction for the purposes of this  
355 paragraph.

356 Section 7. This act shall take effect October 1, 2008.