

By Senator Wise

5-00787A-10

2010924

1 A bill to be entitled
2 An act relating to driving under the influence;
3 amending s. 316.193, F.S.; requiring that an ignition
4 interlock device be used for a specified period after
5 a first conviction of driving under the influence of
6 alcohol; revising the period for which an ignition
7 interlock device is required if the offender's blood-
8 alcohol or breath-alcohol level is 0.15 percent or
9 higher or if minor was in the vehicle; amending s.
10 316.1937, F.S.; requiring a court to order a person
11 who is convicted of driving under the influence not to
12 operate a motor vehicle for up to a specified period
13 unless that vehicle is equipped with a functioning
14 ignition interlock device; setting forth the standard
15 to be used by the court in determining whether a
16 person is able to pay for an ignition interlock
17 device; requiring a person who uses a vehicle equipped
18 with an ignition interlock device to obtain an
19 ignition interlock-restricted driver's license from
20 the Department of Highway Safety and Motor Vehicles;
21 authorizing a court to extend the time an offender
22 must use an ignition interlock device if the offender
23 requests or solicits any other person to blow into an
24 ignition interlock device in place of the offender;
25 amending s. 316.1939, F.S.; increasing the length of
26 time of a driver's license suspension for a second or
27 subsequent refusal to submit to a breath, urine, or
28 blood test; amending s. 322.2715, F.S.; increasing the
29 time that an ignition interlock device must be used by

5-00787A-10

2010924

30 a convicted driver, to conform to changes made by the
31 act; increasing the fee imposed for installing the
32 device; amending s. 322.28, F.S.; authorizing a person
33 convicted of driving under the influence of alcohol or
34 chemical substances to petition the court to approve
35 receipt of a restricted driver's license under certain
36 circumstances and with specified conditions; providing
37 an effective date.

38
39 Be It Enacted by the Legislature of the State of Florida:

40
41 Section 1. Paragraph (a) of subsection (2) and paragraph
42 (c) of subsection (4) of section 316.193, Florida Statutes, are
43 amended to read:

44 316.193 Driving under the influence; penalties.-

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

48 1. By a fine of:

49 a. Not less than \$500 or more than \$1,000 for a first
50 conviction.

51 b. Not less than \$1,000 or more than \$2,000 for a second
52 conviction; and

53 2. By imprisonment for:

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

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

56 3. By placing for a period of 6 months, at the convicted
57 person's sole expense, an ignition interlock device approved by
58 the department in accordance with s. 316.1938 upon any vehicle

5-00787A-10

2010924

59 operated by the convicted person, if the convicted person
60 qualifies for a permanent or restricted license.

61 ~~4.3. For a second conviction,~~ By placing mandatory
62 ~~placement~~ for a period of at least 1 year, for a second
63 conviction, at the convicted person's sole expense, ~~of~~ an
64 ignition interlock device approved by the department in
65 accordance with s. 316.1938 upon any vehicle ~~all vehicles that~~
66 ~~are individually or jointly leased or owned and routinely~~
67 ~~operated by the convicted person, if 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 (4) Any person who is convicted of a violation of
71 subsection (1) and who has a blood-alcohol level or breath-
72 alcohol level of 0.15 or higher, or any person who is convicted
73 of a violation of subsection (1) and who at the time of the
74 offense was accompanied in the vehicle by a person under the age
75 of 18 years, shall be punished:

76 (c) In addition to the penalties in paragraphs (a) and (b),
77 the court shall order the mandatory placement, at the convicted
78 person's sole expense, of an ignition interlock device approved
79 by the department in accordance with s. 316.1938 upon any
80 vehicle ~~all vehicles that are individually or jointly leased or~~
81 ~~owned and routinely~~ operated by the convicted person for not
82 less than 1 year ~~6 continuous months~~ for the first offense and
83 for not less than 2 ~~continuous~~ years for a second offense, when
84 the convicted person qualifies for a permanent or restricted
85 license.

86 Section 2. Subsections (1) and (2) and paragraph (b) of
87 subsection (6) of section 316.1937, Florida Statutes, are

5-00787A-10

2010924

88 amended to read:

89 316.1937 Ignition interlock devices, requiring; unlawful
90 acts.—

91 (1) In addition to any other authorized penalties, the
92 court shall prohibit ~~may require that~~ any person who is
93 convicted of driving under the influence in violation of s.
94 316.193 from operating ~~shall not operate~~ a motor vehicle unless
95 that vehicle is equipped with a functioning ignition interlock
96 device certified by the department as provided in s. 316.1938,
97 and installed in such a manner that the vehicle will not start
98 if the operator's blood alcohol level is in excess of 0.05
99 percent or as otherwise specified by the court. The court shall
100 ~~may~~ require the use of an approved ignition interlock device for
101 a period of not less than 6 continuous months, if the person is
102 permitted to operate a motor vehicle, whether or not the
103 privilege to operate a motor vehicle is restricted, ~~as~~
104 ~~determined by the court. The court, however, shall order~~
105 ~~placement of an ignition interlock device in those circumstances~~
106 ~~required by s. 316.193.~~

107 (2) When ~~If~~ the court imposes the use of an ignition
108 interlock device, the court shall:

109 (a) Stipulate on the record the requirement for, and the
110 period of, the use of a certified ignition interlock device.

111 (b) Order that the records of the department reflect such
112 requirement.

113 (c) Order that an ignition interlock device be installed,
114 as the court may determine necessary, on any vehicle owned or
115 operated by the person.

116 (d) Determine the person's ability to pay for installation

5-00787A-10

2010924

117 of the device if the person claims inability to pay. The court
118 shall base its determination on an objective standard of the
119 convicted person's eligibility for representation by a public
120 defender or eligibility for food stamps. If the court determines
121 that the person is unable to pay for installation of the device,
122 the court may order that any portion of a fine paid by the
123 person for a violation of s. 316.193 shall be allocated to
124 defray the costs of installing the device.

125 (e) Require proof of installation of the device and
126 periodic reporting to the department for verification of the
127 operation of the device in the person's vehicle.

128 (f) Require that anyone who is required to use a vehicle
129 equipped with an ignition interlock device first obtain a
130 license from the department which clearly states that the driver
131 of the vehicle is restricted to operating a vehicle equipped
132 with an ignition interlock device.

133 (6)

134 (b) It is unlawful for any person whose driving privilege
135 is restricted pursuant to this section to request or solicit any
136 other person to blow into an ignition interlock device or to
137 start a motor vehicle equipped with the device for the purpose
138 of providing the person so restricted with an operable motor
139 vehicle. A court shall extend the time that an offender is
140 required to use an ignition interlock device for at least 3
141 months but not more than 6 months if an offender violates this
142 paragraph.

143 Section 3. Subsection (1) of section 316.1939, Florida
144 Statutes, is amended to read:

145 316.1939 Refusal to submit to testing; penalties.—

5-00787A-10

2010924

146 (1) Any person who has refused to submit to a chemical or
147 physical test of his or her breath, blood, or urine, as
148 described in s. 316.1932, and whose driving privilege was
149 previously suspended for a prior refusal to submit to a lawful
150 test of his or her breath, urine, or blood, and:

151 (a) Who the arresting law enforcement officer had probable
152 cause to believe was driving or in actual physical control of a
153 motor vehicle in this state while under the influence of
154 alcoholic beverages, chemical substances, or controlled
155 substances;

156 (b) Who was placed under lawful arrest for a violation of
157 s. 316.193 unless such test was requested pursuant to s.
158 316.1932(1)(c);

159 (c) Who was informed that, if he or she refused to submit
160 to such test, his or her privilege to operate a motor vehicle
161 would be suspended for a period of 1 year or, in the case of a
162 second or subsequent refusal, for a period of 2 years ~~18 months~~;

163 (d) Who was informed that a refusal to submit to a lawful
164 test of his or her breath, urine, or blood, if his or her
165 driving privilege has been previously suspended for a prior
166 refusal to submit to a lawful test of his or her breath, urine,
167 or blood, is a misdemeanor; and

168 (e) Who, after having been so informed, refused to submit
169 to any such test when requested to do so by a law enforcement
170 officer or correctional officer

171
172 commits a misdemeanor of the first degree and is subject to
173 punishment as provided in s. 775.082 or s. 775.083.

174 Section 4. Subsections (3) and (5) of section 322.2715,

5-00787A-10

2010924

175 Florida Statutes, are amended to read:

176 322.2715 Ignition interlock device.—

177 (3) If the person is convicted of:

178 (a) A first offense of driving under the influence under s.
179 316.193 and has an unlawful blood-alcohol level or breath-
180 alcohol level as specified in s. 316.193(4), or if a person is
181 convicted of a violation of s. 316.193 and was at the time of
182 the offense accompanied in the vehicle by a person younger than
183 18 years of age, the person shall have the ignition interlock
184 device installed for not less than 1 year ~~6 continuous months~~
185 for the first offense and for not less than 2 continuous years
186 for a second offense.

187 (b) A second offense of driving under the influence, the
188 ignition interlock device shall be installed for a period of not
189 less than 2 ~~±~~ continuous years ~~year~~.

190 (c) A third offense of driving under the influence which
191 occurs within 10 years after a prior conviction for a violation
192 of s. 316.193, the ignition interlock device shall be installed
193 for a period of not less than 3 ~~±~~ continuous years.

194 (d) A third offense of driving under the influence which
195 occurs more than 10 years after the date of a prior conviction,
196 the ignition interlock device shall be installed for a period of
197 not less than 3 ~~±~~ continuous years.

198 (5) In addition to any fees authorized by rule for the
199 installation and maintenance of the ignition interlock device,
200 the authorized installer of the device shall collect and remit
201 \$15 ~~\$12~~ for each installation to the department, which shall be
202 deposited into the Highway Safety Operating Trust Fund to be
203 used for the operation of the Ignition Interlock Device Program.

5-00787A-10

2010924

204 Section 5. Paragraph (a) of subsection (2) of section
205 322.28, Florida Statutes, is amended to read:

206 322.28 Period of suspension or revocation.—

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

209 (a) Upon conviction of the driver, the court, along with
210 imposing sentence, shall revoke the driver's license or driving
211 privilege of the person so convicted, effective on the date of
212 conviction, and shall prescribe the period of such revocation in
213 accordance with the following provisions:

214 1. Upon a first conviction for a violation of the
215 provisions of s. 316.193, except a violation resulting in death,
216 the driver's license or driving privilege shall be revoked for
217 not less than 180 days or more than 1 year. No sooner than 30
218 days after conviction, the offender may petition the court for
219 approval of a restricted driver's license upon the condition
220 that the offender operate only a vehicle that is equipped with a
221 functioning and approved ignition interlock device certified to
222 be in compliance with s. 316.1938.

223 2. Upon a second conviction for an offense that occurs
224 within a period of 5 years after the date of a prior conviction
225 for a violation of the provisions of s. 316.193 or former s.
226 316.1931 or a combination of such sections, the driver's license
227 or driving privilege shall be revoked for not less than 5 years.
228 No sooner than 180 days after conviction, the offender may
229 petition the court for approval of a restricted driver's license
230 upon the condition that the offender operate only a vehicle that
231 is equipped with a functioning and approved ignition interlock
232 device certified to be in compliance with s. 316.1938.

5-00787A-10

2010924

233 3. Upon a third conviction for an offense that occurs
234 within a period of 10 years after the date of a prior conviction
235 for the violation of the provisions of s. 316.193 or former s.
236 316.1931 or a combination of such sections, the driver's license
237 or driving privilege shall be revoked for not less than 10
238 years. No sooner than 360 days after conviction, the offender
239 may petition the court for approval of a restricted driver's
240 license upon the condition that the offender operate only a
241 vehicle that is equipped with a functioning and approved
242 ignition interlock device certified to be in compliance with s.
243 316.1938.

244
245 For the purposes of this paragraph, a previous conviction
246 outside this state for driving under the influence, driving
247 while intoxicated, driving with an unlawful blood-alcohol level,
248 or any other alcohol-related or drug-related traffic offense
249 similar to the offense of driving under the influence as
250 proscribed by s. 316.193 will be considered a previous
251 conviction for violation of s. 316.193, and a conviction for
252 violation of former s. 316.028, former s. 316.1931, or former s.
253 860.01 is considered a conviction for violation of s. 316.193.

254 Section 6. This act shall take effect January 1, 2011.