

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 479 Ignition Interlock Devices

**SPONSOR(S):** Baxley

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 796

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Kiner	Miller
2) Criminal Justice Subcommittee			
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

CS/HB 479 makes several changes to Florida's DUI law. Specifically, the bill:

- revises provisions for a first-time DUI conviction where the convicted driver did not have a passenger under the age of 18 in the vehicle at the time of arrest, and did not have a blood-alcohol content or breath-alcohol content (BAC) of 0.15 or greater. Under the bill, the convicted driver would have the option of driver license revocation for a period of six months to one year (current law), or mandatory installation of an ignition interlock device (IID) for at least 12 months. The bill allows the court to overrule this option;
- revises mandatory IID installation periods for other DUI convictions;
- lowers the IID threshold from 0.05 BAC to 0.025 BAC, but the court retains the discretion to set the level higher or lower, and in addition, may require IID installation for a period of time in excess of the minimum amount required. The bill clarifies unlawful acts related to tampering with or circumventing an IID and also clarifies the "scope of employment" exemption to required IID installation;
- creates the option to receive an ignition interlock license for certain first-time DUI offenders in addition to other options provided under current law and sets eligibility requirements for the ignition interlock license;
- requires installation of an IID in conjunction with a business purposes only license (BPO) or employment purposes only license (EPO) for a person that has a previous DUI conviction.
- revises the "hard" driver license revocation period for repeat DUI convictions.

The bill has an indeterminate fiscal impact on state revenues and expenditures (See Fiscal Analysis Section).

The bill is effective on October 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

#### **Florida DUI Law**

##### *Elements of the Offense*

Florida law provides that a person is guilty of the offense of DUI if the person is driving or is in actual physical control of a vehicle and:

- is under the influence of alcohol, a chemical substance<sup>1</sup>, or a controlled substance<sup>2</sup>, to the extent the person's normal faculties are impaired; or
- has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.<sup>3</sup>

##### *Criminal Penalties*

Criminal penalties for DUI vary depending on the number of previous DUI convictions, how much time has passed between DUI convictions, the offender's breath-alcohol content or blood-alcohol content (BAC) when arrested, and the age of any passengers in the vehicle at the time of arrest.

The following chart summarizes DUI criminal penalties:

Offense #	Criminal Penalties
1 <sup>st</sup>	<ul style="list-style-type: none"><li>• <b>Fine:</b> \$500 - \$1000<sup>4</sup></li><li>• <b>Imprisonment:</b> Up to 6 months<sup>5</sup></li><li>• <b>Probation:</b> Up to 1 year (total period of probation and incarceration may not exceed one year)<sup>6</sup></li><li>• <b>License suspension:</b> 6 months - 1 year<sup>7</sup></li><li>• <b>Monthly reporting requirement:</b> Includes DUI school<sup>8</sup></li><li>• <b>Community service:</b> 50 hours<sup>9</sup></li><li>• <b>Impoundment or immobilization:</b> Unless the offender's family has no other means of private or public transportation, 10 days, as a condition of probation (must not occur concurrently with imprisonment)<sup>10</sup></li><li>• <b>IID:</b> If court ordered<sup>11</sup></li></ul> <p>Enhanced penalties if BAC ≥ 0.15, or if passenger is under 18:</p> <ul style="list-style-type: none"><li>• <b>Fine:</b> \$1000 - \$2000<sup>12</sup></li><li>• <b>Imprisonment:</b> Up to 9 months<sup>13</sup></li><li>• <b>IID:</b> Mandatory for at least 6 continuous months<sup>14</sup></li></ul>
	<ul style="list-style-type: none"><li>• <b>Fine:</b> \$1,000 - \$2,000<sup>15</sup></li></ul>

<sup>1</sup> s. 877.111, F.S.

<sup>2</sup> ch. 893, F.S.

<sup>3</sup> s. 316.193(1), F.S.

<sup>4</sup> s. 316.193(2), F.S.

<sup>5</sup> Id.

<sup>6</sup> s. 316.193(6)(a), F.S.

<sup>7</sup> s. 322.28(2)(a)1., F.S.

<sup>8</sup> s. 316.193(5), F.S.

<sup>9</sup> s. 316.193(6)(a), F.S.

<sup>10</sup> s. 316.193(6)(a), F.S. The vehicle that was operated by or in the actual control of the DUI offender at the time of the offense, or any one vehicle registered in the DUI offender's name at the time of the offense is the vehicle that will be impounded or immobilized.

<sup>11</sup> s. 316.1937, F.S.

<sup>12</sup> s. 316.193(4)(a), F.S.

<sup>13</sup> s. 316.193(4)(b), F.S.

<sup>14</sup> s. 316.193(4)(c), F.S.

<p style="text-align: center;"><b>2<sup>nd</sup></b></p>	<ul style="list-style-type: none"> <li>• <b>Imprisonment:</b> Up to 9 months<sup>16</sup></li> <li>• <b>License Suspension:</b> 6 months - 1 year<sup>17</sup></li> <li>• <b>Monthly reporting requirement:</b> includes DUI school<sup>18</sup></li> <li>• <b>IID:</b> Mandatory for at least 1 year<sup>19</sup></li> </ul> <p>Enhanced penalties if <i>less</i> than 5 years after a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>Imprisonment:</b> Mandatory minimum of 10 days (at least 48 hours must be consecutive)<sup>20</sup></li> <li>• <b>License suspension:</b> at least 5 years<sup>21</sup></li> <li>• <b>Impoundment or Immobilization:</b> Unless the offender's family has no other means of private or public transportation, 30 days<sup>22</sup></li> </ul> <p>Enhanced penalties if BAC ≥ 0.15, or if passenger is under 18:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> \$2,000 - \$4,000<sup>23</sup></li> <li>• <b>Imprisonment:</b> Up to 1 year<sup>24</sup></li> <li>• <b>IID:</b> Mandatory for at least 2 continuous years<sup>25</sup></li> </ul>
<p style="text-align: center;"><b>3<sup>rd</sup></b></p>	<p>If <i>more</i> than 10 years after a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> \$2,000 - \$5,000<sup>26</sup></li> <li>• <b>Imprisonment:</b> Up to 1 year<sup>27</sup></li> <li>• <b>IID:</b> Mandatory for at least 2 continuous years<sup>28</sup></li> <li>• <b>Monthly reporting requirement:</b> Includes DUI school<sup>29</sup></li> </ul> <p>If <i>less</i> than 10 years after a prior conviction:</p> <ul style="list-style-type: none"> <li>• <b>3<sup>rd</sup> degree felony</b></li> <li>• <b>Fine:</b> Up to \$5,000</li> <li>• <b>Imprisonment:</b> Mandatory minimum of 30 days (at least 48 hours must be consecutive) and up to 5 years<sup>30</sup></li> <li>• <b>IID:</b> Mandatory for at least 2 continuous years<sup>31</sup></li> <li>• <b>Monthly reporting requirement:</b> Includes DUI school<sup>32</sup></li> <li>• <b>License suspension:</b> At least 10 years<sup>33</sup></li> <li>• <b>Impoundment or Immobilization:</b> Unless the offender's family has no other means of private or public transportation, 90 days, as a condition of probation (must not occur concurrently with jail time)</li> </ul> <p>Enhanced penalties if BAC ≥ 0.15, or if passenger is a minor:</p> <ul style="list-style-type: none"> <li>• <b>Fine:</b> At least \$4,000 (3<sup>rd</sup> or subsequent offense)</li> </ul>
<p style="text-align: center;"><b>4<sup>th</sup> or subsequent</b></p>	<p>Regardless of when any prior conviction occurred</p> <ul style="list-style-type: none"> <li>• <b>3<sup>rd</sup> degree felony</b><sup>34</sup></li> <li>• <b>Fine:</b> \$2,000 - \$5,000<sup>35</sup></li> <li>• <b>Imprisonment:</b> Up to 5 years or as provided in s. 775.084, F.S., as habitual/violent offender</li> <li>• <b>License suspension:</b> Mandatory permanent revocation. No hardship reinstatement.<sup>36</sup></li> </ul>

<sup>15</sup> s. 316.193(2)(a)b., F.S.

<sup>16</sup> s. 316.193(2)(a)2.b., F.S.

<sup>17</sup> s. 322.28(2)(a)1., 2., F.S.

<sup>18</sup> s. 316.193(5), F.S.

<sup>19</sup> s. 316.193(2)(a)3., F.S.

<sup>20</sup> s. 316.193(6)(b), F.S.

<sup>21</sup> s. 322.28(2)(a)2., F.S.

<sup>22</sup> 316.193(6)(b), F.S.

<sup>23</sup> s. 316.193(4)(a)2., F.S.

<sup>24</sup> s. 316.193(4)(b)2., F.S.

<sup>25</sup> s. 316.193(4)(c), F.S.

<sup>26</sup> s. 316.193(2)(b)2., F.S.

<sup>27</sup> s. 316.193(2)(b)2., F.S.

<sup>28</sup> s. 316.193(2)(b)2., F.S.

<sup>29</sup> s. 316.193(5), F.S.

<sup>30</sup> ss. 316.193(6)(c) and 775.082(3)(d), F.S.

<sup>31</sup> 316.193(2)(b)1., F.S.

<sup>32</sup> s. 316.193(5), F.S.

<sup>33</sup> s. 322.28(2)(a)3., F.S.

<sup>34</sup> s. 316.193(2)(b)3., F.S.

<sup>35</sup> ss. 316.193(2)(b)3., F.S., and 775.083(1)(c), F.S.

<sup>36</sup> s. 322.28(2)(e), F.S. However, one of the four DUI convictions must have occurred after July 1, 1982.

Notwithstanding the above criminal penalties, Florida law does contain a provision that allows a driver convicted of DUI to obtain a court order reinstating the driver's driving privilege on a temporary basis, provided the driver completes an approved driver training and/or substance abuse course (course must be completed prior to issuance). The reinstatement is valid for no more than 45-days and driving privileges are restricted to business or employment purposes only. In practice, however, DHSMV relies on ss. 322.271 and 322.28, F.S., as part of the more detailed "Florida DUI Law," to grant a driver convicted of DUI a "hardship" license for business or employment purposes only if the driver has met specified criteria.

DHSMV does not currently track how many of these temporary reinstatements are approved per year.

### *Administrative Penalties*

Florida's 'Implied Consent Law' imposes administrative penalties as a result of a licensee's refusal to submit to an approved chemical or physical breath test to determine the licensee's BAC.<sup>37</sup> The chemical or physical breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has reasonable cause to believe the licensee was driving or was in actual physical control of a motor vehicle while under the influence.<sup>38</sup> When a law enforcement officer requests the chemical or physical breath test, the licensee must be told that:

- refusal to submit to the test will result in the suspension of the licensee's driving privilege for one year;
- refusal to submit to the test will result in the suspension of the licensee's driving privilege for 18 months if the licensee's driving privilege has previously been suspended for a refusal to submit; and
- refusal to submit to the test is a misdemeanor if the licensee's driving privilege has previously been suspended for a prior refusal.<sup>39</sup>

If the licensee does in fact refuse to submit to the chemical or physical breath test, the licensee will be arrested and the licensee's driver license will be immediately confiscated. Upon confiscation, the licensee will be given a 10-day temporary driving permit. Upon expiration of the 10-day temporary driving permit, the licensee may be eligible to receive a BPO license or EPO license. Eligibility is limited to first-refusals only; in other words, if the licensee has previously refused to submit to a chemical or physical breath test, the licensee is not eligible to receive a BPO or EPO license. After expiration of the 10-day temporary driving permit, an eligible licensee must wait an additional 90 days before applying for a BPO or EPO driver license. If the licensee submits to the test, but is found to have a BAC of 0.08 or higher, the license may still be eligible to receive a BPO or EPO driver license, but must wait 30 days.

A BPO driver license restricts the driver's driving privilege to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes.<sup>40</sup>

An EPO driver license restricts the driver's driving privilege to driving to and from work and any necessary on-the-job driving required by an employer or occupation.<sup>41</sup>

As a condition precedent to receiving a BPO or EPO driver license, the licensee must successfully complete a department-approved DUI Education and Evaluation Program.

### **Federal DUI Provisions**

#### *Repeat DUI Offender Law – Minimum Requirements for States*

---

<sup>37</sup> s. 316.1932, F.S.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> s. 322.271(1)(c)1., F.S.

<sup>41</sup> s. 322.271(1)(c)2., F.S.

The most recent federal surface transportation funding bill, Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), amended the federal Repeat DUI Offender Law by removing the minimum requirement that repeat DUI offenders be subject to either:

- a driver license suspension of at least one year; or
- a 45-day ‘hard driver license suspension,’ where the offender may not drive at all, followed by a reinstatement of limited driving privileges for the purpose of getting to and from work, school, or an alcohol treatment program if an ignition interlock device is installed on each of the motor vehicles owned or operated, or both, by the DUI offender.<sup>42</sup>

The new minimum federal requirement is the following:

- a suspension of *all* driving privileges for at least one year; or
- a suspension of *unlimited* driving privileges for at least one year, allowing for reinstatement of limited driving privileges<sup>43</sup> if in conjunction with installation of an IID for at least one year. The IID must be installed on each motor vehicle owned, operated, or both by the individual.<sup>44</sup>

### **Ignition Interlock Device (IID)**

#### *General Functionality*

An ignition interlock device (IID) is a breathalyzer-like tube which measures a driver’s breath-alcohol content (BAC). Before starting a vehicle with an IID installed, the driver must give a breath sample by blowing into the IID. If the IID detects a BAC above the pre-set level, the IID will prevent the vehicle from starting, log the violation, and send a record of the violation to the proper authorities.

In Florida, the pre-set level is 0.05 BAC.<sup>45</sup> However, the court has the discretion to set the level higher or lower on a case-by-case basis.<sup>46</sup> According to DHSMV, Florida is one of two states with a statutory pre-set level of 0.05 BAC; nationally, 24 states set the level at 0.025 BAC.

Current Florida law also gives the court the discretion to order mandatory IID installation for all first-time offenders, in addition to any other authorized penalties.<sup>47</sup> If the court exercises this discretion, the installation period must be for at least six months.<sup>48</sup>

Modern IIDs also require random retests after the vehicle has been started to ensure that the driver did not use another person’s breath sample to start the engine, or did not begin drinking after starting the engine; for example, by drinking in a bar while leaving the vehicle running.<sup>49</sup> In these cases, the driver will receive a warning of an upcoming retest and will be given time to pull the car over safely so that a breath sample may be given.<sup>50</sup> If the driver is unable to pull over safely, the driver may slow down and blow into the IID while driving.<sup>51</sup> If the IID detects a BAC above the pre-set level during one of these random tests, the IID will not stop or disable the engine, but will record the violation.<sup>52</sup> While continuing to give the driver the ability to drive in these cases may seem “counter-intuitive,” this is done as a “safety feature,” because “the only thing worse than a drunk [driver] behind the wheel is a drunk [driver]

---

<sup>42</sup> 23 U.S.C. s. 164(a)(5)(A) (pre MAP-21)

<sup>43</sup> subject to restrictions/exemptions in state law

<sup>44</sup> 23 U.S.C. s. 164(a)(4)(A) (current version)

<sup>45</sup> s. 316.1937, F.S.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> See “Ignition Interlocks: Turn the Key and Blow. Can Technology Stop Drunk Driving?” Jeanne Mejeur for the National Conference of State Legislatures (December 2007). A copy of this article is on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

behind the wheel with no steering capability. Since steering shuts down when the engine is turned off, the device will not shut the engine down.”<sup>53</sup>

#### *Required IID Use in Florida*

The following table summarizes Florida’s IID requirements:

<b>DUI Conviction</b>	<b>IID Requirement</b>
1 <sup>st</sup> Conviction	If court ordered
1 <sup>st</sup> Conviction if BAC is $\geq 0.15$ , or minor in car	Mandatory for at least 6 continuous months
2 <sup>nd</sup> Conviction	Mandatory for at least 1 year
2 <sup>nd</sup> Conviction if BAC is $\geq 0.15$ , or minor in car	Mandatory for at least 2 continuous years
3 <sup>rd</sup> Conviction	Mandatory for at least 2 years
4 <sup>th</sup> + Convictions	DUI offender is not eligible for reinstatement of restricted driving privileges

Notwithstanding the above, Florida law will allow a driver who is subject to required IID installation on his or her personal vehicle(s) to drive a vehicle without an IID, if driving is required in the course and scope of his or her employment. In this instance, the vehicle must be owned by the employer and the employer must be notified of the driver’s personal driving restrictions.<sup>54</sup> Additionally, proof of this notification must be in the vehicle.<sup>55</sup> This provision, however, does not apply if the business entity that “employs” the driver is owned or controlled by the driver.<sup>56</sup>

#### *Penalties for Tampering or Circumventing an IID*

With regard to tampering or circumventing an IID, Florida law prohibits the following:

- tampering with or circumventing the operation of an IID;
- requesting or soliciting another person to blow into the IID for the purpose of starting or operating the motor vehicle;
- blowing into an IID for the purpose of starting or operating the motor vehicle for another; and
- knowingly leasing or lending a motor vehicle to a person who has been required to have an IID installed on his or her motor vehicle.<sup>57</sup>

A first violation of any of the above carries a one year license suspension.<sup>58</sup> A separate violation during the same period of IID installation carries a five year license suspension.<sup>59</sup> If a person commits any of the prohibited acts specified above and is not a licensed driver, he or she will be subject to a fine between \$250 and \$500 for each violation, in addition to any other authorized penalty.<sup>60</sup> If the unlicensed driver is unable to pay the fine, the fine then becomes a lien against the motor vehicle used in connection with the violation.<sup>61</sup>

#### *Cost*

In Florida, the offending driver pays for the installation, maintenance, and monitoring of the IID.<sup>62</sup> However, Florida law contains provisions for those drivers the court determines are unable to pay. For example, the court may order that any portion of a fine paid as a result of a DUI offense be counted

---

<sup>53</sup> Id.

<sup>54</sup> s. 316.1937, F.S.

<sup>55</sup> Id.

<sup>56</sup> Id.

<sup>57</sup> s. 316.1937(6), F.S.

<sup>58</sup> s. 316.1937(5)(a), F.S.

<sup>59</sup> Id.

<sup>60</sup> s. 316.1937(5)(b), F.S.

<sup>61</sup> Id.

<sup>62</sup> s. 316.193, F.S.

against IID installation costs.<sup>63</sup> The cost (plus tax) to the offending driver for installation, maintenance, and monitoring is:

- Installation - \$75.50
- Monthly fees - \$72.50
- Optional Insurance - \$5/month

Based on the above, the average cost to the driver over a six month period is \$540.

### *IID Use Nationwide*

According to Mothers Against Drunk Driving, 17 states require mandatory IID installation for all drivers, even for first-time offenders.<sup>64</sup>

### Effect of Proposed Change

#### *Section One*

Section one provides an option for installation of an ignition interlock device (IID) for 12 months, or a driver license revocation between six months and one year, for a first-time DUI conviction. This option is only extended to first-time DUI convictions where the convicted driver's BAC is under 0.15 and no passengers under 18 are in the vehicle at the time of arrest. Installation of the IID or the driver license revocation for this class of convicted drivers is in addition to other authorized penalties under current law. The bill provides that despite the option, the court has the discretion to impose a driver license revocation for a period of six months to one year as provided under current law. If an eligible driver chooses the IID installation for 12 months in lieu of the driver license revocation – and if the court does not overrule that choice – then the convicted driver may receive a reduction on a day-for-day basis for any lawful IID usage as a part of, and during, his or her administrative driver license revocation period.

The bill extends the current mandatory ignition interlock installation periods for all other first-time DUI convictions, as well as all repeat DUI convictions as follows:

- First conviction (BAC of 0.15 or greater, or passenger under 18) – at least 18 months;
- Second conviction (BAC below 0.14 and no passenger under 18) – at least 24 months;
- Second conviction (BAC of 0.15 or greater, or passenger under 18) – at least 30 months;
- Third conviction – at least 36 months.

While revising the length of current IID installation periods for the above categories, the bill removes the requirement that IID installation be “continuous” for first and second DUI convictions where the convicted driver had a BAC of 0.15 or greater, or a passenger under 18 in the vehicle. Under current law, no other DUI conviction requires that the mandatory IID installation period be continuous. Despite the removal of the requirement that IID installation be “continuous,” the bill does not provide the opportunity for a reduction on a day-for-day basis for any lawful IID usage as a part of, and during, an administrative driver license revocation for this class of convicted drivers; the bill only extends that opportunity to a first-time conviction where the driver had a BAC below 0.14 and no passenger under 18 in the vehicle.

As is required under current law, the bill requires that the IID be installed upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted driver.

Under current law, there are increasing IID installation requirements for a 2<sup>nd</sup> DUI conviction “within 5 years after a first conviction” and a 3<sup>rd</sup> DUI conviction “within 10 years after a prior conviction.” The bill changes this to “within 5 years of a first conviction” and “within 10 years of a prior conviction.” The effect of the proposed changes will allow DHSMV to more effectively process driver license revocations. Under current law, if a driver is convicted of his first and second DUI on the same day, the second DUI does not occur “within 5 years after the first,” and IID installation may not be required.

---

<sup>63</sup> s. 316.1937(2)(d), F.S.

<sup>64</sup> See <http://www.madd.org/laws/ignition-interlock.html> (Last viewed on 3/9/13).

However, under the change, if the driver is convicted of his first and second DUI on the same day, the second DUI would be “within 5 years of the first” and IID installation would be required.

### *Section Two*

As mentioned in the Current Situation section, a vehicle with an IID installed requires the driver to give a breath sample in order for the engine to start. The current level is set at 0.05 BAC, or as otherwise set by the court.

The bill lowers the pre-set level to 0.025 BAC, but retains the court’s discretion to set the level higher or lower on a case-by-case basis. The bill also gives the court discretion to require IID installation for a period of time in excess of the minimum required in Section One. The effect of the proposed change will put Florida in line with the 24 other states with a pre-set level of 0.025 BAC.

The bill also revises provisions related to tampering with or circumventing an IID. Tampering with or circumventing an IID is still illegal, but by removing “court ordered,” the bill expands the illegal activity to cover both “court ordered” IID usage as well as non-court ordered IID usage. The bill also provides that the circumventing or tampering must be done “for the purpose of providing the person so restricted [to IID installation] with an operable motor vehicle.” The effect of the proposed change allows authorized persons, such as those responsible for monitoring or maintaining the IID, to disable the device when required, without being subject to criminal penalties.

With regard to the current exemption provided for drivers subject to IID installation on their personal vehicle(s) who must drive within the course and scope of employment, the bill adds the additional requirement that DHSMV receive documentation that the employer has been notified of the driver’s restriction. DHSMV must receive this documentation from the employer before the driver may qualify for the exemption.

The bill also clarifies situations in which the “scope of employment” exemption does not apply. Currently, the exemption does not apply if the business entity that owns the vehicle is owned or controlled by the driver. In addition to this exclusion, the bill adds that the exemption does not apply if the business entity that owns or leases the vehicle is owned or controlled by the driver.

### *Sections Three and Four*

Sections three and four revise the use of IIDs as part of the administrative process under Florida’s Implied Consent Law. Under the bill’s provisions, a licensee that has refused to submit to a chemical or physical breath test incident to a lawful arrest, or submitted to the test but was found to have a BAC of 0.08 or higher, will still have his or her driver license administratively revoked as under current law.

However, if the licensee submits to the chemical or physical breath test, and does not have a prior DUI conviction, the licensee may apply for an ignition interlock license and drive for the remainder of the administrative driver license revocation period provided he or she is operating a vehicle with a department approved IID. If the licensee elects this option, the licensee waives his or her right to a formal or informal review of his driver license revocation. However, the licensee is not forced to go this route; the bill provides an option for the licensee, if eligible. The licensee may still wait out the administrative driver license revocation period and not drive at all, or the licensee may request a formal or informal hearing and seek a hardship driver license, EPO license, or BPO license.

The bill provides that any period of time a person complies with the provisions of his or her ignition interlock license during the administrative driver license revocation period will reduce on a day-for-day basis any mandatory IID installation requirement arising from the same incident. Under the bill, the possibility for reduction, however, does not exist for a licensee who has a previous DUI conviction.

Under the bill, if the licensee refuses to submit to a chemical or physical breath test incident to a lawful arrest, the licensee is not eligible to receive the ignition interlock license. However, the licensee may be

able to apply for an EPO license or BPO license, if eligible, under the same process provided in current law.

The bill defines the term “ignition interlock license” to mean a license that requires that the person operate only a motor vehicle equipped with a functional ignition interlock device certified by DHSMV. A person with a previous DUI conviction is not eligible to receive an ignition interlock license.

#### *Section Five*

The bill reduces the current “hard” driver license revocation period for repeat DUI convictions. During a “hard” driver license revocation period, the convicted driver does not enjoy any driving privileges whatsoever. The amendment reduced the “hard” license suspension period for a person whose license is revoked for 5 years or less from “12 months” to “6 months,” and from “24 months” to “12 months” for a person whose license is revoked for more than 5 years. The effect of the proposed change is that this class of convicted DUI drivers will be able to apply to have their driving privileges reinstated, and restricted to EPO or BPO earlier. Because the possibility of reinstatement is earlier under the bill’s provisions, the proposed change may also result in this class of DUI convicted drivers being subject to the BPO or EPO restrictions for a longer period of time.

#### *Section Six*

The bill has an effective date of October 1, 2013.

### **B. SECTION DIRECTORY:**

- Section 1: revises mandatory ignition interlock installation periods for certain DUI convictions and provides an option to install an ignition interlock in lieu of a driver license revocation for certain first-time DUI convictions, while giving the court the discretion to overrule that option.
- Section 2: lowers the ignition interlock threshold from 0.05 BAC to 0.025 BAC, but the court retains the discretion to set the level higher or lower, and in addition, may require IID installation for a period of time in excess of the minimum amount required by s. 316.193, F.S. The bill clarifies unlawful acts related to tampering with or circumventing an IID and also clarifies the “scope of employment” exemption to required IID installation;
- Section 3: revises provisions for the issuance of business purposes only licenses and employment purposes only licenses and creates an ignition interlock license;
- Section 4: defines the term “ignition interlock license” and requires that a business purposes only license and employment purposes only license must be in conjunction with an IID;
- Section 5: revises the “hard” driver license revocation period for repeat DUI convictions;
- Section 6: provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

- 1. Revenues:  
Indeterminate.
- 2. Expenditures:  
Indeterminate.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
Indeterminate.

2. Expenditures:  
Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

DHSMV is reviewing CS/HB 479, but as of the date of this analysis has not provided fiscal information on the bill.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

With regard to the current exemption provided for drivers subject to IID installation on their personal vehicle(s) who must drive within the course and scope of employment, the bill adds the additional requirement that DHSMV receive documentation that the employer has been notified of the driver's restriction. DHSMV must receive this documentation from the employer before the driver may qualify for the exemption. The bill requires that the notification from the employer be in a "form acceptable" to DHSMV. This provision may require rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, March 12, 2013, the Transportation & Highway Safety Subcommittee adopted a strike-all amendment to HB 479, which substantially revised the bill. The strike-all made the following changes:

- provided that a driver who had a BAC below 0.15 and no minor in the vehicle at the time of arrest will be subject to the current DL suspension of six months to one year (as provided under current law) or installation of an IID for 12 months, in addition to any other authorized penalties – however, the court may require the current DL revocation period instead of IID installation;
- provided that if a driver is eligible to choose IID installation in lieu of a driver license revocation, the driver may receive credit toward the 12 month period described above for any lawful IID usage during, as a part of, his or her administrative driver license revocation period;
- provided that all other DUI convictions are subject to mandatory IID installation, without credit for lawful IID use during the administrative driver license revocation period, for the following periods:
  - 1<sup>st</sup> conviction 0.15 or higher, or minor in the vehicle – 18 months;
  - 2<sup>nd</sup> conviction below 0.15 and no minor in the vehicle – 24 months;
  - 2<sup>nd</sup> conviction 0.15 or higher, or minor in the vehicle – 30 months;
  - 3<sup>rd</sup> conviction – 36 months.
- revised language that requires varying IID installation periods for DUI convictions that occur within "5 years after a first conviction" and within "10 years after a prior conviction," to within "5 years of a first conviction" and within "10 years of a prior conviction";

- lowered the IID threshold to 0.025 BAC from 0.05 BAC, and retained the court's discretion to set the level higher or lower;
- provided that the court has the discretion to order installation of a DHSMV approved IID beyond the minimum period required under s. 316.193, F.S.;
- created an ignition interlock license that requires IID installation, but is not restricted to "employment purposes only" or "business purposes only";
- provided that a certain first-time offender who submits to a physical or chemical breath test that is incident to a lawful arrest may be eligible to receive an ignition interlock license during the administrative process and may receive credit, if the first-time offender is eligible, toward any criminal IID installation requirement for compliant IID usage during the administrative driver license revocation period;
- specified that if a person refuses to submit to a lawful chemical or physical breath test, the person is not eligible to receive the IID license during the administrative driver license revocation period; rather this person will be subject to the requirements provided under current law;
- required installation of an IID as a condition of receiving a BPO or EPO license for a person with a previous DUI conviction;
- lowered the current "hard" driver license revocation periods of 12 months and 24 months for repeat DUI convictions, to 6 months and 12 months, respectively.

This bill analysis is written to CS/HB 479 as amended by the strike-all amendment.