

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Transportation

BILL: SB 796

INTRODUCER: Senator Hukill

SUBJECT: Ignition Interlock Devices

DATE: March 18, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Everette	Eichin	TR	Pre-meeting
2.			JU	
3.			ATD	
4.			AP	
5.				
6.				

I. Summary:

Senate Bill 796 makes several changes to Florida’s DUI law. Specifically, the bill:

- Requires mandatory installation of an ignition interlock device (IID) for all first-time DUI convictions;
- Requires that when an IID is required, the IID be installed upon all vehicles owned or operated by the convicted driver;
- Lowers the maximum breath-alcohol content (BAC) threshold that will allow a vehicle with an IID installed to operate to 0.025 BAC from 0.05 BAC, and also removes the court’s discretion to set this threshold higher or lower on a case-by-case basis;
- Revises provisions related to the offense of tampering with or circumventing an IID;
- Relaxes the conditions precedent to administrative reinstatement of a licensee’s driving privileges after an arrest for DUI by eliminating the business purposes only (BPO) and employment purposes only (EPO) license options in favor of an ignition interlock license;
- Authorizes a driver convicted of DUI to not be subject to any legally imposed period of driver license suspension subject to certain requirements; and
- Sets requirements for the removal of the IID.

This bill substantially amends the following sections of the Florida Statutes: 316.193, 316.1937, 322.25, 322.2615, 322.28, 322.271, 322.2715

II. Present Situation:

Ignition Interlock Devices (IID)

A driver is considered under the influence of alcohol when a person's blood alcohol content (BAC) is 0.08 or more grams of alcohol per 100 milliliters of blood; or 0.08 or more grams of alcohol per 210 liters of breath. The department requires placement of a department-approved IID for any person convicted of committing an offense of driving under the influence as specified in s. 322.2715(3), F.S.:

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.¹ If the court exercises this discretion, the installation period must be for at least six months.²

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.³ 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.⁴ If the driver is unable to pull over safely, the driver may slow down and blow into the IID while driving.⁵ 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.⁶ 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] 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."⁷

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.⁸ If the court exercises this discretion, the installation period must be for at least six months.⁹

Any person who violates and is convicted of driving under the influence of alcohol, with the exception of certain violations, shall be punished by a fine of: no less than \$500 or more than \$1,000 for a first conviction; and no less than \$1,000 or more than \$2,000 for a second conviction; and by imprisonment for: no more than 6 months for a first conviction; and no more than 9 months for a second conviction.

¹ s. 316.1937, F.S.

² Id.

³ 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.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ s. 316.1937, F.S.

⁹ Id.

For a second conviction, there is a mandatory 1 year IID. When there's a third conviction, occurring within 10 years of a prior conviction a IID shall be installed for a period of not less than 2 continuous years. A person with a fourth and subsequent violation commits a felony of the third degree and is punished as provided in ss. 775.082, 775.083, or 775.084, F.S., and the fine imposed can be no less than \$2,000.

Any person convicted of having a blood-alcohol level or breath-alcohol level of 0.15 or higher, and at the time of the offense and was accompanied by a person under the age of 18, shall be punished by a fine of: no less than \$1,000 or more than \$2,000 for a first conviction; no less than \$2,000 or more than \$4,000 for a second conviction; and no less than \$4,000 for a third or subsequent conviction. Also, this person shall be imprisoned for: no more than 9 months for a first conviction; and no more than 12 months for a second conviction.

At the expense of the person convicted of DUI, the court shall mandate a department approved IID to be placed on all vehicles that are individually or jointly leased or owned by the convicted person for no less than 6 continuous months for the first offense and for no less than 2 continuous years for a second offense, when qualifying for a permanent or restricted license.

Cost

In Florida, the offending driver pays for the installation, maintenance, and monitoring of the IID.¹⁰ 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 against IID installation costs.¹¹ 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.

According to Mothers Against Drunk Driving, 17 states require mandatory IID installation for all offenders, even for first-time offenders.¹²

III. Effect of Proposed Changes:

Section 1 amends s. 316.193, F.S., to require mandatory installation of an ignition interlock device (IID) for all first-time DUI convictions, when the convicted driver qualifies for a permanent or restricted driver license. This requirement is in addition to other authorized penalties. Because IID installation is already mandatory for first-time convictions where the convicted driver had a BAC of 0.15 or greater, or a passenger under 18 in the car at the time of arrest, the change specifically affects drivers convicted of a first DUI offense with a BAC between 0.08 and 0.14.

¹⁰ s. 316.193, F.S.

¹¹ s. 316.1937(2)(d), F.S.

¹² See <http://www.madd.org/drunken-driving/ignition-interlocks/> (last visited 3/19/2013)

Under the bill's provisions, first-time DUI offenders are subject to the following required IID installation periods:

- 1st conviction (BAC between 0.08 and 0.14) – at least six months;
- 1st conviction (BAC of 0.15 or greater, or passenger under 18 in the car) – at least six continuous months.

In extending mandatory IID installation to this class of convicted DUI drivers who do not currently fall within the enhanced penalty range for those with a BAC of 0.15 or greater, or a passenger under 18 in the car at the time of arrest, the bill removes the court's current discretion to order IID installation for this population on a case-by-case basis. Because the bill sets a new minimum penalty for this population, the effect of the proposed change may cause a fluctuation in the number of those arrested for DUI to elect to go to trial. The exact impact this new minimum penalty will have on the state's court system is unknown. However, the required IID installation is in lieu of a driver license suspension of six months to one year.

The Florida Department of Highway Safety and Motor Vehicles (DHSMV, department) estimates that the bill's extension of required IID installation for all first-time DUI convictions will affect 50,000 people. Based on the cost of installation and the average cost of monthly maintenance and monitoring, The department estimates this extension will result in a total cost increase to convicted drivers of \$27,000,000.

Although the bill does not revise the required IID installation period for repeat DUI convictions, the bill amends the category of vehicles that will be subject to IID installation, and in later sections of the bill, allows for earlier IID installation while also expanding the scope of the driver's driving privileges.

Under the bill's provisions, the IID must be installed "upon all vehicles owned or operated by the convicted driver." This change removes the current requirement that the IID, when required, be installed "upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person." Currently, if a driver convicted of DUI jointly owns two vehicles with his or her spouse, the IID, when required, will be installed on the vehicle that the convicted driver "jointly owns" and "routinely operates." By extending mandatory IID installation to both vehicles in this example, the convicted driver will incur increased costs related to installation, maintenance, and monitoring of the IID. The bill applies this extension in all cases where IID installation is required.

Section 2 amends s. 316.1937, F.S., to provide that a vehicle with an IID installed requires the driver to give a breath sample in order for the engine to start. If the IID detects BAC above the pre-set level, the vehicle will not start. The current level is set at 0.05 BAC, or as otherwise set by the court.

The bill lowers this pre-set level to 0.025 BAC from 0.05 BAC, and also removes the court's discretion to set the level higher or lower on a case-by-case basis. 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. According to the department, the effect of the proposed changes will increase the number of IID violations, and as a result require two additional full-time equivalent positions (FTEs) to handle the increased workload.

The bill also revises provisions related to tampering with or circumventing an IID. Tampering with or circumventing an IID is still illegal, but the bill clarifies that this activity 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 the department receive documentation that the employer has been notified of the driver’s restriction. The department must receive this documentation before the driver may qualify for the exemption, although the bill does not specify whether the driver or employer is responsible for providing this information to the department.

The bill also clarifies situations in which the “driving within the course and 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.

Section 3 amends, s. 322.25(7), F.S., which currently allows a driver that has been 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 current reinstatement period is no longer than 45-days.

In cases of reinstatement under this section, the bill only permits the driver to drive a vehicle equipped with an IID. The effect of the proposed change provides credit for IID use during this temporary reinstatement period toward the driver’s required IID installation period.

Although the department estimates that it processes a minimal number of temporary reinstatements under this section per year, the department does not have exact numbers. However, the department anticipates that the proposed change would require extensive programming to apply IID use during this temporary period as a credit toward the driver’s required IID installation period.

Section 4 amends, s. 322.2615, F.S., revises the application of administrative penalties imposed under Florida’s Implied Consent Law. Under the bill’s provisions, a licensee that has had his or her driver license administratively suspended for refusing to submit to a chemical or physical breath test incidental to a lawful arrest, or found to have a BAC of 0.08 or higher upon submission, no longer has to wait to 90 days or 30 days, respectively, to apply for a business purposes only (BPO) driver license or employment purposes only (EPO) driver license. Instead, the licensee may drive right away – with an IID – upon enrollment in and subject to the successful completion of a department-approved driver training or substance abuse education course.

The bill relaxes the conditions precedent to administrative reinstatement of a licensee's driving privileges by eliminating BPO and EPO licenses in favor of an ignition interlock license. Under the bill, a licensee is eligible to receive the ignition interlock license as soon as he or she "enrolls in" a driver training or substance abuse education course, and no longer has to "successfully complete" a department-approved DUI Education and Evaluation Program before becoming eligible. However, the ignition interlock license's validity is subject to the licensee's successful completion of the course.

The effect of the proposed change may reduce the deterrent effect of Florida's Implied Consent Law due to the relaxed penalties for a first-refusal to submit to a chemical or physical breath test. On the other hand, in allowing licensees to have their driving privileges reinstated earlier, the effect of the proposed change may allow them to continue to support their families, and may help ensure that if they are driving, they are not above the legal BAC limit.

Section 5 amends, s. 322.28, F.S., authorizing a driver convicted of DUI to not be subject to any legally imposed period of "hard"¹³ driver license suspension – including drivers convicted of DUI manslaughter, DUI involving serious bodily injury, and vehicular homicide in connection with DUI.

In order to avoid a legally imposed hard driver license suspension, the bill requires the driver, at any time after revocation, to have proof of enrollment in a department-approved driver training or substance abuse education course. The driver must also obtain an ignition interlock license restricting the convicted person to operating only vehicles equipped with a functioning IID. The convicted driver's continued use of the ignition interlock license is subject to the successful completion of the department-approved driver training or substance abuse education course.

According to the department, this provision "requires no waiting periods" and allows drivers convicted of DUI to "begin driving anywhere immediately." However, because it is unknown how many drivers convicted of DUI currently comply with their driver license suspensions, it is unknown how many drivers will be truly affected by the proposed change.

The department estimates that section five's proposed change would require the department to fill 16 full-time equivalent positions (FTEs) in order to handle the increased workload associated with approving and monitoring the number of anticipated ignition interlock license applications.

Section 6 amends, s. 322.271, F.S., eliminating the business purposes only (BPO) and employment purposes only (EPO) driver license options, the bill also eliminates the conditions a licensee must meet to obtain and maintain the restricted driving privileges those driver license options bring.

This section also eliminates the supervision and monitoring requirements in place for drivers under driver license suspension periods of five years, 10 years, and for those with permanent life-time suspensions. Specifically, the supervision and monitoring requirements that are eliminated are connected to the department's DUI Evaluation and Education Programs, which

¹³ In this case, a "hard driver license suspension" is a period of time wherein the driver will have all driving privileges revoked.

require the driver to abstain from certain illegal substances, make demonstrated lifestyle changes, and among other things, receive clinical evaluation.

Section 7 amends, s. s. 322.2715, F.S., to conform to the bill's required IID installation period for a first, second, and third DUI conviction expressed in section one. For a fourth or subsequent DUI conviction, the bill authorizes issuance of an IID license and requires IID installation for at least five years. However, this minimum five year IID installation period conflicts with language in section five that subjects a person with four DUI convictions to life-time IID installation as a condition of having his or her driving privilege reinstated. Under current law, no driver license may be issued to persons with four or more DUI convictions.¹⁴

The bill also mandates that the IID remain installed until the department receives certification from the IID vendor that none of the following have occurred during the preceding four months: An attempt to start the vehicle with a breath-alcohol content (BAC) of 0.04 or more, unless a subsequent test within ten minutes registers a BAC less than 0.04;

- A failure to take any random retest unless a review of the digital image confirms that the vehicle was not occupied by the driver at the time of the missed retest;
- A failure to pass any random retest with a BAC of 0.025 or lower, unless a subsequent test within ten minutes registers a BAC lower than 0.025;
- A failure of the person to appear at the ignition interlock device vendor when required for maintenance, repair, calibration, monitoring, inspection, or replacement of the device.

If any of the above happens, the required IID installation period will be extended for a minimum of four months. According to the department, this bill will have the greatest effect on first-time DUI offenders that are not currently subject to mandatory IID installation. Under the bill's provisions, first-time DUI offenders are subject to the following required IID installation periods:

- 1st conviction (BAC between 0.08 and 0.14) – at least six months;
- 1st conviction (BAC of 0.15 or greater, or passenger under 18 in the car) – at least six continuous months.

Although the full six months required for those convicted with a BAC between 0.08 and 0.14, does not have to be continuous under the bill, section 7 requires that four of the six months be continuous.

According to the department, none of the vendors currently participated in Florida's ignition interlock program provide digital images. As such, the requirement that "the digital image confirm that the vehicle was not occupied by the driver at the time of the missed retest" will require the department to contract with a vendor that provides the technology to supply a digital image.

The bill will take effect October 1, 2013.

¹⁴ s. 322.28(2)(e), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact to the private sector is indeterminate, but negative. First time offenders, will incur costs that would not have otherwise been incurred under current law.

Drivers convicted of DUI will incur increased costs due to increased IID requirements. However, by allowing for earlier reinstatement of driving privileges, the bill may allow drivers to continue to maintain their livelihoods.

C. Government Sector Impact:

The bill will have an indeterminate fiscal impact on state revenue. DHSMV currently receives \$12 for every IID installation. DHSMV estimates that the bill will – at a minimum – result in an additional 50,000 IID installations. Based on this estimation, the bill will result in at least \$600,000 to DHSMV, which will be deposited in the Highway Safety Operating Trust Fund.

Expenditures:

Recurring

DHSMV estimates the following recurring expenditures from the Highway Safety Operating Trust Fund:

Salaries -	\$995,112
Expenses -	\$111,798
Human Resources Services -	<u>\$6,372</u>
Total -	\$1,113,282

These figures are associated with the 18 additional FTEs DHSMV anticipates will be needed to cover increased IID monitoring.

Nonrecurring

Under the bill, DHSMV estimates it will require 18 additional full-time equivalent positions (FTEs) to handle the increased workload associated with increased monitoring of the ignition interlock program. DHSMV estimates the 18 additional FTEs will require \$67,716 in nonrecurring expenditures.

DHSMV also estimates the bill's provisions will require 230 hours of programming, which will be contracted out and have a nonrecurring cost to the Highway Safety Operating Trust Fund of \$17,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.