



133622

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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03/10/2016 05:44 PM

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Senator Gibson moved the following:

1 **Senate Amendment to Amendment (588642) (with title**
2 **amendment)**

3
4 Delete line 2865

5 and insert:

6 Section 68. Subsection (2), present paragraph (j) of
7 subsection (6), and subsection (11) of section 316.193, Florida
8 Statutes, are amended, present paragraphs (k), (l), and (m) of
9 subsection (6) are redesignated as paragraphs (j), (k), and (l),
10 respectively, and subsections (15) and (16) are added to that
11 section, to read:



133622

12 316.193 Driving under the influence; penalties.-

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

16 1. By a fine of:

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

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

21 2. By imprisonment for:

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

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

24 3. For a second conviction, by mandatory placement for a
25 period of at least 1 year, at the convicted person's sole
26 expense, of an ignition interlock device approved by the
27 department in accordance with s. 316.1938 upon all vehicles that
28 are individually or jointly leased or owned and routinely
29 operated by the convicted person, when the convicted person
30 qualifies for a permanent or restricted license. Effective
31 October 1, 2016, the court in the Fourth Judicial Circuit may
32 order an offender to participate in a qualified sobriety and
33 drug monitoring program, as defined in subsection (15) and
34 authorized by 23 U.S.C. s. 164, under the pilot program in
35 subsection (16), as an alternative to the placement of an
36 ignition interlock device required by this section ~~The~~
37 ~~installation of such device may not occur before July 1, 2003.~~

38 (b)1. Any person who is convicted of a third violation of
39 this section for an offense that occurs within 10 years after a
40 prior conviction for a violation of this section commits a



133622

41 felony of the third degree, punishable as provided in s.
42 775.082, s. 775.083, or s. 775.084. In addition, the court shall
43 order the mandatory placement for a period of not less than 2
44 years, at the convicted person's sole expense, of an ignition
45 interlock device approved by the department in accordance with
46 s. 316.1938 upon all vehicles that are individually or jointly
47 leased or owned and routinely operated by the convicted person,
48 when the convicted person qualifies for a permanent or
49 restricted license. Effective October 1, 2016, the court in the
50 Fourth Judicial Circuit may order an offender to participate in
51 a qualified sobriety and drug monitoring program, as defined in
52 subsection (15) and authorized by 23 U.S.C. s. 164, under the
53 pilot program in subsection (16), as an alternative to the
54 placement of an ignition interlock device required by this
55 section ~~The installation of such device may not occur before~~
56 ~~July 1, 2003.~~

57 2. Any person who is convicted of a third violation of this
58 section for an offense that occurs more than 10 years after the
59 date of a prior conviction for a violation of this section shall
60 be punished by a fine of not less than \$2,000 or more than
61 \$5,000 and by imprisonment for not more than 12 months. In
62 addition, the court shall order the mandatory placement for a
63 period of at least 2 years, 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. Effective
69 October 1, 2016, the court in the Fourth Judicial Circuit may



133622

70 order an offender to participate in a qualified sobriety and
71 drug monitoring program, as defined in subsection (15) and
72 authorized by 23 U.S.C. s. 164, under the pilot program in
73 subsection (16), as an alternative to the placement of an
74 ignition interlock device required by this section ~~The~~
75 ~~installation of such device may not occur before July 1, 2003.~~

76 3. Any person who is convicted of a fourth or subsequent
77 violation of this section, regardless of when any prior
78 conviction for a violation of this section occurred, commits a
79 felony of the third degree, punishable as provided in s.
80 775.082, s. 775.083, or s. 775.084. However, the fine imposed
81 for such fourth or subsequent violation may be not less than
82 \$2,000.

83 (c) In addition to the penalties in paragraph (a), the
84 court may order placement, at the convicted person's sole
85 expense, of an ignition interlock device approved by the
86 department in accordance with s. 316.1938 for at least 6
87 continuous months upon all vehicles that are individually or
88 jointly leased or owned and routinely operated by the convicted
89 person if, at the time of the offense, the person had a blood-
90 alcohol level or breath-alcohol level of .08 or higher.

91 (6) With respect to any person convicted of a violation of
92 subsection (1), regardless of any penalty imposed pursuant to
93 subsection (2), subsection (3), or subsection (4):

94 ~~(j)1. Notwithstanding the provisions of this section, s.~~
95 ~~316.1937, and s. 322.2715 relating to ignition interlock devices~~
96 ~~required for second or subsequent offenders, in order to~~
97 ~~strengthen the pretrial and posttrial options available to~~
98 ~~prosecutors and judges, the court may order, if deemed~~



133622

99 ~~appropriate, that a person participate in a qualified sobriety~~
100 ~~and drug monitoring program, as defined in subparagraph 2., in~~
101 ~~addition to the ignition interlock device requirement.~~
102 ~~Participation shall be at the person's sole expense.~~

103 ~~2. As used in this paragraph, the term "qualified sobriety~~
104 ~~and drug monitoring program" means an evidence-based program,~~
105 ~~approved by the department, in which participants are regularly~~
106 ~~tested for alcohol and drug use. As the court deems appropriate,~~
107 ~~the program may monitor alcohol or drugs through one or more of~~
108 ~~the following modalities: breath testing twice a day; continuous~~
109 ~~transdermal alcohol monitoring in cases of hardship; or random~~
110 ~~blood, breath, urine, or oral fluid testing. Testing modalities~~
111 ~~that provide the best ability to sanction a violation as close~~
112 ~~in time as reasonably feasible to the occurrence of the~~
113 ~~violation should be given preference. This paragraph does not~~
114 ~~preclude a court from ordering an ignition interlock device as a~~
115 ~~testing modality.~~

116 ~~3. For purposes of this paragraph, the term "evidence-based~~
117 ~~program" means a program that satisfies the requirements of at~~
118 ~~least two of the following:~~

119 ~~a. The program is included in the federal registry of~~
120 ~~evidence-based programs and practices.~~

121 ~~b. The program has been reported in a peer-reviewed journal~~
122 ~~as having positive effects on the primary targeted outcome.~~

123 ~~c. The program has been documented as effective by informed~~
124 ~~experts and other sources.~~

125

126 For the purposes of this section, any conviction for a violation
127 of s. 327.35; a previous conviction for the violation of former



133622

128 s. 316.1931, former s. 860.01, or former s. 316.028; or a
129 previous conviction outside this state for driving under the
130 influence, driving while intoxicated, driving with an unlawful
131 blood-alcohol level, driving with an unlawful breath-alcohol
132 level, or any other similar alcohol-related or drug-related
133 traffic offense, is also considered a previous conviction for
134 violation of this section. However, in satisfaction of the fine
135 imposed pursuant to this section, the court may, upon a finding
136 that the defendant is financially unable to pay either all or
137 part of the fine, order that the defendant participate for a
138 specified additional period of time in public service or a
139 community work project in lieu of payment of that portion of the
140 fine which the court determines the defendant is unable to pay.
141 In determining such additional sentence, the court shall
142 consider the amount of the unpaid portion of the fine and the
143 reasonable value of the services to be ordered; however, the
144 court may not compute the reasonable value of services at a rate
145 less than the federal minimum wage at the time of sentencing.

146 (11) The Department of Highway Safety and Motor Vehicles is
147 directed to adopt rules providing for the implementation of the
148 use of ignition interlock devices and qualified sobriety and
149 drug monitoring programs, as defined in subsection (15), to be
150 used in the pilot program under subsection (16).

151 (15) As used in this chapter and chapter 322, the term:

152 (a) "Qualified sobriety and drug monitoring program" means
153 an evidence-based program approved by the department which
154 authorizes a court or an agency with jurisdiction, as a
155 condition of bond, sentence, probation, parole, or restricted
156 driving privileges, to require a person who was arrested for,



133622

157 pleaded guilty to, or was convicted of driving under the
158 influence of alcohol or drugs to be regularly tested for alcohol
159 and drug use. As the court deems appropriate, the program shall
160 monitor alcohol or drugs through one or more of the following
161 modalities: breath testing twice a day at a testing location;
162 continuous transdermal alcohol monitoring via an electronic
163 monitoring device; random blood, breath, or urine testing; or
164 drug patch or oral fluid testing. Testing modalities that
165 provide the best ability to detect a violation as close in time
166 as reasonably feasible to the occurrence of the violation should
167 be given preference. Participation shall be at the person's sole
168 expense.

169 (b) "Evidence-based program" means a program that satisfies
170 the requirements of at least two of the following:

171 1. The program is included in the federal registry of
172 evidence-based programs and practices.

173 2. The program has been reported in a peer-reviewed journal
174 as having positive effects on the primary targeted outcome.

175 3. The program has been documented as effective by informed
176 experts and other sources.

177 (16) The Fourth Judicial Circuit, in coordination with the
178 department, shall implement a qualified sobriety and drug
179 monitoring pilot program effective October 1, 2016, for offenses
180 where an ignition interlock device is mandated under
181 subparagraphs (2) (a)3., (2) (b)1., and (2) (b)2. The Fourth
182 Judicial Circuit may order a qualified sobriety and drug
183 monitoring program, as defined in subsection (15) and authorized
184 by 23 U.S.C. s. 164, as an alternative to the ignition interlock
185 device. The Fourth Judicial Circuit shall provide a report on



133622

186 the results of the pilot program to the Governor, the President
187 of the Senate, and the Speaker of the House of Representatives
188 by March 1, 2018.

189 Section 69. Subsection (1) of section 316.1937, Florida
190 Statutes, is amended to read:

191 316.1937 Ignition interlock devices, requiring; unlawful
192 acts.-

193 (1) In addition to any other authorized penalties, the
194 court may require that any person who is convicted of driving
195 under the influence in violation of s. 316.193 shall not operate
196 a motor vehicle unless that vehicle is equipped with a
197 functioning ignition interlock device certified by the
198 department as provided in s. 316.1938, and installed in such a
199 manner that the vehicle will not start if the operator's blood
200 alcohol level is in excess of 0.025 percent or as otherwise
201 specified by the court. The court may require the use of an
202 approved ignition interlock device for a period of at least 6
203 continuous months, if the person is permitted to operate a motor
204 vehicle, whether or not the privilege to operate a motor vehicle
205 is restricted, as determined by the court. The court, however,
206 shall order placement of an ignition interlock device in those
207 circumstances required by s. 316.193. Effective October 1, 2016,
208 for offenses where an ignition interlock device is mandated
209 under s. 316.193(2)(a)3., (2)(b)1., and (2)(b)2., the court in
210 the Fourth Judicial Circuit may order a qualified sobriety and
211 drug monitoring program, as defined in s. 316.193(15) and
212 authorized by 23 U.S.C. s. 164, under the pilot program in s.
213 316.193(16) as an alternative to the ignition interlock device.

214 Section 70. Subsections (1), (3), and (4) of section



133622

215 322.2715, Florida Statutes, are amended to read:

216 322.2715 Ignition interlock device.—

217 (1) Before issuing a permanent or restricted driver license
218 under this chapter, the department shall require the placement
219 of a department-approved ignition interlock device for any
220 person convicted of committing an offense of driving under the
221 influence as specified in subsection (3), except that
222 consideration may be given to those individuals having a
223 documented medical condition that would prohibit the device from
224 functioning normally. If a medical waiver has been granted for a
225 convicted person seeking a restricted license, the convicted
226 person is shall ~~shall~~ not be entitled to a restricted license until
227 the required ignition interlock device installation period under
228 subsection (3) expires, in addition to the time requirements
229 under s. 322.271. If a medical waiver has been approved for a
230 convicted person seeking permanent reinstatement of the driver
231 license, the convicted person must be restricted to an
232 employment-purposes-only license and be supervised by a licensed
233 DUI program until the required ignition interlock device
234 installation period under subsection (3) expires. An interlock
235 device shall be placed on all vehicles that are individually or
236 jointly leased or owned and routinely operated by the convicted
237 person. Effective October 1, 2016, if a court in the Fourth
238 Judicial Circuit orders a qualified sobriety and drug monitoring
239 program as defined in s. 316.193(15) and authorized by 23 U.S.C.
240 s. 164 under the pilot program implemented under s. 316.193(16),
241 the department shall use the monitoring program as an
242 alternative to the placement of an ignition interlock device
243 required by this section.



133622

244 (3) If the person is convicted of:

245 (a) A first offense of driving under the influence under s.
246 316.193 and has an unlawful blood-alcohol level or breath-
247 alcohol level as specified in s. 316.193(1), the ignition
248 interlock device may be installed for at least 6 continuous
249 months.

250 (b) A first offense of driving under the influence under s.
251 316.193 and has an unlawful blood-alcohol level or breath-
252 alcohol level as specified in s. 316.193(4), or if a person is
253 convicted of a violation of s. 316.193 and was at the time of
254 the offense accompanied in the vehicle by a person younger than
255 18 years of age, the person shall have the ignition interlock
256 device installed for at least 6 continuous months for the first
257 offense and for at least 2 continuous years for a second
258 offense.

259 (c) A second offense of driving under the influence, the
260 ignition interlock device shall be installed for a period of at
261 least 1 continuous year.

262 (d) A third offense of driving under the influence which
263 occurs within 10 years after a prior conviction for a violation
264 of s. 316.193, the ignition interlock device shall be installed
265 for a period of at least 2 continuous years.

266 (e) A third offense of driving under the influence which
267 occurs more than 10 years after the date of a prior conviction,
268 the ignition interlock device shall be installed for a period of
269 at least 2 continuous years.

270 (f) A fourth or subsequent offense of driving under the
271 influence, the ignition interlock device shall be installed for
272 a period of at least 5 years.



133622

273
274 Effective October 1, 2016, if a court in the Fourth Judicial
275 Circuit orders a qualified sobriety and drug monitoring program
276 as defined in s. 316.193(15) and authorized by 23 U.S.C. s. 164
277 under the pilot program implemented under s. 316.193(16), the
278 department shall use the monitoring program as an alternative to
279 the placement of an ignition interlock device required by this
280 section.

281 (4) If the court fails to order the mandatory placement of
282 the ignition interlock device or fails to order for the
283 applicable period the mandatory placement of an ignition
284 interlock device under s. 316.193 or s. 316.1937 at the time of
285 imposing sentence or within 30 days thereafter, the department
286 shall immediately require that the ignition interlock device be
287 installed as provided in this section, except that consideration
288 may be given to those individuals having a documented medical
289 condition that would prohibit the device from functioning
290 normally. Effective October 1, 2016, if a court in the Fourth
291 Judicial Circuit orders a qualified sobriety and drug monitoring
292 program as defined in s. 316.193(15) and authorized by 23 U.S.C.
293 s. 164 under the pilot program implemented under s. 316.193(16),
294 the department shall use the monitoring program as an
295 alternative to the placement of an ignition interlock device
296 required by this section. This subsection applies to the
297 reinstatement of the driving privilege following a revocation,
298 suspension, or cancellation that is based upon a conviction for
299 the offense of driving under the influence which occurs on or
300 after July 1, 2005.

301 Section 71. Except as otherwise expressly provided in this



133622

302 act, this act shall take effect on July 1, 2016.

303

304 ===== T I T L E A M E N D M E N T =====

305 And the title is amended as follows:

306 Delete line 3163

307 and insert:

308 applicability; amending s. 316.193, F.S.; authorizing,
309 as of a specified date, a specified court to order a
310 certain qualified sobriety and drug monitoring program
311 under a specified pilot program as an alternative to
312 the placement of an ignition interlock device;
313 deleting obsolete provisions; deleting provisions
314 relating to a qualified sobriety and drug monitoring
315 program; directing the department to adopt rules
316 providing for the implementation of the use of certain
317 qualified sobriety and drug monitoring programs;
318 redefining the terms "qualified sobriety and drug
319 monitoring program" and "evidence-based program";
320 creating a qualified sobriety and drug monitoring
321 pilot program effective on a specified date, subject
322 to certain requirements; requiring a specified court
323 to provide a report to the Governor and the
324 Legislature by a specified date; amending s. 316.1937,
325 F.S.; authorizing, as of a specified date, a specified
326 court to order a certain qualified sobriety and drug
327 monitoring program under a specified pilot program as
328 an alternative to the placement of an ignition
329 interlock device; amending s. 322.2715, F.S.;

330 requiring the department to use a certain qualified



133622

331 sobriety and drug monitoring program as an alternative
332 to the placement of an ignition interlock device as of
333 a specified date under certain circumstances;
334 providing effective dates.