

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 Criminal Justice

BILL: SB 918

INTRODUCER: Senator Simmons

SUBJECT: Driving Under the Influence

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Pre-meeting
2.			TR	
3.			AP	
4.			RC	

I. Summary:

SB 918 amends s. 316.1939, F.S., to create different penalties for a person who refuses an alcohol test for the first time and those who have previously refused the alcohol test.

The bill also:

- Specifies penalties for a person who refuses an alcohol test for the first time but does not specify that any criminal penalty is associated with this offense;
- Specifies that it is a first degree misdemeanor for a person to refuse an alcohol test and have previously refused an alcohol test;
- Requires the court to impose the placement of an ignition interlock device for at least one year for these offenders convicted of refusing to submit to an alcohol test and who have previously refused such a test; and
- Prohibits a court from suspending, deferring, or withholding adjudication or the imposition of a sentence or penalty for a person who refuses an alcohol test and has previously refused an alcohol test.

The bill may have a positive fiscal impact on companies that provide the ignition interlock devices to offenders in Florida and a negative indeterminate fiscal impact on the Department of Highway Safety and Motor Vehicles. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2017.

II. Present Situation:

Florida's Driving Under the Influence Laws

A person is guilty of driving under the influence if a person drives or is in actual physical control of a vehicle and the person:

- Is under the influence of alcoholic beverages, any controlled substance set forth in s. 877.111, F.S., or any substance controlled under ch. 893, F.S., to the extent that the person's normal faculties are impaired;
- 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.¹

In 2016, there were 44,643 arrests for driving under the influence.²

Refusal to Submit to Alcohol Testing

Any person who operates a motor vehicle within Florida is deemed to have given his or her consent to submit to an approved test of the alcohol content of his or her blood, breath, or urine. The test must be incidental to a lawful arrest, and administered at the request of a law enforcement officer who has a reasonable belief that a person was driving a motor vehicle while under the influence of alcoholic beverages.³

Section 316.1939, F.S., makes it a first degree misdemeanor⁴ for a person who refuses an alcohol content test, has previously refused such a test, and:

- The arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;
- Was placed under lawful arrest for a violation of s. 316.193, F.S.;
- Was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of one year or, in the case of a second or subsequent refusal, for a period of 18 months;
- Was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood, if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, is a misdemeanor; and
- Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer.

A person's driver license will also be suspended for one year for a first refusal and 18 months for subsequent refusals.⁵

¹ Section 316.193(1), F.S.

² Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/SpecialtyPlates/UniformTrafficCitationReport> (last visited March 29, 2017).

³ Section 316.1932(1)(a)1.a., F.S.

⁴ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 316.1932, F.S.

In 2014, the U.S. Department of Transportation’s National Highway Traffic Safety Administration released a study regarding breath test refusal rates. The study found Florida had a breath test refusal rate of 82 percent in 2011, as compared to a rate of 40 percent in 2005.⁶

Ignition Interlock Device

An ignition interlock device is a dashboard-mounted breathalyzer that requires a driver to blow in the breathalyzer in order to operate the motor vehicle.⁷ Section 316.193, F.S., requires an ignition interlock device to be installed on the vehicles of persons convicted of certain driving under the influence offenses. The table below summarizes when an ignition interlock device is required in Florida.⁸

Driving under the influence conviction	Ignition interlock device required
1st conviction	If court ordered
1st conviction if blood-alcohol level is ≥ 0.15 , or minor in car	Mandatory for at least 6 continuous months
2nd conviction	Mandatory for at least 1 year
2nd conviction if blood-alcohol level is ≥ 0.15 , or minor in car	Mandatory for at least 2 continuous years
3rd conviction	Mandatory for at least 2 years

The Department of Highway Safety and Motor Vehicles (DHSMV) contracts with vendors to provide ignition interlock devices for offenders in Florida. The devices must meet or exceed the current standards of the National Highway Traffic Safety Administration.⁹ The DHSMV oversees and monitors the ignition interlock devices and must adopt rules for the implementation of ignition interlock devices.¹⁰

The Florida Legislature’s Office of Program Policy Analysis and Government Accountability conducted a study researching ignition interlock devices and driving under the influence recidivism rates. The research showed that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions.¹¹

The study also found the six month recidivism rate for first-time driving under the influence offenders that were not required to install an ignition interlock device was 1.74 percent compared to the recidivism rate for first-time offenders required to use the ignition interlock device which

⁶ Esther S. Namuswe, Heidi L. Coleman, Amy Beming, U.S. Department of Transportation, National Highway Traffic Safety Administration, Traffic Safety Facts Research Note, *Breath Test Refusal Rates in the United States – 2011 Update*, p. 6, (March 2014) (on file with the Senate Criminal Justice Committee).

⁷ Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, (December 2014) available at <http://www.opaga.state.fl.us/MonitorDocs/Reports/pdf/1414rpt.pdf> (last visited March 28, 2017).

⁸ Section 316.193, F.S.

⁹ Section 316.1938, F.S.

¹⁰ Sections 316.1938 and 316.193(11), F.S.

¹¹ *Supra* note 7.

was less with a rate of 0.34 percent.¹² However, only 49 percent of Florida's driving under the influence offenders installed an ignition interlock device, as required, after completing their period of license revocation.¹³

III. Effect of Proposed Changes:

The bill amends s. 316.1939, F.S., to create different penalties for a person who refuses an alcohol test for the first time and those who have previously refused the alcohol test.

The bill amends s. 316.1939, F.S., to specify the following penalties for a person who refuses an alcohol test for the first time:

- A fine of at least \$500 but not more than \$1,000;
- Probation for six months; and
- Four points assessed against his or her driver license.

The bill does not specify that any criminal penalty is associated with a person who refuses an alcohol test for the first time.

The bill specifies that a person who refuses an alcohol test and has previously refused an alcohol test commits a first degree misdemeanor. The bill requires the court to impose the placement of an ignition interlock device for at least one year for these offenders. The court is also prohibited from suspending, deferring, or withholding adjudication or the imposition of a sentence or penalty for a person who refuses an alcohol test and has previously refused an alcohol test.

The bill is effective October 1, 2017.

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.

¹² *Id.* at 8.

¹³ *Id.* at 4-5.

B. Private Sector Impact:

The bill requires the court to impose the placement of an ignition interlock device for at least one year for offenders convicted of refusing to submit to an alcohol test and who have previously refused such a test. This may have a positive fiscal impact on the companies that the DHSMV contracts with to provide the ignition interlock devices to offenders in Florida.

C. Government Sector Impact:

The bill requires the court to impose the placement of an ignition interlock device for at least one year for offenders convicted of refusing to submit to an alcohol test and who have previously refused such a test. The DHSMV monitors and oversees ignition interlock devices and this bill may have a negative indeterminate fiscal impact on the DHSMV.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not specify that any criminal penalty is associated with a person who refuses an alcohol test for the first time.

The bill requires a person who refuses an alcohol test for the first time be assessed four points on his or her driving license. The points system for assessing points on a person's driver license is located in s. 322.27, F.S. The bill should reference this statute to ensure that the points are properly assessed against the offender's driver license.

The bill requires the court to impose the placement of an ignition interlock device for *at least one year* for offenders convicted of refusing to submit to an alcohol test and have previously refused such a test. A court's jurisdiction for a first degree misdemeanor is one year. A court could not impose the ignition interlock device for longer than one year since that is the court's jurisdiction.

The bill amends s. 316.1939, F.S., to create different penalties for a person who refuses an alcohol test for the first time and those who have previously refused an alcohol test. The bill is drafted to make the current requirements of s. 316.1939, F.S., (i.e., that a person has been arrested for driving under the influence, etc.) (See **Present Situation Refusal to Submit to Alcohol Testing**), apply only to a person who refuses an alcohol test for the first time. The requirements do not apply to a person who refuses an alcohol test and has previously refused such a test.

VIII. Statutes Affected:

This bill substantially amends section 316.1939 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
