

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 39 Refusal to Submit to Breath, Urine, or Blood Test

SPONSOR(S): Transportation & Modals Subcommittee, Koster

TIED BILLS: IDEN./SIM. BILLS: SB 260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	17 Y, 0 N, As CS	Hinshelwood	Hinshelwood
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

Under current Florida law, any person who accepts the privilege of operating a motor vehicle in the state is deemed to have given consent to submit to an approved chemical test or physical test, including a breath test, incidental to a lawful arrest for driving under the influence (DUI). Any person who refuses to submit to a lawful breath test is subject to an administrative suspension of his or her driving privilege for one year for a first refusal or 18 months for a second or subsequent refusal. Additionally, a person who refuses to submit to a lawful breath test and whose license has previously been suspended for failure to submit to a lawful test of his or her breath, urine, or blood, commits a first-degree misdemeanor. Before a driver can be convicted of a crime for a second or subsequent refusal to submit to a lawful breath test, the state must prove that the driver was informed by law enforcement, prior to his or her refusal, of specified potential penalties.

An ignition interlock device (IID) is an in-car breathalyzer that prevents a vehicle's ignition from starting if the driver blows above a 0.025 blood alcohol content (BAC) reading. Installation of court-ordered IIDs is required following certain DUI convictions for varying time periods depending on whether the driver has any prior DUI conviction, his or her BAC at the time of arrest, and whether the driver was accompanied by a minor at the time of the offense. Placement of an IID is at the sole expense of the driver on all vehicles that he or she individually or jointly leases or owns and routinely operates, and the IID may be installed when he or she qualifies for a permanent or restricted driver license. Florida law does not currently require placement of an IID when an administrative sanction or suspension is imposed upon a person's driving privilege as a result of a first refusal to submit to a lawful breath test.

The bill requires that a person who refuses for the first time to submit to a lawful breath test must install a DHSMV-approved IID, at his or her expense, on all vehicles he or she individually or jointly leases or owns and routinely operates for a period of one continuous year starting at the time when he or she qualifies for reinstatement of a permanent or restricted driver license. Proof of installation of the IID must be sent to DHSMV, and verification of the operation of the device in the person's vehicle must be periodically reported to DHSMV. The IID placement period required by the bill for a first refusal of a breath test may run concurrently with any other IID placement period required by a court or DHSMV. The prohibitions and penalties provided in s. 316.1937(5), (6), and (8), F.S., relating to tampering with a court-ordered IID, apply in the context of an IID required as a result of a first refusal of a breath test.

Under the bill, before a driver can be convicted of a first-degree misdemeanor for a second or subsequent refusal to submit to testing, the state must prove that the driver was informed prior to his or her first refusal about the requirement to install an IID if he or she refused to submit to the lawful breath test.

The bill requires certain information to be contained in a notice of suspension and requires waiver of the IID requirement where a person whose driver license is suspended for a first refusal to submit to a lawful breath test has such suspension invalidated.

The bill will have an indeterminate fiscal impact on the state and a negative fiscal impact on the private sector.

The bill provides an effective date of October 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0039.TMS

DATE: 1/11/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Refusal to Submit to Lawful Breath Test

Administrative Driver License Suspension

Section 316.1932, F.S., specifies that any person who accepts the privilege of operating a motor vehicle in the state is deemed to have given consent to submit to an approved chemical test or physical test, including a breath test, incident to a lawful arrest for driving under the influence (DUI). A driver must be notified that refusal to submit to a lawful breath test will result in an administrative suspension of his or her driving privilege for one year for a first refusal or 18 months for a second or subsequent refusal.¹ An administrative driving privilege suspension is separate from any suspension or revocation that may result from a criminal conviction for DUI.²

Under s. 322.2615, F.S., if a person refuses to submit to a lawful breath test, a law enforcement officer must take his or her driver license and issue the driver a 10-day temporary permit, if he or she is otherwise eligible to drive, and a notice of suspension.³ The suspension period applicable to the offender begins on the date the notice of suspension is issued.⁴

Based on data from the National Highway Traffic Safety Administration (NHTSA), the average nationwide refusal rate for breath alcohol concentration tests was 24 percent in 2011.⁵ In Florida, the average breath test refusal rate was approximately 35 percent for the past five years.⁶

YEAR	TOTAL REFUSALS	DUI UNIFORM TRAFFIC CITATIONS	REFUSAL RATE
2018	15,093	43,715	34.53%
2019	15,506	44,890	34.54%
2020	12,294	37,310	34.64%
2021	15,182	43,787	34.67%
2022	15,199	42,947	35.39%

Criminal Penalty for Second or Subsequent Refusal

A person who refuses to submit to a lawful breath test and whose driver license has previously been suspended for failure to submit to a lawful test of his or her breath, urine, or blood, commits a first-degree misdemeanor punishable by up to one-year imprisonment in a county jail and a \$1,000 fine.^{7, 8}

Under s. 316.1939, F.S., before a person can be convicted of a first-degree misdemeanor for a second or subsequent refusal to submit to lawful testing, the state must prove that the person was notified of the following:

¹ S. 316.1932(1)(a)1.a., F.S.

² S. 322.28, F.S.

³ S. 322.2615(1)(a), F.S.

⁴ S. 322.2615(1)(b)2., F.S.

⁵ National Highway Traffic Safety Administration, *Traffic Safety Facts Research Note*,

https://www.nhtsa.gov/sites/nhtsa.gov/files/breath_test_refusal_rates-811881.pdf (last visited Jan. 8, 2024).

⁶ House Judiciary Committee, Analysis of CS/CS/HB 197, p. 2 (Apr. 20, 2023); Florida Department of Highway Safety and Motor Vehicles, Agency Analysis of 2024 House Bill 39, p. 3 (Oct. 5, 2023).

⁷ Ss. 316.1932(1)(a)1.a. and 316.1939(1), F.S. Penalties for a second or subsequent refusal also apply to a person who was previously fined under s. 321.35215, F.S., for refusal to submit to a blood, breath, or urine test after being lawfully arrested for an alleged violation of boating under the influence. S. 327.35215, F.S.

⁸ Ss. 775.082 and 775.083, F.S.

- If he or she refuses to submit to a breath test requested by a law enforcement officer incident to a lawful arrest his or her driving privilege will be suspended for one year for a first refusal and 18 months for a second or subsequent refusal; and
- If his or her driver license has previously been suspended for failure to submit to a lawful test of his or her breath, urine, or blood, he or she commits a first-degree misdemeanor punishable by up to one-year imprisonment in a county jail and a \$1,000 fine.⁹

Ignition Interlock Devices (IID)

An IID is an in-car breathalyzer that prevents a vehicle's ignition from starting if the driver blows above a 0.025 blood alcohol content (BAC) reading.¹⁰ Sections 316.193 and 322.2715, F.S., require a court to order installation of an IID following a conviction of DUI in the following manner:¹¹

DUI CONVICTION	REQUIRED COURT-ORDERED IIDs
First conviction	Discretionary placement for at least six continuous months
First conviction if BAC is ≥ 0.15 , or accompanied by minor	Mandatory placement for at least six continuous months
Second conviction	Mandatory placement for at least one continuous year
Second conviction if BAC is ≥ 0.15 , or accompanied by minor	Mandatory placement for at least two continuous years
Third conviction	Mandatory placement for at least two continuous years
Fourth or subsequent conviction	Mandatory placement for at least five years

Placement of an IID shall be at the sole expense of the driver on all vehicles that he or she individually or jointly leases or owns and routinely operates, and the IID may be installed when he or she qualifies for a permanent or restricted driver license.¹² A driver whose license has been suspended or revoked for a period of less than three years, must provide proof of compliance with the court's order to install an IID before his or her driving privilege may be reinstated, even in a limited capacity.¹³ Furthermore, if a driver claims inability to pay, a court may consider the driver's ability to pay for IID installation and may order that a portion of any fine paid as part of the judgment for his or her DUI conviction may be allocated to defray the costs of installation.¹⁴

If a person is required to operate a motor vehicle in the course and scope of his or her employment and the vehicle is owned or leased by his or her employer, the person may operate that vehicle without installation of an IID if the employer has been notified of such driving privilege restriction and maintains proof of notification in the vehicle.¹⁵

Additionally, a medical waiver may be granted for individuals having a documented medical condition that would prohibit the IID from functioning normally. If a medical waiver is granted, a driver is not entitled to a restricted license until the required IID placement period expires. If the driver is seeking permanent reinstatement of his or her license, he or she must be restricted to an employment purposes only license and be supervised by a licensed DUI program until the required IID placement period expires.¹⁶

⁹ *Supra* note 7.

¹⁰ S. 316.1937(1), F.S.; FLHSMV, *Ignition Interlock Device (IID) Frequently Asked Questions*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/dui-and-iid/ignition-interlock-device-iid-faqs/> (last visited Jan. 8, 2024).

¹¹ Ss. 316.193 and 322.2715, F.S.

¹² S. 316.193, F.S.

¹³ Ss. 316.1937(4) and 322.2715(1), F.S.

¹⁴ S. 316.1937(1)(d), F.S.

¹⁵ S. 316.1937(7), F.S. This exemption does not apply if the business entity which owns or leases the vehicle is controlled by the person whose driving privilege has been restricted.

¹⁶ S. 322.2715(1), F.S.

According to a study by the NHTSA, 27 states require a person to participate in an IID program following a refusal to submit to testing. The requirements of the programs vary by state.¹⁷

Florida law does not currently require placement of an IID when an administrative sanction or suspension is imposed upon a person's driving privilege as a result of a first refusal to submit to a lawful breath test.

IID Certification and Vendor Contracts

Section 319.1938, F.S., requires DHSMV to certify the accuracy and precision of the testing component of IIDs and publish a list of approved devices along with rules governing the accuracy and precision of the testing component of IIDs.¹⁸ An IID model may not be certified unless it meets or exceeds current NHTSA standards.¹⁹ NHTSA requires all IIDs to be designed to capture a variety of date and time-stamped data, in addition to offender data, vehicle information, mileage, and service visit dates. An IID must be able to record and transmit data including:

- The results of all breath tests;
- Failure to submit to a breath test;
- Vehicle lockouts or early recalls;
- Each time the vehicle's ignition is turned on or off;
- Attempts to tamper with or circumvent the device;
- Failure to turn the vehicle off after a failed rolling retest;
- The date, time, and length of time the vehicle was driven;
- Mileage driven; and
- The date of each service call.

The NHTSA standards require IIDs to pass a series of conformance tests, as well as be tamper-proof and not interfere with normal functioning of the vehicle.²⁰

DHSMV must contract with any service provider whose devices have been certified and who has made a request to become a service provider in the state.²¹ The contract must include, among other things, a requirement for the provider to electronically transmit reports to DHSMV regarding driver activity, bypass approval, compliance, client violations, and other reports, and a requirement for the provider to maintain a readily accessible service center in each judicial circuit.²² Currently, DHSMV contracts with nine different service providers in the state.²³

Effect of Proposed Changes

The bill requires that a person who refuses for the first time to submit to a lawful breath test must install an IID, at his or her expense, on all vehicles he or she individually or jointly leases or owns and routinely operates for a period of one continuous year starting at the time when he or she qualifies for reinstatement of a permanent or restricted driver license. Proof of installation of the IID must be sent to DHSMV, and verification of the operation of the device in the person's vehicle must be periodically reported to DHSMV.

¹⁷ Hannah Barrett, Robyn D. Robertson, and G. M. Ward Vanlaar, *State of the Practice of State Alcohol Ignition Interlock Programs*, p. 10 (January 2023), <https://rosap.ntl.bts.gov/view/dot/66102> (last visited Jan. 8, 2024).

¹⁸ S. 316.1938(1), F.S. Manufacturers of IIDs are required to pay any costs of certification.

¹⁹ S. 316.1938(2), F.S.

²⁰ Alcolock, *Are Ignition Interlock Devices Held to Any Quality Standards?*, <https://alcolockusa.com/fag/are-ignition-interlock-devices-held-to-any-quality-standards/#:~:text=The%20NHTSA%20standards%20say%20the%20IID%20should%20pass,must%20be%20able%20to%20record%20and%20transmit%20includes%3A> (last visited Jan. 8, 2024); NHTSA, *Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)* (May 8, 2013), <https://www.govinfo.gov/content/pkg/FR-2013-05-08/pdf/2013-10940.pdf> (last visited Jan. 8, 2024); NHTSA, *Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)* (March 30, 2015), https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/baiid-model-specs_2015-07161.pdf (last visited Jan. 8, 2024).

²¹ S. 316.1938(3), F.S.

²² S. 316.1938(4)(c) and (j), F.S.

²³ FLHSMV, *Ignition Interlock Program*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/dui-and-iiid/ignition-interlock-program/> (last visited Jan. 8, 2024).

The IID must be approved by DHSMV in the same manner as devices approved by DHSMV in accordance with s. 316.1938, F.S. The requirement for a person to install an IID under the bill is in addition to the current requirement for his or her driving privilege to be suspended for a specified time period. The IID placement period required by the bill for a first refusal of a breath test may run concurrently with any other IID placement period required by a court or DHSMV.

The prohibitions and penalties provided in s. 316.1937(5), (6), and (8), F.S., relating to tampering with a court-ordered IID, apply in the context of an IID required as a result of a first refusal of a breath test.

Before a driver can be convicted of a first-degree misdemeanor for a second or subsequent refusal to submit to testing, the state must prove that the driver was informed prior to his or her first refusal about the requirement to install an IID if he or she refused to submit to the lawful breath test.

The bill amends ss. 322.2615 and 322.2616, F.S., to:

- Require the notice of suspension to inform a driver who refused to submit to a lawful breath test that he or she is subject to mandatory placement, at his or her own expense, of an IID for one continuous year for a first refusal on all vehicles that he or she individually or jointly leases or owns and routinely operates, when he or she qualifies for reinstatement of a permanent or restricted driver license.
- Require waiver of the IID requirement where a person whose driver license is suspended for a first refusal to submit to a lawful breath test has such suspension invalidated.

The bill also amends s. 322.2715, F.S., to direct DHSMV to require placement of an approved IID before issuing a permanent or restricted driver license to any person who refused to submit to a lawful breath test as required under s. 316.1932, F.S.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1 Amends section 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.

Section 2 Amends section 316.1939, F.S., relating to refusal to submit to testing; penalties.

Section 3 Amends section 322.2615, F.S., relating to suspension of license; right to review.

Section 4 Amends section 322.2616, F.S., relating to suspension of license; persons under 21 years of age; right to review.

Section 5 Amends section 322.2715, F.S., relating to ignition interlock device.

Section 6 Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may increase state government revenue, as the vendor or authorized installer of an IID must collect and remit \$12 for each installation to DHSMV to be deposited into the Highway Safety Operating Trust Fund to be used for the operation of the IID program.²⁴

2. Expenditures:

²⁴ S. 322.2715(5), F.S.
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Although DHSMV provided a fiscal impact for the bill as filed, DHSMV has not had the opportunity to provide the fiscal impact for PCS for HB 39. However, the bill will likely have a negative fiscal impact on DHSMV.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals required to install an IID are responsible for the costs of installation, leasing and monitoring, which vary by vendor. Costs can range from \$70 to \$170 for installation and \$50 to \$120 per month for device leasing and monitoring.²⁵

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking may be necessary in order to conform to changes made by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Transportation & Modals Subcommittee adopted a Proposed Committee Substitute (PCS) and reported the bill favorably as a committee substitute. The PCS:

- Reverts to current law regarding how many days a person must wait to apply for a hardship driver license under certain circumstances.
- Requires an IID only for a first refusal of a breath test and reverts to current law regarding a second or subsequent refusal of a breath test.
- Allows the placement period for an IID resulting from a first refusal of a breath test to run concurrently with any other IID placement period required by a court or DHSMV.
- Requires proof of installation of the IID to be sent to DHSMV and requires periodic reporting to DHSMV for verification of the operation of the device in the person's vehicle.

²⁵ LifeSafer Ignition Interlock, *Ignition Interlock Costs*, <https://www.lifesafes.com/ignition-interlock-cost/> (last visited Jan. 8, 2024).

- Applies prohibitions and penalties in s. 1937(5), (6), and (8), F.S., relating to tampering with a court-ordered IID, to the context of an IID that is required as a result of a first refusal of a breath test.

This analysis is drafted to the committee substitute as approved by the Transportation & Modals Subcommittee.