

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

HB 1199 requires the installation of an ignition interlock device upon a wider array of DUI-related convictions and increases the length of time the installation may be required. In addition, the bill authorizes a court to order the installation of an ignition interlock device for convictions of non-DUI-related offenses.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

A driving under the influence (DUI) conviction pursuant to s. 316.193(1), F.S., requires proof of the following elements:

That the person was driving or in actual physical control of a vehicle and either:

- The person’s breath or blood alcohol level at the time was .08% or greater or
- The person was under the influence of alcohol, a chemical substance or a controlled substance to the extent that their normal faculties were impaired.

First, second and certain third DUI convictions are punishable as provided in s. 316.193(2), F.S., by a jail sentence and a fine as indicated below. A third conviction within 10 years of the second, or a fourth or subsequent conviction for DUI is a third degree felony, punishable by up to five years in prison. The penalties, pursuant to s. 316.193(2), F.S., for DUI and for DUI when the blood alcohol level of the driver was over .20 or when the driver was accompanied in the vehicle by a person under the age of 18 are:

	Maximum Incarceration	Incarceration Over .20 BAL or w/minor	Fine	Fine Over .20 BAL or w/minor
1st Offense	6 months jail	9 months jail	\$250-\$500	\$500-\$1,000
2nd Offense	9 months jail	12 months jail	\$500-\$1,000	\$1,000-\$2,000
3rd Offense more than 10 years after prior offense	12 months jail	12 months jail	\$1,000-\$2,500	\$2,000-\$5,000
3rd Offense within 10 years or prior offense	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000
4th Offense (3rd degree felony)	5 years prison	5 years prison	\$1,000-\$5,000	\$1,000-\$5,000

Further, there are mandatory jail sentences associated with certain repeat DUI offenses. For example, if a person is convicted of a second DUI that occurred within 5 years after the date of the prior conviction, he or she must serve a mandatory minimum of 10 days in jail. s. 316.193(6)(b), F.S. For a third or subsequent DUI conviction for an offense that occurs within 10 years after the date of a prior conviction, the person must serve at least 30 days in jail. s. 316.193(6)(c), F.S.

Section 316.193, F.S. also provides penalties for a person who operates a vehicle while under the influence and “who, by reason of such operation, causes”:

- damage to the property or person of another;
- serious bodily injury to another; or
- the death of another (DUI manslaughter)

In 1990, the legislature authorized a judge to order the installation of an ignition interlock device in the vehicle of a DUI offender.¹ With an ignition interlock device, a vehicle will not start if the operator’s blood alcohol level is in excess of .05 or as otherwise specified by a court. During the 2002 session², section 316.193 was amended to require a judge to order the installation of an ignition interlock device in vehicles of certain DUI offenders. Upon a second conviction for DUI, the judge must order the placement, for at least one year, of an ignition interlock device upon all vehicles individually or jointly leased or owned and routinely operated by the offender if the convicted person qualifies for a permanent or restricted license.³ Upon a third DUI conviction, the ignition interlock device must be installed for at least two years.⁴ The ignition interlock device must be of a type approved by the Department of Highway Safety & Motor Vehicles (DHSMV) and must be placed at the offender’s sole expense. The installation of such a device may not occur before July 1, 2003.

Further, the placement of an ignition interlock device for up to six months is required for a first DUI offense and for up to two years for a second DUI offense where the person had a blood alcohol level in excess of .20.⁵

An offender is required to periodically report to DHSMV in order to verify operation of the device.⁶ As part of the 2002 chapter law, DHSMV was directed to adopt rules providing for the implementation of the use of ignition interlock devices.⁷

Effect of Proposed Changes

Enhanced penalties for DUI offenses based on elevated blood alcohol level: The bill changes the blood or breath-alcohol level threshold for enhanced penalties from .20 or higher to .16 or higher.

Interlock Devices: HB 1199 deletes all current language relating to ignition interlock devices from Chapter. 316 (contained in ss. 316.193, 316.1937 and 316.1938, F.S.) and removes the existing authority of DHSMV to adopt rules relating to ignition interlock devices.

¹ Ch. 90-253, Laws of Florida.

² Ch. 2002-263, Laws of Florida; passed as CS/CS/HB 1057, 3rd Eng by Rep. Simmons. This chapter law also contained provisions making a third conviction for DUI or BUI which occurred within ten years of a prior conviction a third degree felony. [Previously, a fourth DUI or BUI conviction was a third degree felony]. The chapter law also made the refusal to submit to a breath or blood alcohol test a first degree misdemeanor if the offender’s license had previously been suspended for a refusal to submit.

³ s. 316.193(2)(a)3., F.S.

⁴ s. 316.193(2)(b)1 and 2., F.S.

⁵ s. 316.193(4)(c)

⁶ s. 316.1937(2)(e), F.S.

⁷ s. 316.193(11), F.S.

HB 1199 creates a new section of statute relating to ignition interlock devices in Ch. 322 (driver's licenses) which:

1. Authorizes DHSMV to contract with a provider or providers to furnish the commodities and contractual services necessary for the implementation of the new ignition interlock device law.
2. Requires ignition interlock devices to prevent a motor vehicle from starting if the operator's breath alcohol level is higher than .025 grams of alcohol per 210 liters of breath, or half of the current level of .05
3. Requires a warning label to be placed on each ignition interlock device that warns that tampering with, circumventing, or otherwise misusing the device is a violation of law. Current law also contains this requirement.
4. Requires placement of the device *on all motor vehicles operated by a person* who is issued a driver's license after being convicted of DUI at his or her own expense. This provision would require placement on a greater number of vehicles than current law which requires placement on all vehicles "individually or jointly leased or owned *and routinely operated* by the convicted person".
5. Requires placement of the device if the person has been convicted of:
 - a. a first offense of DUI – the court may order 6 months to 2 years;
 - b. a first offense of DUI while accompanied by a minor or with a blood or breath alcohol level twice the legal threshold – requires placement for 6 months to 2 years;
 - c. a second offense of DUI – requires placement for 1 to 2 years;
 - d. a third or subsequent offense of DUI – requires placement for 2 years;
 - e. DUI manslaughter with no previous DUI convictions – requires placement for 1 to 2 years.
 - f. If the convicted person has the driver's license revoked for violating an abstinence requirement of a licensed supervision program the device will be placed for 1 year of a 5-year revocation period, or 2 years of a 10-year revocation period if the person operates under a restricted license. The revocation period will begin anew upon the installation of the device.
6. Requires the installation of an ignition interlock device to be recorded on the person's license and in DHSMV's records.
7. Requires probation orders to contain conditions, where applicable, requiring placement of ignition interlock devices effective upon the convicted person obtaining a restricted license, and requires the person to notify his or her probation officer within 72 hours of imposition of the condition, subject to a first-degree misdemeanor.
8. Requires proof to DHSMV of installation, require monitoring by a licensed DUI program, and verification reporting of use of the device to DHSMV by the program.
9. Prohibits the following:
 - a. Tampering with, or circumventing the operation of, an ignition interlock device.
 - b. Requesting or soliciting any other person to blow into an ignition interlock device for the purpose of providing an operable motor vehicle.
 - c. Blowing into an ignition interlock device for the purpose of providing an operable vehicle to a person whose driving privilege is restricted.
 - d. Knowingly leasing or lending a motor vehicle to a person whom has had his or her driving privilege restricted unless the vehicle is equipped with a device.
 - e. Operating a vehicle without an ignition interlock device by a person required to have an ignition interlock device installed.

Under current law, a violation of one of these provisions is a noncriminal traffic infraction⁸, punishable by a fine. The bill punishes persons violating the provisions relating to circumvention of ignition interlock device requirements by:

- first-degree misdemeanor *and a minimum incarceration of 10 days*;
- revocation of a driver's license for 1 year;
- revocation for 5 years if violation occurs while the person is required to have a device installed.

The provisions relating to a minimum 10 day incarceration and one year license revocation would apply to persons who have never been convicted of DUI but who were convicted of blowing into an ignition interlock device for a person who was required to use such a device in order to provide them an operable motor vehicle, as well as a person who was convicted of knowingly lending a motor vehicle to a person who is required to use an interlock device.

The bill also provides that any person who is convicted of a provision relating to circumvention of ignition interlock device requirements who does not have a driver's license shall pay a fine of not less than \$250 for such violation. If the person cannot pay such fine, the fine shall become a lien against the motor vehicle used in the violation.

The bill allows a person who is required to operate a motor vehicle in the course or scope of his or her employment, to operate a vehicle owned by the employer without an interlock device if the employer has been notified of the driving privilege, and proof of the notification is in the vehicle.

10. Grants DHSMV new authority to adopt rules necessary to implement the new provisions placed within Ch. 322, F.S.

In addition, the bill authorizes a court to require installation of an ignition interlock device for conviction *of any offense prohibited by the Uniform Traffic Control Law, or any Florida law*. In such cases, the court is required to examine the "totality of the circumstances" in determining the length of time the device shall be installed and the need to provide for the public's safety.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., to delete provisions relating to ignition interlock devices and to change the blood or breath alcohol level threshold for enhanced penalties from .20 to .16.

Section 2. Repeals s. 316.1937, F.S., and s. 316.1938, F.S.

Section 3. Amends s. 316.655, F.S., requiring that discretionary driver's license revocations and suspensions by a court may not be for a period less than that required by chapter 322, F.S., and providing that a court has discretion to require the installation of an ignition interlock device for conviction of violating any offense prohibited by Florida law.

Section 4. Amends s. 316.656, F.S., prohibiting courts from accepting a plea to a lesser offense from a person charged with DUI who has been tested as having a blood or breath alcohol content level of .16 or more.

Section 5. Amends s. 322.271, F.S., to delete a cross-reference to repealed s. 316.1937, F.S.

Section 6. Creates s. 322.2715, F.S., establishing new provisions regarding ignition interlock devices, their certification, warning labels, and unlawful acts related to ignition interlock devices.

Section 7. Provides for severability of portions of the act held invalid.

⁸ s. 316.1937(6) and (8), F.S.

Section 8. Amends s. 316.656, F.S., prohibiting courts from accepting a plea to a lesser offense from a person charged with DUI who has been tested as having a blood or breath alcohol content level of .16 or more.

Section 9. Provides and effective date of October 1, 2003.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill results in increased use of interlock devices, providers of commodities and contractual services necessary for implementation of the new interlock device law may realize an economic benefit.

The bill will allow a judge to require installation of the device upon conviction of any traffic or criminal offense. The bill requires an offender to pay costs associated with installation of the ignition interlock device.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 1199 authorizes DHSMV to adopt rules necessary to implement the new ignition interlock device provisions in ch. 322, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Sections 4 and 8 of the bill provide identical language amending s. 316.656, F.S.. This language appears to be duplicative.

Paragraph (a) of subsection (4) of the newly created section 322.2715 indicates that prior to issuing a permanent or restricted license the *department* shall require the placement of a department-approved ignition interlock device, for any person convicted of committing an DUI. Paragraph (c) provides that if the person has been convicted of a first DUI, the *court* may require the use of an approved ignition interlock device for a period of not less than 6 months or more than 2 years. The other provisions of this paragraph, relating to a second or third DUI offense, provide that the device "shall be required" but do not indicate whether the court or the department is the entity which will require the placement of the device.

Current law provides that interlock devices shall not be installed before July 1, 2003. Although this provision is repealed by the bill, the bill has an effective date of October 1, 2003. It appears that if this bill passes as written, the department would be required to implement the interlock provisions in chapter 316 from July 1 to October 1 and then implement the newly created provisions. It is suggested that the effective date of the sections of the bill repealing the current interlock devices provisions be changed to "upon becoming law" and the effective date of the sections of the bill creating the new interlock provisions be October 1, 2003, (or a later date) in order for the Department to have sufficient time to comply with the new requirements.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES