

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 307 w/CS Driving or Boating Under the Influence
SPONSOR(S): Rep. Planas
TIED BILLS: **IDEN./SIM. BILLS:** SB 2030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation</u>	<u>20 Y, 1 N</u>	<u>Garner</u>	<u>Miller</u>
2) <u>Public Safety & Crime Prevention</u>	<u>14 Y, 0 N w/CS</u>	<u>Maynard</u>	<u>De La Paz</u>
3) <u>Public Safety Appropriations (Sub)</u>	<u></u>	<u></u>	<u></u>
4) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

When the Legislature enacted enhanced DUI/BUI penalty provisions for persons with a blood or breath alcohol level of 0.20 or higher, the law at that time provided that such a person was guilty of DUI/BUI if the person driving or operating the vehicle or vessel was under the influence of alcoholic beverages when affected to the extent that normal faculties were impaired, or the person had a blood-alcohol level of 0.10 or more grams of alcohol per 100 milliliters of blood, or the person had a breath-alcohol level of 0.10 or more grams of alcohol per 210 liters of breath. Enhanced penalties were triggered when the blood or breath alcohol content reached twice the legal limit. When the Legislature later lowered the maximum legal blood or breath-alcohol level to 0.08, it did not change the levels at which enhanced penalties are triggered.

In addition, a new state law in Ohio requires judges to order drivers convicted of DUI's to obtain a special "scarlet letter" license plate. The plates have red numbers on yellow backgrounds to differentiate the license plates from other drivers. The previously optional law is credited with significantly reducing drunk driving in the state.

The Florida Department of Highway Safety and Motor Vehicles has encountered some adverse court rulings as to their ability to require convicted drunk drivers to obtain ignition interlocking devices on their cars, when the court has not specifically ordered the placement of the device statutorily mandated by s. 316.193(2)(a) and (4)(c), F.S. in an individual case. Some courts have not ordered the statutory mandatory provisions requiring such devices, and a circuit court has recently held that the department had no independent authority under s. 316.193, F.S. to require such devices.

HB 307 w/CS lowers the blood or breath-alcohol level at which enhanced penalties are triggered from 0.20 to 0.16. The change provides that the enhanced penalty provisions will be at twice the maximum legal blood or breath-alcohol level.

The bill also requires those convicted of certain DUI offenses to display on their vehicle a Florida DUI license plate for specified periods of time depending on the circumstances of the offense. The license plate must have a yellow background and red lettering to distinguish it from other license plates and the legend "DUI offender" at the bottom.

HB 307 w/CS also clarifies that the Florida Department of Highway Safety and Motor Vehicles has authority to require motorists convicted of DUI's to have an ignition interlocking device in their vehicles when a court fails to specifically order the device installed.

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

STORAGE NAME: h0307c.ps.doc
DATE: March 25, 2004

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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

The bill creates another obligation on DHSMV in connection with the issuance of special DUI license plates.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A person is guilty of the offense of driving under the influence (DUI) if the person is driving or in actual physical control of a vehicle within Florida and is under the influence of alcoholic beverages when affected to the extent that the person's normal faculties are impaired, the person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or the person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

A person is guilty of the offense of boating under the influence (BUI) if the person is operating a vessel within Florida and is under the influence of alcoholic beverages when affected to the extent that the person's normal faculties are impaired, the person has a blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood, or the person has a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.

First, second and certain third DUI and BUI convictions are punishable 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/BUI is a third degree felony, punishable by up to five years in prison. The penalties for DUI/BUI and for DUI/BUI when the blood alcohol content level of the driver or operator is over 0.20 or for DUI when the driver is 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
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Further, there are mandatory jail sentences associated with certain repeat DUI/BUI offenses. For example, if a person is convicted of a second DUI/BUI 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. For a third or subsequent DUI/BUI 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.

In addition, 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.

When the Legislature enacted enhanced penalty provisions for persons who have a blood or breath alcohol level of 0.20 or higher, the law provided that a person was guilty of DUI/BUI if the person is driving or operating the vehicle or vessel was under the influence of alcoholic beverages when affected to the extent that the person's normal faculties are impaired, or the person had a blood-alcohol level of 0.10 or more grams of alcohol per 100 milliliters of blood, or the person had a breath-alcohol level of 0.10 or more grams of alcohol per 210 liters of breath. Enhanced penalties were triggered when the blood or breath alcohol content reached twice the legal limit. When the Legislature later lowered the maximum legal blood or breath-alcohol level to 0.08, it did not change the levels at which enhanced penalties are triggered.

Recently, a new state law in Ohio required judges to order drivers convicted of DUI's to obtain a special "scarlet letter" license plate. The plates have red numbers on yellow backgrounds to differentiate the license plates from other drivers. Four hundred drivers have been required to place the plates on their vehicles since January. The previously optional law is credited with significantly reducing drunk driving in the state.¹

The Florida Department of Highway Safety and Motor Vehicles has encountered some adverse court rulings as to their ability to require convicted drunk drivers to obtain ignition interlocking devices on their cars, when the court has not specifically ordered the placement of the device statutorily mandated by s. 316.193(2)(a) and (4)(c), F.S. in an individual case. Some courts have not ordered the statutory mandatory provisions requiring such devices, and a circuit court has recently held that the department had no independent authority under s. 316.193, F.S. to require such devices.

Effect of Proposed Changes

HB 307 w/CS lowers the blood or breath-alcohol level at which enhanced penalties are triggered from 0.20 to 0.16. The change provides that enhanced penalty provisions will be twice the maximum legal blood or breath-alcohol level.

The bill also would require those convicted of certain DUI offenses to display on their vehicle a Florida DUI license plate for the same time periods that an interlock device must be installed in an offenders vehicles. A judge would also have the option of ordering the display of the tag as a condition of probation. The license plate must have a yellow background and red lettering to distinguish it from other license plates and the legend "DUI offender" at the bottom.

Offenses and Time Periods an Offender Must Display DUI Offender Tag

Offense	Statute	Length of Time Tag Must Be Displayed
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¹ Fox News Article "Ohio Requires DUI 'Scarlet Letter' Licenses" March 23, 2004 Fox News Website, <http://www.foxnews.com/>

1 st Time DUI with Minor in Vehicle	s. 316.193(4)(c), F.S.	6 months
1 st time DUI with Blood-alcohol or Breath-alcohol level .16 or higher	s. 316.193(4), F.S.	6 months
2 nd offense DUI	s. 316.193(2)(a)(3), F.S.	1 year
3 rd offense DUI	s. 316.193(2)(b), F.S.	2 years
2 nd offense DUI with minor in vehicle or blood-alcohol or breath-alcohol level of 1.6 or higher	316.193(4)(c)	2years

HB 307 w/CS clarifies that the Florida Department of Highway Safety and Motor Vehicles has authority to require motorists convicted of DUI's to have an ignition interlocking device in their vehicles when a court fails to specifically order the device installed.

In addition, the bill re-enacts numerous sections of law for the purpose of incorporating these changes, and references to them.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., revising the blood and breath-alcohol content threshold triggering enhanced DUI penalties.

Section 2. Amends s. 316.656, F.S., revising the blood and breath-alcohol content threshold for a judge's authority to accept a plea to a lesser offense.

Section 3. Amends s. 327.35, F.S., revising the blood and breath-alcohol content threshold triggering enhanced BUI penalties.

Sections 4 – 52. Re-enacts s. 316.066, F.S., s. 316.072, F.S., s. 316.1932, F.S., s. 316.1933, F.S., s. 316.1934, F.S., s. 316.1937, F.S., s. 316.1939, F.S., s. 318.143, F.S., s. 318.17, F.S., s. 322.03, F.S., s. 322.0602, F.S., s. 322.21, F.S., s. 322.25, F.S., s. 322.26, F.S., s. 322.2615, F.S., s. 322.2616, F.S., s. 322.264, F.S., s. 322.271, F.S., s. 322.28, F.S., s. 322.282, F.S., s. 322.291, F.S., s. 322.34, F.S., s. 322.44, F.S., s. 322.62, F.S., s. 322.63, F.S., s. 322.64, F.S., s. 323.001, F.S., s. 327.35, F.S., s. 397.405, F.S., s. 440.02, F.S., s. 440.09, F.S., s. 493.6106, F.S., s. 627.758, F.S., s. 790.06, F.S., s. 903.36, F.S., s. 907.41, F.S., s. 938.07, F.S., s. 938.21, F.S., s. 938.23, F.S., s. 943.05, F.S., s. 948.03, F.S., s. 960.03, F.S., s. 327.352, F.S., s. 327.35215, F.S., s. 327.353, F.S., s. 327.354, F.S., s. 327.355, F.S., s. 327.359, F.S., s. 327.36, F.S., respectively, for the purpose of incorporation by reference.

Section 53. Provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

See FISCAL COMMENTS section, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

See FISCAL COMMENTS section, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill persons convicted of DUI/BUI with a blood or breath-alcohol content of 0.16 up to 0.20 will be subject to the enhanced penalties provided by law. Under current law, these persons are subject only to the standard DUI/BUI penalties.

D. FISCAL COMMENTS:

Because the number of persons convicted of DUI/BUI with blood or breath-alcohol levels below 0.20 but at 0.16 or above cannot be ascertained, any positive impact of the bill on state and local revenues is indeterminate at this time. The bill will impose an additional burden on local jails as more offenders will be subject to enhanced incarceration penalties up to 12 months in duration. Since the number of offenders subject to enhanced incarceration penalties cannot be ascertained, these burdens are indeterminate at this time. In addition, to the extent that a lower threshold for enhanced penalties provides greater incentives for offenders to use the courts to avoid such penalties, increased burdens may be placed on the court system. There may also be some revenue to the Department of Motor Vehicles from the fines collected from DUI offenders obtaining the Florida DUI License Plate. The Criminal Justice Estimating Conference has not yet evaluated the fiscal impact of this bill.

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:

No additional rule-making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 25, 2004, the Committee on Public Safety & Crime Prevention voted to approve HB 307 with a committee substitute which incorporated two amendments adopted by the committee. One amendment would require those convicted of certain DUI offenses to display on their vehicle a Florida DUI license plate for the same time periods that an interlock device must be installed in an offenders vehicles. A judge would also have the option of ordering the display of the tag as a condition of probation. The license plate must have a yellow background and red lettering to distinguish it from other license plates and the legend "DUI offender" at the bottom. Another amendment adopted by the committee clarifies that the Florida Department of Highway Safety and Motor Vehicles has authority to require motorists convicted of DUI's to have an ignition interlocking device in their vehicles when a court fails to specifically order the device installed.