

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 369 Driving Under the Influence

SPONSOR(S): Simmons and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Infrastructure</u>	<u>8 Y, 0 N</u>	<u>Brown</u>	<u>Miller</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u>Brown</u>	<u>Tinker</u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Current statute provides for a court to order the mandatory placement of an ignition interlock device upon all vehicles leased or owned by a person convicted of a first violation of driving under the influence (DUI) when the person’s blood-alcohol level (BAL) is .20 percent or higher or the person is accompanied by a minor; or a second, third, or fourth DUI conviction.

HB 369 amends s. 316.193, F.S., to direct the court to order the mandatory placement of an ignition interlock device for a period of at least six months on all vehicles leased or owned by a person convicted of a first time violation of DUI and referred to a substance abuse treatment provider. The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of DUI with a BAL of .20 percent or higher or who had a minor in the vehicle at the time of arrest from “up to six months” to “at least 1 year.” The penalty for a repeat offender in either of these circumstances remains at “at least 2 years.”

Ignition interlock devices currently disable a vehicle if the driver’s blood alcohol level is .05 percent or higher. HB 369 lowers this allowable threshold to .025 percent.

The bill does not have a fiscal impact on state or local governments and has an effective date of July 1, 2008.

Note: Please see Part VI. Amendments/Council Substitute Changes, on page 7 for the effect of an amendment adopted by the Committee on Infrastructure which is traveling with the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Reduce Government: The court system is provided increased authority to require mandatory placement of ignition interlock devices on the vehicles of first-time DUI offenders who have been referred to drug treatment centers.

Increase Personal Responsibility: Those convicted of a first-time DUI and have been referred to drug treatment centers are required to have an ignition interlock device placed on their vehicle to test the driver's breath for blood alcohol concentration before the person uses a motor vehicle.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Penalties for Persons Convicted of DUI, according to s. 316.193, F.S.

According to s. 316.193, F.S., a person is guilty of the offense of DUI if the person is driving or in actual physical control of a vehicle and either: (1) is under the influence of alcoholic beverages, any chemical substance, or any controlled substance to the extent the person's normal faculties are impaired; or (2) has a blood-alcohol level of 0.08 percent or higher. Penalties vary depending on the number of previous convictions, the offender's blood-alcohol or breath-alcohol level (BAL) when arrested, and the age of passengers in the vehicle at the time of arrest.

A first-time offender is subject to a fine ranging from \$250 to \$500, as well as being subject to imprisonment for up to six months. The offender must also be on probation for up to one year and participate in 50 hours of community service. As a condition of probation, the offender's vehicle is impounded for a period of ten days. However, if the first-time offender's BAL is .20 percent or higher, or if a passenger under 18 years of age is present in the vehicle, the penalty is enhanced to a fine ranging from \$500 to \$1,000, imprisonment not exceeding 9 months, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for up to six months.

A second DUI conviction carries a fine ranging from \$500 to \$1,000, imprisonment for a period of up to nine months, and mandatory placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the offender for at least one year. However, if a second offense occurs within five years of a previous DUI conviction, there is a mandatory imprisonment period of at least 10 days, of which at least 48 hours must be consecutive. As a condition of probation, the offender's vehicle is impounded for 30 days, which may not occur concurrently with the imprisonment. Enhanced penalties also apply when the second-time offender's BAL is .20 percent or higher, or when a passenger under the age of 18 is present in the vehicle. These penalties require a fine ranging from \$1,000 to \$2,000, imprisonment not exceeding 12 months, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for at least two years.

A third or subsequent DUI conviction occurring within ten years of a prior DUI conviction is considered a third degree felony and carries a minimum fine of \$1,000 but not exceeding \$5,000, a term of imprisonment not to exceed five years, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for a period not less than two years. There is also a 30-day minimum mandatory imprisonment period, of which at least 48 hours must be consecutive. The offense of a felony DUI for a third conviction within ten years of a prior conviction is ranked within level three of the offense severity ranking chart. The offense of a felony DUI for a fourth or subsequent conviction is ranked within level six of the offense severity ranking chart. However, a third offense occurring more than ten years after the date of a prior DUI conviction carries a fine ranging from \$1,000 to \$2,500, possible imprisonment for up to 12 months, and placement of an ignition interlock device upon all vehicles leased or owned and routinely operated by the person for at least two years.

Section 316.193(3), F.S., also provides penalties for a person convicted of a DUI who causes or contributes to causing: damage to the property or person of another, serious bodily injury to another, or the death of another (DUI manslaughter). A DUI offense involving property damage results in a first degree misdemeanor, punishable by a fine not exceeding \$1,000 and imprisonment for up to one year in jail. A DUI offense involving serious injury results in a third degree felony, punishable by a fine not exceeding \$5,000 and imprisonment for up to five years. A DUI offense resulting in death is a second degree felony, punishable by a fine not exceeding \$10,000 and imprisonment for up to 15 years.

In addition to these penalties, a DUI conviction results in a driver's license revocation under s. 322.28, F.S., as follows: at least 180 days to one year for a first conviction; at least five years for a second conviction within five years of a previous conviction; at least ten years for a third conviction within ten years from the first of three or more prior convictions; and permanent revocation for a fourth conviction.

Ignition Interlock Devices

As defined in Rule 15A-9.003(13), of the Department of Highway Safety & Motor Vehicles (Department), an ignition interlock device is "a breath alcohol analyzer connected to a motor vehicle's ignition. In order to start the motor vehicle engine, a convicted person must blow a deep lung breath sample into the analyzer, which measures the breath alcohol concentration. If the breath alcohol concentration exceeds the fail point on the ignition interlock device, the motor vehicle engine will not start."

Section 316.193, F.S., says the court must order the placement of an interlock device for up to six months for a first DUI offense and for up to two years for a second DUI offense where the violator had a BAL above .20 percent or if a passenger under 18 years of age is present in the vehicle. Upon a second DUI conviction, the law requires placement of an interlock device on all vehicles owned or leased by the offender for at least one year. Upon a third DUI conviction, the court must order an interlock device to be installed for at least two years. The ignition interlock device must be of a type approved by the Department and must be placed at the offender's sole expense. Section 316.1937, F.S., requires that ignition interlock devices keep a vehicle from starting if the person's blood alcohol level is in excess of .05 percent.

Pursuant to s. 316.193(2) and (4), F.S., the ignition interlock device penalties for DUI and for DUI with a BAL above .20 percent or when the driver was accompanied by a minor in the vehicle are summarized in the chart as follows:

DUI Conviction	Ignition Interlock Device Requirement
1 st Conviction	If court ordered
1 st Conviction if .20 BAL or w/ Minor in Car	Up to 6 months
2 nd Conviction	At least 1 year
2 nd Conviction if .20 BAL or w/ Minor in Car	At least 2 years
3 rd Conviction w/in 10 years of previous	At least 2 years
3 rd Conviction more than 10 years after previous	At least 2 years

Section 322.2715, F.S., directs the Department to require placement of an ignition interlock device for any person convicted of committing an offense of DUI as shown in the chart above, prior to issuing the person a permanent or restricted driver’s license.

The Department has contracted with two interlock device vendors to install, inspect and service the ignition interlock devices in Florida. “Interlock Systems of Florida” is the vendor for south Florida counties and has eight installation locations. “Interlock Group of Florida” is the vendor for north Florida counties and has eight installation locations. The cost of installation is \$70, plus tax. The offender must also pay a \$100 refundable deposit or a \$5 monthly insurance charge, as well as a \$67.50 monthly fee for monitoring and calibration.¹ However, if the court determines that the convicted person is unable to pay for the installation of the device, the court may order that a portion of the fine paid by the person for the DUI violation be allocated to defray the costs of installing the device.²

The ignition device is programmed to require routine servicing at 30 to 60 day intervals. However, events involving misuse or non-compliance with program conditions may cause the service date to advance automatically. Service requirements must be strictly complied with; otherwise the interlock device will not allow the vehicle to be started, even if no alcohol is detected. Locations for installation, inspection and servicing of the ignition interlock devices are as follows:

Interlock Systems of Florida (south Florida)	Interlock Group of Florida (north Florida)
Orlando, Tampa, Largo, Lake Worth, Lauderdale, Miami, Ft. Myers, Marathon	Milton, Panama City, Tallahassee, Jacksonville, Gainesville, DeBary, Mt. Dora, Brooksville

According to the most recent available data from the Department, there are 6,552 people across the state currently enrolled in the ignition interlock device program. Since the program began on February 1, 2004, there have been 9,093 people to successfully complete their program requirements. This population has a 2.95 percent overall recidivism rate, with 36 receiving a DUI during the program and 232 receiving a DUI after the program. 997 people have quit the program since February 1, 2004. This population has a 5.42 percent overall recidivism rate. When a person prematurely quits the ignition

¹ See <http://www.hsmv.state.fl.us/ddl/IID.html> for additional details.

² S. 316.1937(2)(d), F.S.

interlock device program, their license is suspended until the remainder of the required time in the program is completed.

Proposed Changes

HB 369 requires that first-time DUI offenders who have been referred to a substance abuse treatment provider have mandatory placement of an ignition interlock device for a period of at least 6 months. A second conviction requires the offender to have an interlock device for at least 1 year.

The Department estimates that there are approximately 35,000 to 40,000 people a year convicted of a first-time DUI offense. Approximately 15,000 people are referred to treatment for a first offense.³ Under the bill, this population will be required to install an ignition interlock device on their vehicles. An unknown percentage of the population will not comply with the installation, thereby surrendering their license until the program requirements have been met.

The bill also increases the amount of time an interlock device must be used by a first-time offender who is guilty of DUI with a BAL of .20 percent or higher or who had a minor in the vehicle at the time of arrest from “up to six months” to “at least 1 year.” The penalty for a repeat offender in either of these circumstances remains at “at least 2 years.”

Ignition interlock devices currently disable a vehicle if the driver’s blood alcohol level is .05 percent or higher. HB 369 lowers this allowable threshold to .025 percent.

The bill also deletes outdated language regarding the installation of the devices not occurring before July 1, 2003.

C. SECTION DIRECTORY:

Section 1. Amends s. 316.193, F.S., by providing that ignition interlock devices be required for a specified period after the first conviction of certain offenses; and revising provisions relating to the period for which an interlock device may be required for the second conviction of certain offenses.

Section 2. Amends s. 316.1937, F.S., to revise the blood alcohol level threshold on an interlock device to .025 percent.

Section 3. Provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

³ *DHSMV Bill Analysis – HB 369*, December 18, 2007, on file with the Department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Those convicted of a first-time DUI will be ordered to pay for the installation and maintenance of the ignition interlock device on their vehicles. However, if the court determines that the convicted person is unable to pay for the installation of the interlock device, the court may order that a portion of the fine paid by the person for the DUI violation be allocated to defray the costs of installing the device.

Increasing the population required to participate in the ignition interlock device program will increase the volume of installations and monthly maintenance work performed by the state's two contracted vendors. Currently, there are 6,552 people enrolled in the program statewide. With the new requirements found in the bill, as many as 15,000 additional people could be required to participate in the program.

D. FISCAL COMMENTS:

There is no fiscal impact to state and local governments because the costs of installation (\$70) and monthly monitoring and servicing (\$67.50 for monthly monitoring and \$100 refundable deposit or a \$5 monthly 'loss protection plan' charge) are the sole responsibility of the convicted person.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not appear to: require counties or cities to spend funds or take action 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Thursday, February 21, 2008, the Committee on Infrastructure adopted a strike-all amendment replacing the condition that the offender was referred to a drug-treatment center with a condition that the offender's blood-alcohol level (BAL) was between 0.15 and 0.20 at the time of the offense. The amendment also adds a \$15 fee to be paid by the offender, removes the modification to interlock BAL lockout levels, and requires DHSMV to order placement of an interlock device as a condition of getting a hardship license if the court fails to do so. The bill was reported favorably with this amendment.

In its review of the strike-all amendment, the Department estimates that approximately 15,000 drivers will require an interlock device based on the new condition. In addition, approximately 6,000 drivers will commit a 2nd or 3rd offense. As a result, the Department estimates that an additional 21,000 devices will be necessary each year. That number of devices, multiplied by the strike-all amendment's \$15 fee would generate \$315,000 annually for the DUI Programs Coordination Trust Fund. The Department anticipates that the Bureau of Driver Education and DUI Programs will need two additional FTE's to handle the workload increase. The total costs are estimated at approximately \$127,354 for the first year, and \$118,578 for each of the subsequent two years. The possible revenue generated (\$315,000 annually) is in excess of the ongoing costs (approximately \$125,000 annually). However, the Department has pointed out that compliance with ignition interlock requirements is significantly less than 100 percent, and the amount of revenue actually collected will fall similarly short of the \$315,000 estimated impact for full compliance.⁴

⁴ *DHSMV Bill Analysis – HB 369 (Amendment)*, February 22, 2008, on file with the Department.