

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 Criminal Justice Committee

BILL: CS/CS/SB 924

INTRODUCER: Criminal Justice Committee; Transportation Committee; and Senator Wise

SUBJECT: DUI/Permanent Revocation/Ignition Interlock Device

DATE: April 13, 2010 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Eichin | Meyer | TR | Fav/CS |
| 2. | Dugger | Cannon | CJ | Fav/CS |
| 3. | | | TA | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill allows a person who has a revoked driver's license because of four or more DUI convictions to become eligible to petition the Department of Highway Safety and Motor Vehicles (DHSMV) for reinstatement of his or her driving privilege after waiting 10 years from the conviction or completion of incarceration, whichever occurs later. The petitioner must meet the following criteria:

- Has not been arrested for a drug-related offense for at least five years prior to the hearing;
- Has not driven with a suspended or revoked license for at least five years prior to the hearing;
- Has been drug-free for at least five years prior to the hearing; and
- Has completed a licensed DUI program.

If the DHSMV reinstates the petitioner's license, the following conditions apply:

- Petitioner's license must be restricted for employment purposes for at least one year;
- Petitioner must be supervised by a DUI program for the revocation time period;
- Petitioner must assume all reasonable costs of supervision;

- Petitioner must forfeit the license if he or she is subsequently convicted of an offense requiring mandatory revocation; and
- Petitioner must have an ignition interlock device (IID) installed on his or her vehicle for no less than five years.

This bill substantially amends the following sections of the Florida Statutes: 322.271 and 322.2715.

II. Present Situation:

Generally, the Department of Highway Safety and Motor Vehicles (DHSMV) revokes the driver's license of persons convicted of driving under the influence (DUI) for various periods. The length of time of the revocation depends on the number of convictions the person has had, and the relative frequency of the conviction. For example, DHSMV revokes the license of a person convicted of DUI twice within five years for a period of not less than five years, after which the driver may have driving privileges restored. However, upon a fourth conviction of DUI, a person's driving privileges are permanently revoked and that person may not be issued a driver's license again.

Driving Under the Influence (DUI)

The offense of DUI¹ is committed if a person is driving or in the actual physical control of a vehicle within the state and:

- The person is under the influence of alcoholic beverages, any chemical substance or any controlled substance when affected to the extent the person's normal faculties are impaired;
- The person has a BAL of 0.08 or more grams of alcohol per 100 milliliters of blood; or
- The person has a BAL of 0.08 or more grams of alcohol per 210 liters of breath.

The DUI offense is punishable as follows:²

- For a first conviction, by a fine of not less than \$250 or more than \$500 and by imprisonment for not more than 6 months.
- For a second conviction, by a fine of not less than \$500 or more than \$1000 and by imprisonment for not more than 9 months. (If the second conviction was for an offense committed within 5 years of the date of a prior conviction, the court must order imprisonment for not less than 10 days.³)
- For a third conviction that is not within 10 years of a prior conviction, by a fine of not less than \$1000 or more than \$2500 and by imprisonment for not more than 12 months.⁴
- For a third conviction occurring within 10 years of a prior conviction, it is a third degree felony, punishable by no less than 30 days in jail⁵ and up to five years in prison and a fine of up to \$1000.⁶

¹s. 316.193(1), F.S.

²s. 316.193(2), F.S.

³s. 316.193(6)(b), F.S.

⁴s. 316.193(2)(b)2, F.S.

⁵s. 316.193(6)(c), F.S.

⁶s. 316.193(2)(b)1, F.S.

- For a fourth conviction, regardless of when it occurs, it is a third degree felony, punishable by up to five years in prison and a fine of not less than \$1000 or more than \$5000.⁷ (If the fourth or subsequent conviction was for an offense that occurred within 10 years after the date of a prior conviction, the court must order imprisonment for not less than 30 days.⁸)

At the judge's discretion, a defendant may be required to serve all or any portion of a term of imprisonment to which the defendant has been sentenced in a residential alcoholism treatment program or a residential drug abuse treatment program.⁹ Current law also requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles for various periods of time based on the number of DUI convictions.

Period of Suspension or Revocation

Section 322.28, F.S., provides for the revocation of driving privileges and prescribes the following periods of revocation for DUI violations:

- First conviction: not less than 180 days nor more than one year;¹⁰
- Second conviction within 5 years of first: not less than five years;¹¹ and
- Third conviction within 10 years of first: not less than 10 years.¹²

Once the revocation period is over, and upon successful reexamination, a person may have his or her driving privileges restored and a new driver's license may be issued by DHSMV. However, upon a fourth conviction, regardless of the relative frequency, the person's driving privileges are permanently revoked and DHSMV may not issue a driver's license to that person again.¹³ Permanent revocation also applies to any person convicted of DUI manslaughter.

Ignition Interlock Devices (IID)

As defined in Rule 15A-9.003, F.A.C., an IID 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 IID, the motor vehicle engine will not start." An IID currently disables a vehicle if the driver's BAL is 0.05 percent or higher or as otherwise specified by the court.

An IID is not required for a first time DUI offender, unless the offender's conviction is based upon a BAL of 0.15 or higher, or because the offender is DUI with a minor in the vehicle.¹⁴ Repeat DUI offenders must install an IID in their vehicle for different time periods depending

⁷s. 316.193(2)(b)3., F.S.

⁸s. 316.193(6)(c), F.S.

⁹s. 316.193(6)(k), F.S.

¹⁰s. 322.28(2)(a)1., F.S.

¹¹s. 322.28(2)(a)2., F.S.

¹²s. 322.28(2)(a)3., F.S.

¹³s. 322.28(2)(e), F.S.

¹⁴s. 316.193(4), F.S. requires placement of an IID for at least six months for a first conviction and at least two years for a second conviction.

upon the number of convictions (one year for the second conviction and at least two years for a third conviction).¹⁵

III. Effect of Proposed Changes:

This bill allows a person who has a revoked driver's license because of four or more DUI convictions to become eligible to petition the DHSMV for reinstatement of his or her driving privilege after waiting 10 years from the conviction or completion of incarceration, whichever occurs later. The petitioner must meet the following criteria:

- Has not been arrested for a drug-related offense for at least five years prior to the hearing;
- Has not driven with a suspended or revoked license for at least five years prior to the hearing;
- Has been drug-free for at least five years prior to the hearing; and
- Has completed a licensed DUI program.

If the DHSMV reinstates the petitioner's license, the following conditions apply:

- Petitioner's license must be restricted for employment purposes for at least one year;
- Petitioner must be supervised by a DUI program for the revocation time period, including reporting to the program for supervision and education at least four times a year;
- Petitioner must assume all reasonable costs of supervision;
- Petitioner must forfeit the license if he or she is subsequently convicted of an offense requiring mandatory revocation; and
- Petitioner must have an ignition interlock device (IID) installed on his or her vehicle for no less than five years.

The bill also requires the DHSMV to adopt rules regulating the services provided by the DUI programs under this section.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ s. 316.193(2), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

An estimated 30,000 individuals whose driver's licenses have been permanently revoked because of having four DUI convictions could eventually become eligible to have driving privileges restored.

C. Government Sector Impact:

DHSMV will likely experience increased demand at driver's license examination offices which may require additional resources to maintain current performance levels.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Criminal Justice on April 13, 2010:**

- Allows a person who has a revoked driver's license because of four or more DUI convictions (rather than three or more under the bill) to become eligible to petition the DHSMV for reinstatement of his or her driving privilege after waiting 10 years from the conviction or completion of incarceration, whichever occurs later;
- Provides in more detail the required supervision;
- Requires the DHSMV to hold a hearing determining the petitioner's qualifications for license reinstatement;
- Requires the petitioner's license, if it is reinstated, to be restricted to employment purposes for at least one year;
- Specifies that the petitioner must assume reasonable supervision costs;
- Provides that if the petitioner is subsequently convicted of an offense requiring mandatory revocation, he or she will lose the reinstated license; and
- Requires the DHSMV to adopt rules regulating DUI programs under the bill.

CS by Transportation on March 24, 2010:

New provisions:

- remove the requirement for a court to permanently revoke the driver's license of persons with four DUI convictions;
- allow a person with three or more DUI convictions to obtain a driver's license provided:
 - at least five years have passed since the most recent DUI violation;
 - the applicant has not been convicted of driving with a suspended or revoked license; and
 - the applicant has completed a driver improvement course and DUI program within the last six months.

A person issued a license under these provisions must have an IID installed and monitored for no less than five years.

The CS deleted provisions which would have:

- required an ignition interlock device (IID) be used for a specified period after a first conviction of driving under the influence (DUI) of alcohol;
- revised the period for which an IID is required if the offender's blood alcohol or breath-alcohol level is 0.15 percent or higher, or if a minor was in the vehicle;
- required a court to order a person convicted of DUI not to operate a motor vehicle for a specified period unless that vehicle is equipped with a functioning IID;
- set forth the standard to be used by the court in determining whether a person is able to pay for the device;
- required a person who uses a vehicle equipped with an IID to obtain a restricted driver's license;
- authorized a court to extend the time an offender must use an IID if the offender requests or solicits any other person to blow into an IID in place of the offender;
- increased the length of time of a driver's license suspension for a second or subsequent refusal to submit to a breath, urine, or blood test;
- increased the fee imposed for installing the device from \$12 to \$15; and
- authorized a person convicted of DUI to petition the court for approval of a restricted driver's license under certain circumstances and with specified conditions.

B. Amendments:

None.