

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 Committee on Criminal Justice

BILL: CS/SB 260

INTRODUCER: Criminal Justice Committee and Senators DiCeglie and Hooper

SUBJECT: Refusal to Submit to a Breath, Urine, or Blood Test

DATE: January 24, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Shutes</u>	<u>Vickers</u>	<u>TR</u>	Favorable
2.	<u>Parker</u>	<u>Stokes</u>	<u>CJ</u>	Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 260 amends ss. 316.1939, 322.2615, 322.2616, and 322.2715, F.S., providing that an ignition interlock device be placed for a first refusal for 1 year, and reverts to current law on a second or subsequent refusal. The bill allows the placement period for an ignition interlock resulting from a first refusal to run concurrently with any other ignition interlock placement period required by a court or the Department of Highway Safety and Motor Vehicles (DHSMV).

The bill amends s. 316.1932, F.S., requiring a person be told that refusing to submit to the lawful breath test will result in the mandatory placement of an ignition interlock device for the duration of the license suspension.

The bill amends s. 316.1939, F.S., requiring proof of installation of the ignition interlock device to be sent to the DHSMV, and provides that the prohibitions and penalties in s. 316.1937(5), (6), and (8), F.S., apply to a person whose driving privilege is restricted pursuant to this subsection and to an ignition interlock device required by this subsection.

The bill may have a negative fiscal impact on the DHSMV associated with a projected increase in the number of driver license suspension administrative hearings. See the "Fiscal Impact" heading for additional details.

The bill takes effect October 1, 2024.

II. Present Situation:

Section 316.1932, F.S., provides that any person who accepts the privilege of operating a motor vehicle within this state is deemed to have given consent to submit to an approved breath test to determine the alcohol content of his or her breath, also referred to as the “implied consent” law. The breath test must be incidental to a lawful arrest and administered at the request of a law enforcement officer who has a reasonable belief such person was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages.¹

Every state in the U.S. has implied consent laws, which are a tool used by law enforcement to access evidence showing a person was illegally impaired while operating a motor vehicle. A person who refuses to submit to a lawful breath test can be subject to administrative and criminal penalties, but penalties vary among the states.²

Refusal to Submit to a Lawful Breath Test

In Florida, failure to submit to a lawful breath test results in an administrative suspension of the person’s driving privilege for one year for a first refusal or 18 months for a subsequent refusal.³ Additionally, a person who refuses to submit to a breath test for a subsequent time commits a first-degree misdemeanor, punishable by up to one year in jail and \$1,000 fine.⁴

Comparatively, a first conviction of driving under the influence (DUI) can result in a fine of at least \$500, 50 hours of community service, imprisonment of no more than six months, up to one year of probation, a court order to install an ignition interlock device for at least six continuous months, and completion of an authorized substance abuse course.⁵

The table below provides data on DUI breath testing refusal rates in Florida from 2018 to 2023.⁶ Previous studies found the nationwide average rate for testing refusal at 24 percent.⁷

¹ Section 316.1932(1)(a)1.a., F.S.

² In 2016, the U.S. Supreme Court in *Birchfield v. North Dakota* held that the Fourth Amendment permits warrantless breath tests incident to arrest, and criminalizing the refusal to submit to a breath test is designed to serve the government’s interest in deterring drunk driving. However, warrants for blood tests are required unless there are exigent circumstances.

³ Section 322.2616(2)(b)1.a., F.S.

⁴ Sections 316.1939(1), F.S.

⁵ Section 316.193, F.S.

⁶ Email from Jonas Marquez, Legislative Affairs Director, DHSMV, *RE: SB – 260 Refusal to Submit to a Breath, Urine or Blood Test*, (November 8, 2023) (on file with the Senate Committee on Transportation).

⁷ Foundation for Advancing Alcohol Responsibility, *BAC Test Refusal Penalties*, (2016), <https://www.responsibility.org/wp-content/uploads/2015/03/BAC-Test-Refusal-Penalties-2016-2.pdf> (last visited January 18, 2024).

Year	Total Refusals	DUI UTCs	Refusal Rate	Crash-related Refusals
2018	15,091	43,715	34.52%	4,051
2019	15,497	44,890	34.52%	4,083
2020	12,926	37,310	34.64%	3,675
2021	15,183	43,787	34.67%	4,230
2022	14,941	44,001	33.96%	4,154
2023*	11,459	32,582	35.17%	3,166
*2023 is preliminary, activity dated 1/1/2023-9/30/2023				

Restricted Driver Licenses

A person whose driving privilege is suspended for refusing to submit to a lawful test of his or her breath, urine, or blood may be able to apply for restricted driving privileges through the Department of Highway Safety and Motor Vehicles (DHSMV) Bureau of Administrative Review after at least 90 days have elapsed from the date of the license suspension or expiration of a temporary driving permit.^{8, 9} However, this privilege may not be granted to a person whose license has been suspended two or more times for testing refusal, or who refused testing following two or more DUI convictions.¹⁰ Furthermore, a person whose driving privilege was suspended for an unlawful blood-alcohol or breath-alcohol level may be able to apply for restricted driving privileges after at least 30 days have elapsed from the date of the license suspension or expiration of a temporary driving permit.¹¹

Section 322.271(1)(c), F.S., defines a “business purposes only” restricted driving privilege as limited to driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and medical purposes. An “employment purposes only” restricted driving privilege is limited to driving to and from work and necessary on-the-job driving.

Ignition Interlock Devices

An ignition interlock device is a breath alcohol analyzer connected to a motor vehicle’s ignition, which requires a breath sample to operate the motor vehicle. Section 316.1937, F.S., requires such devices to prohibit the vehicle from starting if the operator’s blood alcohol level is in excess of 0.025 percent or other court-specified level.

⁸ Section 322.2615(10)(a), F.S.

⁹ DHSMV, *Application for Administrative Hearing*, Form HSMV 78306 (Rev. 1/2022), available at <https://www.flhsmv.gov/pdf/forms/78306.pdf> (last visited January 18, 2024).

¹⁰ Section 322.271(2)(a), F.S.

¹¹ Section 322.2615(10)(b), F.S.

The table below summarizes when an ignition interlock device is required in Florida.¹²

DUI Conviction	Ignition Interlock Device Required
1st conviction	If court orders for at least 6 continuous months
1st conviction if blood-alcohol level is \geq 0.15, or minor in car	Mandatory for at least 6 continuous months
2nd conviction	Mandatory for at least 1 year
2nd conviction if blood-alcohol level is \geq 0.15, or minor in car	Mandatory for at least 2 continuous years
3rd conviction	Mandatory for at least 2 years

The DHSMV contracts with vendors to provide ignition interlock devices in Florida. Currently, the DHSMV contracts with seven vendors to provide ignition interlock services.¹³ The devices must meet or exceed the current standards of the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA).¹⁴ The DHSMV oversees and monitors the ignition interlock devices.¹⁵

The Florida Legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA) conducted a study researching ignition interlock devices and DUI offense recidivism rates. The research showed that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions.¹⁶ Similarly, NHTSA reviewed 15 studies on ignition interlock device effectiveness and found alcohol-impaired driving recidivism rates were 75 percent lower for drivers with ignition interlock devices installed. However, the difference in recidivism rates largely disappeared once the device was removed.¹⁷

The DHSMV indicates the compliance rate for individuals *eligible* to have an ignition interlock device installed is almost 98 percent. Forty-six percent of individuals required to have an ignition interlock device installed are not eligible until other sanctions on their record are cleared to allow driving privilege eligibility.¹⁸ Section 316.193, F.S., providing DUI penalties, requires placement of the ignition interlock device “when the convicted person qualifies for a permanent or restricted license.” Additionally, the DHSMV indicates that inability to afford the cost

¹² Section 316.193, F.S.

¹³ DHSMV, *Ignition Interlock Program*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/dui-and-iiid/ignition-interlock-program/> (last visited January 18, 2024).

¹⁴ Section 316.1938, F.S.

¹⁵ Sections 316.1938 and 316.193(11), F.S.

¹⁶ OPPAGA, *Ignition Interlock Devices and DUI Recidivism Rates*, Report No. 14-14, (December 2014), <https://oppaga.fl.gov/Documents/Reports/14-14.pdf> (last visited January 18, 2024).

¹⁷ NHTSA, *A Highway Safety Countermeasure Guide for State Highway Safety Offices*, 10th Edition (2020), <https://www.nhtsa.gov/book/countermeasures/deterrence/42-alcohol-ignition-interlocks> (last visited January 18, 2024).

¹⁸ Email from Jonas Marquez, Legislative Affairs Director, DHSMV, *RE: SB 260- Refusal to Submit to a Breath, Urine, or Blood Test*, (November 14, 2023) (on file with the Senate Committee on Transportation).

associated with the ignition interlock device is the most persuasive barrier to required installation.¹⁹

According to a study distributed by NHTSA, 27 states mandate ignition interlock program participation upon test refusal.²⁰ The requirements of the programs vary by state. States may require ignition interlock device placement as a penalty for testing refusal, incident to arrest for DUI, or to be granted restricted driving privileges following an administrative license suspension for refusing to submit to the breath test.

III. Effect of Proposed Changes:

The bill amends ss. 316.1939, 322.2615, 322.2616, and 322.2715, F.S., providing that an ignition interlock device be placed for a first refusal for 1 year, and reverts to current law on a second or subsequent refusal. The bill allows the placement period for an ignition interlock resulting from a first refusal to run concurrently with any other ignition interlock placement period required by a court or the DHSMV.

The bill amends s. 316.1932, F.S., requiring a person be told that refusing to submit to the lawful breath test will result in the mandatory placement of an ignition interlock device for the duration of the license suspension.

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The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁹ *Supra* note 14. See also V. Fiscal Impact Statement.

²⁰ Barrett, H., Robertson, R.D., & Vanlaar, W. G. M., *State of the Practice of State Alcohol Ignition Interlock Programs* Report No. DOT HS 813 394, (January 2023), <https://rosap.ntl.bts.gov/view/dot/66102> (last visited January 18, 2024).

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals required to install an ignition interlock device are responsible for costs of the device. Costs vary by vendor, but can range from \$70 to \$170 for installation and \$50 to \$120 per month for device leasing and monitoring.²¹

C. Government Sector Impact:

The DHSMV receives \$12 for each ignition interlock installation, which is deposited into the Highway Safety Operating Trust Fund for operation of the Ignition Interlock Device Program.²²

The DHSMV estimates the bill will result in a significant increase in the number of driver license review hearings that the Bureau of Administrative Review (BAR) will have to conduct. The department expects that it will need additional legal (hearing officers) and administrative support staff as a result of the expected increase in formal hearings. The department estimates that BAR will require an additional \$1,135,000 in recurring funds (for eight additional full-time hearing officers and four additional administrative assistants) as a result of this bill.²³

Additionally, the department projects that the potential increase in ignition interlock installations will require two additional staff positions in the Bureau of Motorists Compliance to administer the additional workload. The department estimates that the cost for these positions will be \$133,268, recurring.

VI. Technical Deficiencies:

None.

²¹ LifeSaver Ignition Interlock, *Ignition Interlock Costs*, <https://www.lifesafer.com/ignition-interlock-cost/> (last visited January 18, 2024).

²² Section 322.2715(5), F.S.

²³ DHSMV, *2024 Legislative Bill Analysis: HB 39* (November 1, 2023) at p. 7 (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

The DHSMV notes that law enforcement officers will need to be educated and trained on the provisions of the bill and implied consent warning forms and/or cards, and refusal affidavits will need to be reviewed and updated to ensure compliance with the requirements of the bill.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.1932, 316.1939, 322.2615, 322.2616, and 322.2715.

IX. 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 January 23, 2024:**

The committee substitute:

- Provides that an ignition interlock device be placed for a first refusal for 1 year, and reverts to current law on a second or subsequent refusal.
- Allows the placement period for an ignition interlock resulting from a first refusal to run concurrently with any other ignition interlock placement period required by a court or the DHSMV.
- Requires proof of installation of the ignition interlock device to be sent to the DHSMV.
- Applies the prohibitions and penalties in s. 316.1937(5), (6), and (8), F.S., relating to tampering with a court-ordered ignition interlock device, to a person whose driving privilege is restricted pursuant to s. 316.1939, F.S.
- Reverts to current law regarding the number of days a person must wait before applying for a hardship license.

B. Amendments:

None.