

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 197 Refusal to Submit to a Breath, Urine, or Blood Test

SPONSOR(S): Judiciary Committee

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|--------|---------|---------------------------------------|
| Orig. Comm.: Judiciary Committee | | Leshko | Kramer |

SUMMARY ANALYSIS

Section 316.1932, F.S., specifies that any person who accepts the privilege of operating a motor vehicle in the state is deemed to have given consent to submit to an approved chemical test or physical test, including a breath test, incidental to a lawful arrest for driving under the influence (DUI). Any person who refuses to submit to a lawful breath test is subject to an administrative suspension of his or her driving privilege for one year for a first refusal or 18 months for a second or subsequent refusal. Additionally, a person who refuses to submit to a lawful breath test and whose license has previously been suspended for failure to submit to a lawful test of his or her breath, urine, or blood, commits a first-degree misdemeanor. Section 316.1939, F.S., requires a law enforcement officer to notify a driver of specified potential penalties before he or she can be found to have committed a crime for a second or subsequent refusal to submit to a lawful breath test.

An ignition interlock device (IID) is an in-car breathalyzer that prevents a vehicle’s ignition from starting if the driver blows above a 0.025 blood alcohol content (BAC) reading. Sections 319.193 and 322.2715, F.S., require installation of an IID following certain DUI convictions for varying time periods depending on whether the driver has any prior DUI conviction, his or her BAC at the time of arrest, and whether the driver was accompanied by a minor at the time of the offense. Placement of an IID is at the sole expense of the driver on all vehicles that he or she individually or jointly leases or owns and routinely operates, and the IID may be installed when he or she qualifies for a permanent or restricted driver license.

PCS for CS/HB 197 amends section 316.1932, F.S., to require a person who refuses to submit to a lawful breath test to install an IID, approved by the Department of Highway Safety and Motor Vehicles (DHSMV) in accordance with section 316.1938, F.S., at his or her expense, in all vehicles he or she individually or jointly leases or owns and routinely operates, when he or she qualifies for reinstatement of a permanent or restricted driver license, for one continuous year for a first refusal or 18 continuous months for a second or subsequent refusal.

The PCS amends section 316.1939, F.S., to add placement of an IID as a penalty for refusal to submit to a lawful breath test. Additionally, before a driver can be convicted of a first-degree misdemeanor for a second or subsequent refusal to submit to testing, the state must prove that the driver was informed, prior to his or her refusal, about the requirement to install an IID for a specified time period if he or she refused to submit to a lawful breath test.

The PCS amends section 322.2615, F.S., to reduce the time period a person must wait before becoming eligible to apply for a hardship license from 90 to 30 days and amends section 322.2715, F.S., to direct DHSMV to require placement of a department-approved IID before issuing a permanent or restricted driver license to any person who refused to submit to a lawful breath test as required under section 316.1932, F.S.

The PCS may increase state government revenue as the vendor or authorized installer of an IID must collect and remit \$12 for each installation to DHSMV to be deposited into the Highway Safety Operating Trust Fund to be used for the operation of the IID program. Additionally, individuals required to install an IID are responsible for the costs of installation, leasing, and monitoring, which vary by vendor.

The PCS provides an effective date of October 1, 2023.

FULL ANALYSIS

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

STORAGE NAME pcs0197.JDC

DATE 4/17/2023

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Refusal to Submit to Lawful Breath Test

Administrative Driver License Suspension

Section 316.1932, F.S., specifies that any person who accepts the privilege of operating a motor vehicle in the state is deemed to have given consent to submit to an approved chemical test or physical test, including a breath test, incident to a lawful arrest for driving under the influence (DUI). A driver must be notified that refusal to submit to a lawful breath test will result in an administrative suspension of his or her driving privilege for one year for a first refusal or 18 months for a second or subsequent refusal.¹ An administrative driving privilege suspension is separate from any suspension or revocation that may result from a criminal conviction for DUI.²

Under section 322.2615, F.S., if a person refuses to submit to a lawful breath test, a law enforcement officer must take his or her driver license and issue the driver a 10-day temporary permit, if he or she is otherwise eligible, and a notice of suspension.³ The suspension period applicable to the offender begins on the date the notice of suspension is issued.⁴

Based on a 2020 National Highway Traffic Safety Administration (NHTSA) report, an average of 24 percent of drivers refuse to submit to lawful breath or blood alcohol tests nationwide.⁵ According to the Department of Highway Safety and Motor Vehicles (DHSMV), in Florida, the average breath test refusal rate was 35 percent for the past five years.⁶

| YEAR | TOTAL REFUSALS | DUI UNIFORM TRAFFIC CITATIONS | REFUSAL RATE |
|-------|----------------|-------------------------------|--------------|
| 2018 | 15,093 | 43,715 | 34.53% |
| 2019 | 15,506 | 44,890 | 34.54% |
| 2020 | 12,294 | 37,310 | 34.64% |
| 2021 | 15,182 | 43,787 | 34.67% |
| 2022* | 15,199 | 42,947 | 35.39% |

*2022 data is preliminary as of Feb. 2023.

Criminal Penalty for Second or Subsequent Refusal

¹ S. 316.1932(1)(a)1.a., F.S.

² S. 322.28, F.S.

³ S. 322.2615(1)(a), F.S.

⁴ S. 322.2615(1)(b)2., F.S.

⁵ National Highway Traffic Safety Administration, *1.4 BAC Test Refusal Penalties*, <https://www.nhtsa.gov/book/countermeasures/deterrence/14-bac-test-refusal-penalties> (last visited Apr. 17, 2023).

⁶ Email from Jennifer Langston, Chief of Staff, DHSMV, *FW: SB 296 – Breath Test Refusal Rate* (Feb. 6, 2023)(on file with the Criminal Justice Subcommittee).

A person that refuses to submit to a lawful breath test and whose driver license has previously been suspended for failure to submit to a lawful test of his or her breath, urine, or blood, commits a first-degree misdemeanor punishable by up to one-year imprisonment in a county jail and a \$1,000 fine.^{7, 8}

Under section 316.1939, F.S., before a person can be convicted of a first-degree misdemeanor for a second or subsequent refusal to submit to lawful testing the State must prove that he or she was notified of the following:

- If he or she refuses to submit to a breath test requested by a law enforcement officer incident to a lawful arrest his or her driving privilege will be suspended for one year for a first refusal and 18 months for a second or subsequent refusal; and
- If his or her driver license has previously been suspended for failure to submit to a lawful test of his or her breath, urine, or blood, he or she commits a first-degree misdemeanor punishable by up to one-year imprisonment in a county jail and a \$1,000 fine.⁹

Restricted Driving Privilege

A driver, who refused to submit to a lawful test, may request a review of his or her eligibility for a restricted driving privilege (hardship license) through the DHSMV's Bureau of Administrative Review 90 days after the expiration of his or her 10-day temporary permit, or if no temporary permit is issued, 90 days after the commencement of his or her driving privilege suspension.¹⁰ DHSMV must afford the driver a hearing within 30 days after receiving such request.¹¹ However, a driver whose license has been suspended two or more times for refusal to submit to a lawful test or who has been convicted of DUI two or more times is ineligible for the issuance of a hardship license.¹²

A person applying for a hardship license may show that the suspension causes a serious hardship and precludes the person from carrying out his or her normal business occupation, trade, or employment and that the use of his or her license in the normal course of his or her business is necessary to support the person or his or her family.¹³ Additionally, DHSMV requires a person applying for a hardship license, who has had his or her license suspended for refusal to submit to testing under section 322.2615, F.S., to provide proof of enrollment in the applicable department-approved driver training course or licensed DUI program substance abuse education course, including evaluation and treatment, if referred, and may require letters of recommendation from respected business persons, law enforcement officers, or judicial officers to determine if the person's driving privilege should be reinstated on a restricted basis.¹⁴

A hardship license may be issued for "business purposes only" or for "employment purposes only."¹⁵ A business purposes only license is limited to "any 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 for medical purposes." An employment purposes only license is limited to "driving to and from work and any necessary on-the-job driving required by an employer or occupation."¹⁶

After reviewing the licensee's application for reinstatement, DHSMV may require the use of an ignition interlock device as a requirement to obtain a hardship license.¹⁷

Ignition Interlock Devices (IID)

⁷ Ss. 316.1932(1)(a)1.a. and 316.1939(1), F.S. Penalties for a second or subsequent refusal also apply to a person who was previously fined under s. 321.35215, F.S., for refusal to submit to a blood, breath, or urine test after being lawfully arrested for an alleged violation of boating under the influence. S. 327.35215, F.S.

⁸ Ss. 775.082 and 775.083, F.S.

⁹ *Supra* note 7.

¹⁰ Ss. 322.2615(1)(b)3., (10), and 322.271, F.S.

¹¹ S. 322.271(1)(a), F.S.; The disposition of any administrative proceeding that relates to the suspension of a person's driving privilege does not affect a criminal action and vice versa. S. 316.1939(2-3), F.S.

¹² S. 322.271(2)(a), F.S.

¹³ S. 322.271(2), F.S.

¹⁴ S. 322.271(2)(a), F.S.

¹⁵ S. 322.271(1)(c), F.S.

¹⁶ S. 322.271(1)(c)1.-2., F.S.

¹⁷ S. 322.271(2)(e), F.S.

An IID is an in-car breathalyzer that prevents a vehicle's ignition from starting if the driver blows above a 0.025 blood alcohol content (BAC) reading.¹⁸ Sections 316.193 and 322.2715, F.S., require installation of an IID following a conviction of DUI in the following manner:¹⁹

| DUI CONVICTION | IID REQUIRED |
|---|--|
| First conviction | Discretionary placement for at least six continuous months |
| First conviction if BAC is ≥ 0.15 , or accompanied by minor | Mandatory placement for at least six continuous months |
| Second conviction | Mandatory placement for at least one continuous year |
| Second conviction if BAC is ≥ 0.15 , or accompanied by minor | Mandatory placement for at least two continuous years |
| Third conviction | Mandatory placement for at least two years |
| Fourth or subsequent conviction | Mandatory placement for at least five years |

Placement of an IID shall be at the sole expense of the driver on all vehicles that he or she individually or jointly leases or owns and routinely operates, and the IID may be installed when he or she qualifies for a permanent or restricted driver license.²⁰ A driver whose license has been suspended or revoked for a period of less than three years, must provide proof of compliance with the court's order to install an IID before his or her driving privilege may be reinstated, even in a limited capacity.²¹ Furthermore, if a driver claims inability to pay, a court may consider the driver's ability to pay for IID installation and may order that a portion of any fine paid as part of the judgment for his or her DUI conviction may be allocated to defray the costs of installation.²²

If a person is required to operate a motor vehicle in the course and scope of his or her employment and the vehicle is owned or leased by his or her employer, the person may operate that vehicle without installation of an IID if the employer has been notified of such driving privilege restriction and maintains proof of notification in the vehicle.²³

Additionally, a medical waiver may be granted for individuals having a documented medical condition that would prohibit the IID from functioning normally. If a medical waiver is granted, a driver is not entitled to a restricted license until the required IID placement period expires. If the driver is seeking permanent reinstatement of his or her license, he or she must be restricted to an employment purposes only license and be supervised by a licensed DUI program until the required IID placement period expires.²⁴

According to a study by the NHTSA, 27 states require a person to participate in an IID program following a refusal to submit to testing. The requirements of the programs vary by state.²⁵

IID Certification and Vendor Contracts

Section 319.1938, F.S., requires DHSMV to certify the accuracy and precision of the testing component of IIDs and publish a list of approved devices along with rules governing the accuracy and precision of the testing component of IIDs.²⁶ An IID model may not be certified unless it meets or exceeds current

¹⁸ S. 316.1937(1), F.S.; FLHSMV, *Ignition Interlock Device (IID) Frequently Asked Questions*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/dui-and-iid/ignition-interlock-device-iid-faqs/> (last visited Apr. 17, 2023).

¹⁹ Ss. 316.193 and 322.2715, F.S.

²⁰ S. 316.193, F.S.

²¹ Ss. 316.1937(4) and 322.2715(1), F.S.

²² S. 316.1937(1)(d), F.S.

²³ S. 316.1937(7), F.S. This exemption does not apply if the business entity which owns or leases the vehicle is controlled by the person whose driving privilege has been restricted.

²⁴ S. 322.2715(1), F.S.

²⁵ Hannah Barrett, Robyn D. Robertson, and G. M. Ward Vanlaar, *State of the Practice of State Alcohol Ignition Interlock Programs*, p. 10 (January 2023), <https://rosap.ntl.bts.gov/view/dot/66102> (last visited Apr. 17, 2023).

²⁶ S. 316.1938(1), F.S. Manufacturers of IIDs are required to pay any costs of certification.

NHTSA standards.²⁷ NHTSA requires all IIDs to be designed to capture a variety of date and time-stamped data, in addition to offender data, vehicle information, mileage, and service visit dates. An IID must be able to record and transmit data including:

- The results of all breath tests;
- Failure to submit to a breath test;
- Vehicle lockouts or early recalls;
- Each time the vehicle's ignition is turned on or off;
- Attempts to tamper with or circumvent the device;
- Failure to turn the vehicle off after a failed rolling retest;
- The date, time, and length of time the vehicle was driven;
- Mileage driven; and
- The date of each service call.

The NHTSA standards require IIDs to pass a series of conformance tests, as well as be tamper-proof, and not interfere with normal functioning of the vehicle.²⁸

DHSMV must contract with any service provider whose devices have been certified and who has made a request to become a service provider in the state.²⁹ The contract must include, among other things, a requirement for the provider to electronically transmit reports to DHSMV regarding driver activity, bypass approval, compliance, client violations, and other reports, and a requirement for the provider to maintain a readily accessible service center in each judicial circuit.³⁰ Currently, DHSMV contracts with seven different service providers in the state.³¹

Effect of Proposed Changes

PCS for CS/HB 197 amends section 316.1932, F.S., to require a person who refuses to submit to a lawful breath test to install an IID, approved by DHSMV in accordance with section 316.1938, F.S., at his or her expense, in all vehicles he or she individually or jointly leases or owns and routinely operates, when he or she qualifies for reinstatement of a permanent or restricted driver license, for:

- One continuous year for a first refusal; or
- Eighteen continuous months for a second or subsequent refusal.

The requirement for a person to install an IID under the PCS is in addition to the current requirement that his or her driving privilege be suspended for a specified time period.

The PCS amends section 316.1939, F.S., to add placement of an IID as a penalty for refusal to submit to a lawful breath test. Additionally, before a driver can be convicted of a first-degree misdemeanor for a second or subsequent refusal to submit to testing, the state must prove that the driver was informed prior to his or her refusal about the requirement to install an IID for a specified time period if he or she refused to submit to a lawful breath test.

The PCS amends section 322.2615, F.S., to reduce the time period a person whose license has been suspended for refusal to submit to a breath, urine, or blood test must wait before becoming eligible to apply for a hardship license from 90 to 30 days from the expiration of the last temporary permit issued or the date of the suspension. The PCS also amends section 322.2715, F.S., to direct DHSMV to

²⁷ S. 316.1938(2), F.S.

²⁸ Alcolock, *Are Ignition Interlock Devices Held to Any Quality Standards?*, <https://alcolockusa.com/faq/are-ignition-interlock-devices-held-to-any-quality-standards/#:-:text=The%20NHTSA%20standards%20say%20the%20IID%20should%20pass,must%20be%20able%20to%20record%20and%20transmit%20includes%3A> (last visited Apr. 17, 2023); NHTSA, *Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)* (May 8, 2013), <https://www.federalregister.gov/documents/2013/05/08/2013-10940/model-specifications-for-breath-alcohol-ignition-interlock-devices-baiids> (last visited Apr. 17, 2023); NHTSA, *Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)* (March 30, 2015), https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/baiid-model-specs_2015-07161.pdf (last visited Apr. 17, 2023).

²⁹ S. 316.1938(3), F.S.

³⁰ S. 316.1938(4)(c) and (j), F.S.

³¹ FLHSMV, *Ignition Interlock Program*, <https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/dui-and-iiid/ignition-interlock-program/> (last visited Apr. 17, 2023).

require placement of a department-approved IID before issuing a permanent or restricted driver license to any person who refused to submit to a lawful breath test as required under section 316.1932, F.S.

The PCS provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends section 316.1932, F.S., relating to tests for alcohol, chemical substances, or controlled substances; implied consent; refusal.

Section 2: Amends section 316.1939, F.S., relating to refusal to submit to testing; penalties.

Section 3: Amends section 322.2615, F.S., relating to suspension of license; right to review.

Section 4: Amends section 322.2715, F.S., relating to ignition interlock device.

Section 5: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The PCS may increase state government revenue as the vendor or authorized installer of an IID must collect and remit \$12 for each installation to DHSMV to be deposited into the Highway Safety Operating Trust Fund to be used for the operation of the IID program.³²

2. Expenditures:

DHSMV estimates \$7,800 in programming and implementation costs to implement the PCS. However, this increase in expenditures is expected to be offset by the newly generated revenue from the installation of an IID.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals required to install an IID are responsible for the costs of installation, leasing and monitoring, which vary by vendor. Costs can range from \$70 to \$170 for installation and \$50 to \$120 per month for device leasing and monitoring.³³

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

³² S. 322.2715(5), F.S.

³³ LifeSafer Ignition Interlock, *Ignition Interlock Costs*, <https://www.lifesafes.com/ignition-interlock-cost/> (last visited Apr. 17, 2023).

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This PCS does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES