

Restricted "Employment Purposes Only" Driver's License Now an Option for Certain Multiple DUI Offenders...

Legislature Creates "Hard Path Back" to Increase Public Safety



by
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Effective October 1, 2010, certain multiple DUI offenders will have an option to petition the Florida Department of Highway Safety and Motor Vehicles (DHSMV) for a restricted "employment purposes only" drivers license.¹ Persons convicted of DUI manslaughter will not be eligible for a license under the new law.

Previously a person convicted four or more times of driving under the influence in violation of s.316.193 or former s.316.1931 was subject to a permanent revocation.²

10-YEAR WAITING PERIOD AND FOUR OTHER ELIGIBILITY CONDITIONS

Ten years after the date of the last DUI conviction or termination of incarceration, whichever is later, the person may petition the DHSMV's "Bureau of Administrative Review" (BAR) and must meet the following four eligibility requirements:

- ▶ Has not been arrested for drug-related offense for at least five years prior to filing the petition;
- ▶ Has not driven a motor vehicle without a 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 DUI program licensed by the department.

DHSMV HAS DISCRETION TO REINSTATE THE LICENSE

Within 30 days of receipt of the petition, DHSMV shall provide for a hearing. The petitioner has the burden to demonstrate the four eligibility requirements are met. The BAR's hearing officer will determine the petitioner's "qualification, fitness and need to drive" to reinstate the driver's license. Subject to current law and new administrative rules, the hearing officer will have discretion to grant the license.³

To increase the likelihood of approval, counsel should assist the petitioner to obtain employment verification, family information and character letters to demonstrate the petitioner's "fitness and need to drive."

If the applicant is allowed to continue through the process following the initial hearing, he/she must be accepted for "special supervision services" by a DUI program licensed by the DHSMV as well as pay for the installation of an ignition interlock device. If the license is issued it will be restricted to employment purposes only.

THE HARD PATH BACK: ACCEPTANCE INTO A "SPECIAL SUPERVISION SERVICES" DUI PROGRAM

To determine the petitioner's further

eligibility and potential risk, the DUI program assessment for "special supervision services" requires:⁴

- ▶ the applicant under penalty of perjury to complete the "Information Sheet Special Supervision Services," essentially a binding contract and registration form that describes, in detail, the procedures and conditions.⁵
- ▶ the applicant complete a "psychometric exam" to identify risk factors, and "chemical testing";
- ▶ the DUI program certified evaluator to:
 - Analyze the driver's record and FDLE criminal history profile (both are public documents, and the applicant should review them prior to submission of the petition);
 - Review "letters of abstinence" from employers, neighbors and family;
 - Review medical records, previous DUI program records, prior treatment records and chemical test results; and
 - Meet in person with the applicant and conduct a bio psychosocial evaluation to review historical and current information related to family, physical and mental health treatments, employment, education and use of substances;
- ▶ the DUI program staffing committee is to analyze all information, make a risk-assessment, and determine acceptance into the program. (If acceptance is not granted the license is denied.)

DRIVER'S BURDEN TO MAINTAIN THE RESTRICTED LICENSE: "IGNITION INTERLOCK DEVICE" AND STRICT COMPLIANCE WITH SPECIAL SUPERVISION

If the restricted license is reinstated, the driver must:

- ▶ Maintain an "ignition interlock device" pursuant to section 322.2715(3)(e), F.S. for a period of not less than five years;
- ▶ Be supervised by a DUI program (described herein), including at least

four meetings per year to maintain evaluation, education, and treatment requirements;

- ▶ Maintain abstinence from alcohol and drugs, participate in support groups such as Alcoholics Anonymous, and be subject to random testing;
- ▶ Not commit a new driver's license or other criminal violation which would trigger a mandatory license revocation; and
- ▶ Pay all the reasonable costs of the Interlock device and special supervision.

2011 CHANGE TO FIVE-YEAR ELIGIBILITY REQUIREMENT

Effective October 1, 2011, the petitioner has five years (instead of ten years) since their last conviction to seek this restricted license.

PUBLIC POLICY: SAFETY FIRST

Research provided by Mothers Against Drunk Driving (MADD) reports 50 to 75 percent of persons with permanently revoked drivers licenses continue to drive without a driver's license, often without lawful tag registration, and without auto PIP, liability, and property damage insurance.⁶ Based on this compelling research, the Florida Legislature unanimously approved the restricted "employment purposes only" option for applicants who have dealt with the issue of addition and can now demonstrate an ability to be a law abiding and productive citizen.

LEGISLATIVE HISTORY

In 1998, the Legislature created the permanent revocation for four or more DUI convictions.⁷ In 2010 it recognized this law sounded good but did not reduce, as effectively as possible, the potential for DUI-related injuries and death.

On June 4, 2010, Gov. Charlie Crist signed into law CS/CS/HB 971, known as the Florida Department of Highway Safety and Motor Vehicles "agency bill." The new law includes several major public, traffic and driver safety issues. The effective date of the bill is September 1, 2010. [Ch. 2010-223,



"I have no more questions of this witness."

Laws of Florida]

Included is Section 36 which provides that certain offenders with multiple DUI convictions may apply to the DHSMV for a restricted "employment purposes only" license. Section 36 is effective October 1, 2010. SB 924 by Senator Steve Wise (R-Jax) was identical to Section 36 and passed three Senate committees before being approved as a floor amendment to HB 971. ■

¹ Section 322.271(1)(c)2., F.S.; CS/CS/HB 971, known as the FDHSMV "agency bill," section 36, page 69, line 1916-page 73, line 2020. (Ch. 2010-223, Laws of Florida)

² Section 322.28(2)(e), F.S. (Ch. 1998-223,

Laws of Florida)

³ Section 322.271, F.S. and new section 322.271(5)(e), F.S. (CS/CS/HB 971, page 71, lines 1963-1964.)

⁴ Rules 15A-10.029 through 15A-10.040, Florida Administrative Code

⁵ HSMV Form 77012, 5 pages (7/1/98)

⁶ Peck, R.C., Wilson, R. J., and Sutton, L. 1995. "Driver license strategies for controlling the persistent DUI offender, Strategies for Dealing with the intent Drinking Driver." Transportation Research Board, Transportation Research Circular No. 437. Washington, D.C. National Research Council: 48-49.

Beck, KH, et al. "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland." *American Journal of Public Health*, 89 vol. 11 (1999): 1696-1700.

⁷ Section 322.28(2)(e), F.S. (Ch. 1998-223, Laws of Florida).

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