

By Senator Forman

32-472A-98

1 A bill to be entitled
2 An act relating to the operation of vehicles or
3 vessels while under the influence; amending s.
4 316.193; providing for impoundment or
5 immobilization of a vehicle; providing for
6 impoundment of other vehicles owned by the
7 defendant; providing circumstances for
8 dismissal of the impoundment or immobilization
9 order; amending s. 327.35, F.S.; providing for
10 impoundment or immobilization of a vessel;
11 providing for impoundment or immobilization of
12 other vessels owned by the defendant; providing
13 circumstances for dismissal of a court's
14 impoundment or immobilization order; amending
15 s. 327.352, F.S., providing a civil penalty for
16 refusal to submit to chemical testing;
17 providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Subsection (6) of section 316.193, Florida
22 Statutes, is amended to read:

23 316.193 Driving under the influence; penalties.--

24 (6) With respect to any person convicted of a
25 violation of subsection (1), regardless of any penalty imposed
26 pursuant to subsection (2), subsection (3), or subsection (4):

27 (a) For the first conviction, the court shall place
28 the defendant on probation for a period not to exceed 1 year
29 and, as a condition of such probation, shall order the
30 defendant to participate in public service or a community work
31 project for a minimum of 50 hours; or the court may order

1 instead, that any defendant pay an additional fine of \$10 for
2 each hour of public service or community work otherwise
3 required, if, after consideration of the residence or location
4 of the defendant at the time public service or community work
5 is required, payment of the fine is in the best interests of
6 the state. However, the total period of probation and
7 incarceration may not exceed 1 year. The court must also, as a
8 condition of probation, order the impoundment or
9 immobilization of the vehicle that was operated by or in the
10 actual control of the defendant, and any vehicle registered in
11 the defendant's name, for a period of 10 days or for the
12 unexpired term of any lease or rental agreement that expires
13 within 10 days. The impoundment or immobilization must not
14 occur concurrently with the incarceration of the defendant.
15 The impoundment or immobilization order may be dismissed in
16 accordance with paragraph (e), paragraph (f), or paragraph
17 (g).

18 (b) For the second conviction for an offense that
19 occurs within a period of 5 years after the date of a prior
20 conviction for violation of this section, the court shall
21 order imprisonment for not less than 10 days. The court must
22 also, as a condition of probation, order the impoundment or
23 immobilization of the vehicle that was operated by or in the
24 actual control of the defendant, and any vehicle registered in
25 the defendant's name, for a period of 30 days or for the
26 unexpired term of any lease or rental agreement that expires
27 within 30 days. The impoundment or immobilization must not
28 occur concurrently with the incarceration of the defendant.
29 The impoundment or immobilization order may be dismissed in
30 accordance with paragraph (e), paragraph (f), or paragraph
31 (g). At least 48 hours of confinement must be consecutive.

1 (c) For the third or subsequent conviction for an
2 offense that occurs within a period of 10 years after the date
3 of a prior conviction for violation of this section, the court
4 shall order imprisonment for not less than 30 days. The court
5 must also, as a condition of probation, order the impoundment
6 or immobilization of the vehicle that was operated by or in
7 the actual control of the defendant, and any vehicle
8 registered in the defendant's name, for a period of 90 days or
9 for the unexpired term of any lease or rental agreement that
10 expires within 90 days. The impoundment or immobilization must
11 not occur concurrently with the incarceration of the
12 defendant. The impoundment or immobilization order may be
13 dismissed in accordance with paragraph (e), paragraph (f), or
14 paragraph (g).At least 48 hours of confinement must be
15 consecutive.

16 (d) The court must at the time of sentencing the
17 defendant issue an order for the impoundment or immobilization
18 of a vehicle. Within 7 business days after the date that the
19 court issues the order of impoundment or immobilization, and
20 once again 30 business days before the actual impoundment or
21 immobilization of the vehicle, the clerk of the court must
22 send notice by certified mail, return receipt requested, to
23 the registered owner of each vehicle, if the registered owner
24 is a person other than the defendant, and to each person of
25 record claiming a lien against the vehicle.

26 (e) A person who owns but was not operating the
27 vehicle when the offense occurred may submit to the court a
28 police report indicating that the vehicle was stolen at the
29 time of the offense or documentation of having purchased the
30 vehicle after the offense was committed from an entity other
31 than the defendant or the defendant's agent. If the court

1 finds that the vehicle was stolen or that the sale was not
2 made to circumvent the order and allow the defendant continued
3 access to the vehicle, the order must be dismissed and the
4 owner of the vehicle will incur no costs. If the court denies
5 the request to dismiss the order of impoundment or
6 immobilization, the petitioner may request an evidentiary
7 hearing.

8 (f) A person who owns but was not operating the
9 vehicle when the offense occurred, and whose vehicle was
10 stolen or who purchased the vehicle after the offense was
11 committed directly from the defendant or the defendant's
12 agent, may request an evidentiary hearing to determine whether
13 the impoundment should occur. If the court finds that either
14 the vehicle was stolen or the purchase was made without
15 knowledge of the offense, that the purchaser had no
16 relationship to the defendant other than through the
17 transaction, and that such purchase would not circumvent the
18 order and allow the defendant continued access to the vehicle,
19 the order must be dismissed and the owner of the vehicle will
20 incur no costs.

21 (g) The court shall also dismiss the order of
22 impoundment or immobilization of the vehicle if the court
23 finds that the family of the owner of the vehicle has no other
24 public or private means of transportation.

25 ~~(d) In addition to the penalty imposed under paragraph~~
26 ~~(a), paragraph (b), or paragraph (c), the court shall also~~
27 ~~order the impoundment or immobilization of the vehicle that~~
28 ~~was driven by, or in the actual physical control of, the~~
29 ~~offender, unless the court finds that the family of the owner~~
30 ~~of the vehicle has no other public or private means of~~
31 ~~transportation. The period of impoundment or immobilization is~~

1 ~~10 days, or, for the second conviction within 3 years, 30~~
2 ~~days, or, for the third conviction within 5 years, 90 days and~~
3 ~~may not be concurrent with probation or imprisonment. If the~~
4 ~~vehicle is leased or rented, the period of impoundment or~~
5 ~~immobilization may not extend beyond the expiration of the~~
6 ~~lease or rental agreement. Within 7 business days after the~~
7 ~~date that the court issues the order of impoundment or~~
8 ~~immobilization, the clerk of the court shall send notice by~~
9 ~~certified mail, return receipt requested, to the registered~~
10 ~~owner of the vehicle if the registered owner is a person other~~
11 ~~than the offender and to each person of record claiming a lien~~
12 ~~against the vehicle.~~

13 (h) All costs and fees for the impoundment or
14 immobilization, including the cost of notification, must be
15 paid by the owner of the vehicle or, if the vehicle is leased
16 or rented, by the person leasing or renting the vehicle,
17 unless the impoundment or immobilization order is dismissed.

18 (i) The person who owns a vehicle that is impounded or
19 immobilized under this paragraph, or a person who has a lien
20 of record against such a vehicle and who has not requested a
21 review of the impoundment pursuant to paragraph (e), paragraph
22 (f), or paragraph (g), may, within 10 days after the date that
23 person has knowledge of the location of the vehicle, file a
24 complaint in the county in which the owner resides to
25 determine whether the vehicle was wrongfully taken or withheld
26 from the owner or lienholder. Upon the filing of a complaint,
27 the owner or lienholder may have the vehicle released by
28 posting with the court a bond or other adequate security equal
29 to the amount of the costs and fees for impoundment or
30 immobilization, including towing or storage, to ensure the
31 payment of such costs and fees if the owner or lienholder does

1 not prevail. When the bond is posted and the fee is paid as
2 set forth in s. 28.24, the clerk of the court shall issue a
3 certificate releasing the vehicle. At the time of release,
4 after reasonable inspection, the owner or lienholder must give
5 a receipt to the towing or storage company indicating any loss
6 or damage to the vehicle or to the contents of the vehicle.

7 (j)~~(e)~~ A defendant, in the court's discretion, may be
8 required to serve all or any portion of a term of imprisonment
9 to which the defendant has been sentenced pursuant to this
10 section in a residential alcoholism treatment program or a
11 residential drug abuse treatment program. Any time spent in
12 such a program must be credited by the court toward the term
13 of imprisonment.

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15 For the purposes of this section, any conviction for a
16 violation of s. 327.35; a previous conviction for the
17 violation of former s. 316.1931, former s. 860.01, or former
18 s. 316.028; or a previous conviction outside this state for
19 driving under the influence, driving while intoxicated,
20 driving with an unlawful blood-alcohol level, driving with an
21 unlawful breath-alcohol level, or any other similar
22 alcohol-related or drug-related traffic offense, is also
23 considered a previous conviction for violation of this
24 section. However, insatisfaction of the fine imposed pursuant
25 to this section, the court may, upon a finding that the
26 defendant is financially unable to pay either all or part of
27 the fine, order that the defendant participate for a specified
28 additional period of time in public service or a community
29 work project in lieu of payment of that portion of the fine
30 which the court determines the defendant is unable to pay. In
31 determining such additional sentence, the court shall consider

1 the amount of the unpaid portion of the fine and the
2 reasonable value of the services to be ordered; however, the
3 court may not compute the reasonable value of services at a
4 rate less than the federal minimum wage at the time of
5 sentencing.

6 Section 2. Subsection (6) of section 327.35, Florida
7 Statutes, is amended to read:

8 327.35 Boating under the influence; penalties.--

9 (6) With respect to any person convicted of a
10 violation of subsection (1), regardless of any other penalty
11 imposed:

12 (a) For the first conviction, the court shall place
13 the defendant on probation for a period not to exceed 1 year
14 and, as a condition of such probation, shall order the
15 defendant to participate in public service or a community work
16 project for a minimum of 50 hours. The court must also, as a
17 condition of probation, order the impoundment or
18 immobilization of the vessel that was operated by or in the
19 actual control of the defendant, and any vessel registered in
20 the defendant's name, for a period of 10 days or for the
21 unexpired term of any lease or rental agreement that expires
22 within 10 days. The impoundment or immobilization must not
23 occur concurrently with the incarceration of the defendant.
24 The impoundment or immobilization order may be dismissed in
25 accordance with paragraph (e) or paragraph (f).The total
26 period of probation and incarceration may not exceed 1 year.

27 (b) For the second conviction for an offense that
28 occurs within a period of 5 years after the date of a prior
29 conviction for violation of this section, the court shall
30 order imprisonment for not less than 10 days. The court must
31 also, as a condition of probation, order the impoundment or

1 immobilization of the vessel that was operated by or in the
2 actual control of the defendant, and any vessel registered in
3 the defendant's name, for a period of 30 days or for the
4 unexpired term of any lease or rental agreement that expires
5 within 30 days. The impoundment or immobilization must not
6 occur concurrently with the incarceration of the defendant.
7 The impoundment or immobilization order may be dismissed in
8 accordance with paragraph (e) or paragraph (f).At least 48
9 hours of confinement must be consecutive.

10 (c) For the third or subsequent conviction for an
11 offense that occurs within a period of 10 years after the date
12 of a prior conviction for violation of this section, the court
13 shall order imprisonment for not less than 30 days. The court
14 must also, as a condition of probation, order the impoundment
15 or immobilization of the vessel that was operated by or in the
16 actual control of the defendant, and any vessel registered in
17 the defendant's name, for a period of 90 days or for the
18 unexpired term of any lease or rental agreement that expires
19 within 90 days. The impoundment or immobilization must not
20 occur concurrently with the incarceration of the defendant.
21 The impoundment or immobilization order may be dismissed in
22 accordance with paragraph (e) or paragraph (f).At least 48
23 hours of confinement must be consecutive.

24 (d) The court must at the time of sentencing the
25 defendant issue an order for the impoundment or immobilization
26 of a vessel. Within 7 business days after the date that the
27 court issues the order of impoundment, and once again 30
28 business days before the actual impoundment or immobilization
29 of the vessel, the clerk of the court must send notice by
30 certified mail, return receipt requested, to the registered
31 owner of each vessel, if the registered owner is a person

1 other than the defendant, and to each person of record
2 claiming a lien against the vessel.

3 (e) A person who owns but was not operating the vessel
4 when the offense occurred may submit to the court a police
5 report indicating that the vessel was stolen at the time of
6 the offense or documentation of having purchased the vessel
7 after the offense was committed from an entity other than the
8 defendant or the defendant's agent. If the court finds that
9 the vessel was stolen or that the sale was not made to
10 circumvent the order and allow the defendant continued access
11 to the vessel, the order must be dismissed and the owner of
12 the vessel will incur no costs. If the court denies the
13 request to dismiss the order of impoundment or immobilization,
14 the petitioner may request an evidentiary hearing.

15 (f) A person who owns but was not operating the vessel
16 when the offense occurred, and whose vessel was stolen or who
17 purchased the vessel after the offense was committed directly
18 from the defendant or the defendant's agent, may request an
19 evidentiary hearing to determine whether the impoundment
20 should occur. If the court finds that either the vessel was
21 stolen or the purchase was made without knowledge of the
22 offense, that the purchaser had no relationship to the
23 defendant other than through the transaction, and that such
24 purchase would not circumvent the order and allow the
25 defendant continued access to the vessel, the order must be
26 dismissed and the owner of the vessel will incur no costs.

27 ~~(d) In addition to any other penalty imposed, the~~
28 ~~court shall also order the impoundment or immobilization of~~
29 ~~the vessel that was operated by, or in the actual physical~~
30 ~~control of, the offender. The period of impoundment or~~
31 ~~immobilization is 10 days, or, for the second conviction~~

1 ~~within 3 years, 30 days, or, for the third conviction within 5~~
2 ~~years, 90 days and may not be concurrent with probation or~~
3 ~~imprisonment. If the vessel is leased or rented, the period of~~
4 ~~impoundment or immobilization may not extend beyond the~~
5 ~~expiration of the lease or rental agreement. Within 7 business~~
6 ~~days after the date that the court issues the order of~~
7 ~~impoundment or immobilization, the clerk of the court shall~~
8 ~~send notice by certified mail, return receipt requested, to~~
9 ~~the registered owner of the vessel if the registered owner is~~
10 ~~a person other than the offender and to each person of record~~
11 ~~claiming a lien against the vessel.~~

12 (g) All costs and fees for the impoundment or
13 immobilization, including the cost of notification, must be
14 paid by the owner of the vessel or, if the vessel is leased or
15 rented, by the person leasing or renting the vessel, unless
16 the impoundment or immobilization order is dismissed.

17 (h) The person who owns a vessel that is impounded or
18 immobilized under this paragraph, or a person who has a lien
19 of record against such a vessel and who has not requested a
20 review of the impoundment pursuant to paragraph (e) or
21 paragraph (f), may, within 10 days after the date that person
22 has knowledge of the location of the vessel, file a complaint
23 in the county in which the owner resides to determine whether
24 the vessel was wrongfully taken or withheld from the owner or
25 lienholder. Upon the filing of a complaint, the owner or
26 lienholder may have the vessel released by posting with the
27 court a bond or other adequate security equal to the amount of
28 the costs and fees for impoundment or immobilization,
29 including towing or storage, to ensure the payment of the
30 costs and fees if the owner or lienholder does not prevail.
31 When the bond is posted and the fee is paid as set forth in s.

1 28.24, the clerk of the court shall issue a certificate
2 releasing the vessel. At the time of release, after reasonable
3 inspection, the owner or lienholder must give a receipt to the
4 towing or storage company indicating any loss or damage to the
5 vessel or to the contents of the vessel.

6 (i)~~(e)~~ A defendant, in the court's discretion, may be
7 required to serve all or any portion of a term of imprisonment
8 to which the defendant has been sentenced pursuant to this
9 section in a residential alcoholism treatment program or a
10 residential drug abuse treatment program. Any time spent in
11 such a program must be credited by the court toward the term
12 of imprisonment.

13
14 For the purposes of this section, any conviction for a
15 violation of s. 316.193, a previous conviction for the
16 violation of former s. 316.1931, former s. 860.01, or former
17 s. 316.028, or a previous conviction outside this state for
18 driving under the influence, driving while intoxicated,
19 driving with an unlawful blood-alcohol level, driving with an
20 unlawful breath-alcohol level, or any other similar
21 alcohol-related or drug-related traffic offense, is also
22 considered a previous conviction for violation of this
23 section.

24 Section 3. Paragraph (a) of subsection (1) of section
25 327.352, Florida Statutes, is amended to read:

26 327.352 Breath, blood, and urine tests for alcohol,
27 chemical substances, or controlled substances; implied
28 consent; right to refuse.--

29 (1)(a) Any person who accepts the privilege extended
30 by the laws of this state of operating a vessel within this
31 state is, by so operating such vessel, deemed to have given

1 his or her consent to submit to an approved chemical test or
2 physical test including, but not limited to, an infrared light
3 test of his or her breath for the purpose of determining the
4 alcoholic content of his or her blood or breath, and to a
5 urine test for the purpose of detecting the presence of
6 chemical substances as set forth in s. 877.111 or controlled
7 substances, if the person is lawfully arrested for any offense
8 allegedly committed while the person was operating a vessel
9 while under the influence of alcoholic beverages, chemical
10 substances, or controlled substances. The chemical or
11 physical breath test must be incidental to a lawful arrest and
12 administered at the request of a law enforcement officer who
13 has reasonable cause to believe such person was operating the
14 vessel within this state while under the influence of
15 alcoholic beverages. The urine test must be incidental to a
16 lawful arrest and administered at a detention facility or any
17 other facility, mobile or otherwise, which is equipped to
18 administer such tests at the request of a law enforcement
19 officer who has reasonable cause to believe such person was
20 operating a vessel within this state while under the influence
21 of controlled substances. The urine test shall be administered
22 at a detention facility or any other facility, mobile or
23 otherwise, which is equipped to administer such tests in a
24 reasonable manner that will ensure the accuracy of the
25 specimen and maintain the privacy of the individual involved.
26 The administration of one type of test does not preclude the
27 administration of another type of test. The person shall be
28 told that his or her failure to submit to any lawful test of
29 his or her breath or urine, or both, subjects the person to a
30 \$500 civil penalty, and such failure is admissible into
31 evidence in any criminal proceeding.

1 Section 4. This act shall take effect upon becoming a
2 law.

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5 SENATE SUMMARY

6 Provides for the impoundment or immobilization of a
7 vehicle or vessel when the operator is under the
8 influence of drugs or alcohol. Provides for the
9 impoundment or immobilization of other vehicles owned by
10 the defendant. Provides circumstances under which the
11 court order to impound or immobilize the vehicle or
12 vessel must be dismissed. Provides that a person who
13 fails to submit to a chemical test under the implied
14 consent law must be told that such failure subjects the
15 person to a \$500 civil penalty.
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