

By the Committee on Criminal Justice and Senator Forman

307-2159A-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  
6           circumstances for dismissal of the impoundment  
7           or immobilization order; amending s. 327.35,  
8           F.S.; providing for impoundment or  
9           immobilization of a vessel; providing  
10          circumstances for dismissal of a court's  
11          impoundment or immobilization order; providing  
12          an effective date.

13

14 Be It Enacted by the Legislature of the State of Florida:

15

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

18           316.193 Driving under the influence; penalties.--

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

22           (a) For the first conviction, the court shall place  
23 the defendant on probation for a period not to exceed 1 year  
24 and, as a condition of such probation, shall order the  
25 defendant to participate in public service or a community work  
26 project for a minimum of 50 hours; or the court may order  
27 instead, that any defendant pay an additional fine of \$10 for  
28 each hour of public service or community work otherwise  
29 required, if, after consideration of the residence or location  
30 of the defendant at the time public service or community work  
31 is required, payment of the fine is in the best interests of

1 the state. However, the total period of probation and  
2 incarceration may not exceed 1 year. The court must also, as a  
3 condition of probation, order the impoundment or  
4 immobilization of the vehicle that was operated by or in the  
5 actual control of the defendant, or one vehicle registered in  
6 the defendant's name at the time of the impoundment or  
7 immobilization, for a period of 10 days or for the unexpired  
8 term of any lease or rental agreement that expires within 10  
9 days. The impoundment or immobilization must not occur  
10 concurrently with the incarceration of the defendant. The  
11 impoundment or immobilization order may be dismissed in  
12 accordance with paragraph (e), paragraph (f), or paragraph  
13 (g).

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

29 (c) For the third or subsequent conviction for an  
30 offense that occurs within a period of 10 years after the date  
31 of a prior conviction for violation of this section, the court

1 shall order imprisonment for not less than 30 days. The court  
2 must also, as a condition of probation, order the impoundment  
3 or immobilization of the vehicle that was operated by or in  
4 the actual control of the defendant, or one vehicle registered  
5 in the defendant's name at the time of the impoundment or  
6 immobilization, for a period of 90 days or for the unexpired  
7 term of any lease or rental agreement that expires within 90  
8 days. The impoundment or immobilization must not occur  
9 concurrently with the incarceration of the defendant. The  
10 impoundment or immobilization order may be dismissed in  
11 accordance with paragraph (e), paragraph (f), or paragraph  
12 (g).At least 48 hours of confinement must be consecutive.

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

23 (e) A person who owns but was not operating the  
24 vehicle when the offense occurred may submit to the court a  
25 police report indicating that the vehicle was stolen at the  
26 time of the offense or documentation of having purchased the  
27 vehicle after the offense was committed from an entity other  
28 than the defendant or the defendant's agent. If the court  
29 finds that the vehicle was stolen or that the sale was not  
30 made to circumvent the order and allow the defendant continued  
31 access to the vehicle, the order must be dismissed and the

1 owner of the vehicle will incur no costs. If the court denies  
2 the request to dismiss the order of impoundment or  
3 immobilization, the petitioner may request an evidentiary  
4 hearing.

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

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

22 ~~(d) In addition to the penalty imposed under paragraph~~  
23 ~~(a), paragraph (b), or paragraph (c), the court shall also~~  
24 ~~order the impoundment or immobilization of the vehicle that~~  
25 ~~was driven by, or in the actual physical control of, the~~  
26 ~~offender, unless the court finds that the family of the owner~~  
27 ~~of the vehicle has no other public or private means of~~  
28 ~~transportation. The period of impoundment or immobilization is~~  
29 ~~10 days, or, for the second conviction within 3 years, 30~~  
30 ~~days, or, for the third conviction within 5 years, 90 days and~~  
31 ~~may not be concurrent with probation or imprisonment. If the~~

1 ~~vehicle is leased or rented, the period of impoundment or~~  
2 ~~immobilization may not extend beyond the expiration of the~~  
3 ~~lease or rental agreement. Within 7 business days after the~~  
4 ~~date that the court issues the order of impoundment or~~  
5 ~~immobilization, the clerk of the court shall send notice by~~  
6 ~~certified mail, return receipt requested, to the registered~~  
7 ~~owner of the vehicle if the registered owner is a person other~~  
8 ~~than the offender and to each person of record claiming a lien~~  
9 ~~against the vehicle.~~

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

15       (i) The person who owns a vehicle that is impounded or  
16 immobilized under this paragraph, or a person who has a lien  
17 of record against such a vehicle and who has not requested a  
18 review of the impoundment pursuant to paragraph (e), paragraph  
19 (f), or paragraph (g), may, within 10 days after the date that  
20 person has knowledge of the location of the vehicle, file a  
21 complaint in the county in which the owner resides to  
22 determine whether the vehicle was wrongfully taken or withheld  
23 from the owner or lienholder. Upon the filing of a complaint,  
24 the owner or lienholder may have the vehicle released by  
25 posting with the court a bond or other adequate security equal  
26 to the amount of the costs and fees for impoundment or  
27 immobilization, including towing or storage, to ensure the  
28 payment of such costs and fees if the owner or lienholder does  
29 not prevail. All sections of s. 713.78 shall apply. When the  
30 bond is posted and the fee is paid as set forth in s. 28.24,  
31 the clerk of the court shall issue a certificate releasing the

1 vehicle. At the time of release, after reasonable inspection,  
2 the owner or lienholder must give a receipt to the towing or  
3 storage company indicating any loss or damage to the vehicle  
4 or to the contents of the vehicle.

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

12  
13 For the purposes of this section, any conviction for a  
14 violation of s. 327.35; a previous conviction for the  
15 violation of former s. 316.1931, former s. 860.01, or former  
16 s. 316.028; or a previous conviction outside this state for  
17 driving under the influence, driving while intoxicated,  
18 driving with an unlawful blood-alcohol level, driving with an  
19 unlawful breath-alcohol level, or any other similar  
20 alcohol-related or drug-related traffic offense, is also  
21 considered a previous conviction for violation of this  
22 section. However, in satisfaction of the fine imposed pursuant  
23 to this section, the court may, upon a finding that the  
24 defendant is financially unable to pay either all or part of  
25 the fine, order that the defendant participate for a specified  
26 additional period of time in public service or a community  
27 work project in lieu of payment of that portion of the fine  
28 which the court determines the defendant is unable to pay. In  
29 determining such additional sentence, the court shall consider  
30 the amount of the unpaid portion of the fine and the  
31 reasonable value of the services to be ordered; however, the

1 court may not compute the reasonable value of services at a  
2 rate less than the federal minimum wage at the time of  
3 sentencing.

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

6 327.35 Boating under the influence; penalties.--

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

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

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

1 actual control of the defendant, or a vessel registered in the  
2 defendant's name at the time of the impoundment or  
3 immobilization, for a period of 30 days or for the unexpired  
4 term of any lease or rental agreement that expires within 30  
5 days. The impoundment or immobilization must not occur  
6 concurrently with the incarceration of the defendant. The  
7 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, or a vessel registered in the  
17 defendant's name at the time of the impoundment or  
18 immobilization, for a period of 90 days or for the unexpired  
19 term of any lease or rental agreement that expires within 90  
20 days. The impoundment or immobilization must not occur  
21 concurrently with the incarceration of the defendant. The  
22 impoundment or immobilization order may be dismissed in  
23 accordance with paragraph (e) or paragraph (f).At least 48  
24 hours of confinement must be consecutive.

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

1 owner of each vessel, if the registered owner is a person  
2 other than the defendant, and to each person of record  
3 claiming a lien against the vessel.

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

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

29 ~~(d) In addition to any other penalty imposed, the~~  
30 ~~court shall also order the impoundment or immobilization of~~  
31 ~~the vessel that was operated by, or in the actual physical~~

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

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

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

1 costs and fees if the owner or lienholder does not prevail.  
2 All sections of s. 713.78 shall apply.When the bond is posted  
3 and the fee is paid as set forth in s. 28.24, the clerk of the  
4 court shall issue a certificate releasing the vessel. At the  
5 time of release, after reasonable inspection, the owner or  
6 lienholder must give a receipt to the towing or storage  
7 company indicating any loss or damage to the vessel or to the  
8 contents of the vessel.

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

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

27 Section 3. This act shall take effect upon becoming a  
28 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1382

1. Allows the court, at sentencing, to order the impoundment or immobilization of the vehicle or vessel that was involved in the DUI (driving under the influence) or BUI (boating under the influence), or one vehicle or vessel registered in the defendant's name at the time of the impoundment or immobilization.
2. Deletes the provision requiring that a vessel operator be informed that failure to submit to lawful breath or urine testing will subject the operator to a \$500 civil penalty.
3. Provides that s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles applies to impoundment or immobilization under s. 316.193, F.S.