

Bill No. CS/HB 3345

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Lee moved the following amendment:		
12			
13	<b>Senate Amendment (with title amendment)</b>		
14	On page 24, between lines 29 and 30,		
15			
16	insert:		
17	Section 11. Subsection (6) of section 316.193, Florida		
18	Statutes, is amended to read:		
19	316.193 Driving under the influence; penalties.--		
20	(6) With respect to any person convicted of a		
21	violation of subsection (1), regardless of any penalty imposed		
22	pursuant to subsection (2), subsection (3), or subsection (4):		
23	(a) For the first conviction, the court shall place		
24	the defendant on probation for a period not to exceed 1 year		
25	and, as a condition of such probation, shall order the		
26	defendant to participate in public service or a community work		
27	project for a minimum of 50 hours; or the court may order		
28	instead, that any defendant pay an additional fine of \$10 for		
29	each hour of public service or community work otherwise		
30	required, if, after consideration of the residence or location		
31	of the defendant at the time public service or community work		

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

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

30 (c) For the third or subsequent conviction for an  
31 offense that occurs within a period of 10 years after the date

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

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

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

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

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

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

23 ~~(d) In addition to the penalty imposed under paragraph~~  
24 ~~(a), paragraph (b), or paragraph (c), the court shall also~~  
25 ~~order the impoundment or immobilization of the vehicle that~~  
26 ~~was driven by, or in the actual physical control of, the~~  
27 ~~offender, unless the court finds that the family of the owner~~  
28 ~~of the vehicle has no other public or private means of~~  
29 ~~transportation. The period of impoundment or immobilization is~~  
30 ~~10 days, or, for the second conviction within 3 years, 30~~  
31 ~~days, or, for the third conviction within 5 years, 90 days and~~

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

11 (h) All costs and fees for the impoundment or  
12 immobilization, including the cost of notification, must be  
13 paid by the owner of the vehicle or, if the vehicle is leased  
14 or rented, by the person leasing or renting the vehicle,  
15 unless the impoundment or immobilization order is dismissed.  
16 All provisions of s. 713.78 shall apply.

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

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

6 (j)~~(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. 327.35; 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. However, in satisfaction of the fine imposed pursuant  
24 to this section, the court may, upon a finding that the  
25 defendant is financially unable to pay either all or part of  
26 the fine, order that the defendant participate for a specified  
27 additional period of time in public service or a community  
28 work project in lieu of payment of that portion of the fine  
29 which the court determines the defendant is unable to pay. In  
30 determining such additional sentence, the court shall consider  
31 the amount of the unpaid portion of the fine and the

Bill No. CS/HB 3345

Amendment No.     

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

5 Section 12. Subsection (6) of section 327.35, Florida  
6 Statutes, is amended to read:

7 327.35 Boating under the influence; penalties.--

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

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

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

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

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



Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

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

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

30 ~~(d) In addition to any other penalty imposed, the~~  
31 ~~court shall also order the impoundment or immobilization of~~

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

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

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

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

Bill No. CS/HB 3345

Amendment No. \_\_\_\_

1 including towing or storage, to ensure the payment of the  
 2 costs and fees if the owner or lienholder does not prevail.  
 3 When the bond is posted and the fee is paid as set forth in s.  
 4 28.24, the clerk of the court shall issue a certificate  
 5 releasing the vessel. At the time of release, after reasonable  
 6 inspection, the owner or lienholder must give a receipt to the  
 7 towing or storage company indicating any loss or damage to the  
 8 vessel or to the 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  
 28 (Redesignate subsequent sections.)  
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Bill No. CS/HB 3345

Amendment No. \_\_\_\_

1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 2, line 5, after the semicolon

4

5 insert:

6 amending s. 316.193; providing for impoundment  
7 or immobilization of a vehicle; providing  
8 circumstances for dismissal of the impoundment  
9 or immobilization order; amending s. 327.35,  
10 F.S.; providing for impoundment or  
11 immobilization of a vessel; providing  
12 circumstances for dismissal of a court's  
13 impoundment or immobilization order;

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