

1 A bill to be entitled
2 An act relating to regulation of wrecker
3 operators and persons immobilizing vehicles;
4 amending s. 1.01, F.S.; defining the term
5 "wrecker operator"; providing for a law
6 enforcement officer to place a hold order on a
7 motor vehicle in a wrecker operator's storage
8 facility; prescribing conditions on such acts;
9 authorizing county and municipal wrecker
10 operator systems; prohibiting certain acts in
11 contravention of such systems; providing
12 penalties; amending ss. 125.0103 and 166.043,
13 F.S.; providing that counties must establish
14 maximum fees which may be charged for the
15 towing or immobilization of vehicles; amending
16 s. 316.193, F.S.; providing that the vehicle to
17 be impounded or immobilized need not be the
18 vehicle involved in the D.U.I., but must be a
19 vehicle owned, leased, or rented by the
20 offender; providing that the D.U.I. offender
21 will bear all costs and fees of impoundment or
22 immobilization of the vehicle, including cost
23 of notification; amending s. 321.051, F.S.;
24 amending s. 320.08, F.S.; providing for certain
25 license taxes to apply to wreckers used to tow
26 vessels; amending s. 320.04, F.S.; providing a
27 service charge for validation stickers issued
28 by printer dispenser machines; revising
29 provisions authorizing the Florida Highway
30 Patrol to establish a wrecker operator system;
31 prohibiting certain acts in contravention of

1 such system; providing penalties; amending s.
2 322.34, F.S.; revising provisions relating to
3 impoundment or immobilization of vehicles being
4 operated while the operator's license is
5 suspended, revoked, canceled, or disqualified;
6 providing for payment of accrued charges;
7 amending s. 713.78, F.S.; providing that law
8 allowing a lien for recovering, towing, or
9 storing a vehicle or vessel does not authorize
10 a lien for immobilizing a vehicle or vessel;
11 creating a procedure for liens for towing and
12 storage charges on undocumented vessels in the
13 same manner as currently permitted for
14 vehicles; providing liability for damages or
15 theft in connection with a towed vehicle or
16 vessel; amending s. 319.30, F.S.; conforming a
17 cross reference; amending s. 316.193; providing
18 for impoundment or immobilization of a vehicle;
19 providing circumstances for dismissal of the
20 impoundment or immobilization order; amending
21 s. 327.35, F.S.; providing for impoundment or
22 immobilization of a vessel; providing
23 circumstances for dismissal of a court's
24 impoundment or immobilization order; providing
25 an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (15) is added to section 1.01,
30 Florida Statutes, to read:

1 1.01 Definitions.--In construing these statutes and
2 each and every word, phrase, or part hereof, where the context
3 will permit:

4 (15) The term "wrecker operator" means any person or
5 firm regularly engaged for hire in the business of towing or
6 removing motor vehicles.

7 Section 2. Wrecker operator storage facilities;
8 vehicle holds.--

9 (1) An investigating agency may place a hold on a
10 motor vehicle stored within a wrecker operator's storage
11 facility for a period not to exceed 5 days, excluding holidays
12 and weekends, unless extended in writing.

13 (2) The investigating agency must notify the wrecker
14 operator in writing within 5 days, excluding holidays and
15 weekends, whether the hold is to be continued. If no
16 notification follows this period of time the wrecker operator
17 may release the vehicle to the designated person pursuant to
18 s. 713.78, Florida Statutes.

19 (a) If the hold is to continue beyond 5 days,
20 excluding holidays and weekends, the investigating agency may
21 have the vehicle removed to a designated impound lot, in which
22 event, the vehicle will not be released by the investigating
23 agency to the owner or lienholder of the vehicle until proof
24 of payment of the towing and storage charges incurred by the
25 wrecker operator is presented to the investigating agency.

26 (b) If the investigating agency chooses to have the
27 vehicle remain at the wrecker operator's storage facility
28 beyond 5 days, excluding holidays and weekends, pursuant to
29 the written notification, the investigating agency shall be
30 responsible for payment of the storage charges incurred by the
31 wrecker operator for the requested extended period. In such an

1 event, the owner or lienholder shall be responsible for
2 payment of accrued towing and storage charges for the first 5
3 days, excluding holidays and weekends, or any period less than
4 the first 5 days, excluding holidays and weekends, when the
5 investigating agency either moves the vehicle from the wrecker
6 operator's storage facility to a designated impound lot or
7 provides written notification to extend the hold on the
8 vehicle prior to the expiration of the 5 days, excluding
9 holidays and weekends.

10 (c) The towing and storage rates for the owner or
11 lienholder of the held vehicle shall not exceed the rates for
12 the investigating agency.

13 (3) If there is a judicial finding of no probable
14 cause for having continued the immobilization or impoundment,
15 the investigating agency ordering the hold must pay the
16 accrued charges for any towing and storage.

17 (4) The requirements for a written hold applies when
18 the following conditions are present:

19 (a) The officer has probable cause to believe the
20 vehicle should be seized and forfeited under the Florida
21 Contraband Forfeiture Act, ss. 932.701-932.704, Florida
22 Statutes;

23 (b) The officer has probable cause to believe the
24 vehicle should be seized and forfeited under s. 372.312,
25 Florida Statutes;

26 (c) The officer has probable cause to believe the
27 vehicle was used as the means of committing a crime;

28 (d) The officer has probable cause to believe that the
29 vehicle is itself evidence that tends to show that a crime has
30 been committed or that the vehicle contains evidence, which
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1 cannot readily be removed, which tends to show that a crime
2 has been committed;

3 (e) The officer has probable cause to believe the
4 vehicle was involved in a traffic accident resulting in death
5 or personal injury and should be sealed for investigation and
6 collection of evidence by a vehicular homicide investigator;

7 (f) The vehicle is impounded or immobilized pursuant
8 to s. 316.193 or s. 322.34, Florida Statutes; or

9 (g) The officer is complying with a court order.

10 (4) The hold must be in writing and must specify:

11 (a) The name and agency of the law enforcement officer
12 placing the hold on the vehicle;

13 (b) The date and time the hold is placed on the
14 vehicle;

15 (c) A general description of the vehicle including its
16 color, make, model, body style, and year; VIN (Vehicle
17 Identification Number); registration license plate number,
18 state, and year; and validation sticker number, state, and
19 year;

20 (d) The specific reason for placing the hold;

21 (e) The condition of the vehicle;

22 (f) The location where the vehicle is being held; and

23 (g) The name, address, and telephone number of the
24 wrecker operator and the storage facility.

25 (5) A wrecker operator's storage facility must comply
26 with a hold placed by a law enforcement officer, including
27 instructions for inside or outside storage. A wrecker
28 operator's storage facility may not release a motor vehicle
29 subject to a hold to any person except as directed by the law
30 enforcement agency placing the hold.

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1 (6) When a vehicle owner is found guilty of, or pleads
2 nolo contendere to, the offense that resulted in a hold being
3 placed on his or her vehicle, regardless of the adjudication
4 of guilt, the owner must pay the accrued towing and storage
5 charges assessed against the vehicle.

6 Section 3. County and municipal wrecker operator
7 systems; penalties for operation outside of system.--

8 (1) As used in this section, the term:

9 (a) "Authorized wrecker operator" means any wrecker
10 operator who has been designated as part of the wrecker
11 operator system established by the governmental unit having
12 jurisdiction over the scene of a wrecked or disabled vehicle.

13 (b) "Unauthorized wrecker operator" means any wrecker
14 operator who has not been designated as part of the wrecker
15 operator system established by the governmental unit having
16 jurisdiction over the scene of a wrecked or disabled vehicle.

17 (c) "Wrecker operator system" means a system for the
18 towing or removal of wrecked, disabled, or abandoned vehicles,
19 similar to the Florida Highway Patrol wrecker operator system
20 described in s. 321.051(2), Florida Statutes, under which a
21 county or municipality contracts with one or more wrecker
22 operators for the towing or removal of wrecked, disabled, or
23 abandoned vehicles from accident scenes, streets, or highways.
24 A wrecker operator system shall include using a method for
25 apportioning the towing assignments among the eligible wrecker
26 operators through the creation of geographic zones, a rotation
27 schedule, or a combination of these methods.

28 (2) In any county or municipality that operates a
29 wrecker operator system:

30 (a) It is unlawful for an unauthorized wrecker
31 operator or its employees or agents to monitor police radio

1 for communications between patrol field units and the
2 dispatcher in order to determine the location of a wrecked or
3 disabled vehicle for the purpose of driving by the scene of
4 such vehicle in a manner described in paragraph (b) or
5 paragraph (c). Any person who violates this paragraph is
6 guilty of a noncriminal violation, punishable as provided in
7 s. 775.083, Florida Statutes.

8 (b) It is unlawful for an unauthorized wrecker
9 operator to drive by the scene of a wrecked or disabled
10 vehicle before the arrival of an authorized wrecker operator,
11 initiate contact with the owner or operator of such vehicle by
12 soliciting or offering towing services, and tow such vehicle.
13 Any person who violates this paragraph is guilty of a
14 misdemeanor of the second degree, punishable as provided in s.
15 775.082 or s. 775.083, Florida Statutes.

16 (c) When an unauthorized wrecker operator drives by
17 the scene of a wrecked or disabled vehicle and the owner or
18 operator initiates contact by signaling the wrecker operator
19 to stop and provide towing services, the unauthorized wrecker
20 operator must disclose to the owner or operator of the vehicle
21 that he or she is not the authorized wrecker operator who has
22 been designated as part of the wrecker operator system and
23 must disclose, in writing, what charges for towing and storage
24 will apply before the vehicle is connected to the towing
25 apparatus. Any person who violates this paragraph is guilty
26 of a misdemeanor of the second degree, punishable as provided
27 in s. 775.082 or s. 775.083, Florida Statutes.

28 (d) At the scene of a wrecked or disabled vehicle, it
29 is unlawful for a wrecker operator to falsely identify himself
30 or herself as being part of the wrecker operator system. Any
31 person who violates this paragraph is guilty of a misdemeanor

1 of the first degree, punishable as provided in s. 775.082 or
2 s. 775.083, Florida Statutes.

3 (3) This section does not prohibit, or in any way
4 prevent, the owner or operator of a vehicle involved in an
5 accident or otherwise disabled from contacting any wrecker
6 operator for the provision of towing services, whether the
7 wrecker operator is an authorized wrecker operator or not.

8 Section 4. Paragraph (b) of subsection (1) of section
9 125.0103, Florida Statutes, is amended, and paragraph (c) is
10 added to said subsection, to read:

11 125.0103 Ordinances and rules imposing price controls;
12 findings required; procedures.--

13 (1)(a) Except as hereinafter provided, no county,
14 municipality, or other entity of local government shall adopt
15 or maintain in effect an ordinance or a rule which has the
16 effect of imposing price controls upon a lawful business
17 activity which is not franchised by, owned by, or under
18 contract with, the governmental agency, unless specifically
19 provided by general law.

20 (b) The provisions of this section shall not prevent
21 the enactment by local governments of public service rates
22 otherwise authorized by law, including water, sewer, solid
23 waste, public transportation, taxicab, ~~towing of vehicles from~~
24 ~~or immobilization of vehicles on private property, removal and~~
25 ~~storage of wrecked or disabled vehicles from an accident scene~~
26 ~~or for the removal and storage of vehicles, in the event the~~
27 ~~owner or operator is incapacitated, unavailable, leaves the~~
28 ~~procurement of wrecker service to the law enforcement officer~~
29 ~~at the scene, or otherwise does not consent to the removal of~~
30 ~~the vehicle, or port rates.~~

31

1 (c) Counties must establish maximum fees which may be
2 charged on the towing of vehicles from or immobilization of
3 vehicles on private property, removal and storage of wrecked
4 or disabled vehicles from an accident scene or for the removal
5 and storage of vehicles, in the event the owner or operator is
6 incapacitated, unavailable, leaves the procurement of wrecker
7 service to the law enforcement officer at the scene, or
8 otherwise does not consent to the removal of the vehicle.

9 Section 5. Paragraph (b) of subsection (1) of section
10 166.043, Florida Statutes, is amended, and paragraph (c) is
11 added to said subsection, to read:

12 166.043 Ordinances and rules imposing price controls;
13 findings required; procedures.--

14 (1)(a) Except as hereinafter provided, no county,
15 municipality, or other entity of local government shall adopt
16 or maintain in effect an ordinance or a rule which has the
17 effect of imposing price controls upon a lawful business
18 activity which is not franchised by, owned by, or under
19 contract with, the governmental agency, unless specifically
20 provided by general law.

21 (b) The provisions of this section shall not prevent
22 the enactment by local governments of public service rates
23 otherwise authorized by law, including water; sewer; solid
24 waste; public transportation; taxicab; ~~towing of vehicles from~~
25 ~~or immobilization of vehicles on private property; removal and~~
26 ~~storage of wrecked or disabled vehicles from an accident scene~~
27 ~~or for the removal and storage of vehicles, in the event the~~
28 ~~owner or operator is incapacitated, unavailable, leaves the~~
29 ~~procurement of wrecker service to the law enforcement officer~~
30 ~~at the scene, or otherwise does not consent to the removal of~~
31 ~~the vehicle;~~ or port rates.

1 (c) Counties must establish maximum fees which may be
2 charged on the towing of vehicles from or immobilization of
3 vehicles on private property, removal and storage of wrecked
4 or disabled vehicles from an accident scene or for the removal
5 and storage of vehicles, in the event the owner or operator is
6 incapacitated, unavailable, leaves the procurement of wrecker
7 service to the law enforcement officer at the scene, or
8 otherwise does not consent to the removal of the vehicle.

9 Section 6. Paragraph (d) of subsection (6) of section
10 316.193, Florida Statutes, is amended to read:

11 316.193 Driving under the influence; penalties.--

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

15 (d) In addition to the penalty imposed under paragraph
16 (a), paragraph (b), or paragraph (c), the court shall also
17 order the impoundment or immobilization of a vehicle owned,
18 leased, or rented by ~~the vehicle that was driven by, or in the~~
19 ~~actual physical control of,~~ the offender, unless the court
20 finds that the family of the owner of the vehicle has no other
21 public or private means of transportation. The period of
22 impoundment or immobilization is 10 days, or, for the second
23 conviction within 3 years, 30 days, or, for the third
24 conviction within 5 years, 90 days and may not be concurrent
25 with probation or imprisonment. If the vehicle is leased or
26 rented, the period of impoundment or immobilization may not
27 extend beyond the expiration of the lease or rental agreement.
28 Within 7 business days after the date that the court issues
29 the order of impoundment or immobilization, the clerk of the
30 court shall send notice by certified mail, return receipt
31 requested, to ~~the registered owner of the vehicle if the~~

1 ~~registered owner is a person other than~~ the offender and to
2 each person of record claiming a lien against the immobilized
3 or impounded vehicle. All costs and fees for the impoundment
4 or immobilization, including the cost of notification, must be
5 paid by the offender ~~owner of the vehicle or, if the vehicle~~
6 ~~is leased or rented, by the person leasing or renting the~~
7 ~~vehicle~~. The person who owns a vehicle that is impounded or
8 immobilized under this paragraph, or a person who has a lien
9 of record against such a vehicle, may, within 10 days after
10 the date that person has knowledge of the location of the
11 vehicle, file a complaint in the county in which the owner
12 resides to determine whether the vehicle was wrongfully taken
13 or withheld from the owner or lienholder. Upon the filing of a
14 complaint, the owner or lienholder may have the vehicle
15 released by posting with the court a bond or other adequate
16 security equal to the amount of the costs and fees for
17 impoundment or immobilization, including towing or storage, to
18 ensure the payment of such costs and fees if the owner or
19 lienholder does not prevail. When the bond is posted and the
20 fee is paid as set forth in s. 28.24, the clerk of the court
21 shall issue a certificate releasing the vehicle. At the time
22 of release, after reasonable inspection, the owner or
23 lienholder must give a receipt to the towing or storage
24 company indicating any loss or damage to the vehicle or to the
25 contents of the vehicle.

26
27 For the purposes of this section, any conviction for a
28 violation of s. 327.35; a previous conviction for the
29 violation of former s. 316.1931, former s. 860.01, or former
30 s. 316.028; or a previous conviction outside this state for
31 driving under the influence, driving while intoxicated,

1 driving with an unlawful blood-alcohol level, driving with an
2 unlawful breath-alcohol level, or any other similar
3 alcohol-related or drug-related traffic offense, is also
4 considered a previous conviction for violation of this
5 section. However, in satisfaction of the fine imposed pursuant
6 to this section, the court may, upon a finding that the
7 defendant is financially unable to pay either all or part of
8 the fine, order that the defendant participate for a specified
9 additional period of time in public service or a community
10 work project in lieu of payment of that portion of the fine
11 which the court determines the defendant is unable to pay. In
12 determining such additional sentence, the court shall consider
13 the amount of the unpaid portion of the fine and the
14 reasonable value of the services to be ordered; however, the
15 court may not compute the reasonable value of services at a
16 rate less than the federal minimum wage at the time of
17 sentencing.

18 Section 7. Paragraphs (d) and (e) of subsection (5) of
19 section 320.08, Florida Statutes, are amended to read:

20 320.08 License taxes.--Except as otherwise provided
21 herein, there are hereby levied and imposed annual license
22 taxes for the operation of motor vehicles, mopeds, motorized
23 bicycles as defined in s. 316.003(2), and mobile homes, as
24 defined in s. 320.01, which shall be paid to and collected by
25 the department or its agent upon the registration or renewal
26 of registration of the following:

27 (5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE
28 WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.--

29 (d) A wrecker, as defined in s. 320.01(40), which is
30 used to tow a vessel as defined in s. 327.02(36), a disabled,
31 abandoned, stolen-recovered, or impounded motor vehicle as

1 defined in s. 320.01(38),or a replacement motor vehicle as
2 defined in s. 320.01(39): \$30 flat.

3 (e) A wrecker, as defined in s. 320.01(40), which is
4 used to tow any motor vehicle, regardless of whether or not
5 such motor vehicle is a disabled motor vehicle as defined in
6 s. 320.01(38),or a replacement motor vehicle as defined in s.
7 320.01(39), a vessel as defined in s. 327.02(36), or any other
8 cargo, as follows:

9 1. Gross vehicle weight of 10,000 pounds or more, but
10 less than 15,000 pounds: \$87 flat.

11 2. Gross vehicle weight of 15,000 pounds or more, but
12 less than 20,000 pounds: \$131 flat.

13 3. Gross vehicle weight of 20,000 pounds or more, but
14 less than 26,000 pounds: \$186 flat.

15 4. Gross vehicle weight of 26,000 pounds or more, but
16 less than 35,000 pounds: \$240 flat.

17 5. Gross vehicle weight of 35,000 pounds or more, but
18 less than 44,000 pounds: \$300 flat.

19 6. Gross vehicle weight of 44,000 pounds or more, but
20 less than 55,000 pounds: \$572 flat.

21 7. Gross vehicle weight of 55,000 pounds or more, but
22 less than 62,000 pounds: \$678 flat.

23 8. Gross vehicle weight of 62,000 pounds or more, but
24 less than 72,000 pounds: \$800 flat.

25 9. Gross vehicle weight of 72,000 pounds or more:
26 \$979 flat.

27 Section 8. Paragraph (a) of subsection (1) of section
28 320.04, Florida Statutes, is amended to read:

29 320.04 Registration service charge.--

30 (1)(a) There shall be a service charge of \$2.50 for
31 each application which is handled in connection with original

1 issuance, duplicate issuance, or transfer of any license
2 plate, mobile home sticker, or validation sticker or with
3 transfer or duplicate issuance of any registration
4 certificate. There may also be a service charge of up to \$1
5 for the issuance of each license plate validation sticker and
6 mobile home sticker issued from an automated vending facility
7 or printer dispenser machine which shall be payable to and
8 retained by the department to provide for automated vending
9 facilities or printer dispenser machines used to dispense such
10 stickers by ~~in~~ each tax collector's or license tag agent's
11 employee office.

12 Section 9. Section 321.051, Florida Statutes, is
13 amended to read:

14 321.051 Florida Highway Patrol ~~A~~ wrecker operator
15 system; penalties for operation outside of system for removal
16 ~~and storage of wrecked, disabled, or abandoned vehicles.--~~

17 (1) As used in this section, the term:

18 (a) "Authorized wrecker operator" means any wrecker
19 operator who has been designated by the Division of Florida
20 Highway Patrol as part of the wrecker operator system.

21 (b) "Unauthorized wrecker operator" means any wrecker
22 operator who has not been designated by the division as part
23 of the wrecker operator system.

24 (2) The Division of Florida Highway Patrol of the
25 Department of Highway Safety and Motor Vehicles is authorized
26 to establish within areas designated by the patrol a wrecker
27 operator system using ~~utilizing~~ qualified, reputable wrecker
28 operators for removal and storage of wrecked or disabled
29 vehicles from an accident scene or for removal and storage of
30 abandoned vehicles, in the event the owner or operator is
31 incapacitated or unavailable or leaves the procurement of

1 wrecker service to the officer at the scene. All reputable
2 wrecker operators shall be eligible for use in the system
3 provided their equipment and drivers meet recognized safety
4 qualifications and mechanical standards set by rules of the
5 Division of Florida Highway Patrol for the size of vehicle it
6 is designed to handle. The division is authorized to limit the
7 number of wrecker operators participating in the wrecker
8 operator system, which authority shall not affect wrecker
9 operators currently participating in the system established by
10 this section. The division is authorized to establish maximum
11 rates for the towing and storage of vehicles removed at the
12 division's request, where such rates have not been set by a
13 county or municipality pursuant to s. 125.0103 or s. 166.043.
14 Such rates shall not be considered rules for the purpose of
15 chapter 120; however, the department shall establish by rule a
16 procedure for setting such rates. Any provision in chapter
17 120 to the contrary notwithstanding, a final order of the
18 department denying, suspending, or revoking a wrecker
19 operator's participation in the system shall be reviewable in
20 the manner and within the time provided by the Florida Rules
21 of Appellate Procedure only by a writ of certiorari issued by
22 the circuit court in the county wherein such wrecker operator
23 resides ~~shall reside~~.

24 (3)(a) It is unlawful for an unauthorized wrecker
25 operator or its employees or agents to monitor police radio
26 for communications between patrol field units and the
27 dispatcher in order to determine the location of a wrecked or
28 disabled vehicle for the purpose of driving by the scene of
29 such vehicle in a manner described in paragraph (b) or
30 paragraph (c). Any person who violates this paragraph is
31

1 guilty of a noncriminal violation, punishable as provided in
2 s. 775.083.

3 (b) It is unlawful for an unauthorized wrecker
4 operator to drive by the scene of a wrecked or disabled
5 vehicle before the arrival of the authorized wrecker operator,
6 initiate contact with the owner or operator of such vehicle by
7 soliciting or offering towing services, and tow such vehicle.
8 Any person who violates this paragraph is guilty of a
9 misdemeanor of the second degree, punishable as provided in s.
10 775.082 or s. 775.083.

11 (c) When an unauthorized wrecker operator drives by
12 the scene of a wrecked or disabled vehicle and the owner or
13 operator initiates contact by signaling the wrecker operator
14 to stop and provide towing services, the unauthorized wrecker
15 operator must disclose to the owner or operator of the vehicle
16 that he or she is not an authorized wrecker operator who has
17 been designated as part of the wrecker operator system and
18 must disclose, in writing, what charges for towing and storage
19 will apply before the vehicle is connected to the towing
20 apparatus. Any person who violates this paragraph is guilty
21 of a misdemeanor of the second degree, punishable as provided
22 in s. 775.082 or s. 775.083.

23 (d) At the scene of a wrecked or disabled vehicle, it
24 is unlawful for a wrecker operator to falsely identify himself
25 or herself as being part of the wrecker operator system. Any
26 person who violates this paragraph is guilty of a misdemeanor
27 of the first degree, punishable as provided in s. 775.082 or
28 s. 775.083.

29 (4) This section does not prohibit, or in any way
30 prevent, the owner or operator of a vehicle involved in an
31 accident or otherwise disabled from contacting any wrecker

1 operator for the provision of towing services, whether the
2 wrecker operator is an authorized wrecker operator or not.

3 Section 10. Paragraphs (d) and (f) of subsection (8)
4 of section 322.34, Florida Statutes, are amended to read:

5 322.34 Driving while license suspended, revoked,
6 canceled, or disqualified.--

7 (8)

8 (d) Either the arresting agency or the towing service,
9 whichever is in possession of the vehicle, shall determine
10 whether any vehicle impounded or immobilized under this
11 section has been leased or rented or if there are any persons
12 of record with a lien upon the vehicle. Either the arresting
13 agency or the towing service, whichever is in possession of
14 the vehicle, shall notify by express courier service with
15 receipt or certified mail, return receipt requested, within 7
16 business days after the date of the immobilization or
17 impoundment of the vehicle, the registered owner and all
18 persons having a recorded lien against the vehicle ~~telephone~~
19 ~~any lessor or lienholder before 5 p.m. on the business day~~
20 ~~after the day~~ that the vehicle has been impounded or
21 immobilized. A lessor, rental car company, or lienholder may
22 then obtain the vehicle, upon payment of any lawful towing or
23 storage charges. If the vehicle is a rental vehicle subject to
24 a written contract, the charges may be separately charged to
25 the renter, in addition to the rental rate, along with other
26 separate fees, charges, and recoupments disclosed on the
27 rental agreement. If the storage facility fails to provide
28 timely notice to a lessor, rental car company, or lienholder
29 as required by this paragraph, the storage facility shall be
30 responsible for payment of any towing or storage charges
31 necessary to release the vehicle to a lessor, rental car

1 company, or lienholder that accrue after the notice period,
2 which charges may then be assessed against the driver of the
3 vehicle if the vehicle was lawfully impounded or immobilized.

4 (f) The owner of a vehicle that is impounded or
5 immobilized under this subsection may, within 10 days after
6 the date the owner has knowledge of the location of the
7 vehicle, file a complaint in the county in which the owner
8 resides to determine whether the vehicle was wrongfully taken
9 or withheld. Upon the filing of a complaint, the owner may
10 have the vehicle released by posting with the court a bond or
11 other adequate security equal to the amount of the costs and
12 fees for impoundment or immobilization, including towing or
13 storage, to ensure the payment of such costs and fees if the
14 owner does not prevail. When the vehicle owner does not
15 prevail on a complaint that the vehicle was wrongfully taken
16 or withheld, he or she must pay the accrued charges for the
17 immobilization or impoundment, including any towing and
18 storage charges assessed against the vehicle. When the bond is
19 posted and the fee is paid as set forth in s. 28.24, the clerk
20 of the court shall issue a certificate releasing the vehicle.
21 At the time of release, after reasonable inspection, the owner
22 must give a receipt to the towing or storage company
23 indicating any loss or damage to the vehicle or to the
24 contents of the vehicle.

25 Section 11. Section 713.78, Florida Statutes, is
26 amended to read:

27 713.78 Liens for recovering, towing, or storing
28 vehicles and undocumented vessels.--

29 (1) For the purposes of this section, the term:

30 (a) "Vehicle" means any mobile item, whether motorized
31 or not, which is mounted on wheels.

1 **(b)** "Vessel" has the same meaning as the term
2 "undocumented vessel" as defined in s. 327.02(36).

3 **(c)**~~(b)~~ "Wrecker" means any truck or other vehicle
4 which is used to tow, carry, or otherwise transport motor
5 vehicles or vessels upon the streets and highways of this
6 state and which is equipped for that purpose with a boom,
7 winch, car carrier, or other similar equipment.

8 (2) Whenever a person regularly engaged in the
9 business of transporting vehicles or vessels by wrecker, tow
10 truck, or car carrier recovers, removes, or stores a vehicle,
11 vessel, or mobile home upon instructions from:

12 (a) The owner thereof; or

13 (b) The owner or lessor, or a person authorized by the
14 owner or lessor, of property on which such vehicle is
15 wrongfully parked, and such removal is done in compliance with
16 s. 715.07; or

17 (c) Any law enforcement agency; or

18 (d) A mobile home park owner as defined in s. 723.003
19 who has a current writ of possession for a mobile home lot
20 pursuant to s. 723.061,

21
22 she or he shall have a lien on such vehicle or vessel for a
23 reasonable towing fee and for a reasonable storage fee; except
24 that no storage fee shall be charged if such vehicle is stored
25 for less than 6 hours.

26 **(3)** This section does not authorize any person to
27 claim a lien on a vehicle for fees or charges connected with
28 the immobilization of such vehicle using a vehicle boot or
29 other similar device pursuant to s. 715.07.

30 **(4)(a)**~~(3)(a)~~ Any person regularly engaged in the
31 business of recovering, towing, or storing vehicles or vessels

1 who comes into possession of a vehicle or vessel pursuant to
 2 subsection (2), and who claims a lien for recovery, towing, or
 3 storage services, shall give notice to the registered owner
 4 and to all persons claiming a lien thereon, as disclosed by
 5 the records in the Department of Highway Safety and Motor
 6 Vehicles or of a corresponding agency in any other state.

7 (b) Notice by certified mail, return receipt
 8 requested, shall be sent within 7 business days after the date
 9 of storage of the vehicle or vessel to the registered owner
 10 and to all persons of record claiming a lien against the
 11 vehicle or vessel. It shall state the fact of possession of
 12 the vehicle or vessel, that a lien as provided in subsection
 13 (2) is claimed, that charges have accrued and the amount
 14 thereof, that the lien is subject to enforcement pursuant to
 15 law, and that the owner or lienholder, if any, has the right
 16 to a hearing as set forth in subsection ~~(5)(4)~~, and that any
 17 vehicle or vessel which remains unclaimed, or for which the
 18 charges for recovery, towing, or storage services remain
 19 unpaid, may be sold in 35 days free of all prior liens.

20 (c) If attempts to locate the owner or lienholder
 21 prove unsuccessful, the towing-storage operator shall, after 7
 22 working days, excluding Saturday and Sunday, of the initial
 23 tow or storage, notify the public agency of jurisdiction in
 24 writing by certified mail or acknowledged hand delivery that
 25 the towing-storage company has been unable to locate the owner
 26 or lienholder and a physical search of the vehicle or vessel
 27 has disclosed no ownership information and a good faith effort
 28 has been made. For purposes of this paragraph, subsection ~~(9)~~
 29 ~~(8)~~, and s. 715.05, "good faith effort" means that the
 30 following checks have been performed by the company to
 31 establish prior state of registration and for title:

1 1. Check of vehicle or vessel for any type of tag, tag
2 record, temporary tag, or regular tag.

3 2. Check of law enforcement report for tag number or
4 other information identifying the vehicle or vessel, if the
5 vehicle or vessel was towed at the request of a law
6 enforcement officer.

7 3. Check of trip sheet or tow ticket of tow truck
8 operator to see if a tag was on vehicle at beginning of tow,
9 if private tow.

10 4. If there is no address of the owner on the impound
11 report, check of law enforcement report to see if an
12 out-of-state address is indicated from driver license
13 information.

14 5. Check of vehicle or vessel for inspection sticker
15 or other stickers and decals that may indicate a state of
16 possible registration.

17 6. Check of the interior of the vehicle or vessel for
18 any papers that may be in the glove box, trunk, or other areas
19 for a state of registration.

20 7. Check of vehicle for vehicle identification number.

21 8. Check of vessel for vessel registration number.

22 9. Check of vessel hull for a hull identification
23 number which should be carved, burned, stamped, embossed, or
24 otherwise permanently affixed to the outboard side of the
25 transom or, if there is no transom, to the outmost seaboard
26 side at the end of the hull that bears the rudder or other
27 steering mechanism.

28 ~~(5)(a)(4)(a)~~ The owner of a vehicle or vessel removed
29 pursuant to the provisions of subsection (2), or any person
30 claiming a lien, other than the towing-storage operator,
31 within 10 days after the time she or he has knowledge of the

1 location of the vehicle or vessel, may file a complaint in the
2 county court of the county in which the vehicle or vessel is
3 stored or in which the owner resides to determine if her or
4 his property was wrongfully taken or withheld from her or him.

5 (b) Upon filing of a complaint, an owner or lienholder
6 may have her or his vehicle or vessel released upon posting
7 with the court a cash or surety bond or other adequate
8 security equal to the amount of the charges for towing or
9 storage and lot rental amount to ensure the payment of such
10 charges in the event she or he does not prevail. Upon the
11 posting of the bond and the payment of the applicable fee set
12 forth in s. 28.24, the clerk of the court shall issue a
13 certificate notifying the lienor of the posting of the bond
14 and directing the lienor to release the vehicle or vessel. At
15 the time of such release, after reasonable inspection, she or
16 he shall give a receipt to the towing-storage company reciting
17 any claims she or he has for loss or damage to the vehicle or
18 vessel or the contents thereof.

19 (c) Upon determining the respective rights of the
20 parties, the court may award damages and costs in favor of the
21 prevailing party. In any event, the final order shall provide
22 for immediate payment in full of recovery, towing, and storage
23 fees by the vehicle or vessel owner or lienholder; or the
24 agency ordering the tow; or the owner, lessee, or agent
25 thereof of the property from which the vehicle or vessel was
26 removed.

27 ~~(6)(5)~~ Any vehicle or vessel which is stored pursuant
28 to subsection (2) and which remains unclaimed, or for which
29 reasonable charges for recovery, towing, or storing remain
30 unpaid or for which a lot rental amount is due and owing to
31 the mobile home park owner, as evidenced by a judgment for

1 unpaid rent, and any contents not released pursuant to
2 subsection~~(10)~~~~(9)~~, may be sold by the owner or operator of
3 the storage space for such towing or storage charge or unpaid
4 lot rental amount after 35 days from the time the vehicle or
5 vessel is stored therein. The sale shall be at public auction
6 for cash. If the date of the sale was not included in the
7 notice required in subsection~~(4)~~~~(3)~~, notice of the sale
8 shall be given to the person in whose name the vehicle,
9 vessel, or mobile home is registered, to the mobile home park
10 owner, and to all persons claiming a lien on the vehicle or
11 vessel as shown on the records of the Department of Highway
12 Safety and Motor Vehicles or of the corresponding agency in
13 any other state. Notice shall be sent by certified mail,
14 return receipt requested, to the owner of the vehicle or
15 vessel and the person having the recorded lien on the vehicle
16 or vessel at the address shown on the records of the
17 registering agency and shall be mailed not less than 15 days
18 before the date of the sale. After diligent search and
19 inquiry, if the name and address of the registered owner or
20 the owner of the recorded lien cannot be ascertained, the
21 requirements of notice by mail may be dispensed with. In
22 addition to the notice by mail, public notice of the time and
23 place of sale shall be made by publishing a notice thereof one
24 time, at least 10 days prior to the date of the sale, in a
25 newspaper of general circulation in the county in which the
26 sale is to be held. The proceeds of the sale, after payment
27 of reasonable towing and storage charges, costs of the sale,
28 and the unpaid lot rental amount, in that order of priority,
29 shall be deposited with the clerk of the circuit court for the
30 county if the owner is absent, and the clerk shall hold such
31 proceeds subject to the claim of the person legally entitled

1 thereto. The clerk shall be entitled to receive 5 percent of
 2 such proceeds for the care and disbursement thereof. The
 3 certificate of title issued under this law shall be discharged
 4 of all liens unless otherwise provided by court order.

5 (7)(a)(6) A wrecker operator ~~No person regularly~~
 6 ~~engaged in the business of~~ recovering, towing, or storing
 7 vehicles or vessels is not ~~shall be~~ liable for damages
 8 connected with such services, theft of such vehicles or
 9 vessels, or theft of personal property contained in such
 10 vehicles or vessels, provided that such services ~~they~~ have
 11 been performed with reasonable care and provided, further,
 12 that, in the case of removal of a vehicle or vessel upon the
 13 request of a person purporting, and reasonably appearing, to
 14 be the owner or lessee, or a person authorized by the owner or
 15 lessee, of the property from which such vehicle or vessel is
 16 removed, such removal has been done in compliance with s.
 17 715.07. Further, a wrecker operator is not liable for damage
 18 connected with such services when complying with the lawful
 19 directions of a law enforcement officer to remove a vehicle
 20 stopped, standing, or parked upon a street or highway in such
 21 a position as to obstruct the normal movement of traffic or in
 22 such a condition as to create a hazard to other traffic upon
 23 the street or highway.

24 (b) For the purposes of this subsection, a wrecker
 25 operator is presumed to use reasonable care to prevent the
 26 theft of a vehicle or vessel or of any personal property
 27 contained in such vehicle stored in the wrecker operator's
 28 storage facility if all of the following apply:

29 1. The wrecker operator surrounds the storage facility
 30 with a chain-link or solid-wall type fence at least 6 feet in
 31 height;

1 2. The wrecker operator has illuminated the storage
2 facility with lighting of sufficient intensity to reveal
3 persons and vehicles at a distance of at least 150 feet during
4 nighttime; and

5 3. The wrecker operator uses one or more of the
6 following security methods to discourage theft of vehicles or
7 vessels or of any personal property contained in such vehicles
8 or vessels stored in the wrecker operator's storage facility:

9 a. A night dispatcher or watchman remains on duty at
10 the storage facility from sunset to sunrise;

11 b. A security dog remains at the storage facility from
12 sunset to sunrise;

13 c. Security cameras or other similar surveillance
14 devices monitor the storage facility; or

15 d. A security guard service examines the storage
16 facility at least once each hour from sunset to sunrise.

17 (c) Any law enforcement agency requesting that a motor
18 vehicle be removed from an accident scene, street, or highway
19 must conduct an inventory and prepare a written record of all
20 personal property found in the vehicle before the vehicle is
21 removed by a wrecker operator. A wrecker operator is not
22 liable for the loss of personal property alleged to be
23 contained in such a vehicle when such personal property was
24 not identified on the inventory record prepared by the law
25 enforcement agency requesting the removal of the vehicle.

26 (8)(7) A person regularly engaged in the business of
27 recovering, towing, or storing vehicles or vessels, except a
28 person licensed under chapter 493 while engaged in
29 "repossession" activities as defined in s. 493.6101, may not
30 operate a wrecker, tow truck, or car carrier unless the name,
31 address, and telephone number of the company performing the

1 service is clearly printed in contrasting colors on the driver
2 and passenger sides of its vehicle. The name must be in at
3 least 3-inch permanently affixed letters, and the address and
4 telephone number must be in at least 1-inch permanently
5 affixed letters.

6 (9)~~(8)~~ Failure to make good faith best efforts to
7 comply with the notice requirements of this section shall
8 preclude the imposition of any storage charges against such
9 vehicle or vessel.

10 (10)~~(9)~~ Persons who provide services pursuant to this
11 section shall permit vehicle or vessel owners or their agents,
12 which agency is evidenced by a writing acknowledged by the
13 owner before a notary public or other person empowered by law
14 to administer oaths, to inspect the towed vehicle or vessel
15 and shall release to the owner or agent all personal property
16 not affixed to the vehicle or vessel which was in the vehicle
17 or vessel at the time the vehicle or vessel came into the
18 custody of the person providing such services.

19 (11)(a)~~(10)(a)~~ Any person regularly engaged in the
20 business of recovering, towing, or storing vehicles or vessels
21 who comes into possession of a vehicle or vessel pursuant to
22 subsection (2) and who has complied with the provisions of
23 subsections (3) and (6)~~(5)~~, when such vehicle or vessel is to
24 be sold for purposes of being dismantled, destroyed, or
25 changed in such manner that it is not the motor vehicle,
26 vessel, or mobile home described in the certificate of title,
27 shall apply to the county tax collector for a certificate of
28 destruction. A certificate of destruction, which authorizes
29 the dismantling or destruction of the vehicle or vessel
30 described therein, shall be reassignable and shall accompany
31 the vehicle or vessel for which it is issued, when such

1 vehicle or vessel is sold for such purposes, in lieu of a
 2 certificate of title. The application for a certificate of
 3 destruction must ~~shall~~ include an affidavit from the applicant
 4 that it has complied with all applicable requirements of this
 5 section and, if the vehicle or vessel is not registered in
 6 this state, by a statement from a law enforcement officer that
 7 the vehicle or vessel is not reported stolen, and shall be
 8 accompanied by such documentation as may be required by the
 9 department.

10 (b) The Department of Highway Safety and Motor
 11 Vehicles shall charge a fee of \$3 for each certificate of
 12 destruction. A service charge of \$4.25 shall be collected and
 13 retained by the tax collector who processes the application.

14 (c) The Department of Highway Safety and Motor
 15 Vehicles may adopt such rules as it deems necessary or proper
 16 for the administration of this subsection.

17 (12)(a)~~(11)(a)~~ Any person who violates any provision
 18 of subsection ~~subsections~~ (1), subsection (2), subsection (4),
 19 subsection (5), subsection (6), or subsection (7)~~through (6)~~
 20 is guilty of a misdemeanor of the first degree, punishable as
 21 provided in s. 775.082 or s. 775.083.

22 (b) Any person who violates the provisions of
 23 ~~subsections (8) through (11)~~ subsections (7) through (10) is guilty of a felony of
 24 the third degree, punishable as provided in s. 775.082, s.
 25 775.083, or s. 775.084.

26 (c) Any person who uses a false or fictitious name,
 27 gives a false or fictitious address, or makes any false
 28 statement in any application or affidavit required under the
 29 provisions of this section is guilty of a felony of the third
 30 degree, punishable as provided in s. 775.082, s. 775.083, or
 31 s. 775.084.

1 Section 12. Paragraph (a) of subsection (1) of section
2 319.30, Florida Statutes, is amended to read:

3 319.30 Definitions; dismantling, destruction, change
4 of identity of motor vehicle or mobile home; salvage.--

5 (1) As used in this section, the term:

6 (a) "Certificate of destruction" means the certificate
7 issued pursuant to s. 713.78(11)~~s. 713.78(10)~~.

8 Section 13. Subsection (6) of section 316.193, Florida
9 Statutes, is amended to read:

10 316.193 Driving under the influence; penalties.--

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

14 (a) For the first conviction, the court shall place
15 the defendant on probation for a period not to exceed 1 year
16 and, as a condition of such probation, shall order the
17 defendant to participate in public service or a community work
18 project for a minimum of 50 hours; or the court may order
19 instead, that any defendant pay an additional fine of \$10 for
20 each hour of public service or community work otherwise
21 required, if, after consideration of the residence or location
22 of the defendant at the time public service or community work
23 is required, payment of the fine is in the best interests of
24 the state. However, the total period of probation and
25 incarceration may not exceed 1 year. The court must also, as a
26 condition of probation, order the impoundment or
27 immobilization of the vehicle that was operated by or in the
28 actual control of the defendant or any one vehicle registered
29 in the defendant's name at the time of impoundment or
30 immobilization, for a period of 10 days or for the unexpired
31 term of any lease or rental agreement that expires within 10

1 days. The impoundment or immobilization must not occur
2 concurrently with the incarceration of the defendant. The
3 impoundment or immobilization order may be dismissed in
4 accordance with paragraph (e), paragraph (f), or paragraph
5 (g).

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

21 (c) For the third or subsequent conviction for an
22 offense that occurs within a period of 10 years after the date
23 of a prior conviction for violation of this section, the court
24 shall order imprisonment for not less than 30 days. The court
25 must also, as a condition of probation, order the impoundment
26 or immobilization of the vehicle that was operated by or in
27 the actual control of the defendant or any one vehicle
28 registered in the defendant's name at the time of impoundment
29 or immobilization, for a period of 90 days or for the
30 unexpired term of any lease or rental agreement that expires
31 within 90 days. The impoundment or immobilization must not

1 occur concurrently with the incarceration of the defendant.
2 The impoundment or immobilization order may be dismissed in
3 accordance with paragraph (e), paragraph (f), or paragraph
4 (g).At least 48 hours of confinement must be consecutive.

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

15 (e) A person who owns but was not operating the
16 vehicle when the offense occurred may submit to the court a
17 police report indicating that the vehicle was stolen at the
18 time of the offense or documentation of having purchased the
19 vehicle after the offense was committed from an entity other
20 than the defendant or the defendant's agent. If the court
21 finds that the vehicle was stolen or that the sale was not
22 made to circumvent the order and allow the defendant continued
23 access to the vehicle, the order must be dismissed and the
24 owner of the vehicle will incur no costs. If the court denies
25 the request to dismiss the order of impoundment or
26 immobilization, the petitioner may request an evidentiary
27 hearing.

28 (f) A person who owns but was not operating the
29 vehicle when the offense occurred, and whose vehicle was
30 stolen or who purchased the vehicle after the offense was
31 committed directly from the defendant or the defendant's

1 agent, may request an evidentiary hearing to determine whether
2 the impoundment or immobilization should occur. If the court
3 finds that either the vehicle was stolen or the purchase was
4 made without knowledge of the offense, that the purchaser had
5 no relationship to the defendant other than through the
6 transaction, and that such purchase would not circumvent the
7 order and allow the defendant continued access to the vehicle,
8 the order must be dismissed and the owner of the vehicle will
9 incur no costs.

10 (g) The court shall also dismiss the order of
11 impoundment or immobilization of the vehicle if the court
12 finds that the family of the owner of the vehicle has no other
13 private means of transportation.

14 ~~(d) In addition to the penalty imposed under paragraph~~
15 ~~(a), paragraph (b), or paragraph (c), the court shall also~~
16 ~~order the impoundment or immobilization of the vehicle that~~
17 ~~was driven by, or in the actual physical control of, the~~
18 ~~offender, unless the court finds that the family of the owner~~
19 ~~of the vehicle has no other public or private means of~~
20 ~~transportation. The period of impoundment or immobilization is~~
21 ~~10 days, or, for the second conviction within 3 years, 30~~
22 ~~days, or, for the third conviction within 5 years, 90 days and~~
23 ~~may not be concurrent with probation or imprisonment. If the~~
24 ~~vehicle is leased or rented, the period of impoundment or~~
25 ~~immobilization may not extend beyond the expiration of the~~
26 ~~lease or rental agreement. Within 7 business days after the~~
27 ~~date that the court issues the order of impoundment or~~
28 ~~immobilization, the clerk of the court shall send notice by~~
29 ~~certified mail, return receipt requested, to the registered~~
30 ~~owner of the vehicle if the registered owner is a person other~~

31

1 ~~than the offender and to each person of record claiming a lien~~
2 ~~against the vehicle.~~

3 (h) All costs and fees for the impoundment or
4 immobilization, including the cost of notification, must be
5 paid by the owner of the vehicle or, if the vehicle is leased
6 or rented, by the person leasing or renting the vehicle,
7 unless the impoundment or immobilization order is dismissed.
8 All provisions of s. 713.78 shall apply.

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

29 (j)~~(e)~~ A defendant, in the court's discretion, may be
30 required to serve all or any portion of a term of imprisonment
31 to which the defendant has been sentenced pursuant to this

1 section in a residential alcoholism treatment program or a
2 residential drug abuse treatment program. Any time spent in
3 such a program must be credited by the court toward the term
4 of imprisonment.

5
6 For the purposes of this section, any conviction for a
7 violation of s. 327.35; a previous conviction for the
8 violation of former s. 316.1931, former s. 860.01, or former
9 s. 316.028; or a previous conviction outside this state for
10 driving under the influence, driving while intoxicated,
11 driving with an unlawful blood-alcohol level, driving with an
12 unlawful breath-alcohol level, or any other similar
13 alcohol-related or drug-related traffic offense, is also
14 considered a previous conviction for violation of this
15 section. However, in satisfaction of the fine imposed pursuant
16 to this section, the court may, upon a finding that the
17 defendant is financially unable to pay either all or part of
18 the fine, order that the defendant participate for a specified
19 additional period of time in public service or a community
20 work project in lieu of payment of that portion of the fine
21 which the court determines the defendant is unable to pay. In
22 determining such additional sentence, the court shall consider
23 the amount of the unpaid portion of the fine and the
24 reasonable value of the services to be ordered; however, the
25 court may not compute the reasonable value of services at a
26 rate less than the federal minimum wage at the time of
27 sentencing.

28 Section 14. Subsection (6) of section 327.35, Florida
29 Statutes, is amended to read:

30 327.35 Boating under the influence; penalties.--
31

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

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

20 (b) For the second conviction for an offense that
21 occurs within a period of 5 years after the date of a prior
22 conviction for violation of this section, the court shall
23 order imprisonment for not less than 10 days. The court must
24 also, as a condition of probation, order the impoundment or
25 immobilization of the vessel that was operated by or in the
26 actual control of the defendant or any one vehicle registered
27 in the defendant's name at the time of impoundment or
28 immobilization, for a period of 30 days or for the unexpired
29 term of any lease or rental agreement that expires within 30
30 days. The impoundment or immobilization must not occur
31 concurrently with the incarceration of the defendant. The

1 impoundment or immobilization order may be dismissed in
2 accordance with paragraph (e) or paragraph (f).At least 48
3 hours of confinement must be consecutive.

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

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

29 (e) A person who owns but was not operating the vessel
30 when the offense occurred may submit to the court a police
31 report indicating that the vessel was stolen at the time of

1 the offense or documentation of having purchased the vessel
2 after the offense was committed from an entity other than the
3 defendant or the defendant's agent. If the court finds that
4 the vessel was stolen or that the sale was not made to
5 circumvent the order and allow the defendant continued access
6 to the vessel, the order must be dismissed and the owner of
7 the vessel will incur no costs. If the court denies the
8 request to dismiss the order of impoundment or immobilization,
9 the petitioner may request an evidentiary hearing.

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

23 ~~(d) In addition to any other penalty imposed, the~~
24 ~~court shall also order the impoundment or immobilization of~~
25 ~~the vessel that was operated by, or in the actual physical~~
26 ~~control of, the offender. The period of impoundment or~~
27 ~~immobilization is 10 days, or, for the second conviction~~
28 ~~within 3 years, 30 days, or, for the third conviction within 5~~
29 ~~years, 90 days and may not be concurrent with probation or~~
30 ~~imprisonment. If the vessel is leased or rented, the period of~~
31 ~~impoundment or immobilization may not extend beyond the~~

1 ~~expiration of the lease or rental agreement. Within 7 business~~
2 ~~days after the date that the court issues the order of~~
3 ~~impoundment or immobilization, the clerk of the court shall~~
4 ~~send notice by certified mail, return receipt requested, to~~
5 ~~the registered owner of the vessel if the registered owner is~~
6 ~~a person other than the offender and to each person of record~~
7 ~~claiming a lien against the vessel.~~

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

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

1 towing or storage company indicating any loss or damage to the
2 vessel or to the contents of the vessel.

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

10
11 For the purposes of this section, any conviction for a
12 violation of s. 316.193, a previous conviction for the
13 violation of former s. 316.1931, former s. 860.01, or former
14 s. 316.028, or a previous conviction outside this state for
15 driving under the influence, driving while intoxicated,
16 driving with an unlawful blood-alcohol level, driving with an
17 unlawful breath-alcohol level, or any other similar
18 alcohol-related or drug-related traffic offense, is also
19 considered a previous conviction for violation of this
20 section.

21 Section 15. This act shall take effect October 1 of
22 the year in which enacted.