

By Senator Smith

14-1756-04

See HB

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A bill to be entitled
An act relating to driving under the influence;
amending s. 316.193, F.S.; providing for using
certain records of the Department of Highway
Safety and Motor Vehicles as evidence
establishing existence of certain previous
violations; providing for rebutting or
contradicting of such evidence; providing an
effective date.

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

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

316.193 Driving under the influence; penalties.--

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

(a) For the first conviction, the court shall place
the defendant on probation for a period not to exceed 1 year
and, as a condition of such probation, shall order the
defendant to participate in public service or a community work
project for a minimum of 50 hours; or the court may order
instead, that any defendant pay an additional fine of \$10 for
each hour of public service or community work otherwise
required, if, after consideration of the residence or location
of the defendant at the time public service or community work
is required, payment of the fine is in the best interests of
the state. However, the total period of probation and
incarceration may not exceed 1 year. The court must also, as a
condition of probation, order the impoundment or

1 immobilization of the vehicle 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 10 days or for the unexpired
5 term of any lease or rental agreement that expires within 10
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), paragraph (f), paragraph (g),
10 or paragraph (h).

11 (b) For the second conviction for an offense that
12 occurs within a period of 5 years after the date of a prior
13 conviction for violation of this section, the court shall
14 order imprisonment for not less than 10 days. The court must
15 also, as a condition of probation, order the impoundment or
16 immobilization of all vehicles owned by the defendant at the
17 time of impoundment or immobilization, for a period of 30 days
18 or for the unexpired term of any lease or rental agreement
19 that expires within 30 days. The impoundment or immobilization
20 must not occur concurrently with the incarceration of the
21 defendant and must occur concurrently with the driver's
22 license revocation imposed under s. 322.28(2)(a)2. The
23 impoundment or immobilization order may be dismissed in
24 accordance with paragraph (e), paragraph (f), paragraph (g),
25 or paragraph (h). At least 48 hours of confinement must be
26 consecutive.

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

1 or immobilization of all vehicles owned by the defendant at
2 the time of impoundment or immobilization, for a period of 90
3 days or for the unexpired term of any lease or rental
4 agreement that expires within 90 days. The impoundment or
5 immobilization must not occur concurrently with the
6 incarceration of the defendant and must occur concurrently
7 with the driver's license revocation imposed under s.
8 322.28(2)(a)3. The impoundment or immobilization order may be
9 dismissed in accordance with paragraph (e), paragraph (f),
10 paragraph (g), or paragraph (h). At least 48 hours of
11 confinement must be consecutive.

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

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

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

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

20 (h) The court may also dismiss the order of
21 impoundment or immobilization of any vehicles that are owned
22 by the defendant but that are operated solely by the employees
23 of the defendant or any business owned by the defendant.

24 (i) All costs and fees for the impoundment or
25 immobilization, including the cost of notification, must be
26 paid by the owner of the vehicle or, if the vehicle is leased
27 or rented, by the person leasing or renting the vehicle,
28 unless the impoundment or immobilization order is dismissed.
29 All provisions of s. 713.78 shall apply.

30 (j) The person who owns a vehicle that is impounded or
31 immobilized under this paragraph, or a person who has a lien

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

19 (k) A defendant, in the court's discretion, may be
20 required to serve all or any portion of a term of imprisonment
21 to which the defendant has been sentenced pursuant to this
22 section in a residential alcoholism treatment program or a
23 residential drug abuse treatment program. Any time spent in
24 such a program must be credited by the court toward the term
25 of imprisonment.

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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. If records of the department show that a person has
6 been previously convicted of any violation of this section,
7 such records may be used as evidence to establish such
8 previous convictions. However, such evidence may be
9 contradicted or rebutted by other evidence. Such evidence may
10 be considered, together with any other evidence presented, in
11 deciding if such person has been previously convicted of a
12 violation of this section. However, in satisfaction of the
13 fine imposed pursuant to this section, the court may, upon a
14 finding that the defendant is financially unable to pay either
15 all or part of the fine, order that the defendant participate
16 for a specified additional period of time in public service or
17 a community work project in lieu of payment of that portion of
18 the fine which the court determines the defendant is unable to
19 pay. In determining such additional sentence, the court shall
20 consider the amount of the unpaid portion of the fine and the
21 reasonable value of the services to be ordered; however, the
22 court may not compute the reasonable value of services at a
23 rate less than the federal minimum wage at the time of
24 sentencing.

25 Section 2. This act shall take effect upon becoming a
26 law.

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