

By Senator Smith

14-474-06

See HB

1 A bill to be entitled
2 An act relating to suspension of driver license
3 and driving privilege; creating the "Michael
4 Haligowski Memorial Traffic Safety Act";
5 amending s. 318.15, F.S.; directing traffic
6 enforcement officers to impound or immobilize a
7 motor vehicle being driven by or under the
8 actual physical control of a person whose
9 driver license and privilege to drive have been
10 suspended for failure to comply with civil
11 penalties imposed for traffic infractions;
12 providing for notice to the driver and the
13 clerk of court; providing conditions for
14 release of the impounded or immobilized motor
15 vehicle; providing for judicial review;
16 providing for a fee; providing for abandonment;
17 providing for lienholder's right to cure a
18 default; directing the Department of Highway
19 Safety and Motor Vehicles to make certain
20 information available on its Internet website
21 and provide the information over a toll-free
22 telephone hotline; directing the department to
23 include impoundment and immobilization
24 information with notification of suspension;
25 creating s. 318.151, F.S.; authorizing counties
26 and municipalities to adopt rules and
27 procedures necessary to implement impoundment
28 and immobilization provisions; authorizing
29 counties and municipalities to enter into
30 interlocal agreements; authorizing counties and
31 municipalities to contract with wrecker

1 services to carry out impoundment and
2 immobilization; providing for distribution of
3 moneys collected by the clerk of court;
4 providing for use of moneys collected;
5 directing the department to inform the public;
6 providing a grace period for the department to
7 notify drivers whose licenses have been
8 suspended; providing effective dates.
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10 Be It Enacted by the Legislature of the State of Florida:
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12 Section 1. This act may be cited as the "Michael
13 Haliowski Memorial Traffic Safety Act."

14 Section 2. Effective July 1, 2007, section 318.15,
15 Florida Statutes, is amended to read:

16 318.15 Failure to comply with civil penalty or to
17 appear; impoundment or immobilization; penalty.--

18 (1)(a) If a person fails to comply with the civil
19 penalties provided in s. 318.18 within the time period
20 specified in s. 318.14(4), fails to attend driver improvement
21 school, or fails to appear at a scheduled hearing, the clerk
22 of the court shall notify the Division of Driver Licenses of
23 the Department of Highway Safety and Motor Vehicles of such
24 failure within 10 days after such failure. Upon receipt of
25 such notice, the department shall immediately issue an order
26 suspending the driver's license and privilege to drive of such
27 person effective 20 days after the date the order of
28 suspension is mailed in accordance with s. 322.251(1), (2),
29 and (6). Any such suspension of the driving privilege which
30 has not been reinstated, including a similar suspension
31 imposed outside Florida, shall remain on the records of the

1 department for a period of 7 years from the date imposed and
2 shall be removed from the records after the expiration of 7
3 years from the date it is imposed.

4 (b) However, a person who elects to attend driver
5 improvement school and has paid the civil penalty as provided
6 in s. 318.14(9), but who subsequently fails to attend the
7 driver improvement school within the time specified by the
8 court shall be deemed to have admitted the infraction and
9 shall be adjudicated guilty. In such case the person must pay
10 the clerk of the court the 18 percent deducted pursuant to s.
11 318.14(9), and a processing fee of up to \$15, after which no
12 additional penalties, court costs, or surcharges shall be
13 imposed for the violation. The clerk of the court shall notify
14 the department of the person's failure to attend driver
15 improvement school and points shall be assessed pursuant to s.
16 322.27.

17 (2)(a) An officer stopping a motor vehicle being
18 driven by or under the actual physical control of a person
19 whose driver's license and privilege to drive are suspended
20 under subsection (1) shall have the vehicle removed to an
21 impound lot designated by the county or municipality where the
22 vehicle was stopped. At the discretion of the officer and
23 pursuant to procedures enacted by the county or municipality,
24 the officer may have the motor vehicle removed to the property
25 of the motor vehicle's owner or lessee and cause the motor
26 vehicle to be immobilized with a mechanical immobilization
27 device.

28 (b) The officer shall serve notice of the impoundment
29 or immobilization upon the driver. The notice shall include
30 the location where the motor vehicle is being held and
31 information on the procedures to have the motor vehicle

1 released from impoundment or immobilization. A copy of the
2 notice shall be delivered to the clerk of the court in the
3 county where the impoundment or immobilization was made.
4 Transmission of the notice may be by electronic means.

5 (c)1. A motor vehicle impounded or immobilized under
6 paragraph (a) which, according to the records of the
7 department, is owned or leased by the person who was driving
8 or in actual physical control of the motor vehicle when it was
9 stopped and impounded or immobilized shall remain impounded or
10 immobilized until the person's license and driving privilege
11 are reinstated as provided in subsection (3) and payment of
12 the impound fee under paragraph (d) has been made. If
13 department records show a different owner or lessee, the motor
14 vehicle shall be released to that owner or lessee or the
15 owner's or lessee's agent upon payment of the impound fee
16 under paragraph (d).

17 2. Notwithstanding subparagraph 1., if the officer
18 discovers that the motor vehicle was being rented from a motor
19 vehicle rental company, the officer shall not impound or
20 immobilize the vehicle or continue the impoundment or
21 immobilization but shall notify the rental or leasing company
22 that the vehicle is available for pickup and shall notify the
23 clerk of the court if the clerk had been previously notified
24 of the impoundment or immobilization.

25 3. Any driver who is the owner or lessee of the motor
26 vehicle that is impounded or immobilized under paragraph (a)
27 may, during the period of the impoundment or immobilization,
28 petition the county court of the jurisdiction where the arrest
29 was made to review that impoundment or immobilization. The
30 court shall review the matter within the same time period as
31 the court hears an appeal from an order denying bail or fixing

1 terms of bail or terms of recognizance, giving this matter
2 precedence over all other matters on its docket. If the driver
3 proves to the court by a preponderance of the evidence that
4 the officer did not have probable cause for the arrest, the
5 court shall rescind the impoundment or immobilization. Upon
6 rescission, the motor vehicle shall be released. Otherwise,
7 the court shall affirm the impoundment or immobilization. If
8 the driver fails to appear without just cause, his or her
9 right to review shall be waived. The court's findings are
10 without prejudice to the person contesting the impoundment or
11 immobilization or to any other potential party as to any
12 proceedings, civil or criminal, and shall not be evidence in
13 any proceedings, civil or criminal.

14 4. The owner or lessee of any motor vehicle impounded
15 or immobilized under paragraph (a) who was not the driver at
16 the time of the violation may petition the court in the
17 jurisdiction where the violation occurred for the release of
18 the motor vehicle. The motor vehicle shall be released if the
19 owner or lessee proves by a preponderance of the evidence that
20 he or she did not know that the offender's driver's license
21 was suspended or revoked when he or she authorized the
22 offender to drive the motor vehicle or did not consent to the
23 operation of the motor vehicle by the offender. If the owner
24 or lessee proves by a preponderance of the evidence that his
25 or her immediate family has only one motor vehicle and will
26 suffer a substantial hardship if that motor vehicle is
27 impounded or immobilized, the court, in its discretion, may
28 release the vehicle.

29 5. Notwithstanding any provision of this subsection, a
30 subsequent dismissal or acquittal of the charge of driving
31 with a suspended or revoked license shall result in an

1 immediate rescission of the impoundment or immobilization
2 under paragraph (a).

3 (d) There shall be imposed an impound fee not to
4 exceed \$100 which must be paid prior to the release of any
5 motor vehicle impounded or immobilized under this subsection.
6 Moneys collected under this paragraph shall be used to pay the
7 costs of vehicle removal and impoundment or immobilization.

8 (e) Any impounded motor vehicle remaining at an
9 impound lot for more than 120 days shall be considered
10 abandoned and disposed of according to law.

11 (f) Nothing in this subsection shall impede or
12 infringe upon a valid lienholder's rights to cure a default or
13 repossess or remove a motor vehicle from impoundment or
14 immobilization under an existing security agreement. Such
15 lienholder shall not be liable for any fee for impoundment or
16 immobilization.

17 (g) The department shall make available on its
18 Internet website the means to determine the status of a
19 person's driver's license by entering the name of the holder
20 of the license or the person's driver's license number. The
21 department shall also provide a toll-free telephone hotline to
22 provide callers with the status of a person's driver's
23 license.

24 (h) Notification of suspension given by the department
25 under s. 322.251 shall also inform the person whose driver's
26 license and privilege to drive have been suspended that any
27 motor vehicle driven by or under the actual physical control
28 of that person while the license and privilege to drive are
29 suspended is subject to impoundment or immobilization under
30 this subsection; however, failure to receive such notification
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1 shall not preclude, bar, or otherwise affect the impoundment
2 or immobilization of a motor vehicle under this subsection.

3 ~~(3)(2)~~ After suspension of the driver's license and
4 privilege to drive of a person under subsection (1), the
5 license and privilege may not be reinstated until the person
6 complies with all obligations and penalties imposed on him or
7 her under s. 318.18 and presents to a driver license office a
8 certificate of compliance issued by the court, together with a
9 nonrefundable service charge of up to \$47.50 imposed under s.
10 322.29, or presents a certificate of compliance and pays the
11 aforementioned service charge of up to \$47.50 to the clerk of
12 the court or tax collector clearing such suspension. Of the
13 charge collected by the clerk of the court or the tax
14 collector, \$10 shall be remitted to the Department of Revenue
15 to be deposited into the Highway Safety Operating Trust Fund.
16 Such person shall also be in compliance with requirements of
17 chapter 322 prior to reinstatement.

18 Section 3. Section 318.151, Florida Statutes, is
19 created to read:

20 318.151 Impoundment or immobilization of motor
21 vehicle; authority of county and municipality; distribution
22 and use of funds.--

23 (1) Any county may adopt by ordinance rules and
24 procedures necessary to implement the provisions of s.
25 318.15(2), which shall include provisions for:

26 (a) The amount of the impound fee, which shall not
27 exceed \$100, to cover costs of implementing this subsection.

28 (b) Distribution of moneys collected from the impound
29 fee, including distribution to municipalities and law
30 enforcement agencies, which shall be used pay the costs of
31 implementing s. 318.15(2).

1 (c) Designation of lots to be used for impoundment.
2 (d) Security of vehicles impounded.
3 (e) Release of any property, cargo, or load carried in
4 or towed by an impounded motor vehicle.
5 (f) Release of a motor vehicle from impound when all
6 conditions for the release have been met.
7 (g) Release of an immobilized motor vehicle not later
8 than 24 hours after all conditions for release have been met.
9 (h) Any other matters deemed necessary by the county
10 to implement this section and s. 318.15(2).
11 (2) A municipality may adopt by ordinance rules and
12 procedures necessary to implement the provisions of this
13 section and s. 318.15(2).
14 (3) Counties and municipalities may enter into
15 interlocal agreements pursuant to s. 163.01 as they deem
16 necessary to carry out the provisions of this section and s.
17 318.15(2).
18 (4) A county or municipality may contract with any
19 wrecker service or wrecker company for the removal,
20 impoundment, immobilization, and release of motor vehicles
21 under s. 318.15(2).
22 (5) Notwithstanding s. 318.21, impound fees collected
23 by the clerk of court under s. 318.15(2) shall be distributed
24 as provided for by the county and used to pay the costs of
25 implementing s. 318.15(2).
26 Section 4. The Department of Highway Safety and Motor
27 Vehicles shall inform the motoring public of the changes to s.
28 318.15, Florida Statutes, made by this act and shall provide
29 such information in newly printed driver's license educational
30 materials after July 1, 2006, and in public service
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1 announcements produced in cooperation with the Florida Highway
2 Patrol.

3 Section 5. During the period from July 1, 2006, to
4 July 1, 2007, the Department of Highway Safety and Motor
5 Vehicles shall notify by mail drivers whose license and
6 privilege to drive have been suspended under s. 318.15,
7 Florida Statutes, of the changes to s. 318.15, Florida
8 Statutes, made by this act; however, failure to receive such
9 notification shall not preclude, bar, or otherwise affect the
10 impoundment or immobilization of a motor vehicle under s.
11 318.15, Florida Statutes.

12 Section 6. Except as otherwise expressly provided in
13 this act, this act shall take effect July 1, 2006.

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