

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1307 Impoundment or Immobilization of Vehicles

**SPONSOR(S):** Bovo, and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1588

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Roads, Bridges & Ports Policy Committee		Brown	Miller
2)	Public Safety & Domestic Security Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)	Finance & Tax Council			
5)				

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**SUMMARY ANALYSIS**

HB 1307 amends provisions of s. 316.193, F.S., relating to motor vehicle impoundment subsequent to a DUI conviction. The bill mandates specific fees for a first, second, or subsequent DUI impoundment:

- For a first conviction for DUI (currently requiring a 10-day impoundment or immobilization), the offender must pay a fee of \$200 per vehicle;
- For a second conviction for DUI (currently requiring a 30-day impoundment or immobilization), the offender must pay a fee of \$300 per vehicle;
- For a third or subsequent conviction for DUI (currently requiring a 90-day impoundment or immobilization), the offender must pay a fee of \$400 per vehicle.

The bill indexes these fees to the Consumer Price Index (CPI).

The bill also requires that court notices identify the name and phone number of the impounding company (or government agency).

The bill also provides that when motor vehicle impoundments are not performed by a local government agency, private businesses directed by the court to perform these services must meet minimum criteria. HB 1307 requires these entities to be licensed as a repossession service, have at least one year's experience in immobilizing or impounding vehicles, and have a suitable storage facility licensed by the local government. The individuals performing the impoundment or immobilization must be free of any felony conviction, or any conviction for DUI or boating under the influence.

HB 1307 also provides specific definitions of 'immobilization' and 'impoundment.'

The bill could have a positive or negative fiscal impact on local governments, depending on current local practices and fees.

The bill has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Along with several other penalties for driving under the influence (DUI), Florida law provides for mandatory impoundment or immobilization of an offender's vehicle for a specific period.<sup>1</sup> Current law requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles as follows:

- For a first DUI conviction, the court must order the impoundment or immobilization of the vehicle that was used in the DUI offense or any one vehicle registered in the defendant's name at the time of impoundment or immobilization for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days.<sup>2</sup>
- For a second DUI conviction within 5 years of the date of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days.<sup>3</sup>
- For a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.<sup>4</sup>

Impoundment and immobilization may be performed by a local government agency, or by a private entity. The costs of such immobilization or impoundment appear to vary by county. The Leon County Clerk of Court's office maintains a list of private contractors who charge approximately \$50 for a 10 day immobilization, by placing a boot on the offender's vehicle on request. Alachua County performs immobilizations by the clerk's office itself – offenders remove the license plate from their vehicle and give it to the Clerk's office for ten days (along with their vehicle registration). This renders the car legally inoperable, and thus immobilized. There is no charge to the offender under this system. In Miami-Dade County, as in Leon, the court notifies offenders of the immobilization or impoundment requirements,

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<sup>1</sup> s. 316.193(6), F.S.

<sup>2</sup> s. 316.193(6)(a), F.S.

<sup>3</sup> s. 316.193(6)(b), F.S.

<sup>4</sup> s. 316.193(6)(c), F.S.

and directs them to the private sector. The private sector may charge any amount, ranging from a \$50 license-tag removal, to a \$100 car boot, to a \$300 to \$400 towing and storage charge. Because the offender may be unaware of the specific legal requirements, whether he or she pays \$50 or \$400 may depend simply on which private entity he or she contacts for service.

The current statute does not levy any fee against the offender related to the impoundment or immobilization. The costs of vehicle storage or expenses related to immobilization are not specified by statute, leaving rates to be determined by the impounding or immobilization agency.<sup>5</sup>

The court can dismiss an order of impoundment or immobilization in specified circumstances. If a defendant can prove that the vehicle was stolen at the time of the offense (e.g., a police report indicating that the vehicle was stolen), or evidence that the vehicle was not owned by the defendant (for example, proof that the vehicle was recent purchased by the defendant), the court must dismiss the order of impoundment.<sup>6</sup> If the defendant cannot present a police report indicating the vehicle was stolen, he or she may still request an evidentiary hearing to dismiss the order of impoundment.<sup>7</sup> If the court finds that the family of the owner of the vehicle has no other private or public means of transportation, the court "shall" dismiss the order of impoundment.<sup>8</sup> The court "may" dismiss the order of impoundment of any vehicles that are owned by the defendant but that are operated solely by the employees of the defendant or any business owned by the defendant.<sup>9</sup>

The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant and must occur concurrently with the driver's license revocation imposed under s. 322.28(2)(a), F.S.

Current law does not provide standards for impoundment or immobilization agencies or their personnel. Neither does the law provide definitions for "impoundment," "immobilization," or related forms of these words. Industry representatives have stated that there are currently numerous ways in which a vehicle may be "immobilized," whether by physically blocking the steering wheel, placing a boot on the vehicle, or even simply removing the license tag from the vehicle (rendering the vehicle legally inoperable on roads and highways, but still physically operable).

### Proposed Changes

HB 1307 specifies tiered fees for the mandatory impoundment and immobilization requirements of s. 316.193(6)(a) – (c), F.S., as follows:

- For a first conviction for DUI (currently requiring a 10-day impoundment or immobilization), the offender must pay a fee of \$200 per vehicle;
- For a second conviction for DUI (currently requiring a 30-day impoundment or immobilization), the offender must pay a fee of \$300 per vehicle;
- For a third or subsequent conviction for DUI (currently requiring a 90-day impoundment or immobilization), the offender must pay a fee of \$400 per vehicle.

The bill indexes these fees to the Consumer Price Index (CPI), compiled by the United States Department of Labor. In future years, an offender will pay the stated fees plus an "annual percentage increase" based on the CPI.

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<sup>5</sup> In a recent report on license suspension, the Office of Program Policy and Government Accountability states that "impoundment reportedly costs up to \$1,000 for a 30-day period in California... Ohio reports a cost of \$30 for steering wheel locks and \$200 for tire boots, which are paid by the offender." *Several Alternatives Could Be Used to Reduce Increasing Imprisonment of Persons Driving with Suspended Licenses*, Report No. 08-12, March 2008.

<sup>6</sup> s. 316.193(6)(e), F.S.

<sup>7</sup> s. 316.193(6)(f), F.S.

<sup>8</sup> s. 316.193(6)(g), F.S.

<sup>9</sup> s. 316.193(6)(h), F.S.

The bill requires the court's notice of impoundment or immobilization to contain the name and telephone number of the entity in charge of the impoundment or immobilization, and requires the offender to pay the cost of notification and administrative costs of \$50 to that entity.

HB 1307 establishes professional criteria for businesses that impound or immobilize vehicles pursuant to s. 316.193, F.S. In judicial circuits where personnel of the court or Sheriff's office are not responsible for impounding or immobilizing vehicles under s. 316.193, F.S., the bill requires the private entities and/or individuals responsible for these duties to:

- Have a class "R" license issued by the Department of Agriculture and Consumer Services, pursuant to part IV of chapter 493, F.S.,<sup>10</sup>
- Have at least one year of verifiable experience in impounding or immobilizing vehicles,
- Have a storage facility licensed by the local government in the name of the person who performs the impoundment or immobilization, and meet the following size requirements:
  - For judicial circuits with more than 1,000 annual DUI convictions, the facility must be at least 10,000 square feet, or
  - For judicial circuits with less than 1,000 annual DUI convictions, the facility must be at least 5,000 square feet,
- Maintain accurate and complete records of all impoundments or immobilizations for at least 3 years.

In addition to these requirements, the person performing the impoundment or immobilization must not have been convicted of any felony or of any DUI or boating-under-the-influence charge.

The bill provides that a violation of these professional standards is a misdemeanor offense, punishable as provided in s. 775.082 or 775.083, F.S. The bill grants standing to bring a civil action for violations of these standards to any person aggrieved by a person's violation of the standards. The action may include costs and attorney's fees as well as any other remedy in law or equity.

HB 1307 defines "impoundment," "impounding," and "impound," as the act of storing a vehicle at a storage facility where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.

The bill also defines "immobilization," "immobilizing," and "immobile," as the act of installing a vehicle antitheft device on the steering wheel of a vehicle to prevent any person from operating the vehicle. This definition appears to limit the methods by which a government or a private entity may immobilize a vehicle. Local governments and county clerks that currently hold the license plate and registration of an offender's vehicle will be required to use the steering-wheel-lock method of immobilization. Similarly, those public or private entities which rely on boots to immobilize a vehicle by clamping one of its wheels will also have to use the steering-wheel-lock method of immobilization.

## B. SECTION DIRECTORY:

**Section 1** Amends s. 316.193, F.S., providing that, in addition to current penalties, for a first conviction for driving under the influence of alcohol or a controlled substance, an offender pay an impoundment or immobilization fee of \$200 per vehicle; providing that for a second conviction for driving under the influence of alcohol or a controlled substance, an offender pay an impoundment or immobilization fee of \$300 per vehicle; providing that for a third or subsequent conviction for driving under the influence of alcohol or a controlled substance, an offender pay an impoundment or immobilization fee of \$400 per vehicle; requiring the court to include the name and address of the impound or immobilization agency in the order impounding or immobilizing the vehicle;

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<sup>10</sup> A Class 'R' license is currently required for any "person, firm, company, partnership, or corporation which engages in business as a recovery agency." [s. 493.6401, F.S.] At least one employee of a Class 'R' entity must have a Class 'E' license, which in turn requires "at least one year of lawfully gained, verifiable, full-time experience" in repossessing motor vehicles, boats, aircraft, ATVs, or industrial equipment. [s. 493.6403, F.S.]

requiring the person whose vehicle is impounded or immobilized to pay an administration fee to the impoundment agency; establishing professional criteria for persons who are engaged in the business of impounding or immobilizing vehicles in judicial circuits where personnel of the court or sheriff do not impound or immobilize vehicles; providing that a person commits a misdemeanor of the first degree if he or she violates the provisions to qualify a person to impound or immobilize a vehicle; authorizing a person to initiate a civil suit against a person who fails to comply with requirements for qualifying to impound or immobilize a vehicle; providing for attorney's fees and costs; defining several terms.

**Section 2** Provides an Effective Date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

If a local government agency is engaged in impoundment or immobilization under judicial order pursuant to s. 316.193, F.S., the local government agency's fees capped by the bill may be more or less than those currently assessed against the offender. The local agency will also receive an additional payment of \$50 for administrative costs for each impoundment or immobilization.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DUI offenders whose vehicles are subject to impoundment or immobilization will face significant additional fees under HB 1307. All impoundment or immobilization actions require payment of \$50 for administrative costs, and impoundments or immobilizations under s. 316.193, F.S., require payment of an additional \$200 - \$400 fee.

Entities performing DUI-related impoundment or immobilization services pursuant to s. 316.193, F.S., will receive a fee ranging from \$250 to \$450, depending on the length of the immobilization or impoundment. Current statute does not provide a standard fee; because entities currently set their own rates, it is unclear to what extent the bill impacts these entities.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not explicitly state to whom the \$200, \$300, and \$400 fees for 10-day, 30-day, and 90-days immobilizations are to be paid. While it appears the fee should be paid to the agency performing the immobilization or impoundment, it could be advisable to state this explicitly and to make any distinctions (if needed) between public and private entities performing the immobilization or impoundment. A similar clarification could be made in the bill's changes to s. 316.193(6)(i), F.S., the \$50 administrative cost payable to "the impoundment agency."

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**