

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1307 Impoundment or Immobilization of Vehicles
SPONSOR(S): Bovo, and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1588

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	9 Y, 8 N, As CS	Brown	Miller
2)	Public Safety & Domestic Security Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)	Finance & Tax Council			
5)				

SUMMARY ANALYSIS

CS/HB 1307 amends provisions of s. 316.193, F.S., relating to motor vehicle immobilization subsequent to a DUI conviction. Current law requires vehicles to be immobilized or impounded for specified periods, after a first or subsequent DUI conviction. The bill mandates maximum allowable fees for such immobilizations. It does not provide a maximum allowable fee for impoundment. If an offender chooses, or is required by the court, to immobilize his or her vehicle:

- For a first conviction for DUI, the offender must pay a fee of not more than \$200 per vehicle for the required 10 day period;
- For a second conviction for DUI, the offender must pay a fee of not more than \$300 per vehicle for the required 30 day period;
- For a third or subsequent conviction for DUI, the offender must pay a fee of not more than \$400 per vehicle for the required 90 day period;

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

CS/HB 1307 requires that upon issuing an order of impoundment or immobilization, the court order must include the name and address of all "approved vendors." The bill also requires offenders to pay a \$50 administrative cost to the "impoundment agency."

The bill provides that when motor vehicle immobilizations are not performed by a local government agency, private businesses directed by the court to perform these services must meet minimum criteria. CS/HB 1307 requires these entities to have at least one year's experience in immobilizing vehicles, and requires that the individuals performing the 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.¹ 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.²
- 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.³
- 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.⁴

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,

¹ s. 316.193(6), F.S.

² s. 316.193(6)(a), F.S.

³ s. 316.193(6)(b), F.S.

⁴ 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.⁵

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.⁶ 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.⁷ 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.⁸ 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.⁹

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

CS/HB 1307 specifies maximum allowable fees, when a court orders immobilization of a vehicle under 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 not more than \$200 per vehicle;
- For a second conviction for DUI (currently requiring a 30-day impoundment or immobilization), the offender must pay a fee of not more than \$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 not more than \$400 per vehicle.

The bill does not provide maximum allowable fees for impoundment.

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

⁵ 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.

⁶ s. 316.193(6)(e), F.S.

⁷ s. 316.193(6)(f), F.S.

⁸ s. 316.193(6)(g), F.S.

⁹ s. 316.193(6)(h), F.S.

The bill requires a court's notice of impoundment or immobilization to include the name and address of all "approved vendors." The bill also requires offenders to pay a \$50 administrative cost to the "impoundment agency."

CS/HB 1307 establishes professional criteria for businesses that 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 immobilizing vehicles under s. 316.193, F.S., the bill requires the private entities and/or individuals responsible for these duties to:

- Have at least one year of verifiable experience in immobilizing vehicles,
- Maintain accurate and complete records of all impoundments or immobilizations for at least 3 years, and
- The person performing the 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 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, the act of placing a tire lock or wheel clamp on the vehicle, or taking physical possession of the license tag and vehicle registration rendering the vehicle legally inoperable.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.193, F.S., providing that for a first conviction for driving under the influence of alcohol or a controlled substance, in addition to other penalties imposed by the court, the court must order that the person's vehicle be impounded or immobilized for 10 days and that the person pay an immobilization fee of not more than \$200 per vehicle; providing that for a second conviction for driving under the influence of alcohol or a controlled substance, the court must order that the person's vehicle be impounded or immobilized for 30 days and that the offender pay an immobilization fee of not more than \$300 per vehicle; providing that for a third or subsequent conviction for driving under the influence of alcohol or a controlled substance, the court must order that the person's vehicle be impounded or immobilized for 90 days and that the offender pay an immobilization fee of not more than \$400 per vehicle; requiring the court to include the name and address of approved vendors in the order impounding or immobilizing the vehicle; 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 immobilizing vehicles in judicial circuits where personnel of the court or sheriff do not 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 immobilize a vehicle; authorizing a person to initiate a civil suit against a person who fails to comply with requirements for qualifying to immobilize a vehicle; providing for attorney's fees and costs; defining the terms "immobilization," "immobilize," and "immobilizing," and "impound," "impounding," and "impoundment".

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 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 immobilization.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DUI offenders whose vehicles are subject to immobilization could face significant additional fees under CS/HB 1307. All immobilization actions require payment of \$50 for administrative costs, and immobilizations under s. 316.193, F.S., require payment of an additional fee, up to an additional \$200 - \$400, depending on the duration of the immobilization.

Entities performing DUI-related immobilization services pursuant to s. 316.193, F.S., will receive a fee up to \$250 to \$450, depending on the length of the immobilization. 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 fees for immobilization 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., which requires a \$50 administrative charge payable to “the impoundment agency.”

CS/HB 1307 requires the court, on its order of impoundment or immobilization, to notify offenders of all “approved vendors.” The bill does not provide criteria for such approval, and it is unclear by what process vendors may become approved.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2009, the Roads, Bridges, and Ports Policy Committee adopted two amendments and an amendment to one of the amendments, and reported the bill favorably.

The first amendment:

- removed portions of the bill regarding required fees for motor vehicle impoundment (as opposed to immobilization),
- inserted a requirement that the court notify offenders of all “approved vendors,” and
- removed certain professional standards required of private impoundment and immobilization entities performing work pursuant to s. 316.193(6), F.S.

An amendment to the first amendment modified the \$200, \$300, and \$400 fee requirements to provide that the fee may be “not more than” those amounts, allowing public or private entities to charge amounts less than the maximum.

The second amendment expanded the definition of immobilization to include not just steering-wheel-locks, but also wheel clamps and temporary surrender of a motor vehicle’s tag and registration.