

1 A bill to be entitled
2 An act relating to the impoundment or immobilization of
3 vehicles; amending s. 316.193, F.S.; providing that for a
4 first conviction for driving under the influence of
5 alcohol or a controlled substance, in addition to other
6 penalties imposed by the court, the court must order that
7 the person's vehicle be impounded or immobilized for 10
8 days and that the person pay an impoundment or
9 immobilization fee of \$200 per vehicle; providing that for
10 a second conviction for driving under the influence of
11 alcohol or a controlled substance, the court must order
12 that the person's vehicle be impounded or immobilized for
13 30 days and that the offender pay an impoundment or
14 immobilization fee of \$300 per vehicle; providing that for
15 a third or subsequent conviction for driving under the
16 influence of alcohol or a controlled substance, the court
17 must order that the person's vehicle be impounded or
18 immobilized for 90 days and that the offender pay an
19 impoundment or immobilization fee of \$400 per vehicle;
20 requiring the court to include the name and address of the
21 impound or immobilization agency in the order impounding
22 or immobilizing the vehicle; requiring the person whose
23 vehicle is impounded or immobilized to pay an
24 administration fee to the impoundment agency; establishing
25 professional criteria for persons who are engaged in the
26 business of impounding or immobilizing vehicles in
27 judicial circuits where personnel of the court or sheriff
28 do not impound or immobilize vehicles; providing that a

29 person commits a misdemeanor of the first degree if he or
 30 she violates the provisions to qualify a person to impound
 31 or immobilize a vehicle; authorizing a person to initiate
 32 a civil suit against a person who fails to comply with
 33 requirements for qualifying to impound or immobilize a
 34 vehicle; providing for attorney's fees and costs; defining
 35 the terms "immobilization," "immobilize," and
 36 "immobilizing," and "impound," "impounding," and
 37 "impoundment"; providing an effective date.

38

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

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41 Section 1. Paragraphs (a), (b), (c), (d), and (i) of
 42 subsection (6) of section 316.193, Florida Statutes, are
 43 amended, and subsections (13) and (14) are added to that
 44 section, to read:

45 316.193 Driving under the influence; penalties.--

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

49 (a) For the first conviction, the court shall place the
 50 defendant on probation for a period not to exceed 1 year and, as
 51 a condition of such probation, shall order the defendant to
 52 participate in public service or a community work project for a
 53 minimum of 50 hours; or the court may order instead, that any
 54 defendant pay an additional fine of \$10 for each hour of public
 55 service or community work otherwise required, if, after
 56 consideration of the residence or location of the defendant at

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57 | the time public service or community work is required, payment
58 | of the fine is in the best interests of the state. However, the
59 | total period of probation and incarceration may not exceed 1
60 | year. The court must also, as a condition of probation, order
61 | the impoundment or immobilization of the vehicle that was
62 | operated by or in the actual control of the defendant or any one
63 | vehicle registered in the defendant's name at the time of
64 | impoundment or immobilization, for a period of 10 days or for
65 | the unexpired term of any lease or rental agreement that expires
66 | within 10 days. The fee for a 10-day period of impoundment or
67 | immobilization shall be \$200, plus an annual percentage increase
68 | based on the Annual Consumer Price Index compiled by the United
69 | States Department of Labor, beginning with the Annual Consumer
70 | Price Index announced by the United States Department of Labor
71 | for 2010. The impoundment or immobilization must not occur
72 | concurrently with the incarceration of the defendant. The
73 | impoundment or immobilization order may be dismissed in
74 | accordance with paragraph (e), paragraph (f), paragraph (g), or
75 | paragraph (h).

76 | (b) For the second conviction for an offense that occurs
77 | within a period of 5 years after the date of a prior conviction
78 | for violation of this section, the court shall order
79 | imprisonment for not less than 10 days. The court must also, as
80 | a condition of probation, order the impoundment or
81 | immobilization of all vehicles owned by the defendant at the
82 | time of impoundment or immobilization, for a period of 30 days
83 | or for the unexpired term of any lease or rental agreement that
84 | expires within 30 days. The fee for a 30-day period of

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85 impoundment or immobilization shall be \$300 per vehicle, plus an
86 annual percentage increase based on the Annual Consumer Price
87 Index compiled by the United States Department of Labor,
88 beginning with the Annual Consumer Price Index announced by the
89 United States Department of Labor for 2010. The impoundment or
90 immobilization must not occur concurrently with the
91 incarceration of the defendant and must occur concurrently with
92 the driver's license revocation imposed under s. 322.28(2)(a)2.
93 The impoundment or immobilization order may be dismissed in
94 accordance with paragraph (e), paragraph (f), paragraph (g), or
95 paragraph (h). At least 48 hours of confinement must be
96 consecutive.

97 (c) For the third or subsequent conviction for an offense
98 that occurs within a period of 10 years after the date of a
99 prior conviction for violation of this section, the court shall
100 order imprisonment for not less than 30 days. The court must
101 also, as a condition of probation, order the impoundment or
102 immobilization of all vehicles owned by the defendant at the
103 time of impoundment or immobilization, for a period of 90 days
104 or for the unexpired term of any lease or rental agreement that
105 expires within 90 days. The fee for a 90-day period of
106 impoundment or immobilization shall be \$400 per vehicle, plus an
107 annual percentage increase based on the Annual Consumer Price
108 Index compiled by the United States Department of Labor,
109 beginning with the Annual Consumer Price Index announced by the
110 United States Department of Labor for 2010. The impoundment or
111 immobilization must not occur concurrently with the
112 incarceration of the defendant and must occur concurrently with

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113 the driver's license revocation imposed under s. 322.28(2)(a)3.
114 The impoundment or immobilization order may be dismissed in
115 accordance with paragraph (e), paragraph (f), paragraph (g), or
116 paragraph (h). At least 48 hours of confinement must be
117 consecutive.

118 (d) The court must at the time of sentencing the defendant
119 issue an order for the impoundment or immobilization of a
120 vehicle which must include the name and telephone number of the
121 impoundment or immobilization agency. Within 7 business days
122 after the date that the court issues the order of impoundment or
123 immobilization, the clerk of the court must send notice by
124 certified mail, return receipt requested, to the registered
125 owner of each vehicle, if the registered owner is a person other
126 than the defendant, and to each person of record claiming a lien
127 against the vehicle.

128 (i) All costs and fees for the impoundment or
129 immobilization, including the cost of notification and a \$50
130 administrative cost payable to the impoundment agency, must be
131 paid by the owner of the vehicle or, if the vehicle is leased or
132 rented, by the person leasing or renting the vehicle, unless the
133 impoundment or immobilization order is dismissed. All provisions
134 of s. 713.78 shall apply.

135
136 For the purposes of this section, any conviction for a violation
137 of s. 327.35; a previous conviction for the violation of former
138 s. 316.1931, former s. 860.01, or former s. 316.028; or a
139 previous conviction outside this state for driving under the
140 influence, driving while intoxicated, driving with an unlawful

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141 blood-alcohol level, driving with an unlawful breath-alcohol
142 level, or any other similar alcohol-related or drug-related
143 traffic offense, is also considered a previous conviction for
144 violation of this section. However, in satisfaction of the fine
145 imposed pursuant to this section, the court may, upon a finding
146 that the defendant is financially unable to pay either all or
147 part of the fine, order that the defendant participate for a
148 specified additional period of time in public service or a
149 community work project in lieu of payment of that portion of the
150 fine which the court determines the defendant is unable to pay.
151 In determining such additional sentence, the court shall
152 consider the amount of the unpaid portion of the fine and the
153 reasonable value of the services to be ordered; however, the
154 court may not compute the reasonable value of services at a rate
155 less than the federal minimum wage at the time of sentencing.

156 (13) If personnel of the circuit court or the sheriff do
157 not impound or immobilize vehicles, the person responsible for
158 impounding or immobilizing vehicles in that judicial circuit is
159 subject to strict compliance with the following conditions and
160 restrictions:

161 (a) Any person engaged in the business of impounding or
162 immobilizing vehicles shall:

163 1. Have a class "R" license issued pursuant to part IV of
164 chapter 493;

165 2. Have at least 1 year of verifiable experience in
166 immobilizing or impounding vehicles;

167 3. Have a storage facility within the judicial circuit of
168 not less than 10,000 square feet. However, if a judicial circuit

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169 has fewer than 1,000 convictions for driving under the influence
170 based on the Florida Uniform Traffic Citations Statistic Report,
171 beginning with the 2008 Florida Uniform Traffic Citations
172 Statistic Report, the storage facility must be not less than
173 5,000 square feet. The storage facility must be licensed in the
174 name of the person who impounds or immobilizes vehicles by the
175 local government where the storage facility is located; and

176 4. Maintain accurate and complete records of all payments
177 for the impoundment or immobilization, copies of all documents
178 pertaining to the court's order of impoundment or
179 immobilization, and any other documents relevant to each
180 impoundment or immobilization. These records must be maintained
181 by the impoundment or immobilization operator for at least 3
182 years.

183 (b) The individual who impounds or immobilizes a vehicle
184 must not have been convicted of any felony or of driving or
185 boating under the influence of alcohol or controlled substances.

186 (c) A person who violates paragraph (a) or paragraph (b)
187 commits a misdemeanor of the first degree, punishable as
188 provided in s. 775.082 or s. 775.083.

189 (d) Any person who is aggrieved by a person's violation of
190 paragraph (a) may bring a civil action against the person
191 seeking injunctive relief, actual damages, reasonable attorney's
192 fees and costs, and any other remedy available at law or in
193 equity.

194 (14) As used in this chapter, the terms:

195 (a) "Immobilization," "immobilizing," or "immobilize" mean
196 the act of installing a vehicle antitheft device on the steering

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197 wheel of a vehicle to prevent any person from operating the
198 vehicle.

199 (b) "Impoundment," "impounding," or "impound" means the
200 act of storing a vehicle at a storage facility where the person
201 impounding the vehicle exercises control, supervision, and
202 responsibility over the vehicle.

203 Section 2. This act shall take effect July 1, 2009.