

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 immobilization fee of no
9 more than \$200; providing that for a second conviction for
10 driving under the influence of alcohol or a controlled
11 substance, the court must order that the person's vehicle
12 be impounded or immobilized for 30 days and that the
13 offender pay an immobilization fee of no more than \$300
14 per vehicle; providing that for a third or subsequent
15 conviction for driving under the influence of alcohol or a
16 controlled substance, the court must order that the
17 person's vehicle be impounded or immobilized for 90 days
18 and that the offender pay an immobilization fee of no more
19 than \$400 per vehicle; requiring the court to include the
20 name and address of approved vendors in the order
21 impounding or immobilizing the vehicle; requiring the
22 person whose vehicle is impounded or immobilized to pay an
23 administration fee to the impoundment agency; establishing
24 professional criteria for persons who are engaged in the
25 business of immobilizing vehicles in judicial circuits
26 where personnel of the court or sheriff do not immobilize
27 vehicles; providing that a person commits a misdemeanor of
28 the first degree if he or she violates the provisions to

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29 | qualify a person to immobilize a vehicle; authorizing a
30 | person to initiate a civil suit against a person who fails
31 | to comply with requirements for qualifying to immobilize a
32 | vehicle; providing for attorney's fees and costs; defining
33 | the terms "immobilization," "immobilize," and
34 | "immobilizing," and "impound," "impounding," and
35 | "impoundment"; providing an effective date.
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37 | Be It Enacted by the Legislature of the State of Florida:
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39 | Section 1. Paragraphs (a), (b), (c), (d), and (i) of
40 | subsection (6) of section 316.193, Florida Statutes, are
41 | amended, and subsections (13) and (14) are added to that
42 | section, to read:

43 | 316.193 Driving under the influence; penalties.--

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

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

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57 total period of probation and incarceration may not exceed 1
58 year. The court must also, as a condition of probation, order
59 the impoundment or immobilization of the vehicle that was
60 operated by or in the actual control of the defendant or any one
61 vehicle registered in the defendant's name at the time of
62 impoundment or immobilization, for a period of 10 days or for
63 the unexpired term of any lease or rental agreement that expires
64 within 10 days. The fee for a 10-day period of immobilization
65 shall be no more than \$200, plus an annual percentage increase
66 based on the Annual Consumer Price Index compiled by the United
67 States Department of Labor, beginning with the Annual Consumer
68 Price Index announced by the United States Department of Labor
69 for 2010. The impoundment or immobilization must not occur
70 concurrently with the incarceration of the defendant. The
71 impoundment or immobilization order may be dismissed in
72 accordance with paragraph (e), paragraph (f), paragraph (g), or
73 paragraph (h).

74 (b) For the second conviction for an offense that occurs
75 within a period of 5 years after the date of a prior conviction
76 for violation of this section, the court shall order
77 imprisonment for not less than 10 days. The court must also, as
78 a condition of probation, order the impoundment or
79 immobilization of all vehicles owned by the defendant at the
80 time of impoundment or immobilization, for a period of 30 days
81 or for the unexpired term of any lease or rental agreement that
82 expires within 30 days. The fee for a 30-day period of
83 immobilization shall be no more than \$300 per vehicle, plus an
84 annual percentage increase based on the Annual Consumer Price

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

95 (c) For the third or subsequent conviction for an offense
96 that occurs within a period of 10 years after the date of a
97 prior conviction for violation of this section, the court shall
98 order imprisonment for not less than 30 days. The court must
99 also, as a condition of probation, order the impoundment or
100 immobilization of all vehicles owned by the defendant at the
101 time of impoundment or immobilization, for a period of 90 days
102 or for the unexpired term of any lease or rental agreement that
103 expires within 90 days. The fee for a 90-day period of
104 immobilization shall be no more than \$400 per vehicle, plus an
105 annual percentage increase based on the Annual Consumer Price
106 Index compiled by the United States Department of Labor,
107 beginning with the Annual Consumer Price Index announced by the
108 United States Department of Labor for 2010. The impoundment or
109 immobilization must not occur concurrently with the
110 incarceration of the defendant and must occur concurrently with
111 the driver's license revocation imposed under s. 322.28(2)(a)3.
112 The impoundment or immobilization order may be dismissed in

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113 accordance with paragraph (e), paragraph (f), paragraph (g), or
114 paragraph (h). At least 48 hours of confinement must be
115 consecutive.

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

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

133
134 For the purposes of this section, any conviction for a violation
135 of s. 327.35; a previous conviction for the violation of former
136 s. 316.1931, former s. 860.01, or former s. 316.028; or a
137 previous conviction outside this state for driving under the
138 influence, driving while intoxicated, driving with an unlawful
139 blood-alcohol level, driving with an unlawful breath-alcohol
140 level, or any other similar alcohol-related or drug-related

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

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

158 (a) Any person engaged in the business of immobilizing
159 vehicles shall:

160 1. Have at least 1 year of verifiable experience in
161 immobilizing vehicles; and

162 2. Maintain accurate and complete records of all payments
163 for the immobilization, copies of all documents pertaining to
164 the court's order of impoundment or immobilization, and any
165 other documents relevant to each immobilization. These records
166 must be maintained by the immobilization operator for at least 3
167 years.

168 (b) The individual who immobilizes a vehicle must not have

169 been convicted of any felony or of driving or boating under the
170 influence of alcohol or controlled substances.

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

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

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

180 (a) "Immobilization," "immobilizing," or "immobilize" mean
181 the act of installing a vehicle antitheft device on the steering
182 wheel of a vehicle, the act of placing a tire lock or wheel
183 clamp on a vehicle, or the act of taking physical possession of
184 the license tag and vehicle registration rendering a vehicle
185 legally inoperable to prevent any person from operating the
186 vehicle.

187 (b) "Impoundment," "impounding," or "impound" means the
188 act of storing a vehicle at a storage facility where the person
189 impounding the vehicle exercises control, supervision, and
190 responsibility over the vehicle.

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