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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/14/2009 | . | |
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The Committee on Transportation (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (d) and (i) of subsection (6) of section 316.193, Florida Statutes, are amended, and subsections (13) and (14) are added to that section, to read:

316.193 Driving under the influence; penalties.—

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



131834

12 (d) The court must at the time of sentencing the defendant
13 issue an order for the impoundment or immobilization of a
14 vehicle. The order of impoundment or immobilization must include
15 the name and telephone numbers of all immobilization agencies
16 meeting all of the criteria of subsection (13). Within 7
17 business days after the date that the court issues the order of
18 impoundment or immobilization, the clerk of the court must send
19 notice by certified mail, return receipt requested, to the
20 registered owner of each vehicle, if the registered owner is a
21 person other than the defendant, and to each person of record
22 claiming a lien against the vehicle.

23 (i) All costs and fees for the impoundment or
24 immobilization, including the cost of notification, must be paid
25 by the owner of the vehicle or, if the vehicle is leased or
26 rented, by the person leasing or renting the vehicle, directly
27 to the person impounding or immobilizing the vehicle unless the
28 impoundment or immobilization order is dismissed. All provisions
29 of s. 713.78 shall apply.

30
31 For the purposes of this section, any conviction for a violation
32 of s. 327.35; a previous conviction for the violation of former
33 s. 316.1931, former s. 860.01, or former s. 316.028; or a
34 previous conviction outside this state for driving under the
35 influence, driving while intoxicated, driving with an unlawful
36 blood-alcohol level, driving with an unlawful breath-alcohol
37 level, or any other similar alcohol-related or drug-related
38 traffic offense, is also considered a previous conviction for
39 violation of this section. However, in satisfaction of the fine
40 imposed pursuant to this section, the court may, upon a finding



131834

41 that the defendant is financially unable to pay either all or
42 part of the fine, order that the defendant participate for a
43 specified additional period of time in public service or a
44 community work project in lieu of payment of that portion of the
45 fine which the court determines the defendant is unable to pay.
46 In determining such additional sentence, the court shall
47 consider the amount of the unpaid portion of the fine and the
48 reasonable value of the services to be ordered; however, the
49 court may not compute the reasonable value of services at a rate
50 less than the federal minimum wage at the time of sentencing.

51 (13) If personnel of the circuit court or the sheriff do
52 not immobilize vehicles, only immobilization agencies that meet
53 the criteria of this subsection shall immobilize vehicles in
54 that judicial circuit. The immobilization agency responsible for
55 immobilizing vehicles in that judicial circuit is subject to
56 strict compliance with all of the following criteria and
57 restrictions:

58 (a) Any immobilization agency engaged in the business of
59 immobilizing vehicles shall:

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

62 2. Have at least 3 years of verifiable experience in
63 immobilizing vehicles; and

64 3. Maintain accurate and complete records of all payments
65 for the immobilization, copies of all documents pertaining to
66 the court's order of impoundment or immobilization, and any
67 other documents relevant to each immobilization. These records
68 shall be maintained by the immobilization agency for at least 3
69 years.



131834

70 (b) The person who immobilizes a vehicle must never have
71 been convicted of any felony or of driving or boating under the
72 influence of alcohol or controlled substances.

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

76 (d) An immobilization agency that is aggrieved by a
77 person's violation of paragraph (a) or paragraph (b) may bring a
78 civil action against the person who violated paragraph (a) or
79 paragraph (b) seeking injunctive relief, damages, reasonable
80 attorney's fees and costs, and any other remedy available at law
81 or in equity as may be necessary to enforce this subsection.

82 (e) If, in any action to enforce this subsection, it is
83 proven that a person violated paragraph (a) or paragraph (b),
84 that proof conclusively establishes a clear legal right to
85 injunctive relief, that irreparable harm will be caused if an
86 injunction does not issue, that no adequate remedy at law
87 exists, and that public policy favors issuance of injunctive
88 relief.

89 (14) As used in this chapter, the term:

90 (a) "Immobilization," "immobilizing," or "immobilize" means
91 the act of installing a vehicle antitheft device on the steering
92 wheel of a vehicle pursuant to an order of impoundment or
93 immobilization under subsection (6) to prevent any person from
94 operating the vehicle.

95 (b) "Immobilization agency," or "immobilization agencies"
96 means any firm, company, agency, organization, partnership,
97 corporation, association, trust, or other business entity of any
98 kind which meets all of the criteria of subsection (13).



131834

99 (c) "Impoundment," "impounding," or "impound" means the act
100 of storing a vehicle at a storage facility pursuant to an order
101 of impoundment or immobilization under subsection (6) where the
102 person impounding the vehicle exercises control, supervision,
103 and responsibility over the vehicle.

104 (d) "Person" means any individual, firm, company, agency,
105 organization, partnership, corporation, association, trust, or
106 other business entity of any kind.

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

108
109 ===== T I T L E A M E N D M E N T =====

110 And the title is amended as follows:

111 Delete everything before the enacting clause
112 and insert:

113 A bill to be entitled
114 An act relating to the impoundment or immobilization
115 of vehicles; amending s. 316.193, F.S.; requiring the
116 court to include the name and address of
117 immobilization agencies that meet the requirements of
118 law in the order of impoundment or immobilization;
119 requiring the person whose vehicle is ordered to be
120 impounded or immobilized to pay the impoundment or
121 immobilization fees and costs directly to the person
122 impounding or immobilizing the vehicle; establishing
123 professional criteria for immobilization agencies
124 engaged in the business of immobilizing vehicles in
125 judicial circuits where personnel of the court or
126 sheriff do not immobilize vehicles; providing that it
127 is a misdemeanor of the first degree for a person to



131834

128 fail to comply with the requirements necessary to
129 immobilize a vehicle; authorizing a person to initiate
130 a civil suit against a person who fails to comply with
131 the requirements to immobilize a vehicle; providing
132 for attorney's fees and costs; defining terms;
133 providing an effective date.