

By Senator Altman

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

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

40
41 Be It Enacted by the Legislature of the State of Florida:

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

47 316.193 Driving under the influence; penalties.—

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

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

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

78 (b) For the second conviction for an offense that occurs
79 within a period of 5 years after the date of a prior conviction
80 for violation of this section, the court shall order
81 imprisonment for not less than 10 days. The court must also, as
82 a condition of probation, order the impoundment or
83 immobilization of all vehicles owned by the defendant at the
84 time of impoundment or immobilization, for a period of 30 days
85 or for the unexpired term of any lease or rental agreement that
86 expires within 30 days. The fee for a 30-day period of
87 impoundment or immobilization shall be \$300 per vehicle, plus an

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

99 (c) For the third or subsequent conviction for an offense
100 that occurs within a period of 10 years after the date of a
101 prior conviction for violation of this section, the court shall
102 order imprisonment for not less than 30 days. The court must
103 also, as a condition of probation, order the impoundment or
104 immobilization of all vehicles owned by the defendant at the
105 time of impoundment or immobilization, for a period of 90 days
106 or for the unexpired term of any lease or rental agreement that
107 expires within 90 days. The fee for a 90-day period of
108 impoundment or immobilization shall be \$400 per vehicle, plus an
109 annual percentage increase based on the Annual Consumer Price
110 Index compiled by the United States Department of Labor,
111 beginning with the Annual Consumer Price Index announced by the
112 United States Department of Labor for 2010. The impoundment or
113 immobilization must not occur concurrently with the
114 incarceration of the defendant and must occur concurrently with
115 the driver's license revocation imposed under s. 322.28(2)(a)3.
116 The impoundment or immobilization order may be dismissed in

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117 accordance with paragraph (e), paragraph (f), paragraph (g), or
118 paragraph (h). At least 48 hours of confinement must be
119 consecutive.

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

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

137
138 For the purposes of this section, any conviction for a violation
139 of s. 327.35; a previous conviction for the violation of former
140 s. 316.1931, former s. 860.01, or former s. 316.028; or a
141 previous conviction outside this state for driving under the
142 influence, driving while intoxicated, driving with an unlawful
143 blood-alcohol level, driving with an unlawful breath-alcohol
144 level, or any other similar alcohol-related or drug-related
145 traffic offense, is also considered a previous conviction for

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

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

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

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

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

169 3. Have a storage facility within the judicial circuit of
170 not less than 10,000 square feet. However, if a judicial circuit
171 has fewer than 1,000 convictions for driving under the influence
172 based on the Florida Uniform Traffic Citations Statistic Report,
173 beginning with the 2008 Florida Uniform Traffic Citations
174 Statistic Report, the storage facility must be not less than

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175 5,000 square feet. The storage facility must be licensed in the
176 name of the person who impounds or immobilizes vehicles by the
177 local government where the storage facility is located; and

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

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

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

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

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

197 (a) "Immobilization," "immobilizing," or "immobilize" mean
198 the act of installing a vehicle antitheft device on the steering
199 wheel of a vehicle to prevent any person from operating the
200 vehicle.

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

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204 responsibility over the vehicle.

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