

By the Committee on Transportation; and Senator Altman

596-04984-09

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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.; requiring the
4 court to include the name and address of
5 immobilization agencies that meet the requirements of
6 law in the order of impoundment or immobilization;
7 requiring the person whose vehicle is ordered to be
8 impounded or immobilized to pay the impoundment or
9 immobilization fees and costs directly to the person
10 impounding or immobilizing the vehicle; establishing
11 professional criteria for immobilization agencies
12 engaged in the business of immobilizing vehicles in
13 judicial circuits where personnel of the court or
14 sheriff do not immobilize vehicles; providing that it
15 is a misdemeanor of the first degree for a person to
16 fail to comply with the requirements necessary to
17 immobilize a vehicle; authorizing a person to initiate
18 a civil suit against a person who fails to comply with
19 the requirements to immobilize a vehicle; providing
20 for attorney's fees and costs; defining terms;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:
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25 Section 1. Paragraphs (d) and (i) of subsection (6) of
26 section 316.193, Florida Statutes, are amended, and subsections
27 (13) and (14) are added to that section, to read:

28 316.193 Driving under the influence; penalties.—

29 (6) With respect to any person convicted of a violation of

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30 subsection (1), regardless of any penalty imposed pursuant to
31 subsection (2), subsection (3), or subsection (4):

32 (d) The court must at the time of sentencing the defendant
33 issue an order for the impoundment or immobilization of a
34 vehicle. The order of impoundment or immobilization must include
35 the name and telephone numbers of all immobilization agencies
36 meeting all of the criteria of subsection (13). Within 7
37 business days after the date that the court issues the order of
38 impoundment or immobilization, the clerk of the court must send
39 notice by certified mail, return receipt requested, to the
40 registered owner of each vehicle, if the registered owner is a
41 person other than the defendant, and to each person of record
42 claiming a lien against the vehicle.

43 (i) All costs and fees for the impoundment or
44 immobilization, including the cost of notification, must be paid
45 by the owner of the vehicle or, if the vehicle is leased or
46 rented, by the person leasing or renting the vehicle, directly
47 to the person impounding or immobilizing the vehicle unless the
48 impoundment or immobilization order is dismissed. All provisions
49 of s. 713.78 shall apply.

50
51 For the purposes of this section, any conviction for a violation
52 of s. 327.35; a previous conviction for the violation of former
53 s. 316.1931, former s. 860.01, or former s. 316.028; or a
54 previous conviction outside this state for driving under the
55 influence, driving while intoxicated, driving with an unlawful
56 blood-alcohol level, driving with an unlawful breath-alcohol
57 level, or any other similar alcohol-related or drug-related
58 traffic offense, is also considered a previous conviction for

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59 violation of this section. However, in satisfaction of the fine
60 imposed pursuant to this section, the court may, upon a finding
61 that the defendant is financially unable to pay either all or
62 part of the fine, order that the defendant participate for a
63 specified additional period of time in public service or a
64 community work project in lieu of payment of that portion of the
65 fine which the court determines the defendant is unable to pay.
66 In determining such additional sentence, the court shall
67 consider the amount of the unpaid portion of the fine and the
68 reasonable value of the services to be ordered; however, the
69 court may not compute the reasonable value of services at a rate
70 less than the federal minimum wage at the time of sentencing.

71 (13) If personnel of the circuit court or the sheriff do
72 not immobilize vehicles, only immobilization agencies that meet
73 the criteria of this subsection shall immobilize vehicles in
74 that judicial circuit. The immobilization agency responsible for
75 immobilizing vehicles in that judicial circuit is subject to
76 strict compliance with all of the following criteria and
77 restrictions:

78 (a) Any immobilization agency engaged in the business of
79 immobilizing vehicles shall:

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

82 2. Have at least 3 years of verifiable experience in
83 immobilizing vehicles; and

84 3. Maintain accurate and complete records of all payments
85 for the immobilization, copies of all documents pertaining to
86 the court's order of impoundment or immobilization, and any
87 other documents relevant to each immobilization. These records

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88 shall be maintained by the immobilization agency for at least 3
89 years.

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

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

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

102 (e) If, in any action to enforce this subsection, it is
103 proven that a person violated paragraph (a) or paragraph (b),
104 that proof conclusively establishes a clear legal right to
105 injunctive relief, that irreparable harm will be caused if an
106 injunction does not issue, that no adequate remedy at law
107 exists, and that public policy favors issuance of injunctive
108 relief.

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

110 (a) "Immobilization," "immobilizing," or "immobilize" means
111 the act of installing a vehicle antitheft device on the steering
112 wheel of a vehicle pursuant to an order of impoundment or
113 immobilization under subsection (6) to prevent any person from
114 operating the vehicle.

115 (b) "Immobilization agency," or "immobilization agencies"
116 means any firm, company, agency, organization, partnership,

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117 corporation, association, trust, or other business entity of any
118 kind which meets all of the criteria of subsection (13).

119 (c) "Impoundment," "impounding," or "impound" means the act
120 of storing a vehicle at a storage facility pursuant to an order
121 of impoundment or immobilization under subsection (6) where the
122 person impounding the vehicle exercises control, supervision,
123 and responsibility over the vehicle.

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

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