

By Senator Gelber

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1 A bill to be entitled
2 An act relating to highway safety; creating the
3 "Deputy Michael Callin, Michael Haligowski, and Deputy
4 Ryan C. Seguin Memorial Traffic Safety Act"; amending
5 s. 322.251, F.S.; requiring impoundment and
6 immobilization information to be included with notice
7 to a person whose driver license or driving privilege
8 is being canceled, suspended, revoked, or
9 disqualified; amending s. 322.34, F.S.; requiring
10 impoundment and immobilization information to be
11 included with notice to a person whose driver license
12 or driving privilege is being canceled, suspended,
13 revoked, or disqualified; requiring a law enforcement
14 officer who determines that a motor vehicle is being
15 driven by or is under the actual physical control of a
16 person whose driver license or driving privilege is
17 canceled, suspended, revoked, or disqualified to
18 impound or immobilize the motor vehicle; providing for
19 notice to the driver; providing for notice to
20 registered owners of the motor vehicle and
21 lienholders; providing for exceptions; providing for
22 the Department of Highway Safety and Motor Vehicles to
23 commence impoundment or immobilization at the scene
24 where the motor vehicle was immobilized; providing
25 procedures; providing for release of the motor
26 vehicle; requiring department records to contain
27 impoundment and immobilization information; providing
28 for a lien under specified provisions for charges
29 accrued for recovery, towing, or storage services;

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30 requiring notice to the owner, insurance company
31 insuring the motor vehicle, and lienholders of record;
32 providing for the owner's right to a hearing;
33 providing for sale of the motor vehicle free of liens
34 after a certain timeframe; providing for distribution
35 of proceeds from such sale; providing for certain fees
36 and distribution of moneys collected; requiring the
37 department to authorize release of the motor vehicle
38 under certain circumstances; prohibiting operation of
39 an immobilized motor vehicle; providing for an
40 immobilized motor vehicle that is found being operated
41 upon any street or highway in this state before
42 release from immobilization to be seized and subject
43 to forfeit; authorizing the department to contract
44 with vendors; directing the department to inform the
45 person whose driver license or driving privilege has
46 been canceled, suspended, revoked, or disqualified
47 that any motor vehicle driven by or under the actual
48 physical control of that person is subject to
49 impoundment and immobilization; authorizing the
50 department to adopt rules; providing penalties for
51 knowingly aiding a person whose driver license or
52 driving privilege is canceled, suspended, revoked, or
53 disqualified by providing a motor vehicle or
54 authorizing use of a motor vehicle; directing the
55 department to inform drivers whose license or driving
56 privilege has been canceled, suspended, revoked, or
57 disqualified and the motoring public of the provisions
58 for impoundment and immobilization of motor vehicles

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59 under this act; providing effective dates.

60
61 Be It Enacted by the Legislature of the State of Florida:

62
63 Section 1. This act may be cited as the "Deputy Michael
64 Callin, Michael Haligowski, and Deputy Ryan C. Seguin Memorial
65 Traffic Safety Act."

66 Section 2. Subsection (1) of section 322.251, Florida
67 Statutes, is amended to read:

68 322.251 Notice of cancellation, suspension, revocation, or
69 disqualification of license.—

70 (1) All orders of cancellation, suspension, revocation, or
71 disqualification issued under the provisions of this chapter,
72 chapter 318, chapter 324, or ss. 627.732-627.734 shall be given
73 either by personal delivery thereof to the licensee whose
74 license is being canceled, suspended, revoked, or disqualified
75 or by deposit in the United States mail in an envelope, first
76 class, postage prepaid, addressed to the licensee at his or her
77 last known mailing address furnished to the department. Such
78 mailing by the department constitutes notification, and any
79 failure by the person to receive the mailed order will not
80 affect or stay the effective date or term of the cancellation,
81 suspension, revocation, or disqualification of the licensee's
82 driving privilege. Notification of cancellation, suspension,
83 revocation, or disqualification given by the department under
84 this section shall also inform the person whose license or
85 driving privilege is being canceled, suspended, revoked, or
86 disqualified that any motor vehicle driven by or under the
87 actual physical control of that person while the license or

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88 driving privilege is canceled, suspended, revoked, or
89 disqualified is subject to impoundment and immobilization under
90 s. 322.34.

91 Section 3. Effective July 1, 2010, subsections (3), (4),
92 and (8) of section 322.34, Florida Statutes, are amended, and
93 subsection (11) is added to that section, to read:

94 322.34 Driving while license suspended, revoked, canceled,
95 or disqualified.-

96 (3) In any proceeding for a violation of this section, a
97 court may consider evidence, other than that specified in
98 subsection (2) or subsection (11), that the person knowingly
99 violated this section.

100 (4) Any judgment or order rendered by a court or
101 adjudicatory body that cancels, suspends, revokes, or
102 disqualifies a person's driver's license, ~~or~~ any uniform traffic
103 citation that cancels, suspends, ~~or~~ revokes, or disqualifies a
104 person's driver's license, and any notice of cancellation,
105 suspension, revocation, or disqualification of a person's
106 driver's license by the department must contain a provision
107 notifying the person that his or her driver's license is being
108 has been canceled, suspended, ~~or~~ revoked, or disqualified and
109 must inform the person that any motor vehicle driven by that
110 person while the license is canceled, suspended, revoked, or
111 disqualified shall be impounded or immobilized pursuant to this
112 section.

113 (8) (a) 1. If a law enforcement officer determines that a
114 motor vehicle is being driven by or is under the actual physical
115 control of a person whose driver's license or driving privilege
116 is canceled, suspended, revoked, or disqualified, the officer

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117 shall immediately impound the motor vehicle, immobilize the
118 motor vehicle by installing an immobilization device on the
119 motor vehicle, or immobilize the motor vehicle by removing the
120 registration license plate. The officer shall serve notice of
121 the impoundment or immobilization upon the driver. The notice
122 shall include the location where the motor vehicle is being held
123 and information on the procedures to have the motor vehicle
124 released from impoundment or immobilization by a department-
125 approved vendor. A law enforcement agency or officer who
126 proceeds in good faith to immobilize or impound a vehicle under
127 this section is not responsible for any towing, immobilizing, or
128 impounding fees. A law enforcement officer may immobilize the
129 motor vehicle by removing the registration license plate and
130 leave the scene of the impoundment or immobilization without
131 completing the impoundment or immobilization process if the
132 officer is ordered elsewhere by his or her superior officer or
133 an emergency elsewhere or other exigent circumstance compels the
134 officer to leave.

135 2. If the officer determines the driver's license is
136 suspended for a failure to pay traffic infractions and the
137 driver has not previously been warned of immobilization or
138 impoundment, the officer shall provide a warning and shall not
139 impound or immobilize the motor vehicle. The agency issuing the
140 warning shall transmit the individual offender's name to the
141 department, which shall provide notice to the driver pursuant to
142 paragraph (h).

143 3. A law enforcement officer impounding or immobilizing a
144 motor vehicle under subparagraph 1. shall notify the department
145 or the department's agent within 24 hours to effect impoundment

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146 or immobilization under this paragraph. If the officer removed
147 the registration license plate, the plate shall be delivered to
148 the department or the department's agent. The department or the
149 department's agent shall remove and impound or immobilize the
150 motor vehicle at another location; however, the impounding
151 company shall not release the motor vehicle for immobilization
152 at another location without proof that the immobilization vendor
153 is approved by the department. The department is authorized to
154 adopt by rule procedures for removal and immobilization of the
155 motor vehicle by a department-approved vendor from the location
156 where the motor vehicle was impounded or immobilized by the law
157 enforcement officer under subparagraph 1.

158 (b)1. A motor vehicle impounded or immobilized under
159 paragraph (a) that, according to the records of the department,
160 is owned by the person who was driving or in actual physical
161 control of the motor vehicle when it was stopped and impounded
162 or immobilized shall be released from impoundment or
163 immobilization when the owner receives authorization for release
164 of the motor vehicle under paragraph (e) and all costs of
165 towing, impoundment, immobilization, and storage are paid.

166 a. If department records show that the driver's license
167 cancellation, suspension, revocation, or disqualification is
168 based on any criminal conviction, the motor vehicle must be
169 removed to an impound lot or immobilized by installing an
170 immobilization device and removed to another location.

171 b. If department records show that the driver is designated
172 a habitual traffic offender under s. 322.264 whose license has
173 been revoked under s. 322.27(5) and whose driving privilege has
174 not been restored, the motor vehicle must be removed to an

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175 impound lot or immobilized by installing an immobilization
176 device and removed to another location.

177 2. If department records show that the motor vehicle is
178 owned or leased by a person other than the driver, the motor
179 vehicle shall be released to the owner or lessee or the owner's
180 or lessee's agent upon payment of all costs of towing,
181 impoundment, immobilization, and storage.

182 3. The department's records shall reflect that the motor
183 vehicle is impounded or immobilized.

184 (c) Notice by certified mail shall be sent within 7
185 business days after the date of storage of the motor vehicle to
186 the registered owner, the insurance company insuring the motor
187 vehicle notwithstanding the provisions of s. 627.736, and all
188 persons of record claiming a lien against the motor vehicle. The
189 notice shall state the fact of possession of the motor vehicle,
190 that a lien as provided in s. 713.78(2) is claimed, that charges
191 have accrued and the amount thereof, that the lien is subject to
192 enforcement pursuant to law, that the owner or lienholder, if
193 any, has the right to a hearing as set forth in s. 713.78(5),
194 and that any motor vehicle that remains unclaimed or for which
195 the charges for recovery, towing, or storage services remain
196 unpaid may be sold free of all prior liens after 35 days if the
197 motor vehicle is more than 3 years of age or after 50 days if
198 the motor vehicle is 3 years of age or less.

199 1. If attempts to locate the name and address of the owner
200 or lienholder prove unsuccessful, the towing-storage operator
201 shall, after 7 working days following the initial tow or
202 storage, excluding Saturday and Sunday, notify the public agency
203 of jurisdiction in writing by certified mail or acknowledged

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204 hand delivery that the towing-storage company has been unable to
205 locate the name and address of the owner or lienholder, a
206 physical search of the motor vehicle has disclosed no ownership
207 information, and a good faith effort has been made. For purposes
208 of this subparagraph, "good faith effort" means that the
209 following checks have been performed by the company to establish
210 a prior state of registration, if any, and for title:

211 a. A check of the motor vehicle for any type of tag, tag
212 record, temporary tag, or regular tag.

213 b. A check of the law enforcement report for the tag number
214 or other information identifying the motor vehicle if the motor
215 vehicle was towed at the request of a law enforcement officer.

216 c. A check of the trip sheet or tow ticket of the tow truck
217 operator to determine whether a tag was on the motor vehicle at
218 the beginning of the tow, if a private tow.

219 d. If there is no address of the owner on the impound
220 report, a check of the law enforcement report to determine
221 whether an out-of-state address is indicated by the driver's
222 license information.

223 e. A check of the motor vehicle for an inspection sticker
224 or any other sticker or decal that might indicate a state of
225 possible registration.

226 f. A check of the interior of the motor vehicle for any
227 papers that might be in the glove box, trunk, or other areas for
228 a state of registration.

229 g. A check of the motor vehicle for its vehicle
230 identification number.

231 2. Proceeds of the sale under this paragraph shall be used
232 in the following order of priority:

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- 233 a. For payment of the costs of the sale, including payment
234 of the cost of mailing and publication of notice.
- 235 b. For payment of the costs of towing, impoundment,
236 immobilization, and storage.
- 237 c. For payment of the fees imposed under subparagraphs
238 (d)1. and 2., in that order of priority.
- 239 d. For payment of any valid claim made by any lienholder of
240 record.
- 241 e. For payment of any outstanding traffic-related fines or
242 fees owed by the motor vehicle owner.
- 243 f. Proceeds remaining after distribution under sub-
244 paragraphs a.-e. shall be remitted to the owner of the motor
245 vehicle.
- 246 (d)1. The department shall collect a \$35 processing fee
247 prior to release to the owner of any motor vehicle impounded or
248 immobilized under this subsection. Five dollars of the fee shall
249 be distributed to the law enforcement agency that initiated the
250 impoundment or immobilization. The remaining \$30 shall be
251 forwarded to the Department of Revenue, which shall:
- 252 a. Deposit \$10 of the fee into the State Transportation
253 Trust Fund created under s. 206.46 to be used to carry out
254 public transit responsibilities of the Department of
255 Transportation under s. 341.041.
- 256 b. Remit \$5 of the fee to the Florida Law Enforcement
257 Memorial Fund of the Florida State Lodge of the Fraternal Order
258 of Police to be used to provide funds for the Law Enforcement
259 Memorial Monument on the grounds of the Florida Capitol and to
260 provide support to surviving colleagues and families of officers
261 who have lost their lives serving the citizens of the state.

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262 c. Remit \$5 of the fee to the Department of Highway Safety
263 and Motor Vehicles for public service announcements warning
264 motorists that any motor vehicle driven by a person whose
265 license has been canceled, suspended, revoked, or disqualified
266 is subject to impoundment or immobilization.

267 d. Remit \$10 of the fee to the state courts system for
268 deposit into the Operating Trust Fund created under s. 25.3844.

269 2. The department shall charge a reasonable fee, not to
270 exceed \$6, to the owner or lessee of the motor vehicle to cover
271 the operational costs related to immobilizing or impounding
272 motor vehicles. Fees collected under this subparagraph shall be
273 deposited in the Highway Safety Operating Trust Fund of the
274 Department of Highway Safety and Motor Vehicles.

275 3. Notwithstanding any other law to the contrary, that
276 portion of any outstanding fine or fee collected pursuant to
277 this subsection which is not otherwise allocated by law or which
278 is allocated to the General Revenue Fund shall be remitted by
279 the Department of Revenue to the Operating Trust Fund created in
280 s. 25.3844.

281 4. Fees required under this paragraph for release of a
282 motor vehicle, as well as fines and fees required for
283 reinstatement of a person's license and privilege to drive, may
284 be satisfied by community service pursuant to s. 318.18(8) as
285 authorized by the court. This subparagraph does not apply to the
286 payment of costs of towing, impoundment, immobilization, and
287 storage.

288 (e) The department must authorize release of the motor
289 vehicle to the owner upon payment of the fees imposed under
290 paragraph (d); payment of all costs of towing, impoundment,

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291 immobilization, and storage as required under paragraph (c); and
292 satisfaction of one of the following conditions:

293 1. The license and driving privilege of the driver are
294 reinstated;

295 2. The clerk of court verifies that all outstanding traffic
296 finances and related fees and costs owed by the driver have been
297 satisfied;

298 3. The motor vehicle has been sold and the title of the
299 motor vehicle has been transferred;

300 4. The driver submits to the department a statement that
301 the family of the driver living in the same household has no
302 other private or public means of transportation and at least one
303 household member has a valid driver's license that is not
304 anceled, suspended, revoked, or disqualified, which statement
305 is verified by the department using department records; or

306 5. The motor vehicle has been sold pursuant to s. 713.78.

307 (f) A motor vehicle immobilized under this subsection may
308 not be operated in this state until released from immobilization
309 by the department or the department's agent. A motor vehicle
310 immobilized under this subsection that is found being operated
311 upon any street or highway in this state before being released
312 by the department or the department's agent shall be seized and
313 removed from the street or highway and may be forfeited pursuant
314 to ss. 932.701-932.704.

315 (g) The department may contract with vendors to carry out
316 the provisions of this subsection.

317 (h) Notification of cancellation, suspension, revocation,
318 or disqualification given by the department under s. 322.251
319 shall also inform the person whose driver's license or driving

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320 privilege is being canceled, suspended, revoked, or disqualified
321 that any motor vehicle driven by or under the actual physical
322 control of that person while the license or driving privilege is
323 canceled, suspended, revoked, or disqualified is subject to
324 impoundment and immobilization under this subsection.

325 (i) The department may adopt rules pursuant to ss.
326 120.536(1) and 120.54 to implement the provisions of this
327 subsection. Upon the arrest of a person for the offense of
328 driving while the person's driver's license or driving privilege
329 is suspended or revoked, the arresting officer shall determine:

330 1. Whether the person's driver's license is suspended or
331 revoked.

332 2. Whether the person's driver's license has remained
333 suspended or revoked since a conviction for the offense of
334 driving with a suspended or revoked license.

335 3. Whether the suspension or revocation was made under s.
336 316.646 or s. 627.733, relating to failure to maintain required
337 security, or under s. 322.264, relating to habitual traffic
338 offenders.

339 4. Whether the driver is the registered owner or coowner of
340 the vehicle.

341 (b) If the arresting officer finds in the affirmative as to
342 all of the criteria in paragraph (a), the officer shall
343 immediately impound or immobilize the vehicle.

344 (c) Within 7 business days after the date the arresting
345 agency impounds or immobilizes the vehicle, either the arresting
346 agency or the towing service, whichever is in possession of the
347 vehicle, shall send notice by certified mail, return receipt
348 requested, to any coregistered owners of the vehicle other than

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349 ~~the person arrested and to each person of record claiming a lien~~
350 ~~against the vehicle. All costs and fees for the impoundment or~~
351 ~~immobilization, including the cost of notification, must be paid~~
352 ~~by the owner of the vehicle or, if the vehicle is leased, by the~~
353 ~~person leasing the vehicle.~~

354 ~~(d) Either the arresting agency or the towing service,~~
355 ~~whichever is in possession of the vehicle, shall determine~~
356 ~~whether any vehicle impounded or immobilized under this section~~
357 ~~has been leased or rented or if there are any persons of record~~
358 ~~with a lien upon the vehicle. Either the arresting agency or the~~
359 ~~towing service, whichever is in possession of the vehicle, shall~~
360 ~~notify by express courier service with receipt or certified~~
361 ~~mail, return receipt requested, within 7 business days after the~~
362 ~~date of the immobilization or impoundment of the vehicle, the~~
363 ~~registered owner and all persons having a recorded lien against~~
364 ~~the vehicle that the vehicle has been impounded or immobilized.~~
365 ~~A lessor, rental car company, or lienholder may then obtain the~~
366 ~~vehicle, upon payment of any lawful towing or storage charges.~~
367 ~~If the vehicle is a rental vehicle subject to a written~~
368 ~~contract, the charges may be separately charged to the renter,~~
369 ~~in addition to the rental rate, along with other separate fees,~~
370 ~~charges, and recoupments disclosed on the rental agreement. If~~
371 ~~the storage facility fails to provide timely notice to a lessor,~~
372 ~~rental car company, or lienholder as required by this paragraph,~~
373 ~~the storage facility shall be responsible for payment of any~~
374 ~~towing or storage charges necessary to release the vehicle to a~~
375 ~~lessor, rental car company, or lienholder that accrue after the~~
376 ~~notice period, which charges may then be assessed against the~~
377 ~~driver of the vehicle if the vehicle was lawfully impounded or~~

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378 immobilized.

379 ~~(c) Except as provided in paragraph (d), the vehicle shall~~
380 ~~remain impounded or immobilized for any period imposed by the~~
381 ~~court until:~~

382 ~~1. The owner presents proof of insurance to the arresting~~
383 ~~agency; or~~

384 ~~2. The owner presents proof of sale of the vehicle to the~~
385 ~~arresting agency and the buyer presents proof of insurance to~~
386 ~~the arresting agency.~~

387
388 ~~If proof is not presented within 35 days after the impoundment~~
389 ~~or immobilization, a lien shall be placed upon such vehicle~~
390 ~~pursuant to s. 713.78.~~

391 ~~(f) The owner of a vehicle that is impounded or immobilized~~
392 ~~under this subsection may, within 10 days after the date the~~
393 ~~owner has knowledge of the location of the vehicle, file a~~
394 ~~complaint in the county in which the owner resides to determine~~
395 ~~whether the vehicle was wrongfully taken or withheld. Upon the~~
396 ~~filing of a complaint, the owner may have the vehicle released~~
397 ~~by posting with the court a bond or other adequate security~~
398 ~~equal to the amount of the costs and fees for impoundment or~~
399 ~~immobilization, including towing or storage, to ensure the~~
400 ~~payment of such costs and fees if the owner does not prevail.~~
401 ~~When the vehicle owner does not prevail on a complaint that the~~
402 ~~vehicle was wrongfully taken or withheld, he or she must pay the~~
403 ~~accrued charges for the immobilization or impoundment, including~~
404 ~~any towing and storage charges assessed against the vehicle.~~
405 ~~When the bond is posted and the fee is paid as set forth in s.~~
406 ~~28.24, the clerk of the court shall issue a certificate~~

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407 ~~releasing the vehicle. At the time of release, after reasonable~~
408 ~~inspection, the owner must give a receipt to the towing or~~
409 ~~storage company indicating any loss or damage to the vehicle or~~
410 ~~to the contents of the vehicle.~~

411 (11) Any owner or lessee of a motor vehicle who knowingly
412 allows, permits, or authorizes a person whose driver's license
413 or driving privilege has been canceled, suspended, revoked, or
414 disqualified to drive the motor vehicle upon the streets or
415 highways of this state or knowingly gives, leases, lends, or
416 otherwise provides the motor vehicle to a person whose driver's
417 license or driving privilege has been canceled, suspended,
418 revoked, or disqualified while such license or privilege is
419 canceled, suspended, revoked, or disqualified commits a
420 misdemeanor of the second degree, punishable as provided in s.
421 775.082 or s. 775.083. The element of knowledge is satisfied if
422 the owner or lessee has been previously charged under this
423 subsection for providing a motor vehicle to the same person; the
424 owner admits to knowledge of the cancellation, suspension,
425 revocation, or disqualification of the driver's license or
426 driving privilege of the driver; or the owner received notice as
427 provided in subsection (8) relating to the same driver.

428 Section 4. The Department of Highway Safety and Motor
429 Vehicles shall inform the motoring public of the changes to s.
430 322.34, Florida Statutes, made by this act relating to
431 impoundment or immobilization of a motor vehicle being driven by
432 a person whose driver license is canceled, suspended, revoked,
433 or disqualified and shall provide such information in newly
434 printed driver license educational materials after July 1, 2009,
435 and in public service announcements produced in cooperation with

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436 the Florida Highway Patrol.

437 Section 5. During the period from July 1, 2009, to July 1,
438 2010, the Department of Highway Safety and Motor Vehicles shall
439 notify by mail persons whose driver license or driving privilege
440 has been canceled, suspended, revoked, or disqualified of the
441 changes to s. 322.34, Florida Statutes, made by this act
442 relating to impoundment or immobilization of a motor vehicle
443 being driven by such person; however, failure to receive such
444 notification does not preclude, bar, or otherwise affect the
445 impoundment or immobilization of a motor vehicle under s.
446 322.34, Florida Statutes.

447 Section 6. Except as otherwise expressly provided in this
448 act, this act shall take effect July 1, 2009.