

By Senator Gaetz

4-00511-09

2009486\_\_

1                                   A bill to be entitled  
2           An act relating to driving while the operator's  
3           license is suspended or revoked; amending s. 322.34,  
4           F.S.; removing provisions requiring a law enforcement  
5           officer to immediately impound or immobilize a motor  
6           vehicle under certain circumstances if the operator's  
7           driver's license or driving privilege is suspended or  
8           revoked; removing a requirement that the arresting  
9           agency or towing service in possession of the  
10          impounded or immobilized vehicle send notice to any  
11          coregistered owner of the vehicle and to each person  
12          of record claiming a lien against the vehicle;  
13          requiring that a vehicle be impounded or immobilized  
14          for specified periods depending on the seriousness of  
15          the violation committed; prohibiting the court from  
16          ordering that the impoundment or immobilization run  
17          concurrently with the defendant's incarceration;  
18          requiring that all costs of impounding or immobilizing  
19          a vehicle be borne by the defendant; providing for a  
20          person who owns or coowns a motor vehicle when a  
21          violation of law was committed to petition the  
22          sentencing court for an order setting aside the  
23          impoundment or immobilization order; requiring that  
24          the court set aside an impoundment or immobilization  
25          order under certain circumstances; amending s.  
26          932.701, F.S., relating to the Florida Contraband  
27          Forfeiture Act; conforming a cross-reference;  
28          providing an effective date.  
29

4-00511-09

2009486\_\_

30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Section 322.34, Florida Statutes, is amended to  
33 read:

34 322.34 Driving while license suspended, revoked, canceled,  
35 or disqualified.—

36 (1) Except as provided in subsection (2), any person whose  
37 driver's license or driving privilege has been canceled,  
38 suspended, or revoked, except a "habitual traffic offender" as  
39 defined in s. 322.264, who drives a vehicle upon the highways of  
40 this state while the ~~such~~ license or privilege is canceled,  
41 suspended, or revoked commits ~~is guilty of~~ a moving violation,  
42 punishable as provided in chapter 318.

43 (2) Except as provided in subsection (9), any person whose  
44 driver's license or driving privilege has been canceled,  
45 suspended, or revoked as provided by law, except persons defined  
46 in s. 322.264, who, knowing of such cancellation, suspension, or  
47 revocation, drives any motor vehicle upon the highways of this  
48 state while the ~~such~~ license or privilege is canceled,  
49 suspended, or revoked, upon:

50 (a) A first conviction commits ~~is guilty of~~ a misdemeanor  
51 of the second degree, punishable as provided in s. 775.082 or s.  
52 775.083.

53 (b) A second conviction commits ~~is guilty of~~ a misdemeanor  
54 of the first degree, punishable as provided in s. 775.082 or s.  
55 775.083.

56 (c) A third or subsequent conviction commits ~~is guilty of~~ a  
57 felony of the third degree, punishable as provided in s.  
58 775.082, s. 775.083, or s. 775.084.

4-00511-09

2009486\_\_

59

60 The element of knowledge is satisfied if the person has been  
61 previously cited as provided in subsection (1); ~~or~~ the person  
62 admits to knowledge of the cancellation, suspension, or  
63 revocation; or the person received notice as provided in  
64 subsection (4). There is ~~shall be~~ a rebuttable presumption that  
65 the knowledge requirement is satisfied if a judgment or order as  
66 provided in subsection (4) appears in the department's records  
67 for any case except for one involving a suspension by the  
68 department for failure to pay a traffic fine or for a financial  
69 responsibility violation.

70 (3) In any proceeding for a violation of this section, a  
71 court may consider evidence, other than that specified in  
72 subsection (2), that the person knowingly violated this section.

73 (4) Any judgment or order rendered by a court or  
74 adjudicatory body or any uniform traffic citation that cancels,  
75 suspends, or revokes a person's driver's license must contain a  
76 provision notifying the person that his or her driver's license  
77 has been canceled, suspended, or revoked.

78 (5) Except as provided in subsection (9), any person whose  
79 driver's license has been revoked pursuant to s. 322.264  
80 (habitual offender) and who drives any motor vehicle upon the  
81 highways of this state while the ~~such~~ license is revoked commits  
82 ~~is guilty of~~ a felony of the third degree, punishable as  
83 provided in s. 775.082, s. 775.083, or s. 775.084.

84 (6) Any person who operates a motor vehicle:

85 (a) Without having a driver's license as required under s.  
86 322.03; or

87 (b) While his or her driver's license or driving privilege

4-00511-09

2009486\_\_

88 is canceled, suspended, or revoked pursuant to s. 316.655, s.  
89 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

90

91 and who by careless or negligent operation of the motor vehicle  
92 causes the death of or serious bodily injury to another human  
93 being commits ~~is guilty of~~ a felony of the third degree,  
94 punishable as provided in s. 775.082 or s. 775.083.

95 (7) Any person whose driver's license or driving privilege  
96 has been canceled, suspended, revoked, or disqualified and who  
97 drives a commercial motor vehicle on the highways of this state  
98 while the ~~such~~ license or privilege is canceled, suspended,  
99 revoked, or disqualified, upon:

100 (a) A first conviction commits ~~is guilty of~~ a misdemeanor  
101 of the first degree, punishable as provided in s. 775.082 or s.  
102 775.083.

103 (b) A second or subsequent conviction commits ~~is guilty of~~  
104 a felony of the third degree, punishable as provided in s.  
105 775.082, s. 775.083, or s. 775.084.

106 ~~(8)(a) Upon the arrest of a person for the offense of~~  
107 ~~driving while the person's driver's license or driving privilege~~  
108 ~~is suspended or revoked, the arresting officer shall determine:~~

109 ~~1. Whether the person's driver's license is suspended or~~  
110 ~~revoked.~~

111 ~~2. Whether the person's driver's license has remained~~  
112 ~~suspended or revoked since a conviction for the offense of~~  
113 ~~driving with a suspended or revoked license.~~

114 ~~3. Whether the suspension or revocation was made under s.~~  
115 ~~316.646 or s. 627.733, relating to failure to maintain required~~  
116 ~~security, or under s. 322.264, relating to habitual traffic~~

4-00511-09

2009486\_\_

117 offenders.

118 ~~4. Whether the driver is the registered owner or coowner of~~  
119 ~~the vehicle.~~

120 ~~(b) If the arresting officer finds in the affirmative as to~~  
121 ~~all of the criteria in paragraph (a), the officer shall~~  
122 ~~immediately impound or immobilize the vehicle.~~

123 ~~(c) Within 7 business days after the date the arresting~~  
124 ~~agency impounds or immobilizes the vehicle, either the arresting~~  
125 ~~agency or the towing service, whichever is in possession of the~~  
126 ~~vehicle, shall send notice by certified mail, return receipt~~  
127 ~~requested, to any coregistered owners of the vehicle other than~~  
128 ~~the person arrested and to each person of record claiming a lien~~  
129 ~~against the vehicle. All costs and fees for the impoundment or~~  
130 ~~immobilization, including the cost of notification, must be paid~~  
131 ~~by the owner of the vehicle or, if the vehicle is leased, by the~~  
132 ~~person leasing the vehicle.~~

133 ~~(d) Either the arresting agency or the towing service,~~  
134 ~~whichever is in possession of the vehicle, shall determine~~  
135 ~~whether any vehicle impounded or immobilized under this section~~  
136 ~~has been leased or rented or if there are any persons of record~~  
137 ~~with a lien upon the vehicle. Either the arresting agency or the~~  
138 ~~towing service, whichever is in possession of the vehicle, shall~~  
139 ~~notify by express courier service with receipt or certified~~  
140 ~~mail, return receipt requested, within 7 business days after the~~  
141 ~~date of the immobilization or impoundment of the vehicle, the~~  
142 ~~registered owner and all persons having a recorded lien against~~  
143 ~~the vehicle that the vehicle has been impounded or immobilized.~~  
144 ~~A lessor, rental car company, or lienholder may then obtain the~~  
145 ~~vehicle, upon payment of any lawful towing or storage charges.~~

4-00511-09

2009486\_\_

146 ~~If the vehicle is a rental vehicle subject to a written~~  
147 ~~contract, the charges may be separately charged to the renter,~~  
148 ~~in addition to the rental rate, along with other separate fees,~~  
149 ~~charges, and recoupments disclosed on the rental agreement. If~~  
150 ~~the storage facility fails to provide timely notice to a lessor,~~  
151 ~~rental car company, or lienholder as required by this paragraph,~~  
152 ~~the storage facility shall be responsible for payment of any~~  
153 ~~towing or storage charges necessary to release the vehicle to a~~  
154 ~~lessor, rental car company, or lienholder that accrue after the~~  
155 ~~notice period, which charges may then be assessed against the~~  
156 ~~driver of the vehicle if the vehicle was lawfully impounded or~~  
157 ~~immobilized.~~

158 ~~(e) Except as provided in paragraph (d), the vehicle shall~~  
159 ~~remain impounded or immobilized for any period imposed by the~~  
160 ~~court until:~~

161 ~~1. The owner presents proof of insurance to the arresting~~  
162 ~~agency; or~~

163 ~~2. The owner presents proof of sale of the vehicle to the~~  
164 ~~arresting agency and the buyer presents proof of insurance to~~  
165 ~~the arresting agency.~~

166  
167 ~~If proof is not presented within 35 days after the impoundment~~  
168 ~~or immobilization, a lien shall be placed upon such vehicle~~  
169 ~~pursuant to s. 713.78.~~

170 ~~(f) The owner of a vehicle that is impounded or immobilized~~  
171 ~~under this subsection may, within 10 days after the date the~~  
172 ~~owner has knowledge of the location of the vehicle, file a~~  
173 ~~complaint in the county in which the owner resides to determine~~  
174 ~~whether the vehicle was wrongfully taken or withheld. Upon the~~

4-00511-09

2009486\_\_

175 ~~filing of a complaint, the owner may have the vehicle released~~  
176 ~~by posting with the court a bond or other adequate security~~  
177 ~~equal to the amount of the costs and fees for impoundment or~~  
178 ~~immobilization, including towing or storage, to ensure the~~  
179 ~~payment of such costs and fees if the owner does not prevail.~~  
180 ~~When the vehicle owner does not prevail on a complaint that the~~  
181 ~~vehicle was wrongfully taken or withheld, he or she must pay the~~  
182 ~~accrued charges for the immobilization or impoundment, including~~  
183 ~~any towing and storage charges assessed against the vehicle.~~  
184 ~~When the bond is posted and the fee is paid as set forth in s.~~  
185 ~~28.24, the clerk of the court shall issue a certificate~~  
186 ~~releasing the vehicle. At the time of release, after reasonable~~  
187 ~~inspection, the owner must give a receipt to the towing or~~  
188 ~~storage company indicating any loss or damage to the vehicle or~~  
189 ~~to the contents of the vehicle.~~

190 (8)~~(9)~~(a) A motor vehicle that is driven by a person under  
191 the influence of alcohol or drugs in violation of s. 316.193 is  
192 subject to seizure and forfeiture under ss. 932.701-932.706 and  
193 is subject to liens for recovering, towing, or storing vehicles  
194 under s. 713.78 if, at the time of the offense, the person's  
195 driver's license is suspended, revoked, or canceled as a result  
196 of a prior conviction for driving under the influence.

197 (b) The law enforcement officer shall notify the Department  
198 of Highway Safety and Motor Vehicles of any impoundment or  
199 seizure for violation of paragraph (a) in accordance with  
200 procedures established by the department.

201 (c) Notwithstanding s. 932.703(1)(c) or s. 932.7055, when  
202 the seizing agency obtains a final judgment granting forfeiture  
203 of the motor vehicle under this section, 30 percent of the net

4-00511-09

2009486\_\_

204 proceeds from the sale of the motor vehicle shall be retained by  
205 the seizing law enforcement agency and 70 percent shall be  
206 deposited in the General Revenue Fund for use by regional  
207 workforce boards in providing transportation services for  
208 participants of the welfare transition program. In a forfeiture  
209 proceeding under this section, the court may consider the extent  
210 that the family of the owner has other public or private means  
211 of transportation.

212 (9)~~(10)~~(a) Notwithstanding any other provision of this  
213 section, if a person does not have a prior forcible felony  
214 conviction as defined in s. 776.08, the penalties provided in  
215 paragraph (b) apply if a person's driver's license or driving  
216 privilege is canceled, suspended, or revoked for:

217 1. Failing to pay child support as provided in s. 322.245  
218 or s. 61.13016;

219 2. Failing to pay any other financial obligation as  
220 provided in s. 322.245 other than those specified in s.  
221 322.245(1);

222 3. Failing to comply with a civil penalty required in s.  
223 318.15;

224 4. Failing to maintain vehicular financial responsibility  
225 as required by chapter 324;

226 5. Failing to comply with attendance or other requirements  
227 for minors as set forth in s. 322.091; or

228 6. Having been designated a habitual traffic offender under  
229 s. 322.264(1)(d) as a result of suspensions of his or her  
230 driver's license or driver privilege for any underlying  
231 violation listed in subparagraphs 1.-5.

232 (b)1. Upon a first conviction for knowingly driving while



4-00511-09

2009486\_\_

233 his or her license is suspended, revoked, or canceled for any of  
234 the underlying violations listed in subparagraphs (a)1.-6., a  
235 person commits a misdemeanor of the second degree, punishable as  
236 provided in s. 775.082 or s. 775.083.

237 2. Upon a second or subsequent conviction for the same  
238 offense of knowingly driving while his or her license is  
239 suspended, revoked, or canceled for any of the underlying  
240 violations listed in subparagraphs (a)1.-6., a person commits a  
241 misdemeanor of the first degree, punishable as provided in s.  
242 775.082 or s. 775.083.

243 (10) (a) Except for a person convicted under subsection (7),  
244 at the time of sentencing the court shall order the impoundment  
245 or immobilization of any motor vehicle that was operated by,  
246 under the actual control of, or registered in the name of the  
247 defendant, as follows:

248 1. For a second-degree misdemeanor the impoundment or  
249 immobilization shall be for 5 days;

250 2. For a first-degree misdemeanor the impoundment or  
251 immobilization shall be for 10 days; and

252 3. For a third-degree felony the impoundment or  
253 immobilization shall be for 30 days.

254 (b) The court may not order the impoundment or  
255 immobilization to run concurrently with any incarceration of the  
256 defendant.

257 (c) All costs of impoundment or immobilization must be  
258 borne by the defendant.

259 (11) (a) A person who owns or coowns but who was not  
260 operating the motor vehicle when a violation of this section was  
261 committed may petition the sentencing court for an order setting

4-00511-09

2009486\_\_

262 aside the impoundment or immobilization order. In support of the  
263 petition, the person must submit to the sentencing court a  
264 police report demonstrating that the motor vehicle was stolen at  
265 the time the violation of this section was committed or  
266 documentation showing that the vehicle was purchased after the  
267 offense was committed from a person other than the defendant or  
268 the defendant's agent. If the court finds that the vehicle was  
269 stolen or that the sale was not made to circumvent the order of  
270 impoundment or immobilization, the order of impoundment or  
271 immobilization shall be set aside and the vehicle returned to  
272 the owner. If the owner of the vehicle prevails, he or she is  
273 not liable for costs.

274 (b) The court shall dismiss the order of impoundment or  
275 immobilization if the court finds that the family of the owner  
276 of the vehicle has no other private or public means of  
277 transportation.

278 Section 2. Paragraph (a) of subsection (2) of section  
279 932.701, Florida Statutes, is amended to read:

280 932.701 Short title; definitions.-

281 (2) As used in the Florida Contraband Forfeiture Act:

282 (a) "Contraband article" means:

283 1. Any controlled substance as defined in chapter 893 or  
284 any substance, device, paraphernalia, or currency or other means  
285 of exchange that was used, was attempted to be used, or was  
286 intended to be used in violation of any provision of chapter  
287 893, if the totality of the facts presented by the state is  
288 clearly sufficient to meet the state's burden of establishing  
289 probable cause to believe that a nexus exists between the  
290 article seized and the narcotics activity, whether or not the

4-00511-09

2009486\_\_

291 use of the contraband article can be traced to a specific  
292 narcotics transaction.

293 2. Any gambling paraphernalia, lottery tickets, money,  
294 currency, or other means of exchange which was used, was  
295 attempted, or intended to be used in violation of the gambling  
296 laws of the state.

297 3. Any equipment, liquid or solid, which was being used, is  
298 being used, was attempted to be used, or intended to be used in  
299 violation of the beverage or tobacco laws of the state.

300 4. Any motor fuel upon which the motor fuel tax has not  
301 been paid as required by law.

302 5. Any personal property, including, but not limited to,  
303 any vessel, aircraft, item, object, tool, substance, device,  
304 weapon, machine, vehicle of any kind, money, securities, books,  
305 records, research, negotiable instruments, or currency, which  
306 was used or was attempted to be used as an instrumentality in  
307 the commission of, or in aiding or abetting in the commission  
308 of, any felony, whether or not comprising an element of the  
309 felony, or which is acquired by proceeds obtained as a result of  
310 a violation of the Florida Contraband Forfeiture Act.

311 6. Any real property, including any right, title,  
312 leasehold, or other interest in the whole of any lot or tract of  
313 land, which was used, is being used, or was attempted to be used  
314 as an instrumentality in the commission of, or in aiding or  
315 abetting in the commission of, any felony, or which is acquired  
316 by proceeds obtained as a result of a violation of the Florida  
317 Contraband Forfeiture Act.

318 7. Any personal property, including, but not limited to,  
319 equipment, money, securities, books, records, research,

4-00511-09

2009486\_\_

320 negotiable instruments, currency, or any vessel, aircraft, item,  
321 object, tool, substance, device, weapon, machine, or vehicle of  
322 any kind in the possession of or belonging to any person who  
323 takes aquaculture products in violation of s. 812.014(2)(c).

324 8. Any motor vehicle offered for sale in violation of s.  
325 320.28.

326 9. Any motor vehicle used during the course of committing  
327 an offense in violation of s. 322.34(8)(a) ~~s. 322.34(9)(a)~~.

328 10. Any photograph, film, or other recorded image,  
329 including an image recorded on videotape, a compact disc,  
330 digital tape, or fixed disk, that is recorded in violation of s.  
331 810.145 and is possessed for the purpose of amusement,  
332 entertainment, sexual arousal, gratification, or profit, or for  
333 the purpose of degrading or abusing another person.

334 11. Any real property, including any right, title,  
335 leasehold, or other interest in the whole of any lot or tract of  
336 land, which is acquired by proceeds obtained as a result of  
337 Medicaid fraud under s. 409.920 or s. 409.9201; any personal  
338 property, including, but not limited to, equipment, money,  
339 securities, books, records, research, negotiable instruments, or  
340 currency; or any vessel, aircraft, item, object, tool,  
341 substance, device, weapon, machine, or vehicle of any kind in  
342 the possession of or belonging to any person which is acquired  
343 by proceeds obtained as a result of Medicaid fraud under s.  
344 409.920 or s. 409.9201.

345 Section 3. This act shall take effect July 1, 2009.