

1 A bill to be entitled
2 An act relating to highway safety; creating the "Deputy
3 Michael Callin, Michael Haligowski, and Deputy Ryan C.
4 Seguin Memorial Traffic Safety Act"; amending s. 322.251,
5 F.S.; requiring impoundment and immobilization information
6 to be included with notice to a person whose driver
7 license or driving privilege is being canceled, suspended,
8 revoked, or disqualified; amending s. 322.34, F.S.;

9 requiring impoundment and immobilization information to be
10 included with notice to a person whose driver license or
11 driving privilege is being canceled, suspended, revoked,
12 or disqualified; requiring a law enforcement officer who
13 determines that a motor vehicle is being driven by or is
14 under the actual physical control of a person whose driver
15 license or driving privilege is canceled, suspended,
16 revoked, or disqualified to impound or immobilize the
17 motor vehicle; providing for notice to the driver;

18 providing for notice to registered owners of the motor
19 vehicle and lienholders; providing for exceptions;

20 providing for the Department of Highway Safety and Motor
21 Vehicles to commence impoundment or immobilization at the
22 scene where the motor vehicle was immobilized; providing
23 procedures; providing for release of the motor vehicle;

24 requiring department records to contain impoundment and
25 immobilization information; providing for a lien under
26 specified provisions for charges accrued for recovery,
27 towing, or storage services; requiring notice to the
28 owner, insurance company insuring the motor vehicle, and

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

55 |
56 | Be It Enacted by the Legislature of the State of Florida:

57
58 Section 1. This act may be cited as the "Deputy Michael
59 Callin, Michael Haligowski, and Deputy Ryan C. Seguin Memorial
60 Traffic Safety Act."

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

63 322.251 Notice of cancellation, suspension, revocation, or
64 disqualification of license.--

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

85 s. 322.34.

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

89 322.34 Driving while license suspended, revoked, canceled,
 90 or disqualified.--

91 (3) In any proceeding for a violation of this section, a
 92 court may consider evidence, other than that specified in
 93 subsection (2) or subsection (11), that the person knowingly
 94 violated this section.

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

108 (8) (a) 1. If a law enforcement officer determines that a
 109 motor vehicle is being driven by or is under the actual physical
 110 control of a person whose driver's license or driving privilege
 111 is canceled, suspended, revoked, or disqualified, the officer
 112 shall immediately impound the motor vehicle, immobilize the

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

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

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

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

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

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

166 b. If department records show that the driver is
167 designated a habitual traffic offender under s. 322.264 whose
168 license has been revoked under s. 322.27(5) and whose driving

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169 privilege has not been restored, the motor vehicle must be
170 removed to an impound lot or immobilized by installing an
171 immobilization device and removed to another location.

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

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

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

194 1. If attempts to locate the name and address of the owner
195 or lienholder prove unsuccessful, the towing-storage operator
196 shall, after 7 working days following the initial tow or

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197 storage, excluding Saturday and Sunday, notify the public agency
198 of jurisdiction in writing by certified mail or acknowledged
199 hand delivery that the towing-storage company has been unable to
200 locate the name and address of the owner or lienholder, a
201 physical search of the motor vehicle has disclosed no ownership
202 information, and a good faith effort has been made. For purposes
203 of this subparagraph, "good faith effort" means that the
204 following checks have been performed by the company to establish
205 a prior state of registration, if any, and for title:

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

208 b. A check of the law enforcement report for the tag
209 number or other information identifying the motor vehicle if the
210 motor vehicle was towed at the request of a law enforcement
211 officer.

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

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

219 e. A check of the motor vehicle for an inspection sticker
220 or any other sticker or decal that might indicate a state of
221 possible registration.

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

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225 g. A check of the motor vehicle for its vehicle
226 identification number.

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

229 a. For payment of the costs of the sale, including payment
230 of the cost of mailing and publication of notice.

231 b. For payment of the costs of towing, impoundment,
232 immobilization, and storage.

233 c. For payment of the fees imposed under subparagraphs
234 (d)1. and 2., in that order of priority.

235 d. For payment of any valid claim made by any lienholder
236 of record.

237 e. For payment of any outstanding traffic-related fines or
238 fees owed by the motor vehicle owner.

239 f. Proceeds remaining after distribution under sub-
240 paragraphs a.-e. shall be remitted to the owner of the motor
241 vehicle.

242 (d)1. The department shall collect a \$35 processing fee
243 prior to release to the owner of any motor vehicle impounded or
244 immobilized under this subsection. Five dollars of the fee shall
245 be distributed to the law enforcement agency that initiated the
246 impoundment or immobilization. The remaining \$30 shall be
247 forwarded to the Department of Revenue, which shall:

248 a. Deposit \$10 of the fee into the State Transportation
249 Trust Fund created under s. 206.46 to be used to carry out
250 public transit responsibilities of the Department of
251 Transportation under s. 341.041.

252 b. Remit \$5 of the fee to the Florida Law Enforcement

253 Memorial Fund of the Florida State Lodge of the Fraternal Order
 254 of Police to be used to provide funds for the Law Enforcement
 255 Memorial Monument on the grounds of the Florida Capitol and to
 256 provide support to surviving colleagues and families of officers
 257 who have lost their lives serving the citizens of the state.

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

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

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

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

277 4. Fees required under this paragraph for release of a
 278 motor vehicle, as well as fines and fees required for
 279 reinstatement of a person's license and privilege to drive, may
 280 be satisfied by community service pursuant to s. 318.18(8) as

281 authorized by the court. This subparagraph does not apply to the
 282 payment of costs of towing, impoundment, immobilization, and
 283 storage.

284 (e) The department must authorize release of the motor
 285 vehicle to the owner upon payment of the fees imposed under
 286 paragraph (d); payment of all costs of towing, impoundment,
 287 immobilization, and storage as required under paragraph (c); and
 288 satisfaction of one of the following conditions:

289 1. The license and driving privilege of the driver are
 290 reinstated;

291 2. The clerk of court verifies that all outstanding
 292 traffic fines and related fees and costs owed by the driver have
 293 been satisfied;

294 3. The motor vehicle has been sold and the title of the
 295 motor vehicle has been transferred;

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

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

303 (f) A motor vehicle immobilized under this subsection may
 304 not be operated in this state until released from immobilization
 305 by the department or the department's agent. A motor vehicle
 306 immobilized under this subsection that is found being operated
 307 upon any street or highway in this state before being released
 308 by the department or the department's agent shall be seized and

309 removed from the street or highway and may be forfeited pursuant
 310 to ss. 932.701-932.704.

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

313 (h) Notification of cancellation, suspension, revocation,
 314 or disqualification given by the department under s. 322.251
 315 shall also inform the person whose driver's license or driving
 316 privilege is being canceled, suspended, revoked, or disqualified
 317 that any motor vehicle driven by or under the actual physical
 318 control of that person while the license or driving privilege is
 319 canceled, suspended, revoked, or disqualified is subject to
 320 impoundment and immobilization under this subsection.

321 (i) The department may adopt rules pursuant to ss.
 322 120.536(1) and 120.54 to implement the provisions of this
 323 subsection. ~~Upon the arrest of a person for the offense of~~
 324 ~~driving while the person's driver's license or driving privilege~~
 325 ~~is suspended or revoked, the arresting officer shall determine:~~

326 ~~1. Whether the person's driver's license is suspended or~~
 327 ~~revoked.~~

328 ~~2. Whether the person's driver's license has remained~~
 329 ~~suspended or revoked since a conviction for the offense of~~
 330 ~~driving with a suspended or revoked license.~~

331 ~~3. Whether the suspension or revocation was made under s.~~
 332 ~~316.646 or s. 627.733, relating to failure to maintain required~~
 333 ~~security, or under s. 322.264, relating to habitual traffic~~
 334 ~~offenders.~~

335 ~~4. Whether the driver is the registered owner or coowner~~
 336 ~~of the vehicle.~~

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

340 ~~(c) Within 7 business days after the date the arresting~~
341 ~~agency impounds or immobilizes the vehicle, either the arresting~~
342 ~~agency or the towing service, whichever is in possession of the~~
343 ~~vehicle, shall send notice by certified mail, return receipt~~
344 ~~requested, to any coregistered owners of the vehicle other than~~
345 ~~the person arrested and to each person of record claiming a lien~~
346 ~~against the vehicle. All costs and fees for the impoundment or~~
347 ~~immobilization, including the cost of notification, must be paid~~
348 ~~by the owner of the vehicle or, if the vehicle is leased, by the~~
349 ~~person leasing the vehicle.~~

350 ~~(d) Either the arresting agency or the towing service,~~
351 ~~whichever is in possession of the vehicle, shall determine~~
352 ~~whether any vehicle impounded or immobilized under this section~~
353 ~~has been leased or rented or if there are any persons of record~~
354 ~~with a lien upon the vehicle. Either the arresting agency or the~~
355 ~~towing service, whichever is in possession of the vehicle, shall~~
356 ~~notify by express courier service with receipt or certified~~
357 ~~mail, return receipt requested, within 7 business days after the~~
358 ~~date of the immobilization or impoundment of the vehicle, the~~
359 ~~registered owner and all persons having a recorded lien against~~
360 ~~the vehicle that the vehicle has been impounded or immobilized.~~
361 ~~A lessor, rental car company, or lienholder may then obtain the~~
362 ~~vehicle, upon payment of any lawful towing or storage charges.~~
363 ~~If the vehicle is a rental vehicle subject to a written~~
364 ~~contract, the charges may be separately charged to the renter,~~

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365 ~~in addition to the rental rate, along with other separate fees,~~
366 ~~charges, and recouplements disclosed on the rental agreement. If~~
367 ~~the storage facility fails to provide timely notice to a lessor,~~
368 ~~rental car company, or lienholder as required by this paragraph,~~
369 ~~the storage facility shall be responsible for payment of any~~
370 ~~towing or storage charges necessary to release the vehicle to a~~
371 ~~lessor, rental car company, or lienholder that accrue after the~~
372 ~~notice period, which charges may then be assessed against the~~
373 ~~driver of the vehicle if the vehicle was lawfully impounded or~~
374 ~~immobilized.~~

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

378 ~~1. The owner presents proof of insurance to the arresting~~
379 ~~agency; or~~

380 ~~2. The owner presents proof of sale of the vehicle to the~~
381 ~~arresting agency and the buyer presents proof of insurance to~~
382 ~~the arresting agency.~~

383
384 ~~If proof is not presented within 35 days after the impoundment~~
385 ~~or immobilization, a lien shall be placed upon such vehicle~~
386 ~~pursuant to s. 713.78.~~

387 ~~(f) The owner of a vehicle that is impounded or~~
388 ~~immobilized under this subsection may, within 10 days after the~~
389 ~~date the owner has knowledge of the location of the vehicle,~~
390 ~~file a complaint in the county in which the owner resides to~~
391 ~~determine whether the vehicle was wrongfully taken or withheld.~~
392 ~~Upon the filing of a complaint, the owner may have the vehicle~~

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393 ~~released by posting with the court a bond or other adequate~~
394 ~~security equal to the amount of the costs and fees for~~
395 ~~impoundment or immobilization, including towing or storage, to~~
396 ~~ensure the payment of such costs and fees if the owner does not~~
397 ~~prevail. When the vehicle owner does not prevail on a complaint~~
398 ~~that the vehicle was wrongfully taken or withheld, he or she~~
399 ~~must pay the accrued charges for the immobilization or~~
400 ~~impoundment, including any towing and storage charges assessed~~
401 ~~against the vehicle. When the bond is posted and the fee is paid~~
402 ~~as set forth in s. 28.24, the clerk of the court shall issue a~~
403 ~~certificate releasing the vehicle. At the time of release, after~~
404 ~~reasonable inspection, the owner must give a receipt to the~~
405 ~~towing or storage company indicating any loss or damage to the~~
406 ~~vehicle or to the contents of the vehicle.~~

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

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421 revocation, or disqualification of the driver's license or
422 driving privilege of the driver; or the owner received notice as
423 provided in subsection (8) relating to the same driver.

424 Section 4. The Department of Highway Safety and Motor
425 Vehicles shall inform the motoring public of the changes to s.
426 322.34, Florida Statutes, made by this act relating to
427 impoundment or immobilization of a motor vehicle being driven by
428 a person whose driver license is canceled, suspended, revoked,
429 or disqualified and shall provide such information in newly
430 printed driver license educational materials after July 1, 2009,
431 and in public service announcements produced in cooperation with
432 the Florida Highway Patrol.

433 Section 5. During the period from July 1, 2009, to July 1,
434 2010, the Department of Highway Safety and Motor Vehicles shall
435 notify by mail persons whose driver license or driving privilege
436 has been canceled, suspended, revoked, or disqualified of the
437 changes to s. 322.34, Florida Statutes, made by this act
438 relating to impoundment or immobilization of a motor vehicle
439 being driven by such person; however, failure to receive such
440 notification does not preclude, bar, or otherwise affect the
441 impoundment or immobilization of a motor vehicle under s.
442 322.34, Florida Statutes.

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