

By the Committees on Criminal Justice; and Transportation; and
Senator Diaz de la Portilla

591-04440-11

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1 A bill to be entitled
2 An act relating to driving without a valid driver's
3 license; amending s. 318.18, F.S.; providing an
4 additional fine for a violation of specified
5 provisions relating to driving with a canceled,
6 suspended, or revoked driver's license or driving
7 privilege; providing increased fine amounts for second
8 or subsequent violations; amending s. 318.21, F.S.;
9 providing for distribution of such fines collected;
10 amending s. 322.34, F.S.; revising provisions relating
11 to a conviction of the offense of driving while a
12 person's driver's license or driving privilege is
13 canceled, suspended, or revoked; requiring immediate
14 impoundment of the motor vehicle; conforming
15 provisions; revising penalties for knowingly driving
16 while the driver's license or driving privilege is
17 canceled, suspended, or revoked; revising procedures
18 for impoundment of the vehicle; providing an effective
19 date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (22) is added to section 318.18,
24 Florida Statutes, to read:

25 318.18 Amount of penalties.—The penalties required for a
26 noncriminal disposition pursuant to s. 318.14 or a criminal
27 offense listed in s. 318.17 are as follows:

28 (22) For a person driving any motor vehicle upon the
29 highways of this state while the person's license or privilege

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30 to drive is canceled, suspended, or revoked in violation of s.
 31 322.34(2), in addition to the fine under paragraph (3)(a), upon:

32 (a) A first conviction, \$250.

33 (b) A second conviction, \$500.

34 (c) A third or subsequent conviction, \$1,000.

35 Section 2. Subsection (22) is added to section 318.21,
 36 Florida Statutes, to read:

37 318.21 Disposition of civil penalties by county courts.—All
 38 civil penalties received by a county court pursuant to the
 39 provisions of this chapter shall be distributed and paid monthly
 40 as follows:

41 (22) Notwithstanding subsections (1) and (2), the proceeds
 42 from the penalties imposed pursuant to s. 318.18(22) shall be
 43 distributed as follows:

44 (a) For violations committed within a municipality, 40
 45 percent shall be distributed to the municipality, 40 percent
 46 shall be distributed to the county, and 20 percent shall be
 47 distributed to the law enforcement agency that issued the
 48 citation.

49 (b) For violations committed outside a municipality, 80
 50 percent shall be distributed to the county and 20 percent shall
 51 be distributed to the enforcement agency that issued the
 52 citation.

53 Section 3. Section 322.34, Florida Statutes, is amended to
 54 read:

55 322.34 Driving while license suspended ~~or~~ revoked,
 56 ~~canceled, or disqualified.~~—

57 (1) ~~Except as provided in subsection (2),~~ Any person whose
 58 driver's license or driving privilege has been ~~canceled,~~

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59 suspended, or revoked, except a person whose driver's license or
60 driving privilege has been suspended or revoked pursuant to s.
61 322.28 or a "habitual traffic offender" as defined in s.
62 322.264, who drives a vehicle upon the highways of this state
63 while such license or privilege is ~~anceled~~, suspended, or
64 revoked ~~commits is guilty of~~ a moving violation, punishable as
65 provided in chapter 318.

66 (2) Any person whose driver's license or driving privilege
67 has been ~~anceled~~, suspended, or revoked pursuant to s. 322.28,
68 or as a habitual traffic offender as ~~provided by law, except~~
69 persons defined in s. 322.264, who, knowing of such
70 cancellation, suspension, or revocation, drives any motor
71 vehicle upon the highways of this state while such license or
72 privilege is ~~anceled~~, suspended, or revoked, upon:

73 (a) A first conviction is guilty of a misdemeanor of the
74 second degree, punishable as provided in s. 775.082 or s.
75 775.083.

76 (b) A second conviction is guilty of a misdemeanor of the
77 first degree, punishable as provided in s. 775.082 or s.
78 775.083.

79 (c) A third or subsequent conviction is guilty of a felony
80 of the third degree, punishable as provided in s. 775.082, s.
81 775.083, or s. 775.084.

82
83 The element of knowledge is satisfied if the person has been
84 previously cited as provided in subsection (1); or the person
85 admits to knowledge of the ~~cancellation~~, suspension, or
86 revocation; or the person received notice as provided in
87 subsection (4). There shall be a rebuttable presumption that the

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88 knowledge requirement is satisfied if a judgment or order as
89 provided in subsection (4) appears in the department's records
90 for any case except for one involving a suspension by the
91 department for failure to pay a traffic fine or for a financial
92 responsibility violation.

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

96 (4) Any judgment or order rendered by a court or
97 adjudicatory body or any uniform traffic citation that ~~cancels,~~
98 ~~suspends,~~ or revokes a person's driver's license must contain a
99 provision notifying the person that his or her driver's license
100 has been ~~canceled,~~ suspended, or revoked.

101 (5) The motor vehicle being driven at the time of the
102 offense in subsection (2) shall be immediately impounded if the
103 driver is the registered owner of the vehicle, and the vehicle
104 may not be released from impoundment before the impoundment
105 surcharge is paid. The impoundment surcharge for:

106 (a) A first offense, is \$250 before release of the vehicle
107 from impoundment.

108 (b) A second offense, is \$500 before release of the vehicle
109 from impoundment.

110 (c) A third or subsequent offense, is \$1,000 before release
111 of the vehicle from impoundment.

112
113 The proceeds from impoundment surcharges shall be distributed as
114 civil penalties pursuant to s. 318.21(22). Any impoundment
115 surcharge collected under this subsection shall be credited
116 toward the civil penalty amount assessed pursuant to s.

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117 318.18(22).

118 (6)~~(5)~~ Any person whose driver's license has been revoked
119 pursuant to s. 322.264, except for a violation of s.
120 322.264(1)(d), as a ~~(habitual traffic offender)~~ and who drives
121 any motor vehicle upon the highways of this state while such
122 license is revoked commits ~~is guilty of~~ a felony of the third
123 degree, punishable as provided in s. 775.082, s. 775.083, or s.
124 775.084.

125 (7)~~(6)~~ Any person who operates a motor vehicle:

126 (a) Without having a driver's license as required under s.
127 322.03; or

128 (b) While his or her driver's license or driving privilege
129 is canceled, suspended, or revoked pursuant to s. 316.655, s.
130 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

131
132 and who by careless or negligent operation of the motor vehicle
133 causes the death of or serious bodily injury to another human
134 being commits ~~is guilty of~~ a felony of the third degree,
135 punishable as provided in s. 775.082 or s. 775.083.

136 (8)~~(7)~~ Any person whose driver's license or driving
137 privilege has been canceled, suspended, revoked, or disqualified
138 and who drives a commercial motor vehicle on the highways of
139 this state while such license or privilege is canceled,
140 suspended, revoked, or disqualified, upon:

141 (a) A first conviction is guilty of a misdemeanor of the
142 first degree, punishable as provided in s. 775.082 or s.
143 775.083.

144 (b) A second or subsequent conviction is guilty of a felony
145 of the third degree, punishable as provided in s. 775.082, s.

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146 775.083, or s. 775.084.

147 ~~(9)-(8)~~(a) Upon issuing a citation to the arrest of a person
148 for a violation of subsection (2), the offense of driving while
149 the person's driver's license or driving privilege is suspended
150 or revoked, the law enforcement arresting officer shall
151 immediately impound the vehicle if the driver is the registered
152 owner of the vehicle. ~~determine:~~

153 ~~1. Whether the person's driver's license is suspended or~~
154 ~~revoked.~~

155 ~~2. Whether the person's driver's license has remained~~
156 ~~suspended or revoked since a conviction for the offense of~~
157 ~~driving with a suspended or revoked license.~~

158 ~~3. Whether the suspension or revocation was made under s.~~
159 ~~316.646 or s. 627.733, relating to failure to maintain required~~
160 ~~security, or under s. 322.264, relating to habitual traffic~~
161 ~~offenders.~~

162 ~~4. Whether the driver is the registered owner or coowner of~~
163 ~~the vehicle.~~

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

167 ~~(b)-(e)~~ Within 7 business days after the date the vehicle is
168 impounded ~~arresting agency impounds or immobilizes the vehicle,~~
169 ~~either the~~ law enforcement arresting agency or the towing
170 service, whichever is in possession of the vehicle, shall send
171 notice pursuant to s. 713.78 ~~by certified mail~~ to any
172 ~~co~~registered owners of the vehicle other than the person who was
173 cited, to the traffic violations bureau, ~~arrested~~ and to each
174 person of record claiming a lien against the vehicle. All costs

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175 and fees for the impoundment ~~or immobilization~~, including the
176 cost of notification, must be paid by the owner of the vehicle
177 or, if the vehicle is leased, by the person leasing the vehicle.

178 (c) ~~(d) Either~~ The law enforcement ~~arresting~~ agency or the
179 towing service, whichever is in possession of the vehicle, shall
180 determine whether any vehicle impounded ~~or immobilized~~ under
181 this section has been leased or rented or if there are any
182 persons of record with a lien upon the vehicle. ~~Either~~ The law
183 enforcement ~~arresting~~ agency or the towing service, whichever is
184 in possession of the vehicle, shall send notice pursuant to s.
185 713.78 ~~notify by express courier service with receipt or~~
186 ~~certified mail~~ within 7 business days after the date of the
187 ~~immobilization or~~ impoundment of the vehicle, to the registered
188 owner and all persons having a recorded lien against the vehicle
189 that the vehicle has been impounded ~~or immobilized~~. A lessor,
190 rental car company, or lienholder may ~~then~~ obtain the vehicle,
191 upon payment of any lawful towing or storage charges. If the
192 vehicle is a rental vehicle subject to a written contract, the
193 charges may be separately charged to the renter, in addition to
194 the rental rate, along with other separate fees, charges, and
195 recoupments disclosed on the rental agreement. If the storage
196 facility fails to provide timely notice to a lessor, rental car
197 company, or lienholder as required by this paragraph, the
198 storage facility shall be responsible for payment of any towing
199 or storage charges necessary to release the vehicle to a lessor,
200 rental car company, or lienholder that accrue after the notice
201 period, which charges may then be assessed against the driver of
202 the vehicle if the vehicle was lawfully impounded ~~or~~
203 ~~immobilized~~.

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204 (d)~~(e)~~ Except as provided in paragraph (c) ~~(d)~~, the vehicle
205 shall remain impounded ~~or immobilized for any period imposed by~~
206 ~~the court~~ until payment of the applicable impoundment surcharge
207 required under s. 318.18 and:

208 1. The person retrieving the vehicle ~~owner~~ presents to the
209 law enforcement agency proof of a valid driver's license, proof
210 of ownership of the vehicle or written consent by the owner
211 authorizing release to the person, and proof of insurance to the
212 ~~arresting agency;~~ or

213 2. The owner presents to the law enforcement agency proof
214 of sale of the vehicle to the arresting agency and the buyer
215 presents proof of insurance to the ~~arresting~~ agency.
216

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

220 (e)~~(f)~~ The owner of a vehicle that is impounded ~~or~~
221 ~~immobilized~~ under this subsection may, within 10 days after the
222 date the owner has knowledge of the location of the vehicle,
223 file a complaint in the county in which the owner resides to
224 determine whether the vehicle was wrongfully taken or withheld.
225 Upon the filing of a complaint, the owner or lienholder may have
226 the vehicle released by posting with the court a bond or other
227 adequate security equal to the amount of the costs and fees for
228 impoundment ~~or immobilization~~, including towing or storage, to
229 ensure the payment of such costs and fees if the owner or
230 lienholder does not prevail. When the vehicle owner or
231 lienholder does not prevail on a complaint that the vehicle was
232 wrongfully taken or withheld, he or she must pay the accrued

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233 charges for the ~~immobilization or~~ impoundment, including any
234 towing and storage charges assessed against the vehicle. When
235 the bond is posted and the fee is paid as set forth in s. 28.24,
236 the clerk of the court shall issue a certificate releasing the
237 vehicle. At the time of release, after reasonable inspection,
238 the owner must give a receipt to the towing or storage company
239 indicating any loss or damage to the vehicle or to the contents
240 of the vehicle.

241 (f) Notwithstanding any other provision of this section,
242 the court shall order the release of the vehicle from
243 impoundment if the court finds undue hardship to a family
244 relying upon use of the vehicle without any other means of
245 private transportation.

246 (7)(9)(a) A motor vehicle that is driven by a person under
247 the influence of alcohol or drugs in violation of s. 316.193 is
248 subject to seizure and forfeiture under ss. 932.701-932.706 and
249 is subject to liens for recovering, towing, or storing vehicles
250 under s. 713.78 if, at the time of the offense, the person's
251 driver's license is suspended, revoked, or canceled as a result
252 of a prior conviction for driving under the influence.

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

257 (c) Notwithstanding s. 932.703(1)(c) or s. 932.7055, when
258 the seizing agency obtains a final judgment granting forfeiture
259 of the motor vehicle under this section, 30 percent of the net
260 proceeds from the sale of the motor vehicle shall be retained by
261 the seizing law enforcement agency and 70 percent shall be

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262 deposited in the General Revenue Fund for use by regional
263 workforce boards in providing transportation services for
264 participants of the welfare transition program. In a forfeiture
265 proceeding under this section, the court may consider the extent
266 that the family of the owner has other public or private means
267 of transportation.

268 (8)~~(10)~~(a) Notwithstanding any other provision of this
269 section, if a person does not have a prior forcible felony
270 conviction as defined in s. 776.08, the procedures ~~penalties~~
271 provided in paragraph (b) apply if a person's driver's license
272 or driving privilege is canceled, suspended, or revoked for:

273 1. Failing to pay child support as provided in s. 322.245
274 or s. 61.13016;

275 2. Failing to pay any other financial obligation as
276 provided in s. 322.245 other than those specified in s.
277 322.245(1);

278 3. Failing to comply with a civil penalty required in s.
279 318.15;

280 4. Failing to maintain vehicular financial responsibility
281 as required by chapter 324;

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

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

288 ~~(b)1. Upon a first conviction for knowingly driving while
289 his or her license is suspended, revoked, or canceled for any of
290 the underlying violations listed in subparagraphs (a)1.-6., a~~

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291 ~~person commits a misdemeanor of the second degree, punishable as~~
292 ~~provided in s. 775.082 or s. 775.083.~~

293 ~~2. Upon a second or subsequent conviction for the same~~
294 ~~offense of knowingly driving while his or her license is~~
295 ~~suspended, revoked, or canceled for any of the underlying~~
296 ~~violations listed in subparagraphs (a)1.-6., a person commits a~~
297 ~~misdemeanor of the first degree, punishable as provided in s.~~
298 ~~775.082 or s. 775.083.~~

299 (b) ~~(11)~~(a) A person who does not hold a commercial driver's
300 license and who is cited for an offense of knowingly driving
301 while his or her license is suspended, revoked, or canceled for
302 any of the underlying violations listed in paragraph ~~(10)~~(a)
303 may, in lieu of payment of fine or court appearance, elect to
304 enter a plea of nolo contendere and provide proof of compliance
305 to the clerk of the court, designated official, or authorized
306 operator of a traffic violations bureau. In such case,
307 adjudication shall be withheld and the clerk of the court,
308 designated official, or authorized operator of a traffic
309 violations bureau shall issue a certificate releasing the
310 vehicle upon payment of the cost of towing and storing the
311 vehicle. However, no election shall be made under this
312 subsection if such person has made an election under this
313 subsection during the preceding 12 months. A person may not make
314 more than three elections under this subsection.

315 (c) ~~(b)~~ If adjudication is withheld under paragraph (b) ~~(a)~~,
316 such action is not a conviction.

317 Section 4. This act shall take effect July 1, 2011.