

By Senator Bogdanoff

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

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30 the Florida Contraband Forfeiture Act; conforming a
31 cross-reference; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 322.34, Florida Statutes, is amended to
36 read:

37 322.34 Driving while license suspended, revoked, canceled,
38 or disqualified.—

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

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

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

56 (b) A second conviction is guilty of a misdemeanor of the
57 first degree, punishable as provided in s. 775.082 or s.
58 775.083.

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59 (c) A third or subsequent conviction is guilty of a felony
60 of the third degree, punishable as provided in s. 775.082, s.
61 775.083, or s. 775.084.

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

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

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

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

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

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88 (a) Without having a driver's license as required under s.
89 322.03; or

90 (b) While his or her driver's license or driving privilege
91 is canceled, suspended, or revoked pursuant to s. 316.655, s.
92 322.26(8), s. 322.27(2), or s. 322.28(2) or (4),

93

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

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

103 (a) A first conviction is guilty of a misdemeanor of the
104 first degree, punishable as provided in s. 775.082 or s.
105 775.083.

106 (b) A second or subsequent conviction is guilty of a felony
107 of the third degree, punishable as provided in s. 775.082, s.
108 775.083, or s. 775.084.

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

112 ~~1. Whether the person's driver's license is suspended or~~
113 ~~revoked.~~

114 ~~2. Whether the person's driver's license has remained~~
115 ~~suspended or revoked since a conviction for the offense of~~
116 ~~driving with a suspended or revoked license.~~

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117 ~~3. Whether the suspension or revocation was made under s.~~
118 ~~316.646 or s. 627.733, relating to failure to maintain required~~
119 ~~security, or under s. 322.264, relating to habitual traffic~~
120 ~~offenders.~~

121 ~~4. Whether the driver is the registered owner or coowner of~~
122 ~~the vehicle.~~

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

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

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

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

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

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

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

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

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

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

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

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

203 (c) Notwithstanding s. 932.703(1)(c) or s. 932.7055, when

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204 the seizing agency obtains a final judgment granting forfeiture
205 of the motor vehicle under this section, 30 percent of the net
206 proceeds from the sale of the motor vehicle shall be retained by
207 the seizing law enforcement agency and 70 percent shall be
208 deposited in the General Revenue Fund for use by regional
209 workforce boards in providing transportation services for
210 participants of the welfare transition program. In a forfeiture
211 proceeding under this section, the court may consider the extent
212 that the family of the owner has other public or private means
213 of transportation.

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

219 1. Failing to pay child support as provided in s. 322.245
220 or s. 61.13016;

221 2. Failing to pay any other financial obligation as
222 provided in s. 322.245 other than those specified in s.
223 322.245(1);

224 3. Failing to comply with a civil penalty required in s.
225 318.15;

226 4. Failing to maintain vehicular financial responsibility
227 as required by chapter 324;

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

230 6. Having been designated a habitual traffic offender under
231 s. 322.264(1)(d) as a result of suspensions of his or her
232 driver's license or driver privilege for any underlying

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233 violation listed in subparagraphs 1.-5.

234 (b)1. Upon a first conviction for knowingly driving while
235 his or her license is suspended, revoked, or canceled for any of
236 the underlying violations listed in subparagraphs (a)1.-6., a
237 person is guilty of ~~commits~~ a misdemeanor of the second degree,
238 punishable as provided in s. 775.082 or s. 775.083.

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

245 (10) (a) When a person is convicted of a violation of this
246 section, except for a person convicted under subsection (7), at
247 the time of sentencing, the court shall order the impoundment or
248 immobilization of any motor vehicle that was operated by, under
249 the actual control of, or registered in the name of the
250 defendant as follows:

251 1. For a misdemeanor of the second degree, the impoundment
252 or immobilization shall be for 5 days.

253 2. For a misdemeanor of the first degree, the impoundment
254 or immobilization shall be for 10 days.

255 3. For a felony of the third degree, the impoundment or
256 immobilization shall be for 30 days.

257 (b) The court may not order the impoundment or
258 immobilization to run concurrently with any incarceration of the
259 defendant.

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

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

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

281 (12)-(11)(a) A person who does not hold a commercial
282 driver's license and who is cited for an offense of knowingly
283 driving while his or her license is suspended, revoked, or
284 canceled for any of the underlying violations listed in
285 paragraph (9)-(10)(a) may, in lieu of payment of fine or court
286 appearance, elect to enter a plea of nolo contendere and provide
287 proof of compliance to the clerk of the court, designated
288 official, or authorized operator of a traffic violations bureau.
289 In such case, adjudication shall be withheld. However, no
290 election shall be made under this subsection if such person has

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291 made an election under this subsection during the preceding 12
292 months. A person may not make more than three elections under
293 this subsection.

294 (b) If adjudication is withheld under paragraph (a), such
295 action is not a conviction.

296 Section 2. Paragraph (a) of subsection (2) of section
297 932.701, Florida Statutes, is amended to read:

298 932.701 Short title; definitions.—

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

300 (a) "Contraband article" means:

301 1. Any controlled substance as defined in chapter 893 or
302 any substance, device, paraphernalia, or currency or other means
303 of exchange that was used, was attempted to be used, or was
304 intended to be used in violation of any provision of chapter
305 893, if the totality of the facts presented by the state is
306 clearly sufficient to meet the state's burden of establishing
307 probable cause to believe that a nexus exists between the
308 article seized and the narcotics activity, whether or not the
309 use of the contraband article can be traced to a specific
310 narcotics transaction.

311 2. Any gambling paraphernalia, lottery tickets, money,
312 currency, or other means of exchange which was used, was
313 attempted, or intended to be used in violation of the gambling
314 laws of the state.

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

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

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320 5. Any personal property, including, but not limited to,
321 any vessel, aircraft, item, object, tool, substance, device,
322 weapon, machine, vehicle of any kind, money, securities, books,
323 records, research, negotiable instruments, or currency, which
324 was used or was attempted to be used as an instrumentality in
325 the commission of, or in aiding or abetting in the commission
326 of, any felony, whether or not comprising an element of the
327 felony, or which is acquired by proceeds obtained as a result of
328 a violation of the Florida Contraband Forfeiture Act.

329 6. Any real property, including any right, title,
330 leasehold, or other interest in the whole of any lot or tract of
331 land, which was used, is being used, or was attempted to be used
332 as an instrumentality in the commission of, or in aiding or
333 abetting in the commission of, any felony, or which is acquired
334 by proceeds obtained as a result of a violation of the Florida
335 Contraband Forfeiture Act.

336 7. Any personal property, including, but not limited to,
337 equipment, money, securities, books, records, research,
338 negotiable instruments, currency, or any vessel, aircraft, item,
339 object, tool, substance, device, weapon, machine, or vehicle of
340 any kind in the possession of or belonging to any person who
341 takes aquaculture products in violation of s. 812.014(2)(c).

342 8. Any motor vehicle offered for sale in violation of s.
343 320.28.

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

346 10. Any photograph, film, or other recorded image,
347 including an image recorded on videotape, a compact disc,
348 digital tape, or fixed disk, that is recorded in violation of s.

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349 810.145 and is possessed for the purpose of amusement,
350 entertainment, sexual arousal, gratification, or profit, or for
351 the purpose of degrading or abusing another person.

352 11. Any real property, including any right, title,
353 leasehold, or other interest in the whole of any lot or tract of
354 land, which is acquired by proceeds obtained as a result of
355 Medicaid fraud under s. 409.920 or s. 409.9201; any personal
356 property, including, but not limited to, equipment, money,
357 securities, books, records, research, negotiable instruments, or
358 currency; or any vessel, aircraft, item, object, tool,
359 substance, device, weapon, machine, or vehicle of any kind in
360 the possession of or belonging to any person which is acquired
361 by proceeds obtained as a result of Medicaid fraud under s.
362 409.920 or s. 409.9201.

363 Section 3. This act shall take effect July 1, 2011.