

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 20, 1998 Revised: _____

Subject: Operation of Vehicles and Vessels

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Duggar</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	<u>Johnson</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The CS/CS/SB 604 requires as a condition of probation the impoundment or immobilization of the vehicle or vessel used in the offense or another vehicle or vessel currently owned by a person convicted of a DUI offense. The period of immobilization or impoundment will be 10, 30, or 90 days depending on the number of DUI convictions. The bill provides for dismissal of the impoundment order against a vehicle or vessel used in the offense when the vehicle or vessel was stolen or has changed owners since the offense was committed. The CS also expressly reiterates that the period of impoundment or immobilization cannot be concurrent with imprisonment.

This CS substantially amends sections 316.193 and 327.35, of the Florida Statutes.

II. Present Situation:

Section 316.193, F.S., provides penalties for driving under the influence (DUI). In addition to any other penalty imposed by the section, the court must order the impoundment or immobilization of a vehicle that was driven by, or in the actual physical control of a person who is convicted of driving under the influence of alcohol or drugs to the extent that normal faculties are impaired (DUI), unless the court finds that the family of the owner has no other public or private means of transportation.

The impoundment statute has been upheld against a vagueness challenge by the Florida Supreme Court in *Muller v. State*, 693 So.2d 976 (Fla. 1997). The vagueness challenge was based on the statute's lack of specificity as to the persons or parties bearing the responsibility for conducting the impoundment.

The period of impoundment or immobilization under the statute is 10 days for a first conviction, 30 days for the second conviction within 3 years of a prior conviction, and 90 days for the third conviction within 5 years of a prior conviction. *The period of impoundment or immobilization may not be concurrent with probation or imprisonment.* (Probation for first-time offenders is required under the statute and cannot exceed one year.) If the vehicle is leased, the period of impoundment or immobilization may not extend beyond the expiration of the lease agreement.

Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vehicle, if the registered owner is a person other than the person convicted of DUI, and to each person of record claiming a lien against the vehicle. All costs and fees must be paid by the owner of the vehicle or by the person leasing the vehicle if the vehicle is leased.

The person who owns an impounded or immobilized vehicle or a person having a lien of record against such vehicle may file a complaint in the county where the owner resides to determine whether the vehicle was wrongly taken or withheld from the owner or lienholder within 10 days after the date that person learns the location of the vehicle. The definition of a “wrongful taking” is unclear. Innocent persons have had their vehicles impounded because they purchased the vehicle used in the offense, subsequent to the offense, but before the offender completed incarceration and probation. It appears these impoundments have not been considered “wrongful takings” because it was the right *car* that was impounded.

Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting a bond or other adequate security that covers the amount of the costs and fees for impoundment or immobilization. When the bond is posted and a court fee is paid, the clerk of the court is required to issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or its contents.

Section 327.35(6), F.S., provides penalties for boating under the influence including a requirement that the court must order the impoundment or immobilization of a vessel operated by, or in the actual physical control of, a person who is convicted of operating a vessel under the influence of alcohol or drugs to the extent that normal faculties are impaired.

The period of impoundment or immobilization under the statute is 10 days for a first conviction, 30 days for the second conviction within 3 years of a prior conviction, and 90 days for the third conviction within 5 years of a prior conviction. *The period of impoundment or immobilization may not be concurrent with probation or imprisonment.* (Probation for first-time offenders is required under the statute and cannot exceed one year.) If the vessel is leased, the period of impoundment or immobilization may not extend beyond the expiration of the lease or rental agreement.

Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the vessel, if the registered owner is a person other than the person convicted of boating under the influence, and to each person of record claiming a lien against the vessel. All costs and fees must be paid by the owner of the vehicle or by the person leasing the vehicle if the vehicle is leased.

The person who owns an impounded or immobilized vessel or a person having a lien of record against such vessel may file a complaint in the county where the owner resides to determine whether the vessel was wrongly taken or withheld from the owner or lienholder within 10 days after the date that person learns the location of the vessel. The definition of a “wrongful taking” is unclear.

Upon the filing of a complaint, the owner or lienholder may have the vessel released by posting a bond or other adequate security that covers the amount of the costs and fees for impoundment or immobilization. When the bond is posted and a court fee is paid, the clerk of the court is required to issue a certificate releasing the vessel. At the time of release, after reasonable inspection, the owner or lienholder must give a receipt to the towing or storage company indicating any loss or damage to the vessel or its contents.

III. Effect of Proposed Changes:

The CS/CS/SB 604 amends section 316.193, F.S., to require that the vehicle driven by a person convicted of DUI or a vehicle owned by the defendant is to be impounded or immobilized as a condition of probation. The impoundment or immobilization is to be concurrent with probation, if probation is ordered by the court. Thus, if the court orders a first-time DUI offender’s vehicle impounded for 10 days, that 10-day time period will begin while the offender is on probation. (Currently, when the applicable time period for impoundment or immobilization is ordered by the court, it cannot begin until after the offender has completed imprisonment and probation.)

The bill directs the clerk of the court to provide notice of the impoundment or immobilization to the owner of the vehicle if the registered owner is a person other than the defendant, and to each person claiming a lien against the vehicle, by certified mail.

A person who owns the vehicle but was not operating the vehicle at the time of the offense may submit evidence to the court that the vehicle was stolen or that the vehicle was purchased after the offense was committed, from an entity other than the defendant or the defendant’s agent. The court must dismiss the order of impoundment or immobilization if it is determined that the vehicle was stolen or that the sale of the vehicle was not made to circumvent the order and allow the defendant continued access to the vehicle. If the vehicle was purchased from the defendant or the defendant’s agent the purchaser may request a hearing for the court to dismiss the order if the court finds the vehicle was purchased without knowledge of the offense, that the purchaser had no relationship with the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vehicle.

The bill amends section 327.35, F.S., to require that a vessel operated by a person convicted of operating a vessel under the influence or a vessel owned by the defendant is to be impounded or immobilized as a condition of probation. The impoundment or immobilization is to be concurrent with probation, if probation is ordered by the court. Thus, if the court orders a first-time offender's vessel impounded for 10 days, that 10-day time period will begin while the offender is on probation. (Currently, when the applicable time period for impoundment or immobilization is ordered by the court, it cannot begin until after the offender has completed imprisonment and probation.)

The bill directs the clerk of the court to provide notice of the impoundment or immobilization to the owner of the vessel if the registered owner is a person other than the defendant, and to each person claiming a lien against the vessel, by certified mail.

A person who owns the vessel, but was not operating the vessel at the time of the offense, may submit evidence to the court that the vessel was stolen or that the vessel was purchased after the offense was committed, from an entity other than the defendant or the defendant's agent. The court must dismiss the order of impoundment or immobilization if it is determined that the vessel was stolen or that the sale of the vessel was not made to circumvent the order and allow the defendant continued access to the vessel. If the vessel was purchased from the defendant or the defendant's agent the purchaser may request a hearing for the court to dismiss the order if the court finds the vessel was purchased without knowledge of the offense, that the purchaser had no relationship with the defendant other than through the transaction, and that such purchase would not circumvent the order and allow the defendant continued access to the vessel.

The CS also stipulates that s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles applies to impoundment or immobilization under s. 316.193, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will avoid impoundment or immobilization of vehicles or vessels used in an offense but which have been sold or repossessed after the offense and the current owner has no knowledge of the offense.

C. Government Sector Impact:

There may some minimal impact on the courts to deal with hearings when a vehicle or vessel on which an impoundment order is issued has been sold. However, under the provisions of the bill most of these issues can be resolved based solely on submissions of documents and no hearing will be required. Additionally, the court will be able to issue an order for the vehicle or vessel owned by the defendant at the time of the impoundment rather than dealing with the vehicle or vessel used in the offense if it is not owned by the defendant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.