

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 1588

INTRODUCER: Transportation Committee and Senator Altman

SUBJECT: Vehicles/Impoundment or Immobilization

DATE: April 8, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hansson	Meyer	TR	Fav/CS
2.			CJ	
3.			JU	
4.			FT	
5.			TA	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill amends provisions of s. 316.193, F.S., relating to motor vehicle immobilization or impoundment subsequent to a DUI conviction. Current law requires vehicles to be immobilized or impounded for specified periods, after a first or subsequent DUI conviction. The bill provides upon issuing an order of impoundment or immobilization, the court order must include the name and telephone numbers of all mobilization agencies meeting specified criteria. The bill requires all costs and fees for the impoundment or immobilization to be paid directly to the person impounding or immobilizing the vehicle. The bill also provides when motor vehicle immobilizations are not performed by a local government agency, private businesses directed by the court to perform these services must meet minimum criteria. The bill further provides specific definitions of “immobilization,” “immobilization agency,” “impoundment,” and “person.”

This bill substantially amends s. 316.193 of the Florida Statutes.

II. Present Situation:

Along with several other penalties for driving under the influence (DUI), Florida law provides for mandatory impoundment or immobilization of an offender's vehicle for a specific period.¹ Current law requires a judge to order, as a condition of probation, the impoundment or immobilization of vehicles as follows:

- For a first DUI conviction, the court must order the impoundment or immobilization of the vehicle that was used in the DUI offense or any one vehicle registered in the defendant's name at the time of impoundment or immobilization for a period of 10 days or for the unexpired term of any lease or rental agreement that expires within 10 days.²
- For a second DUI conviction within 5 years of the date of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 30 days or for the unexpired term of any lease or rental agreement that expires within 30 days.³
- For a third or subsequent DUI that occurs within 10 years of a prior conviction, the court must order the impoundment or immobilization of all vehicles owned by the defendant at the time of impoundment or immobilization for a period of 90 days or for the unexpired term of any lease or rental agreement that expires within 90 days.⁴

Impoundment and immobilization may be performed by a local government agency, or by a private entity. The costs of such immobilization or impoundment appear to vary by county. The Leon County Clerk of Court's office maintains a list of private contractors who charge approximately \$50 for a 10 day immobilization, by placing a boot on the offender's vehicle on request. Alachua County performs immobilizations by the clerk's office itself – offenders remove the license plate from their vehicle and give it to the Clerk's office for ten days (along with their vehicle registration). This renders the car legally inoperable, and thus immobilized. There is no charge to the offender under this system. In Miami-Dade County, as in Leon, the court notifies offenders of the immobilization or impoundment requirements, and directs them to the private sector. The private sector may charge any amount, ranging from a \$50 license-tag removal, to a \$100 car boot, to a \$300 to \$400 towing and storage charge. Because the offender may be unaware of the specific legal requirements, whether he or she pays \$50 or \$400 may depend simply on which private entity he or she contacts for service.

The current statute does not levy any fee against the offender related to the impoundment or immobilization. The costs of vehicle storage or expenses related to immobilization are not specified by statute, leaving rates to be determined by the impounding or immobilization agency.⁵

¹ s. 316.193(6), F.S.

² s. 316.193(6)(a), F.S.

³ s. 316.193(6)(b), F.S.

⁴ s. 316.193(6)(c), F.S.

⁵ In a recent report on license suspension, the Office of Program Policy and Government Accountability states "impoundment reportedly costs up to \$1,000 for a 30-day period in California... Ohio reports a cost of \$30 for steering wheel locks and \$200

The court can dismiss an order of impoundment or immobilization in specified circumstances. If a defendant can prove the vehicle was stolen at the time of the offense (e.g., a police report indicating the vehicle was stolen), or evidence the vehicle was not owned by the defendant (for example, proof the vehicle was recently purchased by the defendant), the court must dismiss the order of impoundment.⁶ If the defendant cannot present a police report indicating the vehicle was stolen, he or she may still request an evidentiary hearing to dismiss the order of impoundment.⁷ If the court finds the family of the owner of the vehicle has no other private or public means of transportation, the court “shall” dismiss the order of impoundment.⁸ The court “may” dismiss the order of impoundment of any vehicles that are owned by the defendant, but are operated solely by the employees of the defendant or any business owned by the defendant.⁹

The impoundment or immobilization cannot occur concurrently with the incarceration of the defendant and must occur concurrently with the driver’s license revocation imposed under s. 322.28(2)(a), F.S.

Current law does not provide standards for impoundment or immobilization agencies or their personnel. Neither does the law provide definitions for “impoundment,” “immobilization,” or related forms of these words. Industry representatives have stated there are currently numerous ways in which a vehicle may be “immobilized,” whether by physically blocking the steering wheel, placing a boot on the vehicle, or even simply removing the license tag from the vehicle (rendering the vehicle legally inoperable on roads and highways, but still physically operable).

III. Effect of Proposed Changes:

The bill requires a court’s notice of impoundment or immobilization to include the name and telephone numbers of all immobilization agencies that meet specified criteria. The bill requires all costs and fees for the impoundment or immobilization to be paid directly to the person immobilizing or impounding the vehicle.

Senate bill 1588 establishes professional criteria for businesses that immobilize vehicles pursuant to s. 316.193, F.S. In judicial circuits where personnel of the court or Sheriff’s office are not responsible for immobilizing vehicles under s. 316.193, F.S., the bill requires the private entities and/or individuals responsible for these duties to:

- Have a class “R” license issued pursuant to part IV of chapter 493;
- Have at least three years of verifiable experience in immobilizing vehicles;
- Maintain, for at least three years, accurate and complete records of all payments for the immobilization, copies of all documents pertaining to the court’s order of impoundment or immobilization, and any other documents relevant to each immobilization; and

for tire boots, which are paid by the offender.” *Several Alternatives Could Be Used to Reduce Increasing Imprisonment of Persons Driving with Suspended Licenses*, Report No. 08-12, March 2008.

⁶ s. 316.193(6)(e), F.S.

⁷ s. 316.193(6)(f), F.S.

⁸ s. 316.193(6)(g), F.S.

⁹ s. 316.193(6)(h), F.S.

- The person performing the immobilization must not have been convicted of any felony or of any DUI or boating-under-the-influence charge.

The bill provides a violation of these standards is a misdemeanor offense, punishable as provided in s. 775.082 or 775.083, F.S. The bill grants standing to bring a civil action for violations of these standards to any person aggrieved by a person's violation of the standards. The action may include injunctive relief, damages, reasonable attorney's fees and costs, as well as any other remedy in law or equity. Furthermore, if in such an action, it is proven a person violated the specified criteria for persons who immobilize vehicles then that proof conclusively establishes clear legal right to injunctive relief, that irreparable harm will be caused if an injunction is not issued, no adequate remedy at law exists, and that public policy favors issuance of injunctive relief.

Senate bill 1588 defines "immobilization," "immobilizing," and "immobilize," as the act of installing a vehicle antitheft device on the steering wheel of a vehicle pursuant to an order of impoundment or immobilization to prevent any person from operating the vehicle.

The bill defines "immobilization agency" or "immobilization agencies" as any firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind which meets all of the criteria established in the section.

The bill defines "impoundment," "impounding," and "impound," as the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.

The bill also defines "person" as any individual, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind.

This bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation Committee on April 14, 2009:

The CS:

- Requires the order of impoundment to include the name and telephone numbers of all applicable immobilization agencies.
- Requires the costs and fees for impoundment or immobilization to be paid directly to the person impounding or immobilizing the vehicle.
- Specifies certain criteria for immobilization agencies.
- Defines immobilization, immobilization agencies, impoundment, and person.
- Delete provisions requiring set fees.

B. Amendments:

None.