

Council Substitute for
Committee Substitute for House Bill No. 293

An act relating to motor vehicle and mobile home title transfer; amending s. 319.22, F.S.; revising provisions for limitation of liability for the operation of a motor vehicle that has been sold or transferred; providing requirements for notice of transfer to the Department of Highway Safety and Motor Vehicles; requiring an owner or coowner who has made a sale or transfer of a motor vehicle to notify the department; providing requirements for such notification; providing applicability; requiring the department to provide certain information to the motor vehicle owner or coowner when issuing a certificate of title; amending s. 320.02, F.S., requiring the application form for motor vehicle registration and renewal of registration to include language permitting a voluntary contribution to the Ronald McDonald Houses of Florida; revising provisions for distribution of such contributions; amending s. 320.02, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to withhold renewal of registration or replacement registration of specified motor vehicles under certain circumstances; amending s. 320.03, F.S.; preemption jurisdiction over the outsourced electronic filing system to the state; requiring the department to continue its current outsourcing of the existing electronic filing system; approving the system for use in all counties; authorizing motor vehicle dealers to charge certain fees; requiring a report from the Office of Program Policy Analysis and Government Accountability by a specified date; creating s. 320.1316, F.S.; providing responsibilities of the department relating to the issuance of a license plate, revalidation sticker, or replacement license plate for certain vehicles; requiring the department to create a notice to surrender form; providing procedures for the dispute of a notice to surrender; amending s. 559.903, F.S.; defining the terms "lienholder" and "owner" for purposes of the Florida Motor Vehicle Repair Act; amending s. 322.34, F.S.; creating certain rights for lienholders; deleting a return receipt mailing requirement; amending s. 713.78, F.S.; clarifying provisions; deleting a return receipt mailing requirement; creating certain rights for lienholders; deleting a provision that allows a complaint to be filed in the county where the owner resides; creating a cause of action to determine the rights of the parties after a vehicle or vessel has been sold; providing for attorney's fees and costs; providing a right of inspection to lienholders; amending s. 320.0609, F.S., relating to the transfer and exchange of registration license plates and transfer fees; requiring that a temporary tag be issued and displayed during the time that an application for a transfer of a registration license plate is being processed; providing exceptions; amending s. 320.131, F.S.; authorizing the department to issue temporary tags for the time that an application for a transfer of a registration license plate is being processed; amending s. 320.0609, F.S., relating to the transfer and exchange of registration license plates and transfer fees; requiring

a licensed motor vehicle dealer to provide certain required information via an electronic system to the department when the owner of a vehicle transfers a registration license plate to a replacement or substitute vehicle acquired from the dealer; providing that the electronic system shall be administered by the department; requiring the dealer to give the owner written notice documenting the transfer if the dealer cannot provide the required transfer information to the department under certain circumstances; requiring the dealer to maintain certain records; providing for the dealer and the department to charge a fee; providing for exceptions; authorizing the department to adopt rules; amending s. 316.193, F.S.; requiring the court to include in the order of impoundment or immobilization the names and telephone numbers of immobilization agencies that meet specified requirements; requiring the person whose vehicle is ordered to be impounded or immobilized to pay the impoundment or immobilization fees and costs directly to the person impounding or immobilizing the vehicle; establishing conditions and restrictions for immobilization agencies who are engaged in the business of immobilizing vehicles in judicial circuits where personnel of the court or sheriff do not immobilize vehicles; providing penalties for violating such conditions and restrictions; authorizing aggrieved immobilization agency to initiate a civil action against a person who commits such violation; providing for attorney's fees and costs; defining the terms "immobilization," "immobilize," "immobilizing," "immobilization agency," "immobilization agencies," "impound," "impounding," "impoundment," and "person"; providing an effective dates.

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

Section 1. Subsection (2) of section 319.22, Florida Statutes, is amended to read:

319.22 Transfer of title.—

(2)(a) An owner or coowner who has made a bona fide sale or transfer of a motor vehicle or mobile home and has delivered possession thereof to a purchaser shall not, by reason of any of the provisions of this chapter, be deemed the owner or coowner of such vehicle or mobile home so as to be subject to civil liability for the operation of such vehicle or mobile home thereafter by another when such owner or coowner has fulfilled either of the following requirements:

1.(a) When such owner or coowner has made proper endorsement and delivery of the certificate of title as provided by this chapter. Proper endorsement shall be:

a.1. When a motor vehicle or mobile home is registered in the names of two or more persons as coowners in the alternative by the use of the word "or," such vehicle shall be held in joint tenancy. Each coowner shall be deemed to have granted to the other coowner the absolute right to dispose of the title and interest in the vehicle or mobile home, and the signature of any coowner shall constitute proper endorsement. Upon the death of a

coowner, the interest of the decedent shall pass to the survivor as though title or interest in the vehicle or mobile home was held in joint tenancy. This provision shall apply even if the coowners are husband and wife.

b.2. When a vehicle or mobile home is registered in the names of two or more persons as coowners in the conjunctive by the use of the word “and,” the signature of each coowner or his or her personal representative shall be required to transfer title to the vehicle or mobile home.

The department shall adopt suitable language to appear upon the certificate of title to effectuate the manner in which the interest in or title to the motor vehicle or mobile home is held.

2.(b) When such owner or coowner has delivered to the department, or placed in the United States mail, addressed to the department, either the certificate of title properly endorsed or a notice in the form prescribed by the department. In addition to the information required by the department under this subparagraph, the notice must also contain the information required under paragraph (b) when the title being transferred is to a motor vehicle.

(b) An owner or coowner who has made a bona fide sale or transfer of a motor vehicle and has delivered possession thereof to a purchaser shall notify the department within 30 days after the sale or transfer in the form prescribed by the department. Notice by such owner or coowner under this paragraph shall satisfy the notice requirement under subparagraph (a)2. for limitation of liability under paragraph (a). The notification shall include the vehicle identification number and the buyer’s full first name, middle initial, last name, and personal or business identification, which may include, but need not be limited to, a driver’s license number, Florida identification card number, or federal employer identification number, and any information required by the department. This paragraph shall not apply to any transfer or sale to or by a licensed motor vehicle dealer or to an insurer who has taken possession or is taking possession of the vehicle or the title thereto pursuant to a policy of insurance.

(c) The department shall inform the motor vehicle owner or coowner of the requirements of this subsection with the issuance of each certificate of title to a motor vehicle. The information may be printed on the certificate of title or on a separate form that is included with the certificate.

Section 2. Subsection (17) is added to section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(17) If any applicant’s name appears on a list of persons who may not be issued a license plate, revalidation sticker, or replacement license plate after a written notice to surrender a vehicle was submitted to the department by a lienor as provided in s. 320.1316, the department may withhold renewal of registration or replacement registration of any motor vehicle owned by the applicant at the time the notice was submitted by the lienor. The lienor must

maintain proof that written notice to surrender the vehicle was sent to each registered owner pursuant to s. 320.1316(1). A revalidation sticker or replacement license plate may not be issued until that person's name no longer appears on the list or until the person presents documentation from the lienor that the vehicle has been surrendered to the lienor. The department shall not withhold an initial registration in connection with an applicant's purchase or lease of a motor vehicle solely because the applicant's name is on the list created by s. 320.1316.

Section 3. Subsection (10) is added to section 320.03, Florida Statutes, to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(10) Jurisdiction over the outsourced electronic filing system for use by licensed motor vehicle dealers electronically to title and to register motor vehicles and to issue or to transfer registration license plates or decals is expressly preempted to the state. The department shall continue its current outsourcing of the existing electronic filing system, including its program standards. The electronic filing system is approved for use in all counties, shall apply uniformly to all tax collectors of the state, and no tax collector may add or detract from the program standards in his or her respective county. A motor vehicle dealer licensed under this chapter may charge a fee to the customer for use of the electronic filing system and such fee is not a component of the program standards. Final authority over disputes relating to program standards lies with the department. By January 1, 2010, the Office of Program Policy Analysis and Government Accountability, with input from the department and from affected parties, including tax collectors, service providers, and motor vehicle dealers, shall report to the President of the Senate and the Speaker of the House of Representatives on the status of the outsourced electronic filing system, including the program standards, and its compliance with this subsection. The report shall identify all public and private alternatives for continued operation of the electronic filing system and shall include any and all appropriate recommendations, including revisions to the program standards.

Section 4. Section 320.1316, Florida Statutes, is created to read:

320.1316 Failure to surrender vehicle or vessel.—

(1) Upon receipt from a lienor who claims a lien on a vehicle pursuant to s. 319.27 by the Department of Highway Safety and Motor Vehicles of written notice to surrender a vehicle or vessel that has been disposed of, concealed, removed, or destroyed by the lienee, the department shall place the name of the registered owner of that vehicle on the list of those persons who may not be issued a license plate, revalidation sticker, or replacement license plate for any motor vehicle under s. 320.03(8) owned by the lienee at the time the notice was given by the lienor. If the vehicle is owned jointly by more than one person, the name of each registered owner shall be placed on the list.

(2) The notice to surrender the vehicle shall be submitted on forms developed by the department, which must include:

(a) The name, address, and telephone number of the lienor.

(b) The name of the registered owner of the vehicle and the address to which the lienor provided notice to surrender the vehicle to the registered owner.

(c) A general description of the vehicle, including its color, make, model, body style, and year.

(d) The vehicle identification number, registration license plate number, if known, or other identification number, as applicable.

(3) The registered owner of the vehicle may dispute a notice to surrender the vehicle by notifying the department of the dispute in writing on forms provided by the department and presenting proof that the vehicle was sold to a motor vehicle dealer licensed under s. 320.27, a mobile home dealer licensed under s. 320.77, or a recreational vehicle dealer licensed under s. 320.771.

Section 5. Subsection (8) of section 322.34, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

(c) Within 7 business days after the date the arresting agency impounds or immobilizes the vehicle, either the arresting agency or the towing service, whichever is in possession of the vehicle, shall send notice by certified mail, ~~return receipt requested~~, to any coregistered owners of the vehicle other than the person arrested and to each person of record claiming a lien against the vehicle. All costs and fees for the impoundment or immobilization, in-

cluding the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased, by the person leasing the vehicle.

(d) Either the arresting agency or the towing service, whichever is in possession of the vehicle, shall determine whether any vehicle impounded or immobilized under this section has been leased or rented or if there are any persons of record with a lien upon the vehicle. Either the arresting agency or the towing service, whichever is in possession of the vehicle, shall notify by express courier service with receipt or certified mail, ~~return receipt requested,~~ within 7 business days after the date of the immobilization or impoundment of the vehicle, the registered owner and all persons having a recorded lien against the vehicle that the vehicle has been impounded or immobilized. A lessor, rental car company, or lienholder may then obtain the vehicle, upon payment of any lawful towing or storage charges. If the vehicle is a rental vehicle subject to a written contract, the charges may be separately charged to the renter, in addition to the rental rate, along with other separate fees, charges, and recoupments disclosed on the rental agreement. If the storage facility fails to provide timely notice to a lessor, rental car company, or lienholder as required by this paragraph, the storage facility shall be responsible for payment of any towing or storage charges necessary to release the vehicle to a lessor, rental car company, or lienholder that accrue after the notice period, which charges may then be assessed against the driver of the vehicle if the vehicle was lawfully impounded or immobilized.

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

1. The owner presents proof of insurance to the arresting agency; or
2. The owner presents proof of sale of the vehicle to the arresting agency and the buyer presents proof of insurance to the arresting agency.

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

(f) The owner of a vehicle that is impounded or immobilized under this subsection may, within 10 days after the date the owner has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld. Upon the filing of a complaint, the owner or lienholder may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail. When the vehicle owner or lienholder does not prevail on a complaint that the vehicle was wrongfully taken or withheld, he or she must pay the accrued charges for the immobilization or impoundment, including any towing and storage charges assessed against the vehicle. When the bond is posted and the fee is paid as set forth in s. 28.24, the clerk of the court shall issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.

Section 6. Subsections (4), (5), (6), and (10) of section 713.78, Florida Statutes, are amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and to all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or of a corresponding agency in any other state.

(b) Whenever any law enforcement agency authorizes the removal of a vehicle or vessel or whenever any towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~ applicable law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requester notwithstanding the provisions of s. 627.736.

(c) Notice by certified mail, ~~return receipt requested~~, shall be sent within 7 business days after the date of storage of the vehicle or vessel to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and all persons of record claiming a lien against the vehicle or vessel. It shall state the fact of possession of the vehicle or vessel, that a lien as provided in subsection (2) is claimed, that charges have accrued and the amount thereof, that the lien is subject to enforcement pursuant to law, and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5), and that any vehicle or vessel which remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than 3 years of age or after 50 days if the vehicle or vessel is 3 years of age or less.

(d) If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 working days, excluding Saturday and Sunday, of the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing

by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made. For purposes of this paragraph and subsection (9), "good faith effort" means that the following checks have been performed by the company to establish prior state of registration and for title:

1. Check of vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.
2. Check of law enforcement report for tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.
3. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle or vessel at beginning of tow, if private tow.
4. If there is no address of the owner on the impound report, check of law enforcement report to see if an out-of-state address is indicated from driver license information.
5. Check of vehicle or vessel for inspection sticker or other stickers and decals that may indicate a state of possible registration.
6. Check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.
7. Check of vehicle for vehicle identification number.
8. Check of vessel for vessel registration number.
9. Check of vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

(5)(a) The owner of a vehicle or vessel removed pursuant to the provisions of subsection (2), or any person claiming a lien, other than the towing-storage operator, within 10 days after the time she or he has knowledge of the location of the vehicle or vessel, may file a complaint in the county court of the county in which the vehicle or vessel is stored ~~or in which the owner resides~~ to determine if her or his property was wrongfully taken or withheld from her or him.

(b) Upon filing of a complaint, an owner or lienholder may have her or his vehicle or vessel released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing or storage and lot rental amount to ensure the payment of such charges in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the lienor of the posting of the bond

and directing the lienor to release the vehicle or vessel. At the time of such release, after reasonable inspection, she or he shall give a receipt to the towing-storage company reciting any claims she or he has for loss or damage to the vehicle or vessel or the contents thereof.

(c) Upon determining the respective rights of the parties, the court may award damages, attorney's fees, and costs in favor of the prevailing party. In any event, the final order shall provide for immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder; or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.

(6) Any vehicle or vessel which is stored pursuant to subsection (2) and which remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge after 35 days from the time the vehicle or vessel is stored therein if the vehicle or vessel is more than 3 years of age or after 50 days following the time the vehicle or vessel is stored therein if the vehicle or vessel is 3 years of age or less. The sale shall be at public sale auction for cash. If the date of the sale was not included in the notice required in subsection (4), notice of the sale shall be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice shall be sent by certified mail, ~~return receipt requested~~, to the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency and shall be mailed not less than 15 days before the date of the sale. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, and costs of the sale, in that order of priority, shall be deposited with the clerk of the circuit court for the county if the owner or lienholder is absent, and the clerk shall hold such proceeds subject to the claim of the owner or lienholder ~~person~~ legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order. The owner or lienholder may file a complaint after the vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court may award damages, attorney's fees, and costs in favor of the prevailing party.

(10) Persons who provide services pursuant to this section shall permit vehicle or vessel owners, lienholders, or their agents, which agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths, to inspect the

towed vehicle or vessel and shall release to the owner, lienholder, or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the person providing such services.

Section 7. Effective October 1, 2009, paragraph (c) is added to subsection (2) of section 320.0609, Florida Statutes, to read:

320.0609 Transfer and exchange of registration license plates; transfer fee.—

(2)

(c) If a retail sale by a licensed independent motor vehicle dealer results in the transfer of a registration license plate, a temporary tag shall be issued and displayed during the time that the application for transfer of such registration license plate is being processed unless the department's records reflect that the transfer has occurred. However, this paragraph shall not apply to independent motor vehicle dealers that are owned by principals that also hold a franchise motor vehicle dealer license in this state. This paragraph is repealed June 30, 2010.

Section 8. Effective July 1, 2010, subsection (8) is added to section 320.0609, Florida Statutes, to read:

320.0609 Transfer and exchange of registration license plates; transfer fee.—

(8)(a) When the owner of a vehicle transfers a registration license plate to a replacement or substitute vehicle acquired from a motor vehicle dealer licensed under this chapter, the dealer shall timely provide to the department, via an electronic system administered by the department for this purpose, information regarding the transfer which is required by the department. The dealer shall also give the owner written notice documenting the transfer if the dealer cannot timely provide the required transfer information to the department due to system or connectivity problems. The dealer shall maintain all records required by the department which must be open to inspection by the department or its agents during reasonable business hours. The dealer may charge the vehicle owner a fee to comply with this subsection. The department may charge a fee of \$2 to be deposited into the Highway Safety Operating Trust Fund for each transfer in addition to any other fee imposed by law.

(b) A dealer is not required to comply with paragraph (a) if the department's records are otherwise modified on the date of transfer to reflect that the transfer has occurred.

(c) The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to administer this subsection.

Section 9. Effective October 1, 2009, paragraph (m) is added to subsection (1) of section 320.131, Florida Statutes, to read:

320.131 Temporary tags.—

(1) The department is authorized and empowered to design, issue, and regulate the use of temporary tags to be designated “temporary tags” for use in the following cases:

(m) For a retail sale by a licensed independent motor vehicle dealer when an application for the transfer of a registration license plate is being processed. This paragraph is repealed June 30, 2010.

Further, the department is authorized to disallow the purchase of temporary tags by licensed dealers, common carriers, or financial institutions in those cases where abuse has occurred.

Section 10. Paragraphs (d) and (i) of subsection (6) of section 316.193, Florida Statutes, are amended, and subsections (13) and (14) are added to that section, to read:

316.193 Driving under the influence; penalties.—

(6) With respect to any person convicted of a violation of subsection (1), regardless of any penalty imposed pursuant to subsection (2), subsection (3), or subsection (4):

(d) The court must at the time of sentencing the defendant issue an order for the impoundment or immobilization of a vehicle. The order of impoundment or immobilization must include the name and telephone numbers of all immobilization agencies meeting all of the conditions of subsection (13). Within 7 business days after the date that 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 each vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the vehicle.

(i) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the vehicle or, if the vehicle is leased or rented, by the person leasing or renting the vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply. The costs and fees for the impoundment or immobilization must be paid directly to the person impounding or immobilizing the vehicle.

For the purposes of this section, any conviction for a violation of s. 327.35; a previous conviction for the violation of former s. 316.1931, former s. 860.01, or former s. 316.028; or a previous conviction outside this state for driving under the influence, driving while intoxicated, driving with an unlawful blood-alcohol level, driving with an unlawful breath-alcohol level, or any other similar alcohol-related or drug-related traffic offense, is also considered a previous conviction for violation of this section. However, in satisfaction of the fine imposed pursuant to this section, the court may, upon a finding that the defendant is financially unable to pay either all or part of the fine, order that the defendant participate for a specified additional period of time in public service or a community work project in lieu of payment

of that portion of the fine which the court determines the defendant is unable to pay. In determining such additional sentence, the court shall consider the amount of the unpaid portion of the fine and the reasonable value of the services to be ordered; however, the court may not compute the reasonable value of services at a rate less than the federal minimum wage at the time of sentencing.

(13) If personnel of the circuit court or the sheriff do not immobilize vehicles, only immobilization agencies that meet the conditions of this subsection shall immobilize vehicles in that judicial circuit.

(a) The immobilization agency responsible for immobilizing vehicles in that judicial circuit shall be subject to strict compliance with all of the following conditions and restrictions:

1. Any immobilization agency engaged in the business of immobilizing vehicles shall:

- a. Have a class "R" license issued pursuant to part IV of chapter 493;
- b. Have at least 3 years of verifiable experience in immobilizing vehicles; and

c. Maintain 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. Such records must be maintained by the immobilization agency for at least 3 years.

2. The person who immobilizes a vehicle must never have been convicted of any felony or of driving or boating under the influence of alcohol or a controlled substance in the last 3 years.

(b) A person who violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any immobilization agency who is aggrieved by a person's violation of paragraph (a) may bring a civil action against the person who violated paragraph (a) seeking injunctive relief, damages, reasonable attorney's fees and costs, and any other remedy available at law or in equity as may be necessary to enforce this subsection. In any action to enforce this subsection, establishment of a violation of paragraph (a) shall conclusively establish a clear legal right to injunctive relief, that irreparable harm will be caused if an injunction does not issue, that no adequate remedy at law exists, and that public policy favors issuance of injunctive relief.

(14) As used in this chapter, the term:

(a) "Immobilization," "immobilizing," or "immobilize" means the act of installing a vehicle antitheft device on the steering wheel of a vehicle, the act of placing a tire lock or wheel clamp on a vehicle, or a governmental agency's act of taking physical possession of the license tag and vehicle registration rendering a vehicle legally inoperable to prevent any person

from operating the vehicle pursuant to an order of impoundment or immobilization under subsection (6).

(b) “Immobilization agency” or “immobilization agencies” means any firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever that meets all of the conditions of subsection (13).

(c) “Impoundment,” “impounding,” or “impound” means the act of storing a vehicle at a storage facility pursuant to an order of impoundment or immobilization under subsection (6) where the person impounding the vehicle exercises control, supervision, and responsibility over the vehicle.

(d) “Person” means any individual, firm, company, agency, organization, partnership, corporation, association, trust, or other business entity of any kind whatsoever.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2009.

Approved by the Governor June 18, 2009.

Filed in Office Secretary of State June 18, 2009.