

HB 115

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1 A bill to be entitled

2 An act relating to motor vehicles used to flee from or
3 elude a law enforcement officer; amending s. 316.1935,
4 F.S.; providing for impoundment or immobilization of a
5 motor vehicle used to flee from or elude a law enforcement
6 officer; requiring payment of costs and a civil penalty by
7 the owner or lessee of the vehicle; providing for
8 exceptions; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
11

12 Section 1. Section 316.1935, Florida Statutes, is amended
13 to read:

14 316.1935 Fleeing or attempting to elude a law enforcement
15 officer; aggravated fleeing or eluding.--

16 (1) It is unlawful for the operator of any vehicle, having
17 knowledge that he or she has been ordered to stop such vehicle
18 by a duly authorized law enforcement officer, willfully to
19 refuse or fail to stop the vehicle in compliance with such order
20 or, having stopped in knowing compliance with such order,
21 willfully to flee in an attempt to elude the officer, and a
22 person who violates this subsection commits a felony of the
23 third degree, punishable as provided in s. 775.082, s. 775.083,
24 or s. 775.084.

25 (2) Any person who willfully flees or attempts to elude a
26 law enforcement officer in an authorized law enforcement patrol
27 vehicle, with agency insignia and other jurisdictional markings
28 prominently displayed on the vehicle, with siren and lights

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29 activated commits a felony of the third degree, punishable as
30 provided in s. 775.082, s. 775.083, or s. 775.084.

31 (3) Any person who willfully flees or attempts to elude a
32 law enforcement officer in an authorized law enforcement patrol
33 vehicle, with agency insignia and other jurisdictional markings
34 prominently displayed on the vehicle, with siren and lights
35 activated, and during the course of the fleeing or attempted
36 eluding:

37 (a) Drives at high speed, or in any manner which
38 demonstrates a wanton disregard for the safety of persons or
39 property, commits a felony of the second degree, punishable as
40 provided in s. 775.082, s. 775.083, or s. 775.084.

41 (b) Drives at high speed, or in any manner which
42 demonstrates a wanton disregard for the safety of persons or
43 property, and causes serious bodily injury or death to another
44 person, including any law enforcement officer involved in
45 pursuing or otherwise attempting to effect a stop of the
46 person's vehicle, commits a felony of the first degree,
47 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
48 Notwithstanding any other provision of law, the court shall
49 sentence any person convicted of committing the offense
50 described in this paragraph to a mandatory minimum sentence of 3
51 years imprisonment. Nothing in this paragraph shall prevent a
52 court from imposing a greater sentence of incarceration as
53 authorized by law.

54 (4) Any person who, in the course of unlawfully leaving or
55 attempting to leave the scene of a crash in violation of s.
56 316.027 or s. 316.061, having knowledge of an order to stop by a

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57 | duly authorized law enforcement officer, willfully refuses or
58 | fails to stop in compliance with such an order, or having
59 | stopped in knowing compliance with such order, willfully flees
60 | in an attempt to elude such officer and, as a result of such
61 | fleeing or eluding:

62 | (a) Causes injury to another person or causes damage to
63 | any property belonging to another person, commits aggravated
64 | fleeing or eluding, a felony of the second degree, punishable as
65 | provided in s. 775.082, s. 775.083, or s. 775.084.

66 | (b) Causes serious bodily injury or death to another
67 | person, including any law enforcement officer involved in
68 | pursuing or otherwise attempting to effect a stop of the
69 | person's vehicle, commits aggravated fleeing or eluding with
70 | serious bodily injury or death, a felony of the first degree,
71 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

72 |

73 | The felony of aggravated fleeing or eluding and the felony of
74 | aggravated fleeing or eluding with serious bodily injury or
75 | death constitute separate offenses for which a person may be
76 | charged, in addition to the offenses under ss. 316.027 and
77 | 316.061, relating to unlawfully leaving the scene of a crash,
78 | which the person had been in the course of committing or
79 | attempting to commit when the order to stop was given.

80 | Notwithstanding any other provision of law, the court shall
81 | sentence any person convicted of committing aggravated fleeing
82 | or eluding with serious bodily injury or death to a mandatory
83 | minimum sentence of 3 years imprisonment. Nothing in this

84 subsection shall prevent a court from imposing a greater
 85 sentence of incarceration as authorized by law.

86 (5) The court shall revoke, for a period not less than 1
 87 year nor exceeding 5 years, the driver's license of any operator
 88 of a motor vehicle convicted of a violation of subsection (1),
 89 subsection (2), subsection (3), or subsection (4).

90 (6) Notwithstanding s. 948.01, no court may suspend,
 91 defer, or withhold adjudication of guilt or imposition of
 92 sentence for any violation of this section. A person convicted
 93 and sentenced to a mandatory minimum term of incarceration under
 94 paragraph (3)(b) or paragraph (4)(b) is not eligible for
 95 statutory gain-time under s. 944.275 or any form of
 96 discretionary early release, other than pardon or executive
 97 clemency or conditional medical release under s. 947.149, prior
 98 to serving the mandatory minimum sentence.

99 (7) When a law enforcement officer who is in pursuit of a
 100 motor vehicle being operated in violation of this section
 101 decides to end the pursuit based on safety concerns or the
 102 pursuit policies under which the officer is operating, the
 103 officer may end pursuit and order the motor vehicle to be
 104 impounded or immobilized pursuant to this subsection.

105 (a) An order to impound or immobilize a motor vehicle
 106 under this subsection must provide a positive identification of
 107 the motor vehicle, including a description of the motor vehicle,
 108 its make and color, and its registration license number. Once
 109 the order has been issued, the law enforcement agency shall have
 110 the motor vehicle impounded or immobilized. The law enforcement
 111 agency shall then notify the clerk of the court of the

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112 impoundment or immobilization for violation of this section. The
113 motor vehicle shall remain in impound or immobilized until the
114 owner or lessee receives authorization from the clerk of the
115 court for release of the motor vehicle under this subsection.

116 (b) Within 7 business days after the date of impoundment
117 or immobilization, the clerk of the court shall send notice by
118 certified mail, return receipt requested, to the registered
119 owner or coowners of the motor vehicle, any lessee of the motor
120 vehicle, and each person of record claiming a lien against the
121 motor vehicle. The notice shall include the location where the
122 motor vehicle is being held and information on the procedures to
123 have the motor vehicle released from impoundment or
124 immobilization.

125 (c)1. All costs and fees for the impoundment or
126 immobilization, including the cost of notification, must be paid
127 by the owner of the motor vehicle or, if the motor vehicle is
128 leased or rented, by the person leasing or renting the motor
129 vehicle, unless the impoundment or immobilization order is
130 canceled by the clerk of the court. All provisions of s. 713.78
131 shall apply.

132 2. Notwithstanding s. 318.121, a civil penalty of \$2,000
133 must be paid to the clerk of the court by the owner of the motor
134 vehicle or, if the motor vehicle is leased or rented, by the
135 person leasing or renting the motor vehicle. Moneys collected
136 under this subparagraph shall be distributed as provided in s.
137 318.21.

138 (d) Upon satisfaction of the requirements of subparagraphs
139 (c)1. and 2., the clerk of the court shall authorize the release

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140 of the motor vehicle, and the impounding agency shall release
141 the motor vehicle to the owner or lessee or an agent of the
142 owner or lessee.

143 (e) The clerk of the court shall cancel the order of
144 impoundment or immobilization and the impounding agency shall
145 release the motor vehicle under the conditions provided in s.
146 316.193(6)(e), (f), (g), and (h) if the owner or lessee or an
147 agent of the owner or lessee presents a valid driver license at
148 the time of pickup of the motor vehicle.

149 (8)~~(7)~~ Any motor vehicle involved in a violation of this
150 section is deemed to be contraband, which may be seized by a law
151 enforcement agency and is subject to forfeiture pursuant to ss.
152 932.701-932.704. Any vehicle not required to be titled under the
153 laws of this state is presumed to be the property of the person
154 in possession of the vehicle.

155 Section 2. This act shall take effect October 1, 2008.