

1 A bill to be entitled
2 An act relating to wrecker liens; amending s.
3 320.03, F.S.; including a cross reference;
4 providing that the term "civil penalties and
5 fines" does not include reference to a wrecker
6 operator's lien; amending s. 713.78, F.S.,
7 relating to liens; revising conditions for sale
8 of certain vehicles and vessels; providing that
9 the Department of Highway Safety and Motor
10 Vehicles shall not issue a license plate or
11 revalidation sticker for certain motor
12 vehicles, vessels, or motor homes for which a
13 wrecker operator's lien has been issued;
14 providing procedures with respect to such
15 liens; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Subsection (8) of section 320.03, Florida
20 Statutes, is amended to read:

21 320.03 Registration; duties of tax collectors;
22 International Registration Plan.--

23 (8) If the applicant's name appears on the list
24 referred to in s. 316.1001(4), ~~or~~ s. 316.1967(6), or s.
25 713.78(13), a license plate or revalidation sticker may not be
26 issued until that person's name no longer appears on the list
27 or until the person presents a receipt from the clerk showing
28 that the fines outstanding have been paid. The tax collector
29 and the clerk of the court are each entitled to receive
30 monthly, as costs for implementing and administering this
31 subsection, 10 percent of the civil penalties and fines

1 recovered from such persons. As used in this subsection, the
 2 term "civil penalties and fines" does not include a wrecker
 3 operator's lien as described in s. 713.78(13). If the tax
 4 collector has private tag agents, such tag agents are entitled
 5 to receive a pro rata share of the amount paid to the tax
 6 collector, based upon the percentage of license plates and
 7 revalidation stickers issued by the tag agent compared to the
 8 total issued within the county. The authority of any private
 9 agent to issue license plates shall be revoked, after notice
 10 and a hearing as provided in chapter 120, if he or she issues
 11 any license plate or revalidation sticker contrary to the
 12 provisions of this subsection. This section applies only to
 13 the annual renewal in the owner's birth month of a motor
 14 vehicle registration and does not apply to the transfer of a
 15 registration of a motor vehicle sold by a motor vehicle dealer
 16 licensed under this chapter, except for the transfer of
 17 registrations which is inclusive of the annual renewals. This
 18 section does not affect the issuance of the title to a motor
 19 vehicle, notwithstanding s. 319.23(7)(b).

20 Section 2. Paragraph (b) of subsection (4) and
 21 subsection (6) of section 713.78, Florida Statutes, are
 22 amended, and subsection (13) is added to said section, to
 23 read:

24 713.78 Liens for recovering, towing, or storing
 25 vehicles and documented vessels.--

26 (4)

27 (b) Notice by certified mail, return receipt
 28 requested, shall be sent within 7 business days after the date
 29 of storage of the vehicle or vessel to the registered owner
 30 and to all persons of record claiming a lien against the
 31 vehicle or vessel. It shall state the fact of possession of

1 the vehicle or vessel, that a lien as provided in subsection
2 (2) is claimed, that charges have accrued and the amount
3 thereof, that the lien is subject to enforcement pursuant to
4 law, and that the owner or lienholder, if any, has the right
5 to a hearing as set forth in subsection (5), and that any
6 vehicle or vessel which remains unclaimed, or for which the
7 charges for recovery, towing, or storage services remain
8 unpaid, may be sold ~~after 35 days~~ free of all prior liens
9 after 35 days if the vehicle or vessel is more than 3 years of
10 age and after 50 days if the vehicle or vessel is 3 years of
11 age or less.

12 (6) Any vehicle or vessel which is stored pursuant to
13 subsection (2) and which remains unclaimed, or for which
14 reasonable charges for recovery, towing, or storing remain
15 unpaid or for which a lot rental amount is due and owing to
16 the mobile home park owner, as evidenced by a judgment for
17 unpaid rent, and any contents not released pursuant to
18 subsection (10), may be sold by the owner or operator of the
19 storage space for such towing or storage charge or unpaid lot
20 rental amount after 35 days from the time the vehicle or
21 vessel is stored therein if the vehicle or vessel is more than
22 3 years of age and after 50 days from the time the vehicle or
23 vessel is stored therein if the vehicle or vessel is 3 years
24 of age or less. The sale shall be at public auction for cash.
25 If the date of the sale was not included in the notice
26 required in subsection (4), notice of the sale shall be given
27 to the person in whose name the vehicle, vessel, or mobile
28 home is registered, to the mobile home park owner, and to all
29 persons claiming a lien on the vehicle or vessel as shown on
30 the records of the Department of Highway Safety and Motor
31 Vehicles or of the corresponding agency in any other state.

1 Notice shall be sent by certified mail, return receipt
2 requested, to the owner of the vehicle or vessel and the
3 person having the recorded lien on the vehicle or vessel at
4 the address shown on the records of the registering agency and
5 shall be mailed not less than 15 days before the date of the
6 sale. After diligent search and inquiry, if the name and
7 address of the registered owner or the owner of the recorded
8 lien cannot be ascertained, the requirements of notice by mail
9 may be dispensed with. In addition to the notice by mail,
10 public notice of the time and place of sale shall be made by
11 publishing a notice thereof one time, at least 10 days prior
12 to the date of the sale, in a newspaper of general circulation
13 in the county in which the sale is to be held. The proceeds
14 of the sale, after payment of reasonable towing and storage
15 charges, costs of the sale, and the unpaid lot rental amount,
16 in that order of priority, shall be deposited with the clerk
17 of the circuit court for the county if the owner is absent,
18 and the clerk shall hold such proceeds subject to the claim of
19 the person legally entitled thereto. The clerk shall be
20 entitled to receive 5 percent of such proceeds for the care
21 and disbursement thereof. The certificate of title issued
22 under this law shall be discharged of all liens unless
23 otherwise provided by court order.

24 (13)(a) Upon receipt by the Department of Highway
25 Safety and Motor Vehicles of written notice from a wrecker
26 operator who claims a wrecker operator's lien under paragraph
27 (2)(c) or paragraph (2)(d) for recovery, towing, or storage of
28 a vehicle, vessel, or mobile home, upon instructions from any
29 law enforcement agency, for which a certificate of destruction
30 has been issued under subsection (11), the department shall
31 place the name of the registered owner of that vehicle,

1 vessel, or mobile home on the list of those persons who may
2 not be issued a license plate or revalidation sticker for any
3 motor vehicle under s. 320.03(8). If the vehicle, vessel, or
4 mobile home is owned jointly by more than one person, the name
5 of each registered owner shall be placed on the list. The
6 notice of wrecker operator's lien shall be submitted on forms
7 provided by the department, which must include:

8 1. The name, address, and telephone number of the
9 wrecker operator.

10 2. The name of the registered owner of the vehicle,
11 vessel, or mobile home and the address to which the wrecker
12 operator provided notice of the lien to the registered owner
13 under subsection (4).

14 3. A general description of the vehicle, vessel, or
15 mobile home, including its color, make, model, body style, and
16 year.

17 4. The vehicle identification number (VIN);
18 registration license plate number, state, and year; validation
19 decal number, state, and year; mobile home sticker number,
20 state, and year; vessel registration number; hull
21 identification number; or other identification number, as
22 applicable.

23 5. The name of the person or the corresponding law
24 enforcement agency that requested that the vehicle, vessel, or
25 mobile home be recovered, towed, or stored.

26 6. The amount of the wrecker operator's lien, not to
27 exceed the amount allowed by paragraph (b).

28 (b) For purposes of this subsection only, the amount
29 of the wrecker operator's lien for which the department will
30 prevent issuance of a license plate or revalidation sticker
31 may not exceed the amount of the charges for recovery, towing,

1 and storage of the vehicle, vessel, or mobile home for 7 days.
2 These charges may not exceed the maximum rates imposed by the
3 ordinances of the respective county or municipality under ss.
4 125.0103(1)(c) and 166.043(1)(c). This paragraph does not
5 limit the amount of a wrecker operator's lien claimed under
6 subsection (2) or prevent a wrecker operator from seeking
7 civil remedies for enforcement of the entire amount of the
8 lien, but limits only that portion of the lien for which the
9 department will prevent issuance of a license plate or
10 revalidation sticker.

11 (c)1. The registered owner of a vehicle, vessel, or
12 mobile home may dispute a wrecker operator's lien, by
13 notifying the department of the dispute in writing on forms
14 provided by the department, if at least one of the following
15 applies:

16 a. The registered owner presents a notarized bill of
17 sale proving that the vehicle, vessel, or mobile home was sold
18 in a private or casual sale before the vehicle, vessel, or
19 mobile home was recovered, towed, or stored.

20 b. The registered owner presents proof that the
21 Florida certificate of title of the vehicle, vessel, or mobile
22 home was sold to a licensed dealer as defined in s. 319.001
23 before the vehicle, vessel, or mobile home was recovered,
24 towed, or stored.

25
26 If the registered owner's dispute of a wrecker operator's lien
27 complies with one of these criteria, the department shall
28 immediately remove the registered owner's name from the list
29 of those persons who may not be issued a license plate or
30 revalidation sticker for any motor vehicle under s. 320.03(8),
31 thereby allowing issuance of a license plate or revalidation

1 sticker. If the vehicle, vessel, or mobile home is owned
 2 jointly by more than one person, each registered owner must
 3 dispute the wrecker operator's lien in order to be removed
 4 from the list. However, the department shall deny any dispute
 5 and maintain the registered owner's name on the list of those
 6 persons who may not be issued a license plate or revalidation
 7 sticker for any motor vehicle under s. 320.03(8) if the
 8 wrecker operator has provided the department with a certified
 9 copy of the judgment of a court which orders the registered
 10 owner to pay the wrecker operator's lien claimed under this
 11 section. In such a case, the amount of the wrecker operator's
 12 lien allowed by paragraph (b) may be increased to include no
 13 more than \$500 of the reasonable costs and attorney's fees
 14 incurred in obtaining the judgment. The department's action
 15 under this subparagraph is ministerial in nature, shall not be
 16 considered final agency action, and is appealable only to the
 17 county court for the county in which the vehicle, vessel, or
 18 mobile home was ordered removed.

19 2. A person against whom a wrecker operator's lien has
 20 been imposed may alternatively obtain a discharge of the lien
 21 by filing a complaint, challenging the validity of the lien or
 22 the amount thereof, in the county court of the county in which
 23 the vehicle, vessel, or mobile home was ordered removed. Upon
 24 filing of the complaint, the person may have her or his name
 25 removed from the list of those persons who may not be issued a
 26 license plate or revalidation sticker for any motor vehicle
 27 under s. 320.03(8), thereby allowing issuance of a license
 28 plate or revalidation sticker, upon posting with the court a
 29 cash or surety bond or other adequate security equal to the
 30 amount of the wrecker operator's lien to ensure the payment of
 31 such lien in the event she or he does not prevail. Upon the

1 posting of the bond and the payment of the applicable fee set
 2 forth in s. 28.24, the clerk of the court shall issue a
 3 certificate notifying the department of the posting of the
 4 bond and directing the department to release the wrecker
 5 operator's lien. Upon determining the respective rights of
 6 the parties, the court may award damages and costs in favor of
 7 the prevailing party.

8 3. If a person against whom a wrecker operator's lien
 9 has been imposed does not object to the lien, but cannot
 10 discharge the lien by payment because the wrecker operator has
 11 moved or gone out of business, the person may have her or his
 12 name removed from the list of those persons who may not be
 13 issued a license plate or revalidation sticker for any motor
 14 vehicle under s. 320.03(8), thereby allowing issuance of a
 15 license plate or revalidation sticker, upon posting with the
 16 clerk of court in the county in which the vehicle, vessel, or
 17 mobile home was ordered removed, a cash or surety bond or
 18 other adequate security equal to the amount of the wrecker
 19 operator's lien. Upon the posting of the bond and the
 20 payment of the applicable fee set forth in s. 28.24, the clerk
 21 of the court shall issue a certificate notifying the
 22 department of the posting of the bond and directing the
 23 department to release the wrecker operator's lien. The
 24 department shall mail to the wrecker operator, at the address
 25 upon the lien form, notice that the wrecker operator must
 26 claim the security within 60 days, or the security will be
 27 released back to the person who posted it. At the conclusion
 28 of the 60 days, the department shall direct the clerk as to
 29 which party is entitled to payment of the security, less
 30 applicable clerk's fees.

1 4. A wrecker operator's lien expires 5 years after
2 filing.

3 (d) Upon discharge of the amount of the wrecker
4 operator's lien allowed by paragraph (b), the wrecker operator
5 must issue a certificate of discharged wrecker operator's lien
6 on forms provided by the department to each registered owner
7 of the vehicle, vessel, or mobile home attesting that the
8 amount of the wrecker operator's lien allowed by paragraph (b)
9 has been discharged. Upon presentation of the certificate of
10 discharged wrecker operator's lien by the registered owner,
11 the department shall immediately remove the registered owner's
12 name from the list of those persons who may not be issued a
13 license plate or revalidation sticker for any motor vehicle
14 under s. 320.03(8), thereby allowing issuance of a license
15 plate or revalidation sticker. Issuance of a certificate of
16 discharged wrecker operator's lien under this paragraph does
17 not discharge the entire amount of the wrecker operator's lien
18 claimed under subsection (2), but only certifies to the
19 department that the amount of the wrecker operator's lien
20 allowed by paragraph (b), for which the department will
21 prevent issuance of a license plate or revalidation sticker,
22 has been discharged.

23 (e) When a wrecker operator files a notice of wrecker
24 operator's lien under this subsection, the department shall
25 charge the wrecker operator a fee of \$2, which shall be
26 deposited into the Florida Motor Vehicle Theft Prevention
27 Trust Fund established under s. 860.158. A service charge of
28 \$2.50 shall be collected and retained by the tax collector who
29 processes a notice of wrecker operator's lien.

30 (f) This subsection applies only to the annual renewal
31 in the registered owner's birth month of a motor vehicle

1 registration and does not apply to the transfer of a
2 registration of a motor vehicle sold by a motor vehicle dealer
3 licensed under chapter 320, except for the transfer of
4 registrations which is inclusive of the annual renewals. This
5 subsection does not affect the issuance of the title to a
6 motor vehicle, notwithstanding s. 319.23(7)(b).

7 (g) The Department of Highway Safety and Motor
8 Vehicles may adopt rules pursuant to ss. 120.536(1) and 120.54
9 to implement this subsection.

10 Section 3. This act shall take effect July 1, 2001.