

1 A bill to be entitled
 2 An act relating to nonjudicial sale of vessels; amending
 3 s. 328.17, F.S.; revising notice requirements of a marina
 4 having a possessory lien on a vessel for unpaid costs,
 5 charges, or fees prior to nonjudicial sale of the vessel;
 6 reducing the time allowed to pay the fees, charges, and
 7 costs giving rise to the lien prior to sale of the vessel;
 8 revising requirements with respect to perfection of and
 9 priority over prior or other liens; providing an effective
 10 date.

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

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 14 Section 1. Subsections (4), (5), (7), (10), (11), and (12)
 15 of section 328.17, Florida Statutes, are amended to read:

16 328.17 Nonjudicial sale of vessels.--

17 (4) A marina, as defined in s. 327.02(19), shall have:

18 (a) A possessory lien upon any vessel for storage fees,
 19 dockage fees, repairs, improvements, or other work-related
 20 storage charges, and for expenses necessary for preservation of
 21 the vessel or expenses reasonably incurred in the sale or other
 22 disposition of the vessel. The possessory lien shall attach as
 23 of the date the vessel is brought to the marina, or as of the
 24 date the vessel first occupies rental space at the marina
 25 facility. ~~However, in the event of default, the marina must give~~
 26 ~~notice to persons who hold perfected security interests against~~
 27 ~~the vessel under the Uniform Commercial Code in which the owner~~
 28 ~~is named as the debtor.~~

29 (b) A possessory lien upon any vessel in a wrecked,
30 junked, or substantially dismantled condition, which has been
31 left docked, grounded, beached, or otherwise abandoned at a
32 marina without consent of the marina owner, for expenses
33 reasonably incurred in the removal and disposal of the vessel.
34 The possessory lien shall attach as of the date the vessel is
35 discovered at the marina facility. If the funds recovered from
36 the sale of such a vessel, or from the scrap or salvage value of
37 such a vessel, are insufficient to cover the expenses reasonably
38 incurred by the marina in removing and disposing of the vessel,
39 all costs in excess of recovery shall be recoverable against the
40 owner of the vessel.

41 (5) A marina's possessory lien may be satisfied as
42 follows:

43 (a) 1. The marina shall provide written notice to the
44 vessel's owner, delivered in person or by certified mail to the
45 owner's last known address. The notice shall also be ~~and~~
46 conspicuously posted at the marina and on the vessel.

47 2. In addition to notice provided to the vessel owner
48 under subparagraph 1., the marina shall provide written notice
49 to each person or entity that:

50 a. Holds a security interest on the vessel as shown in the
51 records of the Department of Highway Safety and Motor Vehicles
52 with respect to state-titled vessels.

53 b. Holds a preferred ship mortgage or has filed a claim of
54 lien with the United States Coast Guard Vessel Documentation
55 Center.

56 c. Holds a security interest against the vessel under the
57 Uniform Commercial Code.

58 d. Has perfected a lien against the subject vessel by
59 filing a judgment lien certificate pursuant to s. 55.201-55.209.

60 3. When a vessel displays a foreign country identification
61 or displays registration numbers from a state other than
62 Florida, the marina shall conduct a reasonable lien search of
63 the vessel registration records in the jurisdiction of registry
64 to determine if there is a lienholder who is entitled to notice
65 pursuant to subparagraph 2. Failure to discover a foreign
66 national or non-Florida United States lienholder after a good
67 faith effort to conduct such a lien search shall not prevent the
68 sale or removal of a vessel from the marina to satisfy the
69 marina's possessory lien or a purchaser, in good faith, from
70 taking title of the vessel, pursuant to subsections (7) and
71 (11).

72 4. The requirements of subparagraph 2. shall be satisfied
73 if the marina:

74 a. Obtains ownership documentation for the vessel and
75 trailer, if applicable, from the Department of Highway Safety
76 and Motor Vehicles or other agency where the vessel is
77 registered;

78 b. Obtains an abstract from the United States Coast Guard
79 for a vessel that is documented as defined in 46 U.S.C. s.
80 301.01;

81 c. Performs a current Uniform Commercial Code lien search;

82 d. Performs a current Florida judgment lien certificate
83 search; and

84 e. Complies with subparagraph 3. with regard to vessels
 85 registered in a foreign country or in a state other than
 86 Florida.

87 5. The written notice to the vessel owner and lienholders
 88 required by this paragraph shall be made at least 60 days prior
 89 to any sale of the vessel under this section ~~recorded lienholder~~
 90 ~~of such vessel registered with this state as shown by the~~
 91 ~~records of the Department of Highway Safety and Motor Vehicles,~~
 92 ~~at least 30 days prior to the proposed sale.~~

93 (b) The notice shall include:

94 1. An itemized statement of the marina's claim, showing
 95 the sum due at the time of the notice and the date upon which
 96 the sum became due.

97 2. A description of the vessel.

98 3. A demand for payment.

99 4. A conspicuous statement that, unless the claim is paid
 100 within the time stated in the notice, the vessel will be
 101 advertised for sale or other disposition and will be sold or
 102 otherwise disposed of at a specified time and place.

103 5. The name, street address, and telephone number of the
 104 marina that the owner may contact to respond to the notice.

105 (7) If the fees, ~~and costs,~~ and late payment interest that
 106 give rise to such a lien are due and unpaid 60 ~~120~~ days after
 107 the vessel owner and lienholder are ~~is~~ given written notice, the
 108 marina may sell the vessel, including its machinery, rigging,
 109 and accessories as provided for in subsection (8) or the marina
 110 may, at its option, remove the vessel from the marina or from

111 the waters of the state at the owner's expense pursuant to
 112 paragraph (4) (b).

113 (10) Before any sale or other disposition of the vessel
 114 pursuant to this section, the owner or the lienholder may pay
 115 the amount necessary to satisfy the lien and the reasonable
 116 expenses and late payment interest incurred under this section
 117 and thereby redeem and take possession of the vessel. Upon
 118 receipt of such payment, the marina shall return the property to
 119 the owner or lienholder making such payment and thereafter shall
 120 have no liability to any person with respect to such vessel.

121 (11) Unless otherwise provided by law, a purchaser in good
 122 faith of a vessel sold to satisfy a lien provided for in this
 123 section takes the property free of any claims other than a prior
 124 lien perfected under state or federal law ~~the Uniform Commercial~~
 125 ~~Code, despite noncompliance by the marina with the requirements~~
 126 ~~of this section.~~

127 (12) In the event of a sale under this section, the marina
 128 may satisfy its lien from the proceeds of the sale, provided the
 129 marina's lien has priority over all other liens on the vessel
 130 ~~other than a prior lien perfected under the Uniform Commercial~~
 131 ~~Code.~~ The lien rights of secured lienholders ~~are~~ automatically
 132 also attach ~~transferred~~ to the remaining proceeds of the sale.
 133 The balance, if any, shall be held by the marina for delivery on
 134 demand to the owner. A notice of any balance shall be delivered
 135 by the marina to the owner in person or by certified mail to the
 136 last known address of the owner. If the owner does not claim the
 137 balance of the proceeds within 1 year after the date of sale,
 138 the proceeds shall be deemed abandoned, and the marina shall

139 | have no further obligation with regard to the payment of the
140 | balance. In the event that the marina's lien does not have
141 | priority over all other liens, the sale proceeds shall be held
142 | for the benefit of the holders of those liens having priority. A
143 | notice of the amount of the sale proceeds shall be delivered by
144 | the marina to the owner or secured lienholder in person or by
145 | certified mail to the owner's or the secured lienholder's last
146 | known address. If the owner or the secured lienholder does not
147 | claim the sale proceeds within 1 year after the date of sale,
148 | the proceeds shall be deemed abandoned, and the owner or the
149 | secured lienholder shall have no further obligation with regard
150 | to the payment of the proceeds.

151 | Section 2. This act shall take effect July 1, 2005.