

Bill No. SB 902

Barcode 943254

CHAMBER ACTION

Senate

House

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The Committee on Transportation (Bennett) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

328.17 Nonjudicial sale of vessels.--

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

(a) A possessory lien upon any vessel for storage fees, dockage fees, repairs, improvements, or other work-related storage charges, and for expenses necessary for preservation of the vessel or expenses reasonably incurred in the sale or other disposition of the vessel. The possessory lien shall attach as of the date the vessel is brought to the marina, or as of the date the vessel first occupies rental space at the marina facility. ~~However, in the event of default, the marina must give notice to persons who hold perfected security interests against the vessel under the~~

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1 ~~Uniform Commercial Code in which the owner is named as the~~
2 ~~debtor.~~

3 (b) A possessory lien upon any vessel in a wrecked,
4 junked, or substantially dismantled condition which has been
5 left docked, grounded, beached, or otherwise abandoned at a
6 marina without consent of the marina owner, for expenses
7 reasonably incurred in the removal and disposal of the vessel.
8 The possessory lien shall attach as of the date the vessel is
9 discovered at the marina facility. If the funds recovered from
10 the sale of such a vessel, or from the scrap or salvage value
11 of such a vessel, are insufficient to cover the expenses
12 reasonably incurred by the marina in removing and disposing of
13 the vessel, all costs in excess of recovery shall be
14 recoverable against the owner of the vessel.

15 (5) A marina's possessory lien may be satisfied as
16 follows:

17 (a)1. The marina shall provide written notice to the
18 vessel's owner, delivered in person or by certified mail to
19 the owner's last known address. The notice shall also be and
20 conspicuously posted at the marina and on the vessel.

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

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

27 b. Holds a preferred ship mortgage or has filed a
28 claim of lien with the United States Coast Guard Vessel
29 Documentation Center.

30 c. Holds a security interest against the vessel under
31 the Uniform Commercial Code.

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1 d. Has perfected a lien against the subject vessel by
2 filing a judgment lien certificate pursuant to ss.
3 55.201-55.209.

4 3. When a vessel displays a foreign country
5 identification or displays registration numbers from a state
6 other than Florida, the marina shall conduct a reasonable lien
7 search of the vessel registration records in the jurisdiction
8 of registry to determine if there is a lienholder who is
9 entitled to notice pursuant to subparagraph 2. Failure to
10 discover a foreign national or non-Florida United States
11 lienholder after a good faith effort to conduct such a lien
12 search shall not prevent the sale or removal of a vessel from
13 the marina to satisfy the marina's possessory lien or a
14 purchaser, in good faith, from taking title of the vessel,
15 pursuant to subsections (7) and (11).

16 4. The requirements of subparagraph 2. shall be
17 satisfied if the marina:

18 a. Obtains a copy of the title for the vessel and
19 trailer, if applicable, from the Department of Highway Safety
20 and Motor Vehicles or other agency where the vessel is
21 registered;

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

25 c. Performs a current Uniform Commercial Code lien
26 search;

27 d. Performs a current Florida judgment lien
28 certificate search; and

29 e. Complies with subparagraph 3. with regard to
30 vessels registered in a foreign country or in a state other
31 than Florida.

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1 5. The written notice to the vessel owner and
 2 lienholders required by this paragraph shall be made at least
 3 60 days prior to any sale of the vessel under this section
 4 ~~recorded lienholder of such vessel registered with this state~~
 5 ~~as shown by the records of the Department of Highway Safety~~
 6 ~~and Motor Vehicles, at least 30 days prior to the proposed~~
 7 ~~sale.~~

8 (b) The notice shall include:

9 1. An itemized statement of the marina's claim,
 10 showing the sum due at the time of the notice and the date
 11 upon which the sum became due.

12 2. A description of the vessel.

13 3. A demand for payment.

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

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

21 (7) If the fees, ~~and costs,~~ and late payment interest
 22 that give rise to such a lien are due and unpaid 60 ~~120~~ days
 23 after the vessel owner and lienholder are ~~is~~ given written
 24 notice, the marina may sell the vessel, including its
 25 machinery, rigging, and accessories as provided for in
 26 subsection (8) or the marina may, at its option, remove the
 27 vessel from the marina or from the waters of the state at the
 28 owner's expense pursuant to paragraph (4)(b).

29 (10) Before any sale or other disposition of the
 30 vessel pursuant to this section, the owner or the lienholder
 31 may pay the amount necessary to satisfy the lien and the

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1 reasonable expenses and late payment interest incurred under
 2 this section and thereby redeem and take possession of the
 3 vessel. Upon receipt of such payment, the marina shall return
 4 the property to the owner or lienholder making such payment
 5 and thereafter shall have no liability to any person with
 6 respect to such vessel.

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

13 (12) In the event of a sale under this section, the
 14 marina may satisfy its lien from the proceeds of the sale,
 15 provided the marina's lien has priority over all other liens
 16 on the vessel ~~other than a prior lien perfected under the~~
 17 ~~Uniform Commercial Code.~~ The lien rights of secured
 18 lienholders ~~are~~ automatically also attach ~~transferred~~ to the
 19 remaining proceeds of the sale. The balance, if any, shall be
 20 held by the marina for delivery on demand to the owner. A
 21 notice of any balance shall be delivered by the marina to the
 22 owner in person or by certified mail to the last known address
 23 of the owner. If the owner does not claim the balance of the
 24 proceeds within 1 year after the date of sale, the proceeds
 25 shall be deemed abandoned, and the marina shall have no
 26 further obligation with regard to the payment of the balance.
 27 In the event that the marina's lien does not have priority
 28 over all other liens, the sale proceeds shall be held for the
 29 benefit of the holders of those liens having priority. A
 30 notice of the amount of the sale proceeds shall be delivered
 31 by the marina to the owner or secured lienholder in person or

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1 by certified mail to the owner's or the secured lienholder's
 2 last known address. If the owner or the secured lienholder
 3 does not claim the sale proceeds within 1 year after the date
 4 of sale, the proceeds shall be deemed abandoned, and the owner
 5 or the secured lienholder shall have no further obligation
 6 with regard to the payment of the proceeds.

7 Section 2. This act shall take effect July 1, 2005.
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10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause
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14 and insert:

15 A bill to be entitled
 16 An act relating to nonjudicial sale of vessels;
 17 amending s. 328.17, F.S.; revising notice
 18 requirements of a marina having a possessory
 19 lien on a vessel for unpaid costs, charges, or
 20 fees prior to nonjudicial sale of the vessel;
 21 reducing the time allowed to pay the fees,
 22 charges, and costs giving rise to the lien
 23 prior to sale of the vessel; revising
 24 requirements with respect to perfection of and
 25 priority over prior or other liens; providing
 26 an effective date.
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