

By the Committee on Transportation; and Senator Campbell

596-2139-05

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

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

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

18           328.17 Nonjudicial sale of vessels.--

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

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

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

13           (5) A marina's possessory lien may be satisfied as  
14 follows:

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

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

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

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

28           c. Holds a security interest against the vessel under  
29 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 ownership documentation 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.

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

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

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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9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
10 COMMITTEE SUBSTITUTE FOR  
11 Senate Bill 902

12 The CS requires a marina to conduct a reasonable lien search  
13 of the vessel registration records in the jurisdiction where  
14 the vessel is registered in order to determine if there is a  
lienholder entitled to notice.

15 The CS gives marina owners the option of removing the vessel  
16 from the marina or the waters of the state at the vessel  
17 owner's expense and using funds from the sale of the vessel to  
18 cover the expenses incurred by the marina. Excess expenses can  
19 be recovered from the owner of the vessel.

20 The CS requires marina owners to obtain ownership  
21 documentation rather than a copy of the title for the vessel  
22 or trailer.  
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