

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to nonjudicial sale of vessels; amending  
7 s. 328.17, F.S.; revising notice requirements of a marina  
8 having a possessory lien on a vessel for unpaid costs,  
9 charges, or fees prior to nonjudicial sale of the vessel,  
10 including expenses for the removal and disposal of certain  
11 vessels in a wrecked, junked, or substantially dismantled  
12 condition; reducing the time allowed to pay the fees,  
13 charges, and costs giving rise to the lien prior to sale  
14 of the vessel; revising requirements with respect to  
15 perfection of and priority over prior or other liens;  
16 providing an effective date.

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

19  
20 Section 1. Subsections (4), (5), (7), (10), (11), and (12)  
21 of section 328.17, Florida Statutes, are amended to read:

22 328.17 Nonjudicial sale of vessels.--

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

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

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

47        (5) A marina's possessory lien may be satisfied as  
 48 follows:

49        (a)1. The marina shall provide written notice to the  
 50 vessel's owner, delivered in person or by certified mail to the

51 owner's last known address. The notice shall also be ~~and~~  
52 conspicuously posted at the marina and on the vessel.

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

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

59 b. Holds a preferred ship mortgage or has filed a claim of  
60 lien with the United States Coast Guard Vessel Documentation  
61 Center.

62 c. Holds a security interest against the vessel under the  
63 Uniform Commercial Code.

64 d. Has perfected a lien against the subject vessel by  
65 filing a judgment lien certificate pursuant to ss. 55.201-  
66 55.209.

67 3. When a vessel displays a foreign country identification  
68 or displays registration numbers from a state other than  
69 Florida, the marina shall conduct a reasonable lien search of  
70 the vessel registration records in the jurisdiction of registry  
71 to determine if there is a lienholder who is entitled to notice  
72 pursuant to subparagraph 2. Failure to discover a foreign  
73 national or non-Florida United States lienholder after a good  
74 faith effort to conduct such a lien search shall not prevent the  
75 sale or removal of a vessel from the marina to satisfy the  
76 marina's possessory lien or a purchaser, in good faith, from  
77 taking title of the vessel, pursuant to subsections (7) and  
78 (11).

79           4. The requirements of subparagraph 2. shall be satisfied  
80 if the marina:

81           a. Obtains ownership documentation for the vessel and  
82 trailer, if applicable, from the Department of Highway Safety  
83 and Motor Vehicles or other agency with which the vessel is  
84 registered;

85           b. Obtains an abstract from the United States Coast Guard  
86 for a vessel that is documented as defined in 46 U.S.C. s.  
87 30101;

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

89           d. Performs a current Florida judgment lien certificate  
90 search; and

91           e. Complies with subparagraph 3. with regard to vessels  
92 registered in a foreign country or in a state other than  
93 Florida.

94           5. The written notice to the vessel owner and lienholders  
95 required by this paragraph shall be made at least 60 days prior  
96 to any sale of the vessel under this section ~~recorded lienholder~~  
97 ~~of such vessel registered with this state as shown by the~~  
98 ~~records of the Department of Highway Safety and Motor Vehicles,~~  
99 ~~at least 30 days prior to the proposed sale.~~

100           (b) The notice shall include:

101           1. An itemized statement of the marina's claim, showing  
102 the sum due at the time of the notice and the date upon which  
103 the sum became due.

104           2. A description of the vessel.

105           3. A demand for payment.

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

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

112           (7) If the fees, ~~and costs,~~ and late payment interest that  
113 give rise to such a lien are due and unpaid 60 ~~120~~ days after  
114 the vessel owner and lienholder are ~~is~~ given written notice, the  
115 marina may sell the vessel, including its machinery, rigging,  
116 and accessories as provided for in subsection (8); or the marina  
117 may, at its option, remove the vessel from the marina or from  
118 the waters of the state at the owner's expense pursuant to  
119 paragraph (4) (b).

120           (10) Before any sale or other disposition of the vessel  
121 pursuant to this section, the owner or the lienholder may pay  
122 the amount necessary to satisfy the lien and the reasonable  
123 expenses and late payment interest incurred under this section  
124 and thereby redeem and take possession of the vessel. Upon  
125 receipt of such payment, the marina shall return the property to  
126 the owner or lienholder making such payment and thereafter shall  
127 have no liability to any person with respect to such vessel.

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

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134           (12) In the event of a sale under this section, the marina  
135 may satisfy its lien from the proceeds of the sale, provided the  
136 marina's lien has priority over all other liens on the vessel  
137 ~~other than a prior lien perfected under the Uniform Commercial~~  
138 ~~Code~~. The lien rights of secured lienholders ~~are~~ automatically  
139 also attach ~~transferred~~ to the remaining proceeds of the sale.  
140 The balance, if any, shall be held by the marina for delivery on  
141 demand to the owner. A notice of any balance shall be delivered  
142 by the marina to the owner in person or by certified mail to the  
143 last known address of the owner. If the owner does not claim the  
144 balance of the proceeds within 1 year after the date of sale,  
145 the proceeds shall be deemed abandoned, and the marina shall  
146 have no further obligation with regard to the payment of the  
147 balance. In the event that the marina's lien does not have  
148 priority over all other liens, the sale proceeds shall be held  
149 for the benefit of the holders of those liens having priority. A  
150 notice of the amount of the sale proceeds shall be delivered by  
151 the marina to the owner or secured lienholder in person or by  
152 certified mail to the owner's or the secured lienholder's last  
153 known address. If the owner or the secured lienholder does not  
154 claim the sale proceeds within 1 year after the date of sale,  
155 the proceeds shall be deemed abandoned, and the owner or the  
156 secured lienholder shall have no further obligation with regard  
157 to the payment of the proceeds.

158           Section 2. This act shall take effect July 1, 2006.