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 HB 201, Engrossed 1

2006 Legislature

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 including expenses for the removal and disposal of certain
 7 vessels in a wrecked, junked, or substantially dismantled
 8 condition; reducing the time allowed to pay the fees,
 9 charges, and costs giving rise to the lien prior to sale
 10 of the vessel; providing for suspending application for a
 11 certain time after a named storm; revising requirements
 12 with respect to perfection of and priority over prior or
 13 other liens; providing an effective date.

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

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

19 328.17 Nonjudicial sale of vessels.--

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

21 (a) A possessory lien upon any vessel for storage fees,
 22 dockage fees, repairs, improvements, or other work-related
 23 storage charges, and for expenses necessary for preservation of
 24 the vessel or expenses reasonably incurred in the sale or other
 25 disposition of the vessel. The possessory lien shall attach as
 26 of the date the vessel is brought to the marina, or as of the
 27 date the vessel first occupies rental space at the marina

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28 | ~~facility. However, in the event of default, the marina must give~~
 29 | ~~notice to persons who hold perfected security interests against~~
 30 | ~~the vessel under the Uniform Commercial Code in which the owner~~
 31 | ~~is named as the debtor.~~

32 | (b) A possessory lien upon any vessel in a wrecked,
 33 | junked, or substantially dismantled condition, which has been
 34 | left abandoned at a marina, for expenses reasonably incurred in
 35 | the removal and disposal of the vessel. The possessory lien
 36 | shall attach as of the date the vessel arrives at the marina or
 37 | as of the date the vessel first occupies rental space at the
 38 | marina facility. If the funds recovered from the sale of the
 39 | vessel, or from the scrap or salvage value of the vessel, are
 40 | insufficient to cover the expenses reasonably incurred by the
 41 | marina in removing and disposing of the vessel, all costs in
 42 | excess of recovery shall be recoverable against the owner of the
 43 | vessel. For a vessel damaged as a result of a named storm, the
 44 | provisions of this paragraph shall be suspended for 60 days
 45 | following the date the vessel is damaged in the named storm. The
 46 | operation of the provisions specified in this paragraph run
 47 | concurrently with, and do not extend, the 60-day notice periods
 48 | provided in subsections (5) and (7).

49 | (5) A marina's possessory lien may be satisfied as
 50 | follows:

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

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

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

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

64 c. Holds a security interest against the vessel under the
65 Uniform Commercial Code.

66 d. Has perfected a lien against the subject vessel by
67 filing a judgment lien certificate pursuant to ss. 55.201-
68 55.209.

69 3. When a vessel displays a foreign country identification
70 or displays registration numbers from a state other than
71 Florida, the marina shall conduct a reasonable lien search of
72 the vessel registration records in the jurisdiction of registry
73 to determine if there is a lienholder who is entitled to notice
74 pursuant to subparagraph 2. Failure to discover a foreign
75 national or non-Florida United States lienholder after a good
76 faith effort to conduct such a lien search shall not prevent the
77 sale or removal of a vessel from the marina to satisfy the
78 marina's possessory lien or a purchaser, in good faith, from
79 taking title of the vessel, pursuant to subsections (7) and
80 (11).

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81 4. The requirements of subparagraph 2. shall be satisfied
 82 if the marina:

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

87 b. Obtains an abstract from the United States Coast Guard
 88 for a vessel that is documented as defined in 46 U.S.C. s.
 89 30101;

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

91 d. Performs a current Florida judgment lien certificate
 92 search; and

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

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

102 (b) The notice shall include:

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

106 2. A description of the vessel.

107 3. A demand for payment.

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

112 5. The name, street address, and telephone number of the
 113 marina that the owner or lienholder may contact to respond to
 114 the notice.

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

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

131 (11) Unless otherwise provided by law, a purchaser in good
 132 faith of a vessel sold to satisfy a lien provided for in this
 133 section takes the property free of any claims other than a prior
 134 lien perfected under state or federal law ~~the Uniform Commercial~~

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135 | ~~Code, despite noncompliance by the marina with the requirements~~
136 | ~~of this section.~~

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

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