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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/3R

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05/01/2009 11:39 AM

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Senator Constantine moved the following:

1 **Senate Amendment to Amendment (728458) (with title**
2 **amendment)**

3
4 Delete line 1311

5 and insert:

6 Section 27. Subsection (2) of section 30.231, Florida
7 Statutes, is amended to read:

8 30.231 Sheriffs' fees for service of summons, subpoenas,
9 and executions.—

10 (2) For levying on property and for the seizure of persons,
11 the sheriff shall be allowed anticipated expenses necessary for
12 the execution of the process directing such levy or seizure and



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13 for the safekeeping of property and persons in the custody of
14 the sheriff. A reasonable cost deposit to cover said fees and
15 expenses in connection with the requested services shall be
16 deposited in advance, by the party requesting the service, with
17 the officer requested to perform the service. If the sheriff is
18 required to expedite execution of a writ of replevin pursuant to
19 s. 30.30, the sheriff may recover additional expenses, including
20 payment of off-duty deputy sheriffs, to expedite execution of
21 the writ of replevin.

22 Section 28. Subsection (1) of section 30.30, Florida
23 Statutes, is amended to read:

24 30.30 Writs, process; duties and liabilities in levying.-

25 (1) Whenever any writ~~7~~ issuing out of any court of this
26 state ~~is, shall be~~ delivered to a sheriff~~7~~ commanding the
27 sheriff to levy upon property specifically described therein, it
28 shall be his or her duty to levy upon such property. If a party
29 to whom a writ of replevin has been issued requests expedited
30 service of the writ because the writ is upon property that
31 includes motor vehicles, the sheriff shall expedite service no
32 later than 3 days after such request, subject to payment of the
33 additional expenses allowed by s. 30.231(2). If no property is
34 specifically described in the writ, the sheriff ~~he or she~~ shall
35 levy upon:

36 (a) Any property in the possession of the defendant which
37 is described in instructions for levy; and

38 (b) Upon any property assessed against the defendant on the
39 current tax rolls of the county or registered in his or her name
40 under any law of the United States or of the state, upon the
41 request of the plaintiff or the plaintiff's attorney listing



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42 such property in an instructions for levy. The instructions for
43 levy shall state the balance due on such writ.

44 Section 29. Subsection (1) of section 78.065, Florida
45 Statutes, is amended to read:

46 78.065 Order to show cause; contents.—

47 (1) The court without delay shall examine the complaint
48 filed; and, if on the basis of the complaint and further showing
49 of the plaintiff in support of it the court finds that the
50 defendant has waived in accordance with s. 78.075 his or her
51 right to be notified and heard, the court shall promptly issue
52 an order authorizing the clerk of the court to issue a writ of
53 replevin. The court shall advance the cause on the calendar.

54 Section 30. Subsection (1) of section 78.068, Florida
55 Statutes, is amended to read:

56 78.068 Prejudgment writ of replevin.—

57 (1) A prejudgment writ of replevin may be issued and the
58 property seized delivered forthwith to the petitioners when the
59 nature of the claim and the amount thereof, if any, and the
60 grounds relied upon for the issuance of the writ clearly appear
61 from specific facts shown by the verified petition or by
62 separate affidavit of the petitioner. The court shall advance
63 the cause on the calendar.

64 Section 31. Subsection (17) is added to section 320.02,
65 Florida Statutes, to read:

66 320.02 Registration required; application for registration;
67 forms.—

68 (17) If any applicant's name appears on a list of persons
69 who may not be issued a license plate, revalidation sticker, or
70 replacement license plate after a written notice to surrender a



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71 vehicle was submitted to the department by a lienor as provided
72 in s. 320.1316, the department may withhold renewal of
73 registration or replacement registration of any motor vehicle
74 owned by the applicant at the time the notice was submitted by
75 the lienor. The lienor must maintain proof that written notice
76 to surrender the vehicle was sent to each registered owner
77 pursuant to s. 320.1316(1). A revalidation sticker or
78 replacement license plate may not be issued until that person's
79 name no longer appears on the list or until the person presents
80 documentation from the lienor that the vehicle has been
81 surrendered to the lienor. The department shall not withhold an
82 initial registration in connection with an applicant's purchase
83 or lease of a motor vehicle solely because the applicant's name
84 is on the list created by s. 320.1316.

85 Section 32. Subsection (10) is added to section 320.03,
86 Florida Statutes, to read:

87 320.03 Registration; duties of tax collectors;
88 International Registration Plan.-

89 (10) Jurisdiction over the outsourced electronic filing
90 system for use by licensed motor vehicle dealers electronically
91 to title and to register motor vehicles and to issue or to
92 transfer registration license plates or decals is expressly
93 preempted to the state. The department shall continue its
94 current outsourcing of the existing electronic filing system,
95 including its program standards. The electronic filing system is
96 approved for use in all counties, shall apply uniformly to all
97 tax collectors of the state, and no tax collector may add or
98 detract from the program standards in his or her respective
99 county. A motor vehicle dealer licensed under this chapter may



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100 charge a fee to the customer for use of the electronic filing
101 system and such fee is not a component of the program standards.
102 Final authority over disputes relating to program standards lies
103 with the department. By January 1, 2010, the Office of Program
104 Policy Analysis and Government Accountability, with input from
105 the department and from affected parties, including tax
106 collectors, service providers, and motor vehicle dealers, shall
107 report to the President of the Senate and the Speaker of the
108 House of Representatives on the status of the outsourced
109 electronic filing system, including the program standards, and
110 its compliance with this subsection. The report shall identify
111 all public and private alternatives for continued operation of
112 the electronic filing system and shall include any and all
113 appropriate recommendations, including revisions to the program
114 standards.

115 Section 33. Section 320.1316, Florida Statutes, is created
116 to read:

117 320.1316 Failure to surrender vehicle or vessel.—

118 (1) Upon receipt from a lienor who claims a lien on a
119 vehicle pursuant to s. 319.27 by the Department of Highway
120 Safety and Motor Vehicles of written notice to surrender a
121 vehicle or vessel that has been disposed of, concealed, removed,
122 or destroyed by the lienee, the department shall place the name
123 of the registered owner of that vehicle on the list of those
124 persons who may not be issued a license plate, revalidation
125 sticker, or replacement license plate for any motor vehicle
126 under s. 320.03(8) owned by the lienee at the time the notice
127 was given by the lienor. If the vehicle is owned jointly by more
128 than one person, the name of each registered owner shall be



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129 placed on the list.

130 (2) The notice to surrender the vehicle shall be submitted
131 on forms developed by the department, which must include:

132 (a) The name, address, and telephone number of the lienor.

133 (b) The name of the registered owner of the vehicle and the
134 address to which the lienor provided notice to surrender the
135 vehicle to the registered owner.

136 (c) A general description of the vehicle, including its
137 color, make, model, body style, and year.

138 (d) The vehicle identification number, registration license
139 plate number, if known, or other identification number, as
140 applicable.

141 (3) The registered owner of the vehicle may dispute a
142 notice to surrender the vehicle by notifying the department of
143 the dispute in writing on forms provided by the department and
144 presenting proof that the vehicle was sold to a motor vehicle
145 dealer licensed under s. 320.27, a mobile home dealer licensed
146 under s. 320.77, or a recreational vehicle dealer licensed under
147 s. 320.771.

148 Section 34. Section 559.903, Florida Statutes, is amended
149 to read:

150 559.903 Definitions.—As used in this act:

151 (1) "Customer" means the person who signs the written
152 repair estimate or any other person whom the person who signs
153 the written repair estimate designates on the written repair
154 estimate as a person who may authorize repair work.

155 (2) "Department" means the Department of Agriculture and
156 Consumer Services.

157 (3) "Employee" means an individual who is employed full



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158 time or part time by a motor vehicle repair shop and performs
159 motor vehicle repair.

160 (4) "Final estimate" means the last estimate approved by
161 the customer either in writing or orally, as evidenced by the
162 written repair estimate.

163 (5) "Lienholder" means the person or entity that holds a
164 lien or security interest on the motor vehicle and who perfected
165 the lien or security interest on the motor vehicle pursuant to
166 s. 319.27.

167 (6)~~(5)~~ "Motor vehicle" means any automobile, truck, bus,
168 recreational vehicle, motorcycle, motor scooter, or other motor
169 powered vehicle, but does not include trailers, mobile homes,
170 travel trailers, trailer coaches without independent motive
171 power, watercraft or aircraft, or special mobile equipment as
172 defined in s. 316.003(48).

173 (7) "Motor vehicle repair" means all maintenance of and
174 modifications and repairs to motor vehicles, and diagnostic work
175 incident thereto, including, but not limited to, the rebuilding
176 or restoring of rebuilt vehicles, body work, painting, warranty
177 work, and other work customarily undertaken by motor vehicle
178 repair shops.

179 (8)~~(6)~~ "Motor vehicle repair shop" means any person who,
180 for compensation, engages or attempts to engage in the repair of
181 motor vehicles owned by other persons and includes, but is not
182 limited to: mobile motor vehicle repair shops, motor vehicle and
183 recreational vehicle dealers; garages; service stations; self-
184 employed individuals; truck stops; paint and body shops; brake,
185 muffler, or transmission shops; and shops doing glass work. Any
186 person who engages solely in the maintenance or repair of the



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187 coach portion of a recreational vehicle is not a motor vehicle
188 repair shop.

189 ~~(7) "Place of business" means a physical place where the~~
190 ~~business of motor vehicle repair is conducted, including any~~
191 ~~vehicle constituting a mobile motor vehicle repair shop from~~
192 ~~which the business of motor vehicle repair is conducted.~~

193 ~~(8) "Motor vehicle repair" means all maintenance of and~~
194 ~~modifications and repairs to motor vehicles, and diagnostic work~~
195 ~~incident thereto, including, but not limited to, the rebuilding~~
196 ~~or restoring of rebuilt vehicles, body work, painting, warranty~~
197 ~~work, and other work customarily undertaken by motor vehicle~~
198 ~~repair shops.~~

199 (9) "Owner" means the person or persons whose names appear
200 on the title to the motor vehicle.

201 (10) "Place of business" means a physical place where the
202 business of motor vehicle repair is conducted, including any
203 vehicle constituting a mobile motor vehicle repair shop from
204 which the business of motor vehicle repair is conducted.

205 Section 35. Section 559.917, Florida Statutes, is amended
206 to read:

207 559.917 Bond to release possessory lien claimed by motor
208 vehicle repair shop.—

209 (1) (a) Any customer may obtain the release of her or his
210 motor vehicle from any lien claimed under part II of chapter 713
211 by a motor vehicle repair shop for repair work performed under a
212 written repair estimate by filing with the clerk of the court in
213 the circuit in which the disputed transaction occurred a cash or
214 surety bond, payable to the person claiming the lien and
215 conditioned for the payment of any judgment which may be entered



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216 on the lien. The bond shall be in the amount stated on the
217 invoice required by s. 559.911, plus accrued storage charges, if
218 any, less any amount paid to the motor vehicle repair shop as
219 indicated on the invoice, plus 15 percent. The customer shall
220 not be required to institute judicial proceedings in order to
221 post the bond in the registry of the court, nor shall the
222 customer be required to use a particular form for posting the
223 bond, unless the clerk shall provide such form to the customer
224 for filing. Upon the posting of such bond, the clerk of the
225 court shall automatically issue a certificate notifying the
226 lienor of the posting of the bond and directing the lienor to
227 release the customer's motor vehicle.

228 (b) The lienor shall have 60 days to file suit to recover
229 the bond. The prevailing party in that action may be entitled to
230 damages plus court costs and reasonable attorney's fees. If the
231 lienor fails to file suit within 60 days after the posting of
232 such bond, the bond shall be discharged.

233 (c) The owner or lienholder may obtain the release of a
234 motor vehicle pursuant to s. 713.78.

235 (2) The failure of a lienor to release or return to the
236 customer, owner, or lienholder the motor vehicle upon which any
237 lien is claimed, upon receiving a copy of a certificate giving
238 notice of the posting of the bond and directing release of the
239 motor vehicle, shall subject the lienor to judicial proceedings
240 which may be brought by the customer, owner, or lienholder to
241 compel compliance with the certificate. Whenever a customer,
242 owner, or lienholder brings an action to compel compliance with
243 the certificate, the customer, owner, or lienholder need only
244 establish that:



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245 (a) Bond in the amount of the invoice, plus accrued storage
246 charges, if any, less any amount paid to the motor vehicle
247 repair shop as indicated on the invoice, plus 15 percent, was
248 posted;

249 (b) A certificate was issued pursuant to this section;

250 (c) The motor vehicle repair shop, or any employee or agent
251 thereof who is authorized to release the motor vehicle, received
252 a copy of a certificate issued pursuant to this section; and

253 (d) The motor vehicle repair shop or employee authorized to
254 release the motor vehicle failed to release the motor vehicle.
255

256 The customer, owner, or lienholder, upon a judgment in her or
257 his favor in an action brought under this subsection, may be
258 entitled to damages plus court costs and reasonable attorney's
259 fees sustained by her or him by reason of such wrongful
260 detention or retention. Upon a judgment in favor of the motor
261 vehicle repair shop, the shop may be entitled to reasonable
262 attorney's fees.

263 (3) Any motor vehicle repair shop which, or any employee or
264 agent thereof who is authorized to release the motor vehicle
265 who, upon receiving a copy of a certificate giving notice of the
266 posting of the bond in the required amount and directing release
267 of the motor vehicle, fails to release or return the property to
268 the customer, owner, or lienholder pursuant to this section
269 commits ~~is guilty of~~ a misdemeanor of the second degree,
270 punishable as provided in s. 775.082 or s. 775.083.

271 (4) Any customer, owner, or lienholder who stops payment on
272 a credit card charge or a check drawn in favor of a motor
273 vehicle repair shop on account of an invoice or who fails to



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274 post a cash or surety bond pursuant to this section shall be
275 prohibited from any recourse under this section with respect to
276 the motor vehicle repair shop.

277 Section 36. Section 713.585, Florida Statutes, is amended
278 to read:

279 713.585 Enforcement of lien by sale of motor vehicle.—A
280 person claiming a lien under s. 713.58 for performing labor or
281 services on a motor vehicle may enforce such lien by sale of the
282 vehicle in accordance with the following procedures:

283 (1) The lienor must give notice, by certified mail, ~~return~~
284 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding
285 Saturday and Sunday, from the beginning date of the assessment
286 of storage charges on the ~~said~~ motor vehicle, to the registered
287 owner of the vehicle, to the customer as indicated on the order
288 for repair, and to all other persons claiming an interest in or
289 lien thereon, as disclosed by the records of the Department of
290 Highway Safety and Motor Vehicles or of a corresponding agency
291 of any other state in which the vehicle appears registered. Such
292 notice must contain:

293 (a) A description of the vehicle (year, make, vehicle
294 identification number) and its location.

295 (b) The name and address of the owner of the vehicle, the
296 customer as indicated on the order for repair, and any person
297 claiming an interest in or lien thereon.

298 (c) The name, address, and telephone number of the lienor.

299 (d) Notice that the lienor claims a lien on the vehicle for
300 labor and services performed and storage charges, if any, and
301 the cash sum which, if paid to the lienor, would be sufficient
302 to redeem the vehicle from the lien claimed by the lienor.



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303 (e) Notice that the lien claimed by the lienor is subject
304 to enforcement pursuant to this section and that the vehicle may
305 be sold to satisfy the lien.

306 (f) If known, the date, time, and location of any proposed
307 or scheduled sale of the vehicle. No vehicle may be sold earlier
308 than 50 ~~60~~ days after completion of the repair work.

309 (g) Notice that the owner of the vehicle or any person
310 claiming an interest in or lien thereon has a right to a hearing
311 at any time prior to the scheduled date of sale by filing a
312 demand for hearing with the clerk of the circuit court in the
313 county in which the vehicle is held and mailing copies of the
314 demand for hearing to all other owners and lienors as reflected
315 on the notice.

316 (h) Notice that the owner or lienholder of the vehicle has
317 a right to recover possession of the vehicle without instituting
318 judicial proceedings by posting bond in accordance with the
319 provisions of s. 559.917.

320 (i) Notice that any proceeds from the sale of the vehicle
321 remaining after payment of the amount claimed to be due and
322 owing to the lienor will be deposited with the clerk of the
323 circuit court for disposition upon court order pursuant to
324 subsection (8).

325 (2) If attempts to locate the owner or lienholder are
326 unsuccessful, the lienor must notify the local law enforcement
327 agency in writing by certified mail or acknowledged hand
328 delivery that the lienor has been unable to locate the owner or
329 lienholder, that a physical search of the vehicle has disclosed
330 no ownership information, and that a good faith effort has been
331 made. A description of the motor vehicle which includes the



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332 year, make, and identification number must be given on the
333 notice. This notification must take place within 10 ~~15~~ business
334 days, excluding Saturday and Sunday, from the beginning date of
335 the assessment of storage charges on the ~~said~~ motor vehicle. For
336 purposes of this paragraph, the term "good faith effort" means
337 that the following checks have been performed by the company to
338 establish the prior state of registration and title:

339 (a) A check of vehicle for any type of tag, tag record,
340 temporary tag, or regular tag;

341 (b) A check of vehicle for inspection sticker or other
342 stickers and decals that could indicate the state of possible
343 registration; and

344 (c) A check of the interior of the vehicle for any papers
345 that could be in the glove box, trunk, or other areas for the
346 state of registration.

347 (3) If the date of the sale was not included in the notice
348 required in subsection (1), notice of the sale must be sent by
349 certified mail, ~~return receipt requested~~, not less than 15 days
350 before the date of sale, to the customer as indicated on the
351 order for repair, and to all other persons claiming an interest
352 in or lien on the motor vehicle, as disclosed by the records of
353 the Department of Highway Safety and Motor Vehicles or of a
354 corresponding agency of any other state in which the vehicle
355 appears to have been registered. After diligent search and
356 inquiry, if the name and address of the registered owner or the
357 owner of the recorded lien cannot be ascertained, the
358 requirements for this notice may be disregarded.

359 (4) The lienor, at least 15 days before the proposed or
360 scheduled date of sale of the vehicle, shall publish the notice



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361 required by this section once in a newspaper circulated in the
362 county where the vehicle is held. A certificate of compliance
363 with the notification provisions of this section, verified by
364 the lienor, together with a copy of the notice ~~and return~~
365 ~~receipt for mailing of the notice required by this section,~~ and
366 proof of publication, must be duly and expeditiously filed with
367 the clerk of the circuit court in the county where the vehicle
368 is held. The lienor, at the time of filing the certificate of
369 compliance, must pay to the clerk of that court a service charge
370 of \$10 for indexing and recording the certificate.

371 (5) At any time prior to the proposed or scheduled date of
372 sale of a vehicle, the owner of the vehicle, or any person
373 claiming an interest in the vehicle or a lien thereon, may file
374 a demand for hearing with the clerk of the circuit court in the
375 county in which the vehicle is held to determine whether the
376 vehicle has been wrongfully taken or withheld from her or him.
377 Any person who files a demand for hearing shall mail copies of
378 the demand to all other owners and lienors as reflected on the
379 notice required in subsection (1). Upon the filing of a demand
380 for hearing, a hearing shall be held prior to the proposed or
381 scheduled date of sale of the vehicle.

382 (6) In the event a lienor institutes a judicial proceeding
383 to enforce a lien, no filing fee shall be required at the time
384 of filing, but the court shall require the lienor to pay the
385 filing fee unless the lienor shall prevail in the action.

386 (7) At the hearing on the complaint, the court shall
387 forthwith issue its order determining:

388 (a) Whether the vehicle is subject to a valid lien by the
389 lienor and the amount thereof;



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390 (b) The priority of the lien of the lienor as against any
391 existing security interest in the vehicle;
392 (c) The distribution of any proceeds of the sale by the
393 clerk of the circuit court;
394 (d) The award of reasonable attorney's fees and costs to
395 the prevailing party; and
396 (e) The reasonableness of storage charges.
397 (8) A vehicle subject to lien enforcement pursuant to this
398 section must be sold by the lienor at public sale. Immediately
399 upon the sale of the vehicle and payment in cash of the purchase
400 price, the lienor shall deposit with the clerk of the circuit
401 court the proceeds of the sale less the amount claimed by the
402 lienor for work done and storage, if any, and all reasonable
403 costs and expenses incurred in conducting the sale, including
404 any attorney's fees and costs ordered by the court.
405 Simultaneously with depositing the proceeds of sale remaining
406 after payment to the lienor, the lienor shall file with the
407 clerk a verified report of the sale stating a description of the
408 vehicle sold, including the vehicle identification number; the
409 name and address of the purchaser; the date of the sale; and the
410 selling price. The report shall also itemize the amount retained
411 by the lienor pursuant to this section and shall indicate
412 whether a hearing was demanded and held. All proceeds held by
413 the court shall be held for the benefit of the owner of the
414 vehicle or any lienholder whose lien is discharged by the sale
415 and shall be disbursed only upon order of the court. Unless a
416 proceeding is initiated to validate a claim to such proceeds
417 within 1 year and a day from the date of the sale, the proceeds
418 shall be deemed abandoned property and disposition thereof shall



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419 be governed by s. 705.103. The clerk shall receive 5 percent of
420 the proceeds deposited with her or him, not to exceed \$25, for
421 her or his services under this section.

422 (9) A copy of the certificate of compliance and the report
423 of sale, certified by the clerk of the court, shall constitute
424 satisfactory proof for application to the Department of Highway
425 Safety and Motor Vehicles for transfer of title, together with
426 any other proof required by any rules and regulations of the
427 department.

428 (10) Nothing contained in this section shall be construed
429 as affecting an owner's right to redeem her or his vehicle from
430 the lien at any time prior to sale by paying the amount claimed
431 by the lienor for work done and assessed storage charges, plus
432 any costs incurred by the repair shop for utilizing enforcement
433 procedures under this section.

434 (11) Nothing in this section shall operate in derogation of
435 the rights and remedies established by s. 559.917.

436 (12) When a vehicle is sold by a lienor in accordance with
437 this law, a purchaser for value takes title to the vehicle free
438 and clear of all claims, liens, and encumbrances whatsoever,
439 unless otherwise provided by court order.

440 (13) A failure to make good faith efforts as defined in
441 subsection (2) precludes the imposition of any storage charges
442 against the vehicle. If a lienor fails to provide notice to any
443 person claiming a lien on a vehicle under subsection (1) within
444 10 ~~15~~ business days, excluding Saturday or Sunday, after the
445 assessment of storage charges have begun, then the lienor is
446 precluded from charging for more than 15 days of storage, but
447 failure to provide timely notice does not affect charges made



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448 for repairs, adjustments, or modifications to the vehicle or the
449 priority of liens on the vehicle.

450 Section 37. Subsection (8) of section 322.34, Florida
451 Statutes, is amended to read:

452 322.34 Driving while license suspended, revoked, canceled,
453 or disqualified.—

454 (8) (a) Upon the arrest of a person for the offense of
455 driving while the person's driver's license or driving privilege
456 is suspended or revoked, the arresting officer shall determine:

457 1. Whether the person's driver's license is suspended or
458 revoked.

459 2. Whether the person's driver's license has remained
460 suspended or revoked since a conviction for the offense of
461 driving with a suspended or revoked license.

462 3. Whether the suspension or revocation was made under s.
463 316.646 or s. 627.733, relating to failure to maintain required
464 security, or under s. 322.264, relating to habitual traffic
465 offenders.

466 4. Whether the driver is the registered owner or coowner of
467 the vehicle.

468 (b) If the arresting officer finds in the affirmative as to
469 all of the criteria in paragraph (a), the officer shall
470 immediately impound or immobilize the vehicle.

471 (c) Within 7 business days after the date the arresting
472 agency impounds or immobilizes the vehicle, either the arresting
473 agency or the towing service, whichever is in possession of the
474 vehicle, shall send notice by certified mail, ~~return receipt~~
475 ~~requested,~~ to any coregistered owners of the vehicle other than
476 the person arrested and to each person of record claiming a lien



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477 against the vehicle. All costs and fees for the impoundment or
478 immobilization, including the cost of notification, must be paid
479 by the owner of the vehicle or, if the vehicle is leased, by the
480 person leasing the vehicle.

481 (d) Either the arresting agency or the towing service,
482 whichever is in possession of the vehicle, shall determine
483 whether any vehicle impounded or immobilized under this section
484 has been leased or rented or if there are any persons of record
485 with a lien upon the vehicle. Either the arresting agency or the
486 towing service, whichever is in possession of the vehicle, shall
487 notify by express courier service with receipt or certified
488 mail, ~~return receipt requested~~, within 7 business days after the
489 date of the immobilization or impoundment of the vehicle, the
490 registered owner and all persons having a recorded lien against
491 the vehicle that the vehicle has been impounded or immobilized.
492 A lessor, rental car company, or lienholder may then obtain the
493 vehicle, upon payment of any lawful towing or storage charges.
494 If the vehicle is a rental vehicle subject to a written
495 contract, the charges may be separately charged to the renter,
496 in addition to the rental rate, along with other separate fees,
497 charges, and recoupments disclosed on the rental agreement. If
498 the storage facility fails to provide timely notice to a lessor,
499 rental car company, or lienholder as required by this paragraph,
500 the storage facility shall be responsible for payment of any
501 towing or storage charges necessary to release the vehicle to a
502 lessor, rental car company, or lienholder that accrue after the
503 notice period, which charges may then be assessed against the
504 driver of the vehicle if the vehicle was lawfully impounded or
505 immobilized.



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506 (e) Except as provided in paragraph (d), the vehicle shall
507 remain impounded or immobilized for any period imposed by the
508 court until:

509 1. The owner presents proof of insurance to the arresting
510 agency; or

511 2. The owner presents proof of sale of the vehicle to the
512 arresting agency and the buyer presents proof of insurance to
513 the arresting agency.

514

515 If proof is not presented within 35 days after the impoundment
516 or immobilization, a lien shall be placed upon such vehicle
517 pursuant to s. 713.78.

518 (f) The owner of a vehicle that is impounded or immobilized
519 under this subsection may, within 10 days after the date the
520 owner has knowledge of the location of the vehicle, file a
521 complaint in the county in which the owner resides to determine
522 whether the vehicle was wrongfully taken or withheld. Upon the
523 filing of a complaint, the owner or lienholder may have the
524 vehicle released by posting with the court a bond or other
525 adequate security equal to the amount of the costs and fees for
526 impoundment or immobilization, including towing or storage, to
527 ensure the payment of such costs and fees if the owner or
528 lienholder does not prevail. When the vehicle owner or
529 lienholder does not prevail on a complaint that the vehicle was
530 wrongfully taken or withheld, he or she must pay the accrued
531 charges for the immobilization or impoundment, including any
532 towing and storage charges assessed against the vehicle. When
533 the bond is posted and the fee is paid as set forth in s. 28.24,
534 the clerk of the court shall issue a certificate releasing the



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535 vehicle. At the time of release, after reasonable inspection,
536 the owner must give a receipt to the towing or storage company
537 indicating any loss or damage to the vehicle or to the contents
538 of the vehicle.

539 Section 38. Subsections (4), (5), (6), and (10) of section
540 713.78, Florida Statutes, are amended to read:

541 713.78 Liens for recovering, towing, or storing vehicles
542 and vessels.—

543 (4) (a) Any person regularly engaged in the business of
544 recovering, towing, or storing vehicles or vessels who comes
545 into possession of a vehicle or vessel pursuant to subsection
546 (2), and who claims a lien for recovery, towing, or storage
547 services, shall give notice to the registered owner, the
548 insurance company insuring the vehicle notwithstanding the
549 provisions of s. 627.736, and to all persons claiming a lien
550 thereon, as disclosed by the records in the Department of
551 Highway Safety and Motor Vehicles or of a corresponding agency
552 in any other state.

553 (b) Whenever any law enforcement agency authorizes the
554 removal of a vehicle or vessel or whenever any towing service,
555 garage, repair shop, or automotive service, storage, or parking
556 place notifies the law enforcement agency of possession of a
557 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
558 law enforcement agency of the jurisdiction where the vehicle or
559 vessel is stored shall contact the Department of Highway Safety
560 and Motor Vehicles, or the appropriate agency of the state of
561 registration, if known, within 24 hours through the medium of
562 electronic communications, giving the full description of the
563 vehicle or vessel. Upon receipt of the full description of the



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564 vehicle or vessel, the department shall search its files to
565 determine the owner's name, the insurance company insuring the
566 vehicle or vessel, and whether any person has filed a lien upon
567 the vehicle or vessel as provided in s. 319.27(2) and (3) and
568 notify the applicable law enforcement agency within 72 hours.
569 The person in charge of the towing service, garage, repair shop,
570 or automotive service, storage, or parking place shall obtain
571 such information from the applicable law enforcement agency
572 within 5 days after the date of storage and shall give notice
573 pursuant to paragraph (a). The department may release the
574 insurance company information to the requestor notwithstanding
575 the provisions of s. 627.736.

576 (c) Notice by certified mail, ~~return receipt requested,~~
577 shall be sent within 7 business days after the date of storage
578 of the vehicle or vessel to the registered owner, the insurance
579 company insuring the vehicle notwithstanding the provisions of
580 s. 627.736, and all persons of record claiming a lien against
581 the vehicle or vessel. It shall state the fact of possession of
582 the vehicle or vessel, that a lien as provided in subsection (2)
583 is claimed, that charges have accrued and the amount thereof,
584 that the lien is subject to enforcement pursuant to law, and
585 that the owner or lienholder, if any, has the right to a hearing
586 as set forth in subsection (5), and that any vehicle or vessel
587 which remains unclaimed, or for which the charges for recovery,
588 towing, or storage services remain unpaid, may be sold free of
589 all prior liens after 35 days if the vehicle or vessel is more
590 than 3 years of age or after 50 days if the vehicle or vessel is
591 3 years of age or less.

592 (d) If attempts to locate the name and address of the owner



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593 or lienholder prove unsuccessful, the towing-storage operator
594 shall, after 7 working days, excluding Saturday and Sunday, of
595 the initial tow or storage, notify the public agency of
596 jurisdiction where the vehicle or vessel is stored in writing by
597 certified mail or acknowledged hand delivery that the towing-
598 storage company has been unable to locate the name and address
599 of the owner or lienholder and a physical search of the vehicle
600 or vessel has disclosed no ownership information and a good
601 faith effort has been made. For purposes of this paragraph and
602 subsection (9), "good faith effort" means that the following
603 checks have been performed by the company to establish prior
604 state of registration and for title:

605 1. Check of vehicle or vessel for any type of tag, tag
606 record, temporary tag, or regular tag.

607 2. Check of law enforcement report for tag number or other
608 information identifying the vehicle or vessel, if the vehicle or
609 vessel was towed at the request of a law enforcement officer.

610 3. Check of trip sheet or tow ticket of tow truck operator
611 to see if a tag was on vehicle or vessel at beginning of tow, if
612 private tow.

613 4. If there is no address of the owner on the impound
614 report, check of law enforcement report to see if an out-of-
615 state address is indicated from driver license information.

616 5. Check of vehicle or vessel for inspection sticker or
617 other stickers and decals that may indicate a state of possible
618 registration.

619 6. Check of the interior of the vehicle or vessel for any
620 papers that may be in the glove box, trunk, or other areas for a
621 state of registration.



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622 7. Check of vehicle for vehicle identification number.

623 8. Check of vessel for vessel registration number.

624 9. Check of vessel hull for a hull identification number
625 which should be carved, burned, stamped, embossed, or otherwise
626 permanently affixed to the outboard side of the transom or, if
627 there is no transom, to the outmost seaboard side at the end of
628 the hull that bears the rudder or other steering mechanism.

629 (5) (a) The owner of a vehicle or vessel removed pursuant to
630 the provisions of subsection (2), or any person claiming a lien,
631 other than the towing-storage operator, within 10 days after the
632 time she or he has knowledge of the location of the vehicle or
633 vessel, may file a complaint in the county court of the county
634 in which the vehicle or vessel is stored ~~or in which the owner~~
635 ~~resides~~ to determine if her or his property was wrongfully taken
636 or withheld from her or him.

637 (b) Upon filing of a complaint, an owner or lienholder may
638 have her or his vehicle or vessel released upon posting with the
639 court a cash or surety bond or other adequate security equal to
640 the amount of the charges for towing or storage and lot rental
641 amount to ensure the payment of such charges in the event she or
642 he does not prevail. Upon the posting of the bond and the
643 payment of the applicable fee set forth in s. 28.24, the clerk
644 of the court shall issue a certificate notifying the lienor of
645 the posting of the bond and directing the lienor to release the
646 vehicle or vessel. At the time of such release, after reasonable
647 inspection, she or he shall give a receipt to the towing-storage
648 company reciting any claims she or he has for loss or damage to
649 the vehicle or vessel or the contents thereof.

650 (c) Upon determining the respective rights of the parties,



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651 the court may award damages, attorney's fees, and costs in favor
652 of the prevailing party. In any event, the final order shall
653 provide for immediate payment in full of recovery, towing, and
654 storage fees by the vehicle or vessel owner or lienholder; or
655 the agency ordering the tow; or the owner, lessee, or agent
656 thereof of the property from which the vehicle or vessel was
657 removed.

658 (6) Any vehicle or vessel which is stored pursuant to
659 subsection (2) and which remains unclaimed, or for which
660 reasonable charges for recovery, towing, or storing remain
661 unpaid, and any contents not released pursuant to subsection
662 (10), may be sold by the owner or operator of the storage space
663 for such towing or storage charge after 35 days from the time
664 the vehicle or vessel is stored therein if the vehicle or vessel
665 is more than 3 years of age or after 50 days following the time
666 the vehicle or vessel is stored therein if the vehicle or vessel
667 is 3 years of age or less. The sale shall be at public sale
668 ~~auction~~ for cash. If the date of the sale was not included in
669 the notice required in subsection (4), notice of the sale shall
670 be given to the person in whose name the vehicle or vessel is
671 registered and to all persons claiming a lien on the vehicle or
672 vessel as shown on the records of the Department of Highway
673 Safety and Motor Vehicles or of the corresponding agency in any
674 other state. Notice shall be sent by certified mail, ~~return~~
675 ~~receipt requested~~, to the owner of the vehicle or vessel and the
676 person having the recorded lien on the vehicle or vessel at the
677 address shown on the records of the registering agency and shall
678 be mailed not less than 15 days before the date of the sale.
679 After diligent search and inquiry, if the name and address of



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680 the registered owner or the owner of the recorded lien cannot be
681 ascertained, the requirements of notice by mail may be dispensed
682 with. In addition to the notice by mail, public notice of the
683 time and place of sale shall be made by publishing a notice
684 thereof one time, at least 10 days prior to the date of the
685 sale, in a newspaper of general circulation in the county in
686 which the sale is to be held. The proceeds of the sale, after
687 payment of reasonable towing and storage charges, and costs of
688 the sale, in that order of priority, shall be deposited with the
689 clerk of the circuit court for the county if the owner or
690 lienholder is absent, and the clerk shall hold such proceeds
691 subject to the claim of the owner or lienholder ~~person~~ legally
692 entitled thereto. The clerk shall be entitled to receive 5
693 percent of such proceeds for the care and disbursement thereof.
694 The certificate of title issued under this law shall be
695 discharged of all liens unless otherwise provided by court
696 order. The owner or lienholder may file a complaint after the
697 vehicle or vessel has been sold in the county court of the
698 county in which it is stored. Upon determining the respective
699 rights of the parties, the court may award damages, attorney's
700 fees, and costs in favor of the prevailing party.

701 (10) Persons who provide services pursuant to this section
702 shall permit vehicle or vessel owners, lienholders, or their
703 agents, which agency is evidenced by an original writing
704 acknowledged by the owner before a notary public or other person
705 empowered by law to administer oaths, to inspect the towed
706 vehicle or vessel and shall release to the owner, lienholder, or
707 agent the vehicle, vessel, or all personal property not affixed
708 to the vehicle or vessel which was in the vehicle or vessel at



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709 the time the vehicle or vessel came into the custody of the
710 person providing such services.

711 Section 39. Effective October 1, 2009, paragraph (c) is
712 added to subsection (2) of section 320.0609, Florida Statutes,
713 to read:

714 320.0609 Transfer and exchange of registration license
715 plates; transfer fee.-

716 (2)

717 (c) If a retail sale by a licensed independent motor
718 vehicle dealer results in the transfer of a registration license
719 plate, a temporary tag shall be issued and displayed during the
720 time that the application for transfer of such registration
721 license plate is being processed unless the department's records
722 reflect that the transfer has occurred. However, this paragraph
723 shall not apply to independent motor vehicle dealers that are
724 owned by principals that also hold a franchise motor vehicle
725 dealer license in this state. This paragraph is repealed June
726 30, 2010.

727 Section 40. Effective July 1, 2010, subsection (8) is added
728 to section 320.0609, Florida Statutes, to read:

729 320.0609 Transfer and exchange of registration license
730 plates; transfer fee.-

731 (8) (a) When the owner of a vehicle transfers a registration
732 license plate to a replacement or substitute vehicle acquired
733 from a motor vehicle dealer licensed under this chapter, the
734 dealer shall timely provide to the department, via an electronic
735 system administered by the department for this purpose,
736 information regarding the transfer which is required by the
737 department. The dealer shall also give the owner written notice



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738 documenting the transfer if the dealer cannot timely provide the
739 required transfer information to the department due to system or
740 connectivity problems. The dealer shall maintain all records
741 required by the department which must be open to inspection by
742 the department or its agents during reasonable business hours.
743 The dealer may charge the vehicle owner a fee to comply with
744 this subsection. The department may charge a fee of \$2 to be
745 deposited into the Highway Safety Operating Trust Fund for each
746 transfer in addition to any other fee imposed by law.

747 (b) A dealer is not required to comply with paragraph (a)
748 if the department's records are otherwise modified on the date
749 of transfer to reflect that the transfer has occurred.

750 (c) The department has authority to adopt rules pursuant to
751 ss. 120.536(1) and 120.54 to administer this subsection.

752 Section 41. Effective October 1, 2009, paragraph (m) is
753 added to subsection (1) of section 320.131, Florida Statutes, to
754 read:

755 320.131 Temporary tags.—

756 (1) The department is authorized and empowered to design,
757 issue, and regulate the use of temporary tags to be designated
758 "temporary tags" for use in the following cases:

759 (m) For a retail sale by a licensed independent motor
760 vehicle dealer when an application for the transfer of a
761 registration license plate is being processed. This paragraph is
762 repealed June 30, 2010.

763
764 Further, the department is authorized to disallow the purchase
765 of temporary tags by licensed dealers, common carriers, or
766 financial institutions in those cases where abuse has occurred.



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767 Section 42. Paragraphs (d) and (i) of subsection (6) of
768 section 316.193, Florida Statutes, are amended, and subsections
769 (13) and (14) are added to that section, to read:

770 316.193 Driving under the influence; penalties.—

771 (6) With respect to any person convicted of a violation of
772 subsection (1), regardless of any penalty imposed pursuant to
773 subsection (2), subsection (3), or subsection (4):

774 (d) The court must at the time of sentencing the defendant
775 issue an order for the impoundment or immobilization of a
776 vehicle. The order of impoundment or immobilization must include
777 the name and telephone numbers of all immobilization agencies
778 meeting all of the conditions of subsection (13). Within 7
779 business days after the date that the court issues the order of
780 impoundment or immobilization, the clerk of the court must send
781 notice by certified mail, return receipt requested, to the
782 registered owner of each vehicle, if the registered owner is a
783 person other than the defendant, and to each person of record
784 claiming a lien against the vehicle.

785 (i) All costs and fees for the impoundment or
786 immobilization, including the cost of notification, must be paid
787 by the owner of the vehicle or, if the vehicle is leased or
788 rented, by the person leasing or renting the vehicle, unless the
789 impoundment or immobilization order is dismissed. All provisions
790 of s. 713.78 shall apply. The costs and fees for the impoundment
791 or immobilization must be paid directly to the person impounding
792 or immobilizing the vehicle.

793
794 For the purposes of this section, any conviction for a violation
795 of s. 327.35; a previous conviction for the violation of former



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796 s. 316.1931, former s. 860.01, or former s. 316.028; or a
797 previous conviction outside this state for driving under the
798 influence, driving while intoxicated, driving with an unlawful
799 blood-alcohol level, driving with an unlawful breath-alcohol
800 level, or any other similar alcohol-related or drug-related
801 traffic offense, is also considered a previous conviction for
802 violation of this section. However, in satisfaction of the fine
803 imposed pursuant to this section, the court may, upon a finding
804 that the defendant is financially unable to pay either all or
805 part of the fine, order that the defendant participate for a
806 specified additional period of time in public service or a
807 community work project in lieu of payment of that portion of the
808 fine which the court determines the defendant is unable to pay.
809 In determining such additional sentence, the court shall
810 consider the amount of the unpaid portion of the fine and the
811 reasonable value of the services to be ordered; however, the
812 court may not compute the reasonable value of services at a rate
813 less than the federal minimum wage at the time of sentencing.

814 (13) If personnel of the circuit court or the sheriff do
815 not immobilize vehicles, only immobilization agencies that meet
816 the conditions of this subsection shall immobilize vehicles in
817 that judicial circuit.

818 (a) The immobilization agency responsible for immobilizing
819 vehicles in that judicial circuit shall be subject to strict
820 compliance with all of the following conditions and
821 restrictions:

822 1. Any immobilization agency engaged in the business of
823 immobilizing vehicles shall:

824 a. Have a class "R" license issued pursuant to part IV of



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825 chapter 493;

826 b. Have at least 3 years of verifiable experience in
827 immobilizing vehicles; and

828 c. Maintain accurate and complete records of all payments
829 for the immobilization, copies of all documents pertaining to
830 the court's order of impoundment or immobilization, and any
831 other documents relevant to each immobilization. Such records
832 must be maintained by the immobilization agency for at least 3
833 years.

834 2. The person who immobilizes a vehicle must never have
835 been convicted of any felony or of driving or boating under the
836 influence of alcohol or a controlled substance in the last 3
837 years.

838 (b) A person who violates paragraph (a) commits a
839 misdemeanor of the first degree, punishable as provided in s.
840 775.082 or s. 775.083.

841 (c) Any immobilization agency who is aggrieved by a
842 person's violation of paragraph (a) may bring a civil action
843 against the person who violated paragraph (a) seeking injunctive
844 relief, damages, reasonable attorney's fees and costs, and any
845 other remedy available at law or in equity as may be necessary
846 to enforce this subsection. In any action to enforce this
847 subsection, establishment of a violation of paragraph (a) shall
848 conclusively establish a clear legal right to injunctive relief,
849 that irreparable harm will be caused if an injunction does not
850 issue, that no adequate remedy at law exists, and that public
851 policy favors issuance of injunctive relief.

852 (14) As used in this chapter, the term:

853 (a) "Immobilization," "immobilizing," or "immobilize" means



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854 the act of installing a vehicle antitheft device on the steering
855 wheel of a vehicle, the act of placing a tire lock or wheel
856 clamp on a vehicle, or a governmental agency's act of taking
857 physical possession of the license tag and vehicle registration
858 rendering a vehicle legally inoperable to prevent any person
859 from operating the vehicle pursuant to an order of impoundment
860 or immobilization under subsection (6).

861 (b) "Immobilization agency" or "immobilization agencies"
862 means any firm, company, agency, organization, partnership,
863 corporation, association, trust, or other business entity of any
864 kind whatsoever that meets all of the conditions of subsection
865 (13).

866 (c) "Impoundment," "impounding," or "impound" means the act
867 of storing a vehicle at a storage facility pursuant to an order
868 of impoundment or immobilization under subsection (6) where the
869 person impounding the vehicle exercises control, supervision,
870 and responsibility over the vehicle.

871 (d) "Person" means any individual, firm, company, agency,
872 organization, partnership, corporation, association, trust, or
873 other business entity of any kind whatsoever.

874 Section 43. Except as otherwise expressly provided in this
875 act, this act shall take effect July 1, 2009.

876
877 ===== T I T L E A M E N D M E N T =====

878 And the title is amended as follows:

879 Delete line 1428

880 and insert:

881 Regional Transportation Authority; amending s. 30.231,
882 F.S.; authorizing sheriffs expediting execution of a



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883 writ of replevin to recover certain additional
884 expenses; amending s. 30.30, F.S.; requiring sheriffs
885 to expedite certain writs of replevin within a
886 specified amount of time; amending s. 78.065, F.S.;
887 requiring courts to advance certain matters related to
888 writs of replevin on the calendar; amending s. 78.068,
889 F.S.; requiring courts to advance certain matters
890 related to prejudgment writs of replevin on the
891 calendar; amending s. 320.02, F.S.; authorizing the
892 Department of Highway Safety and Motor Vehicles to
893 withhold renewal of registration or replacement
894 registration of specified motor vehicles under certain
895 circumstances; amending s. 320.03, F.S.; preemption
896 jurisdiction over the outsourced electronic filing
897 system to the state; requiring the department to
898 continue its current outsourcing of the existing
899 electronic filing system; approving the system for use
900 in all counties; authorizing motor vehicle dealers to
901 charge certain fees; requiring a report from the
902 Office of Program Policy Analysis and Government
903 Accountability by a specified date; creating s.
904 320.1316, F.S.; providing responsibilities of the
905 department relating to the issuance of a license
906 plate, revalidation sticker, or replacement license
907 plate for certain vehicles; requiring the department
908 to create a notice to surrender form; providing
909 procedures for the dispute of a notice to surrender;
910 amending s. 559.903, F.S.; defining the terms
911 "lienholder" and "owner" for purposes of the Florida



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912 Motor Vehicle Repair Act; amending s. 559.917, F.S.;
913 revising the amount of the bond required to release a
914 possessory lien claimed by a motor vehicle repair
915 shop; providing for a motor vehicle owner or
916 lienholder to obtain the release of a motor vehicle
917 from a motor vehicle repair shop; revising criteria
918 required to establish an action to compel compliance;
919 amending s. 713.585, F.S.; modifying procedures for
920 enforcing liens for labor or services by sale of a
921 motor vehicle; amending s. 322.34, F.S.; creating
922 certain rights for lienholders; deleting a return
923 receipt mailing requirement; amending s. 713.78, F.S.;
924 clarifying provisions; deleting a return receipt
925 mailing requirement; creating certain rights for
926 lienholders; deleting a provision that allows a
927 complaint to be filed in the county where the owner
928 resides; creating a cause of action to determine the
929 rights of the parties after a vehicle or vessel has
930 been sold; providing for attorney's fees and costs;
931 providing a right of inspection to lienholders;
932 amending s. 320.0609, F.S., relating to the transfer
933 and exchange of registration license plates and
934 transfer fees; requiring that a temporary tag be
935 issued and displayed during the time that an
936 application for a transfer of a registration license
937 plate is being processed; providing exceptions;
938 amending s. 320.131, F.S.; authorizing the department
939 to issue temporary tags for the time that an
940 application for a transfer of a registration license



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941 plate is being processed; amending s. 320.0609, F.S.,
942 relating to the transfer and exchange of registration
943 license plates and transfer fees; requiring a licensed
944 motor vehicle dealer to provide certain required
945 information via an electronic system to the department
946 when the owner of a vehicle transfers a registration
947 license plate to a replacement or substitute vehicle
948 acquired from the dealer; providing that the
949 electronic system shall be administered by the
950 department; requiring the dealer to give the owner
951 written notice documenting the transfer if the dealer
952 cannot provide the required transfer information to
953 the department under certain circumstances; requiring
954 the dealer to maintain certain records; providing for
955 the dealer and the department to charge a fee;
956 providing for exceptions; authorizing the department
957 to adopt rules; amending s. 316.193, F.S.; requiring
958 the court to include in the order of impoundment or
959 immobilization the names and telephone numbers of
960 immobilization agencies that meet specified
961 requirements; requiring the person whose vehicle is
962 ordered to be impounded or immobilized to pay the
963 impoundment or immobilization fees and costs directly
964 to the person impounding or immobilizing the vehicle;
965 establishing conditions and restrictions for
966 immobilization agencies who are engaged in the
967 business of immobilizing vehicles in judicial circuits
968 where personnel of the court or sheriff do not
969 immobilize vehicles; providing penalties for violating



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970 such conditions and restrictions; authorizing
971 aggrieved immobilization agency to initiate a civil
972 action against a person who commits such violation;
973 providing for attorney's fees and costs; defining the
974 terms "immobilization," "immobilize," "immobilizing,"
975 "immobilization agency," "immobilization agencies,"
976 "impound," "impounding," "impoundment," and "person";
977 providing effective dates.