

HB 1175

2009

1 A bill to be entitled
2 An act relating to the recovery, towing, and storage of
3 vehicles and vessels; amending s. 322.34, F.S.; deleting
4 provisions requiring a return receipt for the notice sent
5 by certified mail to the owner and lienholders of an
6 impounded or immobilized vehicle; authorizing the
7 lienholder of an impounded or immobilized vehicle to file
8 a complaint to determine if the vehicle was wrongfully
9 taken or withheld and to have the vehicle released by
10 posting a bond or other security; requiring a lienholder
11 who does not prevail in court to pay certain
12 immobilization, impoundment, towing, and storage charges;
13 requiring the lienholder to notify the towing or storage
14 company of any loss or damage to the vehicle or its
15 contents; amending s. 713.78, F.S.; specifying which law
16 enforcement agency is responsible for notifying the
17 Department of Highway Safety and Motor Vehicles or
18 corresponding agency in another state of a vehicle's or
19 vessel's removal or possession by a recovery, towing, or
20 storage service; deleting provisions requiring a return
21 receipt for the notice sent by certified mail to the
22 owner, insurance company, and lienholder of a vehicle or
23 vessel in the possession of a recovery, towing, or storage
24 service; specifying which public agency a towing-storage
25 operator is required to notify if the operator is unable
26 to locate the owner or lienholder of a vehicle or vessel;
27 limiting the county court in which an owner or lienholder
28 of a removed vehicle or vessel may file a complaint to

Page 1 of 10

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1175-00

29 determine if his or her property was wrongfully taken or
 30 withheld; deleting a requirement that the public sale of
 31 an unclaimed vehicle or vessel be at auction; deleting a
 32 provision requiring a return receipt for the notice of the
 33 sale sent by certified mail to the owner and lienholders
 34 of the vehicle or vessel; requiring deposit of the
 35 proceeds of the vehicle's or vessel's sale with the clerk
 36 of circuit court if the owner or lienholder is absent;
 37 authorizing an owner or lienholder to file a complaint in
 38 a certain county court; providing for the award of
 39 damages, attorney's fees, and costs; requiring a recovery,
 40 towing, or storage service to permit a lienholder or agent
 41 to inspect the vehicle or vessel and release personal
 42 property to the lienholder or agent; requiring certain
 43 evidence of the owner's or lienholder's authority for an
 44 agent to inspect a vehicle or vessel or receive personal
 45 property in the vehicle or vessel; providing an effective
 46 date.

47
 48 Be It Enacted by the Legislature of the State of Florida:

49
 50 Section 1. Paragraphs (c), (d), and (f) of subsection (8)
 51 of section 322.34, Florida Statutes, are amended to read:

52 322.34 Driving while license suspended, revoked, canceled,
 53 or disqualified.--

54 (8)

55 (c) Within 7 business days after the date the arresting
 56 agency impounds or immobilizes the vehicle, either the arresting

HB 1175

2009

57 | agency or the towing service, whichever is in possession of the
58 | vehicle, shall send notice by certified mail, ~~return receipt~~
59 | ~~requested,~~ to any coregistered owners of the vehicle other than
60 | the person arrested and to each person of record claiming a lien
61 | against the vehicle. All costs and fees for the impoundment or
62 | immobilization, including the cost of notification, must be paid
63 | by the owner of the vehicle or, if the vehicle is leased, by the
64 | person leasing the vehicle.

65 | (d) Either the arresting agency or the towing service,
66 | whichever is in possession of the vehicle, shall determine
67 | whether any vehicle impounded or immobilized under this section
68 | is ~~has been~~ leased or rented or if there are any persons of
69 | record with a lien upon the vehicle. Either the arresting agency
70 | or the towing service, whichever is in possession of the
71 | vehicle, shall notify by express courier service with receipt,
72 | or by certified mail, ~~return receipt requested,~~ within 7
73 | business days after the date of the immobilization or
74 | impoundment of the vehicle, the registered owner and all persons
75 | having a recorded lien against the vehicle that the vehicle is
76 | ~~has been~~ impounded or immobilized. A lessor, rental car company,
77 | or lienholder may then obtain the vehicle, upon payment of any
78 | lawful towing or storage charges. If the vehicle is a rental
79 | vehicle subject to a written contract, the charges may be
80 | separately charged to the renter, in addition to the rental
81 | rate, along with other separate fees, charges, and recoupments
82 | disclosed on the rental agreement. If the storage facility fails
83 | to provide timely notice to a lessor, rental car company, or
84 | lienholder as required by this paragraph, the storage facility

HB 1175

2009

85 ~~is shall be~~ responsible for payment of any towing or storage
86 charges necessary to release the vehicle to a lessor, rental car
87 company, or lienholder that accrue after the notice period,
88 which charges may then be assessed against the driver of the
89 vehicle if the vehicle was lawfully impounded or immobilized.

90 (f) The owner or lienholder of a vehicle that is impounded
91 or immobilized under this subsection may, within 10 days after
92 the date the owner or lienholder has knowledge of the location
93 of the vehicle, file a complaint in the county in which the
94 owner resides to determine whether the vehicle was wrongfully
95 taken or withheld. Upon the filing of a complaint, the owner or
96 lienholder may have the vehicle released by posting with the
97 court a bond or other adequate security equal to the amount of
98 the costs and fees for impoundment or immobilization, including
99 towing or storage, to ensure the payment of such costs and fees
100 if the owner or lienholder does not prevail. When the vehicle
101 owner or lienholder does not prevail on a complaint that the
102 vehicle was wrongfully taken or withheld, he or she must pay the
103 accrued charges for the immobilization or impoundment, including
104 any towing and storage charges assessed against the vehicle.
105 When the bond is posted and the fee is paid as set forth in s.
106 28.24, the clerk of the court shall issue a certificate
107 releasing the vehicle. At the time of release, after reasonable
108 inspection, the owner or lienholder must give a receipt to the
109 towing or storage company indicating any loss or damage to the
110 vehicle or to the contents of the vehicle.

111 Section 2. Subsection (4), paragraph (a) of subsection
 112 (5), and subsections (6) and (10) of section 713.78, Florida
 113 Statutes, are amended to read:

114 713.78 Liens for recovering, towing, or storing vehicles
 115 and vessels.--

116 (4) (a) Any person regularly engaged in the business of
 117 recovering, towing, or storing vehicles or vessels who comes
 118 into possession of a vehicle or vessel pursuant to subsection
 119 (2), and who claims a lien for recovery, towing, or storage
 120 services, shall give notice to the registered owner, the
 121 insurance company insuring the vehicle notwithstanding the
 122 provisions of s. 627.736, and to all persons claiming a lien
 123 thereon, as disclosed by the records in the Department of
 124 Highway Safety and Motor Vehicles or of a corresponding agency
 125 in any other state.

126 (b) Whenever any law enforcement agency authorizes the
 127 removal of a vehicle or vessel or whenever any towing service,
 128 garage, repair shop, or automotive service, storage, or parking
 129 place notifies the law enforcement agency of possession of a
 130 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
 131 law enforcement agency of the jurisdiction in which the vehicle
 132 or vessel is stored shall contact the Department of Highway
 133 Safety and Motor Vehicles, or the appropriate agency of the
 134 state of registration, if known, within 24 hours through the
 135 medium of electronic communications, giving the full description
 136 of the vehicle or vessel. Upon receipt of the full description
 137 of the vehicle or vessel, the department shall search its files
 138 to determine the owner's name, the insurance company insuring

HB 1175

2009

139 the vehicle or vessel, and whether any person has filed a lien
 140 upon the vehicle or vessel as provided in s. 319.27(2) and (3)
 141 and notify the applicable law enforcement agency within 72
 142 hours. The person in charge of the towing service, garage,
 143 repair shop, or automotive service, storage, or parking place
 144 shall obtain such information from the applicable law
 145 enforcement agency within 5 days after the date of storage and
 146 shall give notice pursuant to paragraph (a). The department may
 147 release the insurance company information to the requestor
 148 notwithstanding the provisions of s. 627.736.

149 (c) Notice by certified mail, ~~return receipt requested,~~
 150 shall be sent within 7 business days after the date of storage
 151 of the vehicle or vessel to the registered owner, the insurance
 152 company insuring the vehicle notwithstanding the provisions of
 153 s. 627.736, and all persons of record claiming a lien against
 154 the vehicle or vessel. It shall state the fact of possession of
 155 the vehicle or vessel, that a lien as provided in subsection (2)
 156 is claimed, that charges have accrued and the amount thereof,
 157 that the lien is subject to enforcement pursuant to law, and
 158 that the owner or lienholder, if any, has the right to a hearing
 159 as set forth in subsection (5), and that any vehicle or vessel
 160 which remains unclaimed, or for which the charges for recovery,
 161 towing, or storage services remain unpaid, may be sold free of
 162 all prior liens after 35 days if the vehicle or vessel is more
 163 than 3 years of age or after 50 days if the vehicle or vessel is
 164 3 years of age or less.

165 (d) If attempts to locate the name and address of the
 166 owner or lienholder prove unsuccessful, the towing-storage

HB 1175

2009

167 operator shall, after 7 working days, excluding Saturday and
168 Sunday, of the initial tow or storage, notify the public agency
169 of the jurisdiction in which the vehicle or vessel is stored in
170 writing by certified mail or acknowledged hand delivery that the
171 towing-storage company is ~~has been~~ unable to locate the name and
172 address of the owner or lienholder and a physical search of the
173 vehicle or vessel ~~has~~ disclosed no ownership information and a
174 good faith effort was ~~has been~~ made. For purposes of this
175 paragraph and subsection (9), "good faith effort" means that the
176 following checks have been performed by the company to establish
177 prior state of registration and for title:

178 1. Check of vehicle or vessel for any type of tag, tag
179 record, temporary tag, or regular tag.

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

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

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

189 5. Check of vehicle or vessel for inspection sticker or
190 other stickers and decals that may indicate a state of possible
191 registration.

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

195 7. Check of vehicle for vehicle identification number.

196 8. Check of vessel for vessel registration number.

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

202 (5) (a) The owner of a vehicle or vessel removed pursuant
 203 to the provisions of subsection (2), or any person claiming a
 204 lien, other than the towing-storage operator, within 10 days
 205 after the time she or he has knowledge of the location of the
 206 vehicle or vessel, may file a complaint in the county court of
 207 the county in which the vehicle or vessel is stored ~~or in which~~
 208 ~~the owner resides~~ to determine if her or his property was
 209 wrongfully taken or withheld from her or him.

210 (6) Any vehicle or vessel which is stored pursuant to
 211 subsection (2) and which remains unclaimed, or for which
 212 reasonable charges for recovery, towing, or storing remain
 213 unpaid, and any contents not released pursuant to subsection
 214 (10), may be sold for cash at a public sale by the owner or
 215 operator of the storage space for such towing or storage charge
 216 after 35 days from the time the vehicle or vessel is stored
 217 therein if the vehicle or vessel is more than 3 years of age or
 218 after 50 days following the time the vehicle or vessel is stored
 219 therein if the vehicle or vessel is 3 years of age or less. ~~The~~
 220 ~~sale shall be at public auction for cash.~~ If the date of the
 221 sale was not included in the notice required in subsection (4),
 222 notice of the sale shall be given to the person in whose name

223 the vehicle or vessel is registered and to all persons claiming
 224 a lien on the vehicle or vessel as shown on the records of the
 225 Department of Highway Safety and Motor Vehicles or of the
 226 corresponding agency in any other state. Notice shall be sent by
 227 certified mail, ~~return receipt requested,~~ to the owner of the
 228 vehicle or vessel and the person having the recorded lien on the
 229 vehicle or vessel at the address shown on the records of the
 230 registering agency and shall be mailed not less than 15 days
 231 before the date of the sale. After diligent search and inquiry,
 232 if the name and address of the registered owner or the owner of
 233 the recorded lien cannot be ascertained, the requirements of
 234 notice by mail may be dispensed with. In addition to the notice
 235 by mail, public notice of the time and place of sale shall be
 236 made by publishing a notice thereof one time, at least 10 days
 237 before ~~prior to~~ the date of the sale, in a newspaper of general
 238 circulation in the county in which the sale is to be held. The
 239 proceeds of the sale, after payment of reasonable towing and
 240 storage charges, and costs of the sale, in that order of
 241 priority, shall be deposited with the clerk of the circuit court
 242 for the county if the owner or lienholder is absent, and the
 243 clerk shall hold the ~~such~~ proceeds subject to the claim of the
 244 owner or lienholder who is ~~person~~ legally entitled to the
 245 proceeds thereto. The clerk is ~~shall be~~ entitled to receive 5
 246 percent of the ~~such~~ proceeds for the care and disbursement
 247 thereof. The certificate of title issued under this law shall be
 248 discharged of all liens unless otherwise provided by court
 249 order. After the vehicle or vessel is sold, the owner or
 250 lienholder may file a complaint in the county court of the

251 county in which the vehicle or vessel is stored. Upon
 252 determining the respective rights of the parties, the court may
 253 award damages, attorney's fees, and costs in favor of the
 254 prevailing party.

255 (10) Persons who provide services pursuant to this section
 256 shall permit vehicle or vessel owners, lienholders, or their
 257 agents, ~~which agency is evidenced by an original writing~~
 258 ~~acknowledged by the owner before a notary public or other person~~
 259 ~~empowered by law to administer oaths,~~ to inspect the towed
 260 vehicle or vessel and shall release to the owner, lienholder, or
 261 agent the vehicle, vessel, or all personal property not affixed
 262 to the vehicle or vessel which was in the vehicle or vessel at
 263 the time the vehicle or vessel came into the custody of the
 264 person providing such services. An agent's authority to inspect
 265 the vehicle or vessel and receive personal property in the
 266 vehicle or vessel must be evidenced by an original writing
 267 acknowledged by the owner or lienholder before a notary public
 268 or before another person empowered by law to administer oaths.

269 Section 3. This act shall take effect July 1, 2009.