

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Burgin offered the following:

2  
3 **Amendment (with title amendment)**

4 Between lines 475 and 476, insert:

5 Section 11. Subsection (8) of section 322.34, Florida  
6 Statutes, is amended to read:

7 322.34 Driving while license suspended, revoked, canceled,  
8 or disqualified.--

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

12 1. Whether the person's driver's license is suspended or  
13 revoked.

14 2. Whether the person's driver's license has remained  
15 suspended or revoked since a conviction for the offense of  
16 driving with a suspended or revoked license.

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17 3. Whether the suspension or revocation was made under s.  
18 316.646 or s. 627.733, relating to failure to maintain required  
19 security, or under s. 322.264, relating to habitual traffic  
20 offenders.

21 4. Whether the driver is the registered owner or coowner  
22 of the vehicle.

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

26 (c) Within 7 business days after the date the arresting  
27 agency impounds or immobilizes the vehicle, either the arresting  
28 agency or the towing service, whichever is in possession of the  
29 vehicle, shall send notice by certified mail, ~~return receipt~~  
30 ~~requested~~, to any coregistered owners of the vehicle other than  
31 the person arrested and to each person of record claiming a lien  
32 against the vehicle. All costs and fees for the impoundment or  
33 immobilization, including the cost of notification, must be paid  
34 by the owner of the vehicle or, if the vehicle is leased, by the  
35 person leasing the vehicle.

36 (d) Either the arresting agency or the towing service,  
37 whichever is in possession of the vehicle, shall determine  
38 whether any vehicle impounded or immobilized under this section  
39 has been leased or rented or if there are any persons of record  
40 with a lien upon the vehicle. Either the arresting agency or the  
41 towing service, whichever is in possession of the vehicle, shall  
42 notify by express courier service with receipt or certified  
43 mail, ~~return receipt requested~~, within 7 business days after the  
44 date of the immobilization or impoundment of the vehicle, the

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45 registered owner and all persons having a recorded lien against  
46 the vehicle that the vehicle has been impounded or immobilized.  
47 A lessor, rental car company, or lienholder may then obtain the  
48 vehicle, upon payment of any lawful towing or storage charges.  
49 If the vehicle is a rental vehicle subject to a written  
50 contract, the charges may be separately charged to the renter,  
51 in addition to the rental rate, along with other separate fees,  
52 charges, and recoupments disclosed on the rental agreement. If  
53 the storage facility fails to provide timely notice to a lessor,  
54 rental car company, or lienholder as required by this paragraph,  
55 the storage facility shall be responsible for payment of any  
56 towing or storage charges necessary to release the vehicle to a  
57 lessor, rental car company, or lienholder that accrue after the  
58 notice period, which charges may then be assessed against the  
59 driver of the vehicle if the vehicle was lawfully impounded or  
60 immobilized.

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

64 1. The owner presents proof of insurance to the arresting  
65 agency; or

66 2. The owner presents proof of sale of the vehicle to the  
67 arresting agency and the buyer presents proof of insurance to  
68 the arresting agency.

69  
70 If proof is not presented within 35 days after the impoundment  
71 or immobilization, a lien shall be placed upon such vehicle  
72 pursuant to s. 713.78.

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73 (f) The owner of a vehicle that is impounded or  
74 immobilized under this subsection may, within 10 days after the  
75 date the owner has knowledge of the location of the vehicle,  
76 file a complaint in the county in which the owner resides to  
77 determine whether the vehicle was wrongfully taken or withheld.  
78 Upon the filing of a complaint, the owner or lienholder may have  
79 the vehicle released by posting with the court a bond or other  
80 adequate security equal to the amount of the costs and fees for  
81 impoundment or immobilization, including towing or storage, to  
82 ensure the payment of such costs and fees if the owner or  
83 lienholder does not prevail. When the vehicle owner or  
84 lienholder does not prevail on a complaint that the vehicle was  
85 wrongfully taken or withheld, he or she must pay the accrued  
86 charges for the immobilization or impoundment, including any  
87 towing and storage charges assessed against the vehicle. When  
88 the bond is posted and the fee is paid as set forth in s. 28.24,  
89 the clerk of the court shall issue a certificate releasing the  
90 vehicle. At the time of release, after reasonable inspection,  
91 the owner must give a receipt to the towing or storage company  
92 indicating any loss or damage to the vehicle or to the contents  
93 of the vehicle.

94 Section 12. Subsections (4), (5), (6), and (10) of section  
95 713.78, Florida Statutes, are amended to read:

96 713.78 Liens for recovering, towing, or storing vehicles  
97 and vessels.--

98 (4) (a) Any person regularly engaged in the business of  
99 recovering, towing, or storing vehicles or vessels who comes  
100 into possession of a vehicle or vessel pursuant to subsection  
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101 (2), and who claims a lien for recovery, towing, or storage  
102 services, shall give notice to the registered owner, the  
103 insurance company insuring the vehicle notwithstanding the  
104 provisions of s. 627.736, and to all persons claiming a lien  
105 thereon, as disclosed by the records in the Department of  
106 Highway Safety and Motor Vehicles or of a corresponding agency  
107 in any other state.

108 (b) Whenever any law enforcement agency authorizes the  
109 removal of a vehicle or vessel or whenever any towing service,  
110 garage, repair shop, or automotive service, storage, or parking  
111 place notifies the law enforcement agency of possession of a  
112 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~  
113 law enforcement agency of the jurisdiction where the vehicle or  
114 vessel is stored shall contact the Department of Highway Safety  
115 and Motor Vehicles, or the appropriate agency of the state of  
116 registration, if known, within 24 hours through the medium of  
117 electronic communications, giving the full description of the  
118 vehicle or vessel. Upon receipt of the full description of the  
119 vehicle or vessel, the department shall search its files to  
120 determine the owner's name, the insurance company insuring the  
121 vehicle or vessel, and whether any person has filed a lien upon  
122 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
123 notify the applicable law enforcement agency within 72 hours.  
124 The person in charge of the towing service, garage, repair shop,  
125 or automotive service, storage, or parking place shall obtain  
126 such information from the applicable law enforcement agency  
127 within 5 days after the date of storage and shall give notice  
128 pursuant to paragraph (a). The department may release the

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129 insurance company information to the requestor notwithstanding  
130 the provisions of s. 627.736.

131 (c) Notice by certified mail, ~~return receipt requested,~~  
132 shall be sent within 7 business days after the date of storage  
133 of the vehicle or vessel to the registered owner, the insurance  
134 company insuring the vehicle notwithstanding the provisions of  
135 s. 627.736, and all persons of record claiming a lien against  
136 the vehicle or vessel. It shall state the fact of possession of  
137 the vehicle or vessel, that a lien as provided in subsection (2)  
138 is claimed, that charges have accrued and the amount thereof,  
139 that the lien is subject to enforcement pursuant to law, and  
140 that the owner or lienholder, if any, has the right to a hearing  
141 as set forth in subsection (5), and that any vehicle or vessel  
142 which remains unclaimed, or for which the charges for recovery,  
143 towing, or storage services remain unpaid, may be sold free of  
144 all prior liens after 35 days if the vehicle or vessel is more  
145 than 3 years of age or after 50 days if the vehicle or vessel is  
146 3 years of age or less.

147 (d) If attempts to locate the name and address of the  
148 owner or lienholder prove unsuccessful, the towing-storage  
149 operator shall, after 7 working days, excluding Saturday and  
150 Sunday, of the initial tow or storage, notify the public agency  
151 of jurisdiction where the vehicle or vessel is stored in writing  
152 by certified mail or acknowledged hand delivery that the towing-  
153 storage company has been unable to locate the name and address  
154 of the owner or lienholder and a physical search of the vehicle  
155 or vessel has disclosed no ownership information and a good  
156 faith effort has been made. For purposes of this paragraph and  
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157 subsection (9), "good faith effort" means that the following  
158 checks have been performed by the company to establish prior  
159 state of registration and for title:

160 1. Check of vehicle or vessel for any type of tag, tag  
161 record, temporary tag, or regular tag.

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

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

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

171 5. Check of vehicle or vessel for inspection sticker or  
172 other stickers and decals that may indicate a state of possible  
173 registration.

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

177 7. Check of vehicle for vehicle identification number.

178 8. Check of vessel for vessel registration number.

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

184 (5) (a) The owner of a vehicle or vessel removed pursuant  
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185 to the provisions of subsection (2), or any person claiming a  
186 lien, other than the towing-storage operator, within 10 days  
187 after the time she or he has knowledge of the location of the  
188 vehicle or vessel, may file a complaint in the county court of  
189 the county in which the vehicle or vessel is stored ~~or in which~~  
190 ~~the owner resides~~ to determine if her or his property was  
191 wrongfully taken or withheld from her or him.

192 (b) Upon filing of a complaint, an owner or lienholder may  
193 have her or his vehicle or vessel released upon posting with the  
194 court a cash or surety bond or other adequate security equal to  
195 the amount of the charges for towing or storage and lot rental  
196 amount to ensure the payment of such charges in the event she or  
197 he does not prevail. Upon the posting of the bond and the  
198 payment of the applicable fee set forth in s. 28.24, the clerk  
199 of the court shall issue a certificate notifying the lienor of  
200 the posting of the bond and directing the lienor to release the  
201 vehicle or vessel. At the time of such release, after reasonable  
202 inspection, she or he shall give a receipt to the towing-storage  
203 company reciting any claims she or he has for loss or damage to  
204 the vehicle or vessel or the contents thereof.

205 (c) Upon determining the respective rights of the parties,  
206 the court may award damages, attorney's fees, and costs in favor  
207 of the prevailing party. In any event, the final order shall  
208 provide for immediate payment in full of recovery, towing, and  
209 storage fees by the vehicle or vessel owner or lienholder; or  
210 the agency ordering the tow; or the owner, lessee, or agent  
211 thereof of the property from which the vehicle or vessel was  
212 removed.

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213 (6) Any vehicle or vessel which is stored pursuant to  
214 subsection (2) and which remains unclaimed, or for which  
215 reasonable charges for recovery, towing, or storing remain  
216 unpaid, and any contents not released pursuant to subsection  
217 (10), may be sold by the owner or operator of the storage space  
218 for such towing or storage charge after 35 days from the time  
219 the vehicle or vessel is stored therein if the vehicle or vessel  
220 is more than 3 years of age or after 50 days following the time  
221 the vehicle or vessel is stored therein if the vehicle or vessel  
222 is 3 years of age or less. The sale shall be at public sale  
223 ~~auction~~ for cash. If the date of the sale was not included in  
224 the notice required in subsection (4), notice of the sale shall  
225 be given to the person in whose name the vehicle or vessel is  
226 registered and to all persons claiming a lien on the vehicle or  
227 vessel as shown on the records of the Department of Highway  
228 Safety and Motor Vehicles or of the corresponding agency in any  
229 other state. Notice shall be sent by certified mail, ~~return~~  
230 ~~receipt requested~~, to the owner of the vehicle or vessel and the  
231 person having the recorded lien on the vehicle or vessel at the  
232 address shown on the records of the registering agency and shall  
233 be mailed not less than 15 days before the date of the sale.  
234 After diligent search and inquiry, if the name and address of  
235 the registered owner or the owner of the recorded lien cannot be  
236 ascertained, the requirements of notice by mail may be dispensed  
237 with. In addition to the notice by mail, public notice of the  
238 time and place of sale shall be made by publishing a notice  
239 thereof one time, at least 10 days prior to the date of the  
240 sale, in a newspaper of general circulation in the county in  
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241 which the sale is to be held. The proceeds of the sale, after  
242 payment of reasonable towing and storage charges, and costs of  
243 the sale, in that order of priority, shall be deposited with the  
244 clerk of the circuit court for the county if the owner or  
245 lienholder is absent, and the clerk shall hold such proceeds  
246 subject to the claim of the owner or lienholder ~~person~~ legally  
247 entitled thereto. The clerk shall be entitled to receive 5  
248 percent of such proceeds for the care and disbursement thereof.  
249 The certificate of title issued under this law shall be  
250 discharged of all liens unless otherwise provided by court  
251 order. The owner or lienholder may file a complaint after the  
252 vehicle or vessel has been sold in the county court of the  
253 county in which it is stored. Upon determining the respective  
254 rights of the parties, the court may award damages, attorney's  
255 fees, and costs in favor of the prevailing party.

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

266 -----  
267  
268 **T I T L E A M E N D M E N T**

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269       Between lines 34 and 35, insert:  
270       amending s. 322.34, F.S.; creating certain rights for  
271       lienholders; deleting a return receipt mailing requirement;  
272       amending s. 713.78, F.S.; clarifying provisions; deleting a  
273       return receipt mailing requirement; creating certain rights for  
274       lienholders; deleting a provision that allows a complaint to be  
275       filed in the county where the owner resides; creating a cause of  
276       action to determine the rights of the parties after a vehicle or  
277       vessel has been sold; providing for attorney's fees and costs;  
278       providing a right of inspection to lienholders;