

1 A bill to be entitled
2 An act relating to motor vehicle lien enforcement;
3 amending s. 30.231, F.S.; authorizing sheriffs expediting
4 execution of a writ of replevin to recover certain
5 additional expenses; amending s. 30.30, F.S.; requiring
6 sheriffs to expedite certain writs of replevin within a
7 specified amount of time; amending s. 78.065, F.S.;
8 requiring courts to advance certain matters related to
9 writs of replevin on the calendar; amending s. 78.068,
10 F.S.; requiring courts to advance certain matters related
11 to prejudgment writs of replevin on the calendar; amending
12 s. 320.02, F.S.; authorizing the Department of Highway
13 Safety and Motor Vehicles to withhold renewal of
14 registration or replacement registration of specified
15 motor vehicles under certain circumstances; creating s.
16 320.1315, F.S.; requiring the department to implement a
17 system to notify motor vehicle floor-plan financiers when a
18 motor vehicle is sold by a licensed dealer; providing
19 system requirements; providing fees for users of the
20 system and providing for disposition of the fees; creating
21 s. 320.1316, F.S.; providing responsibilities of the
22 department relating to the issuance of a license plate,
23 revalidation sticker, or replacement license plate for
24 certain vehicles; requiring the department to create a
25 notice to surrender form; providing procedures for the
26 dispute of a notice to surrender; amending s. 559.903,
27 F.S.; defining the terms "lienholder" and "owner" for
28 purposes of the Florida Motor Vehicle Repair Act; amending

CS/HB 1179

2009

29 s. 559.917, F.S.; providing for a motor vehicle owner or
 30 lienholder to obtain the release of a motor vehicle from a
 31 motor vehicle repair shop; revising criteria required to
 32 establish an action to compel compliance; amending s.
 33 713.585, F.S.; modifying procedures for enforcing liens
 34 for labor or services by sale of a motor vehicle;
 35 providing an effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
 38

39 Section 1. Subsection (2) of section 30.231, Florida
 40 Statutes, is amended to read:

41 30.231 Sheriffs' fees for service of summons, subpoenas,
 42 and executions.--

43 (2) For levying on property and for the seizure of
 44 persons, the sheriff shall be allowed anticipated expenses
 45 necessary for the execution of the process directing such levy
 46 or seizure and for the safekeeping of property and persons in
 47 the custody of the sheriff. A reasonable cost deposit to cover
 48 said fees and expenses in connection with the requested services
 49 shall be deposited in advance, by the party requesting the
 50 service, with the officer requested to perform the service. If
 51 the sheriff is required to expedite execution of a writ of
 52 replevin pursuant to s. 30.30, the sheriff may recover
 53 additional expenses, including payment of off-duty deputy
 54 sheriffs, to expedite execution of the writ of replevin.

55 Section 2. Subsection (1) of section 30.30, Florida
 56 Statutes, is amended to read:

CS/HB 1179

2009

57 | 30.30 Writs, process; duties and liabilities in levying.--

58 | (1) Whenever any writ~~,~~ issuing out of any court of this
 59 | state ~~is,~~ ~~shall be~~ delivered to a sheriff~~,~~ commanding the
 60 | sheriff to levy upon property specifically described therein, it
 61 | shall be his or her duty to levy upon such property. If a party
 62 | to whom a writ of replevin has been issued requests expedited
 63 | service of the writ because the writ is upon property that
 64 | includes motor vehicles, the sheriff shall expedite service no
 65 | later than 3 days after such request, subject to payment of the
 66 | additional expenses allowed by s. 30.231(2). If no property is
 67 | specifically described in the writ, the sheriff ~~he or she~~ shall
 68 | levy upon:

69 | (a) Any property in the possession of the defendant which
 70 | is described in instructions for levy; and

71 | (b) Upon any property assessed against the defendant on
 72 | the current tax rolls of the county or registered in his or her
 73 | name under any law of the United States or of the state, upon
 74 | the request of the plaintiff or the plaintiff's attorney listing
 75 | such property in an instructions for levy. The instructions for
 76 | levy shall state the balance due on such writ.

77 | Section 3. Subsection (1) of section 78.065, Florida
 78 | Statutes, is amended to read:

79 | 78.065 Order to show cause; contents.--

80 | (1) The court without delay shall examine the complaint
 81 | filed; and, if on the basis of the complaint and further showing
 82 | of the plaintiff in support of it the court finds that the
 83 | defendant has waived in accordance with s. 78.075 his or her
 84 | right to be notified and heard, the court shall promptly issue

85 an order authorizing the clerk of the court to issue a writ of
 86 replevin. The court shall advance the cause on the calendar.

87 Section 4. Subsection (1) of section 78.068, Florida
 88 Statutes, is amended to read:

89 78.068 Prejudgment writ of replevin.--

90 (1) A prejudgment writ of replevin may be issued and the
 91 property seized delivered forthwith to the petitioners when the
 92 nature of the claim and the amount thereof, if any, and the
 93 grounds relied upon for the issuance of the writ clearly appear
 94 from specific facts shown by the verified petition or by
 95 separate affidavit of the petitioner. The court shall advance
 96 the cause on the calendar.

97 Section 5. Subsection (17) is added to section 320.02,
 98 Florida Statutes, to read:

99 320.02 Registration required; application for
 100 registration; forms.--

101 (17) If any applicant's name appears on a list of persons
 102 who may not be issued a license plate, revalidation sticker, or
 103 replacement license plate after a written notice to surrender a
 104 vehicle was submitted to the department by a lienor as provided
 105 in s. 320.1316, the department may withhold renewal of
 106 registration or replacement registration of any motor vehicle
 107 owned by the applicant at the time the notice was submitted by
 108 the lienor. The lienor must maintain proof that written notice
 109 to surrender the vehicle was sent to each registered owner
 110 pursuant to s. 320.1316(1). A revalidation sticker or
 111 replacement license plate may not be issued until that person's
 112 name no longer appears on the list or until the person presents

CS/HB 1179

2009

113 documentation from the lienor that the vehicle has been
114 surrendered to the lienor. The department shall not withhold an
115 initial registration in connection with an applicant's purchase
116 or lease of a motor vehicle solely because the applicant's name
117 is on the list created by s. 320.1316.

118 Section 6. Section 320.1315, Florida Statutes, is created
119 to read:

120 320.1315 Electronic notification to motor vehicle floor-
121 plan financiers upon issuance of temporary tags.--

122 (1) By January 1, 2010, the Department of Highway Safety
123 and Motor Vehicles shall implement a system that will provide
124 daily electronic notification to motor vehicle floor-plan
125 financiers when a motor vehicle is sold by a licensed motor
126 vehicle dealer.

127 (2) The department may use its temporary tag database,
128 permanent tag database, or any other electronic database
129 available to expedite the notification process. The notification
130 must include, at a minimum, the year, make, model, vehicle
131 identification number, and dealer identification.

132 (3) (a) To assist the department, each floor-plan financier
133 shall notify the department of the motor vehicle dealer name and
134 license number of the vehicle of which the floor-plan financier
135 has perfected a security interest pursuant to chapter 679 or
136 other applicable law.

137 (b) A floor-plan financier may authorize a third-party
138 entity to provide information to and receive information from
139 the department.

140 (c) Upon termination of a perfected security interest in
 141 the inventory of a secured debtor, a motor vehicle floor-plan
 142 financer shall notify the department of such termination and the
 143 department shall no longer be required to notify the financer of
 144 sales made by such dealer.

145 (4) The department may charge an entity receiving the
 146 notification up to 25 cents per motor vehicle record, and such
 147 revenues shall be deposited into the Highway Safety Operating
 148 Trust Fund.

149 Section 7. Section 320.1316, Florida Statutes, is created
 150 to read:

151 320.1316 Failure to surrender vehicle or vessel.--

152 (1) Upon receipt from a lienor who claims a lien on a
 153 vehicle pursuant to s. 319.27 by the Department of Highway
 154 Safety and Motor Vehicles of written notice to surrender a
 155 vehicle or vessel that has been disposed of, concealed, removed,
 156 or destroyed by the lienee, the department shall place the name
 157 of the registered owner of that vehicle on the list of those
 158 persons who may not be issued a license plate, revalidation
 159 sticker, or replacement license plate for any motor vehicle
 160 under s. 320.03(8) owned by the lienee at the time the notice
 161 was given by the lienor. If the vehicle is owned jointly by more
 162 than one person, the name of each registered owner shall be
 163 placed on the list.

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

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

167 (b) The name of the registered owner of the vehicle and

CS/HB 1179

2009

168 the address to which the lienor provided notice to surrender the
169 vehicle to the registered owner.

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

172 (d) The vehicle identification number, registration
173 license plate number, if known, or other identification number,
174 as applicable.

175 (3) The registered owner of the vehicle may dispute a
176 notice to surrender the vehicle by notifying the department of
177 the dispute in writing on forms provided by the department and
178 presenting proof that the vehicle was sold to a motor vehicle
179 dealer licensed under s. 320.27, a mobile home dealer licensed
180 under s. 320.77, or a recreational vehicle dealer licensed under
181 s. 320.771.

182 Section 8. Section 559.903, Florida Statutes, is amended
183 to read:

184 559.903 Definitions.--As used in this act:

185 (1) "Customer" means the person who signs the written
186 repair estimate or any other person whom the person who signs
187 the written repair estimate designates on the written repair
188 estimate as a person who may authorize repair work.

189 (2) "Department" means the Department of Agriculture and
190 Consumer Services.

191 (3) "Employee" means an individual who is employed full
192 time or part time by a motor vehicle repair shop and performs
193 motor vehicle repair.

194 (4) "Final estimate" means the last estimate approved by
 195 the customer either in writing or orally, as evidenced by the
 196 written repair estimate.

197 (5) "Lienholder" means the person or entity that holds a
 198 lien or security interest on the motor vehicle and who perfected
 199 the lien or security interest on the motor vehicle pursuant to
 200 s. 319.27.

201 (6)~~(5)~~ "Motor vehicle" means any automobile, truck, bus,
 202 recreational vehicle, motorcycle, motor scooter, or other motor
 203 powered vehicle, but does not include trailers, mobile homes,
 204 travel trailers, trailer coaches without independent motive
 205 power, watercraft or aircraft, or special mobile equipment as
 206 defined in s. 316.003(48).

207 (7)~~(8)~~ "Motor vehicle repair" means all maintenance of and
 208 modifications and repairs to motor vehicles, and diagnostic work
 209 incident thereto, including, but not limited to, the rebuilding
 210 or restoring of rebuilt vehicles, body work, painting, warranty
 211 work, and other work customarily undertaken by motor vehicle
 212 repair shops.

213 (8)~~(6)~~ "Motor vehicle repair shop" means any person who,
 214 for compensation, engages or attempts to engage in the repair of
 215 motor vehicles owned by other persons and includes, but is not
 216 limited to: mobile motor vehicle repair shops, motor vehicle and
 217 recreational vehicle dealers; garages; service stations; self-
 218 employed individuals; truck stops; paint and body shops; brake,
 219 muffler, or transmission shops; and shops doing glass work. Any
 220 person who engages solely in the maintenance or repair of the

221 coach portion of a recreational vehicle is not a motor vehicle
 222 repair shop.

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

225 (10)-(7)- "Place of business" means a physical place where
 226 the business of motor vehicle repair is conducted, including any
 227 vehicle constituting a mobile motor vehicle repair shop from
 228 which the business of motor vehicle repair is conducted.

229 Section 9. Section 559.917, Florida Statutes, is amended
 230 to read:

231 559.917 Bond to release possessory lien claimed by motor
 232 vehicle repair shop.--

233 (1) (a) Any customer may obtain the release of her or his
 234 motor vehicle from any lien claimed under part II of chapter 713
 235 by a motor vehicle repair shop for repair work performed under a
 236 written repair estimate by filing with the clerk of the court in
 237 the circuit in which the disputed transaction occurred a cash or
 238 surety bond, payable to the person claiming the lien and
 239 conditioned for the payment of any judgment which may be entered
 240 on the lien. The bond shall be in the amount stated on the
 241 invoice required by s. 559.911, plus accrued storage charges, if
 242 any, less any amount paid to the motor vehicle repair shop as
 243 indicated on the invoice. The customer shall not be required to
 244 institute judicial proceedings in order to post the bond in the
 245 registry of the court, nor shall the customer be required to use
 246 a particular form for posting the bond, unless the clerk shall
 247 provide such form to the customer for filing. Upon the posting
 248 of such bond, the clerk of the court shall automatically issue a

CS/HB 1179

2009

249 certificate notifying the lienor of the posting of the bond and
250 directing the lienor to release the customer's motor vehicle.

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

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

258 (2) The failure of a lienor to release or return to the
259 customer, owner, or lienholder the motor vehicle upon which any
260 lien is claimed, upon receiving a copy of a certificate giving
261 notice of the posting of the bond and directing release of the
262 motor vehicle, shall subject the lienor to judicial proceedings
263 which may be brought by the customer, owner, or lienholder to
264 compel compliance with the certificate. Whenever a customer,
265 owner, or lienholder brings an action to compel compliance with
266 the certificate, the customer, owner, or lienholder need only
267 establish that:

268 (a) Bond in the amount of the invoice, plus accrued
269 storage charges, if any, less any amount paid to the motor
270 vehicle repair shop as indicated on the invoice, plus 15
271 percent, was posted;

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

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

CS/HB 1179

2009

277 (d) The motor vehicle repair shop or employee authorized
278 to release the motor vehicle failed to release the motor
279 vehicle.

280
281 The customer, owner, or lienholder, upon a judgment in her or
282 his favor in an action brought under this subsection, may be
283 entitled to damages plus court costs and reasonable attorney's
284 fees sustained by her or him by reason of such wrongful
285 detention or retention. Upon a judgment in favor of the motor
286 vehicle repair shop, the shop may be entitled to reasonable
287 attorney's fees.

288 (3) Any motor vehicle repair shop which, or any employee
289 or agent thereof who is authorized to release the motor vehicle
290 who, upon receiving a copy of a certificate giving notice of the
291 posting of the bond in the required amount and directing release
292 of the motor vehicle, fails to release or return the property to
293 the customer, owner, or lienholder pursuant to this section
294 commits ~~is guilty of~~ a misdemeanor of the second degree,
295 punishable as provided in s. 775.082 or s. 775.083.

296 (4) Any customer, owner, or lienholder who stops payment
297 on a credit card charge or a check drawn in favor of a motor
298 vehicle repair shop on account of an invoice or who fails to
299 post a cash or surety bond pursuant to this section shall be
300 prohibited from any recourse under this section with respect to
301 the motor vehicle repair shop.

302 Section 10. Section 713.585, Florida Statutes, is amended
303 to read:

304 713.585 Enforcement of lien by sale of motor vehicle.--A
 305 person claiming a lien under s. 713.58 for performing labor or
 306 services on a motor vehicle may enforce such lien by sale of the
 307 vehicle in accordance with the following procedures:

308 (1) The lienor must give notice, by certified mail, ~~return~~
 309 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding
 310 Saturday and Sunday, from the beginning date of the assessment
 311 of storage charges on the ~~said~~ motor vehicle, to the registered
 312 owner of the vehicle, to the customer as indicated on the order
 313 for repair, and to all other persons claiming an interest in or
 314 lien thereon, as disclosed by the records of the Department of
 315 Highway Safety and Motor Vehicles or of a corresponding agency
 316 of any other state in which the vehicle appears registered. Such
 317 notice must contain:

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

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

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

324 (d) Notice that the lienor claims a lien on the vehicle
 325 for labor and services performed and storage charges, if any,
 326 and the cash sum which, if paid to the lienor, would be
 327 sufficient to redeem the vehicle from the lien claimed by the
 328 lienor.

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

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

335 (g) Notice that the owner of the vehicle or any person
 336 claiming an interest in or lien thereon has a right to a hearing
 337 at any time prior to the scheduled date of sale by filing a
 338 demand for hearing with the clerk of the circuit court in the
 339 county in which the vehicle is held and mailing copies of the
 340 demand for hearing to all other owners and lienors as reflected
 341 on the notice.

342 (h) Notice that the owner or lienholder of the vehicle has
 343 a right to recover possession of the vehicle without instituting
 344 judicial proceedings by posting bond in accordance with the
 345 provisions of s. 559.917.

346 (i) Notice that any proceeds from the sale of the vehicle
 347 remaining after payment of the amount claimed to be due and
 348 owing to the lienor will be deposited with the clerk of the
 349 circuit court for disposition upon court order pursuant to
 350 subsection (8).

351 (2) If attempts to locate the owner or lienholder are
 352 unsuccessful, the lienor must notify the local law enforcement
 353 agency in writing by certified mail or acknowledged hand
 354 delivery that the lienor has been unable to locate the owner or
 355 lienholder, that a physical search of the vehicle has disclosed
 356 no ownership information, and that a good faith effort has been
 357 made. A description of the motor vehicle which includes the
 358 year, make, and identification number must be given on the
 359 notice. This notification must take place within 10 ~~15~~ business

CS/HB 1179

2009

360 days, excluding Saturday and Sunday, from the beginning date of
361 the assessment of storage charges on the ~~said~~ motor vehicle. For
362 purposes of this paragraph, the term "good faith effort" means
363 that the following checks have been performed by the company to
364 establish the prior state of registration and title:

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

367 (b) A check of vehicle for inspection sticker or other
368 stickers and decals that could indicate the state of possible
369 registration; and

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

373 (3) If the date of the sale was not included in the notice
374 required in subsection (1), notice of the sale must be sent by
375 certified mail, ~~return receipt requested,~~ not less than 15 days
376 before the date of sale, to the customer as indicated on the
377 order for repair, and to all other persons claiming an interest
378 in or lien on the motor vehicle, as disclosed by the records of
379 the Department of Highway Safety and Motor Vehicles or of a
380 corresponding agency of any other state in which the vehicle
381 appears to have been registered. After diligent search and
382 inquiry, if the name and address of the registered owner or the
383 owner of the recorded lien cannot be ascertained, the
384 requirements for this notice may be disregarded.

385 (4) The lienor, at least 15 days before the proposed or
386 scheduled date of sale of the vehicle, shall publish the notice
387 required by this section once in a newspaper circulated in the

CS/HB 1179

2009

388 county where the vehicle is held. A certificate of compliance
389 with the notification provisions of this section, verified by
390 the lienor, together with a copy of the notice ~~and return~~
391 ~~receipt for mailing of the notice required by this section,~~ and
392 proof of publication, must be duly and expeditiously filed with
393 the clerk of the circuit court in the county where the vehicle
394 is held. The lienor, at the time of filing the certificate of
395 compliance, must pay to the clerk of that court a service charge
396 of \$10 for indexing and recording the certificate.

397 (5) At any time prior to the proposed or scheduled date of
398 sale of a vehicle, the owner of the vehicle, or any person
399 claiming an interest in the vehicle or a lien thereon, may file
400 a demand for hearing with the clerk of the circuit court in the
401 county in which the vehicle is held to determine whether the
402 vehicle has been wrongfully taken or withheld from her or him.
403 Any person who files a demand for hearing shall mail copies of
404 the demand to all other owners and lienors as reflected on the
405 notice required in subsection (1). Upon the filing of a demand
406 for hearing, a hearing shall be held prior to the proposed or
407 scheduled date of sale of the vehicle.

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

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

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

CS/HB 1179

2009

416 (b) The priority of the lien of the lienor as against any
417 existing security interest in the vehicle;

418 (c) The distribution of any proceeds of the sale by the
419 clerk of the circuit court;

420 (d) The award of reasonable attorney's fees and costs to
421 the prevailing party; and

422 (e) The reasonableness of storage charges.

423 (8) A vehicle subject to lien enforcement pursuant to this
424 section must be sold by the lienor at public sale. Immediately
425 upon the sale of the vehicle and payment in cash of the purchase
426 price, the lienor shall deposit with the clerk of the circuit
427 court the proceeds of the sale less the amount claimed by the
428 lienor for work done and storage, if any, and all reasonable
429 costs and expenses incurred in conducting the sale, including
430 any attorney's fees and costs ordered by the court.

431 Simultaneously with depositing the proceeds of sale remaining
432 after payment to the lienor, the lienor shall file with the
433 clerk a verified report of the sale stating a description of the
434 vehicle sold, including the vehicle identification number; the
435 name and address of the purchaser; the date of the sale; and the
436 selling price. The report shall also itemize the amount retained
437 by the lienor pursuant to this section and shall indicate
438 whether a hearing was demanded and held. All proceeds held by
439 the court shall be held for the benefit of the owner of the
440 vehicle or any lienholder whose lien is discharged by the sale
441 and shall be disbursed only upon order of the court. Unless a
442 proceeding is initiated to validate a claim to such proceeds
443 within 1 year and a day from the date of the sale, the proceeds

444 shall be deemed abandoned property and disposition thereof shall
 445 be governed by s. 705.103. The clerk shall receive 5 percent of
 446 the proceeds deposited with her or him, not to exceed \$25, for
 447 her or his services under this section.

448 (9) A copy of the certificate of compliance and the report
 449 of sale, certified by the clerk of the court, shall constitute
 450 satisfactory proof for application to the Department of Highway
 451 Safety and Motor Vehicles for transfer of title, together with
 452 any other proof required by any rules and regulations of the
 453 department.

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

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

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

466 (13) A failure to make good faith efforts as defined in
 467 subsection (2) precludes the imposition of any storage charges
 468 against the vehicle. If a lienor fails to provide notice to any
 469 person claiming a lien on a vehicle under subsection (1) within
 470 10 ~~15~~ business days, excluding Saturday or Sunday, after the
 471 assessment of storage charges have begun, then the lienor is

CS/HB 1179

2009

472 | precluded from charging for more than 15 days of storage, but
473 | failure to provide timely notice does not affect charges made
474 | for repairs, adjustments, or modifications to the vehicle or the
475 | priority of liens on the vehicle.

476 | Section 11. This act shall take effect July 1, 2009.