

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; amending s.
16 320.03, F.S.; preemption jurisdiction over the outsourced
17 electronic filing system to the state; requiring the
18 department to continue its current outsourcing of the
19 existing electronic filing system; approving the system
20 for use in all counties; authorizing motor vehicle dealers
21 to charge certain fees; requiring a report from the Office
22 of Program Policy Analysis and Government Accountability
23 by a specified date; creating s. 320.1316, F.S.; providing
24 responsibilities of the department relating to the
25 issuance of a license plate, revalidation sticker, or
26 replacement license plate for certain vehicles; requiring
27 the department to create a notice to surrender form;
28 providing procedures for the dispute of a notice to

29 | surrender; amending s. 559.903, F.S.; defining the terms
30 | "lienholder" and "owner" for purposes of the Florida Motor
31 | Vehicle Repair Act; amending s. 559.917, F.S.; revising
32 | the amount of the bond required to release a possessory
33 | lien claimed by a motor vehicle repair shop; providing for
34 | a motor vehicle owner or lienholder to obtain the release
35 | of a motor vehicle from a motor vehicle repair shop;
36 | revising criteria required to establish an action to
37 | compel compliance; amending s. 713.585, F.S.; modifying
38 | procedures for enforcing liens for labor or services by
39 | sale of a motor vehicle; amending s. 322.34, F.S.;
40 | creating certain rights for lienholders; deleting a return
41 | receipt mailing requirement; amending s. 713.78, F.S.;
42 | clarifying provisions; deleting a return receipt mailing
43 | requirement; creating certain rights for lienholders;
44 | deleting a provision that allows a complaint to be filed
45 | in the county where the owner resides; creating a cause of
46 | action to determine the rights of the parties after a
47 | vehicle or vessel has been sold; providing for attorney's
48 | fees and costs; providing a right of inspection to
49 | lienholders; amending s. 320.0609, F.S., relating to the
50 | transfer and exchange of registration license plates and
51 | transfer fees; requiring that a temporary tag be issued
52 | and displayed during the time that an application for a
53 | transfer of a registration license plate is being
54 | processed; providing exceptions; amending s. 320.131,
55 | F.S.; authorizing the department to issue temporary tags
56 | for the time that an application for a transfer of a

57 | registration license plate is being processed; amending s.
58 | 320.0609, F.S., relating to the transfer and exchange of
59 | registration license plates and transfer fees; requiring a
60 | licensed motor vehicle dealer to provide certain required
61 | information via an electronic system to the department
62 | when the owner of a vehicle transfers a registration
63 | license plate to a replacement or substitute vehicle
64 | acquired from the dealer; providing that the electronic
65 | system shall be administered by the department; requiring
66 | the dealer to give the owner written notice documenting
67 | the transfer if the dealer cannot provide the required
68 | transfer information to the department under certain
69 | circumstances; requiring the dealer to maintain certain
70 | records; providing for the dealer and the department to
71 | charge a fee; providing for exceptions; authorizing the
72 | department to adopt rules; amending s. 316.193, F.S.;
73 | requiring the court to include in the order of impoundment
74 | or immobilization the names and telephone numbers of
75 | immobilization agencies that meet specified requirements;
76 | requiring the person whose vehicle is ordered to be
77 | impounded or immobilized to pay the impoundment or
78 | immobilization fees and costs directly to the person
79 | impounding or immobilizing the vehicle; establishing
80 | conditions and restrictions for immobilization agencies
81 | who are engaged in the business of immobilizing vehicles
82 | in judicial circuits where personnel of the court or
83 | sheriff do not immobilize vehicles; providing penalties
84 | for violating such conditions and restrictions;

85 | authorizing aggrieved immobilization agency to initiate a
 86 | civil action against a person who commits such violation;
 87 | providing for attorney's fees and costs; defining the
 88 | terms "immobilization," "immobilize," "immobilizing,"
 89 | "immobilization agency," "immobilization agencies,"
 90 | "impound," "impounding," "impoundment," and "person";
 91 | providing effective dates.

92 |

93 | Be It Enacted by the Legislature of the State of Florida:

94 |

95 | Section 1. Subsection (2) of section 30.231, Florida
 96 | Statutes, is amended to read:

97 | 30.231 Sheriffs' fees for service of summons, subpoenas,
 98 | and executions.--

99 | (2) For levying on property and for the seizure of
 100 | persons, the sheriff shall be allowed anticipated expenses
 101 | necessary for the execution of the process directing such levy
 102 | or seizure and for the safekeeping of property and persons in
 103 | the custody of the sheriff. A reasonable cost deposit to cover
 104 | said fees and expenses in connection with the requested services
 105 | shall be deposited in advance, by the party requesting the
 106 | service, with the officer requested to perform the service. If
 107 | the sheriff is required to expedite execution of a writ of
 108 | replevin pursuant to s. 30.30, the sheriff may recover
 109 | additional expenses, including payment of off-duty deputy
 110 | sheriffs, to expedite execution of the writ of replevin.

111 | Section 2. Subsection (1) of section 30.30, Florida
 112 | Statutes, is amended to read:

113 30.30 Writs, process; duties and liabilities in levying.--

114 (1) Whenever any writ~~,~~ issuing out of any court of this
 115 state ~~is,~~ ~~shall be~~ delivered to a sheriff~~,~~ commanding the
 116 sheriff to levy upon property specifically described therein, it
 117 shall be his or her duty to levy upon such property. If a party
 118 to whom a writ of replevin has been issued requests expedited
 119 service of the writ because the writ is upon property that
 120 includes motor vehicles, the sheriff shall expedite service no
 121 later than 3 days after such request, subject to payment of the
 122 additional expenses allowed by s. 30.231(2). If no property is
 123 specifically described in the writ, the sheriff ~~he or she~~ shall
 124 levy upon:

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

127 (b) Upon any property assessed against the defendant on
 128 the current tax rolls of the county or registered in his or her
 129 name under any law of the United States or of the state, upon
 130 the request of the plaintiff or the plaintiff's attorney listing
 131 such property in an instructions for levy. The instructions for
 132 levy shall state the balance due on such writ.

133 Section 3. Subsection (1) of section 78.065, Florida
 134 Statutes, is amended to read:

135 78.065 Order to show cause; contents.--

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

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

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

145 78.068 Prejudgment writ of replevin.--

146 (1) A prejudgment writ of replevin may be issued and the
 147 property seized delivered forthwith to the petitioners when the
 148 nature of the claim and the amount thereof, if any, and the
 149 grounds relied upon for the issuance of the writ clearly appear
 150 from specific facts shown by the verified petition or by
 151 separate affidavit of the petitioner. The court shall advance
 152 the cause on the calendar.

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

155 320.02 Registration required; application for
 156 registration; forms.--

157 (17) If any applicant's name appears on a list of persons
 158 who may not be issued a license plate, revalidation sticker, or
 159 replacement license plate after a written notice to surrender a
 160 vehicle was submitted to the department by a lienor as provided
 161 in s. 320.1316, the department may withhold renewal of
 162 registration or replacement registration of any motor vehicle
 163 owned by the applicant at the time the notice was submitted by
 164 the lienor. The lienor must maintain proof that written notice
 165 to surrender the vehicle was sent to each registered owner
 166 pursuant to s. 320.1316(1). A revalidation sticker or
 167 replacement license plate may not be issued until that person's
 168 name no longer appears on the list or until the person presents

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

174 Section 6. Subsection (10) is added to section 320.03,
 175 Florida Statutes, to read:

176 320.03 Registration; duties of tax collectors;
 177 International Registration Plan.--

178 (10) Jurisdiction over the outsourced electronic filing
 179 system for use by licensed motor vehicle dealers electronically
 180 to title and to register motor vehicles and to issue or to
 181 transfer registration license plates or decals is expressly
 182 preempted to the state. The department shall continue its
 183 current outsourcing of the existing electronic filing system,
 184 including its program standards. The electronic filing system is
 185 approved for use in all counties, shall apply uniformly to all
 186 tax collectors of the state, and no tax collector may add or
 187 detract from the program standards in his or her respective
 188 county. A motor vehicle dealer licensed under this chapter may
 189 charge a fee to the customer for use of the electronic filing
 190 system and such fee is not a component of the program standards.
 191 Final authority over disputes relating to program standards lies
 192 with the department. By January 1, 2010, the Office of Program
 193 Policy Analysis and Government Accountability, with input from
 194 the department and from affected parties, including tax
 195 collectors, service providers, and motor vehicle dealers, shall
 196 report to the President of the Senate and the Speaker of the

197 House of Representatives on the status of the outsourced
 198 electronic filing system, including the program standards, and
 199 its compliance with this subsection. The report shall identify
 200 all public and private alternatives for continued operation of
 201 the electronic filing system and shall include any and all
 202 appropriate recommendations, including revisions to the program
 203 standards.

204 Section 7. Section 320.1316, Florida Statutes, is created
 205 to read:

206 320.1316 Failure to surrender vehicle or vessel.--

207 (1) Upon receipt from a lienor who claims a lien on a
 208 vehicle pursuant to s. 319.27 by the Department of Highway
 209 Safety and Motor Vehicles of written notice to surrender a
 210 vehicle or vessel that has been disposed of, concealed, removed,
 211 or destroyed by the lienee, the department shall place the name
 212 of the registered owner of that vehicle on the list of those
 213 persons who may not be issued a license plate, revalidation
 214 sticker, or replacement license plate for any motor vehicle
 215 under s. 320.03(8) owned by the lienee at the time the notice
 216 was given by the lienor. If the vehicle is owned jointly by more
 217 than one person, the name of each registered owner shall be
 218 placed on the list.

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

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

222 (b) The name of the registered owner of the vehicle and
 223 the address to which the lienor provided notice to surrender the
 224 vehicle to the registered owner.

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

227 (d) The vehicle identification number, registration
 228 license plate number, if known, or other identification number,
 229 as applicable.

230 (3) The registered owner of the vehicle may dispute a
 231 notice to surrender the vehicle by notifying the department of
 232 the dispute in writing on forms provided by the department and
 233 presenting proof that the vehicle was sold to a motor vehicle
 234 dealer licensed under s. 320.27, a mobile home dealer licensed
 235 under s. 320.77, or a recreational vehicle dealer licensed under
 236 s. 320.771.

237 Section 8. Section 559.903, Florida Statutes, is amended
 238 to read:

239 559.903 Definitions.--As used in this act:

240 (1) "Customer" means the person who signs the written
 241 repair estimate or any other person whom the person who signs
 242 the written repair estimate designates on the written repair
 243 estimate as a person who may authorize repair work.

244 (2) "Department" means the Department of Agriculture and
 245 Consumer Services.

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

249 (4) "Final estimate" means the last estimate approved by
 250 the customer either in writing or orally, as evidenced by the
 251 written repair estimate.

252 (5) "Lienholder" means the person or entity that holds a
 253 lien or security interest on the motor vehicle and who perfected
 254 the lien or security interest on the motor vehicle pursuant to
 255 s. 319.27.

256 ~~(6)~~ ~~(5)~~ "Motor vehicle" means any automobile, truck, bus,
 257 recreational vehicle, motorcycle, motor scooter, or other motor
 258 powered vehicle, but does not include trailers, mobile homes,
 259 travel trailers, trailer coaches without independent motive
 260 power, watercraft or aircraft, or special mobile equipment as
 261 defined in s. 316.003(48).

262 ~~(7)~~ ~~(8)~~ "Motor vehicle repair" means all maintenance of and
 263 modifications and repairs to motor vehicles, and diagnostic work
 264 incident thereto, including, but not limited to, the rebuilding
 265 or restoring of rebuilt vehicles, body work, painting, warranty
 266 work, and other work customarily undertaken by motor vehicle
 267 repair shops.

268 ~~(8)~~ ~~(6)~~ "Motor vehicle repair shop" means any person who,
 269 for compensation, engages or attempts to engage in the repair of
 270 motor vehicles owned by other persons and includes, but is not
 271 limited to: mobile motor vehicle repair shops, motor vehicle and
 272 recreational vehicle dealers; garages; service stations; self-
 273 employed individuals; truck stops; paint and body shops; brake,
 274 muffler, or transmission shops; and shops doing glass work. Any
 275 person who engages solely in the maintenance or repair of the
 276 coach portion of a recreational vehicle is not a motor vehicle
 277 repair shop.

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

280 ~~(10)(7)~~ "Place of business" means a physical place where
281 the business of motor vehicle repair is conducted, including any
282 vehicle constituting a mobile motor vehicle repair shop from
283 which the business of motor vehicle repair is conducted.

284 Section 9. Section 559.917, Florida Statutes, is amended
285 to read:

286 559.917 Bond to release possessory lien claimed by motor
287 vehicle repair shop.--

288 (1)(a) Any customer may obtain the release of her or his
289 motor vehicle from any lien claimed under part II of chapter 713
290 by a motor vehicle repair shop for repair work performed under a
291 written repair estimate by filing with the clerk of the court in
292 the circuit in which the disputed transaction occurred a cash or
293 surety bond, payable to the person claiming the lien and
294 conditioned for the payment of any judgment which may be entered
295 on the lien. The bond shall be in the amount stated on the
296 invoice required by s. 559.911, plus accrued storage charges, if
297 any, less any amount paid to the motor vehicle repair shop as
298 indicated on the invoice, plus 15 percent. The customer shall
299 not be required to institute judicial proceedings in order to
300 post the bond in the registry of the court, nor shall the
301 customer be required to use a particular form for posting the
302 bond, unless the clerk shall provide such form to the customer
303 for filing. Upon the posting of such bond, the clerk of the
304 court shall automatically issue a certificate notifying the
305 lienor of the posting of the bond and directing the lienor to
306 release the customer's motor vehicle.

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

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

314 (2) The failure of a lienor to release or return to the
315 customer, owner, or lienholder the motor vehicle upon which any
316 lien is claimed, upon receiving a copy of a certificate giving
317 notice of the posting of the bond and directing release of the
318 motor vehicle, shall subject the lienor to judicial proceedings
319 which may be brought by the customer, owner, or lienholder to
320 compel compliance with the certificate. Whenever a customer,
321 owner, or lienholder brings an action to compel compliance with
322 the certificate, the customer, owner, or lienholder need only
323 establish that:

324 (a) Bond in the amount of the invoice, plus accrued
325 storage charges, if any, less any amount paid to the motor
326 vehicle repair shop as indicated on the invoice, plus 15
327 percent, was posted;

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

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

333 (d) The motor vehicle repair shop or employee authorized
334 to release the motor vehicle failed to release the motor
335 vehicle.

336
337 The customer, owner, or lienholder, upon a judgment in her or
338 his favor in an action brought under this subsection, may be
339 entitled to damages plus court costs and reasonable attorney's
340 fees sustained by her or him by reason of such wrongful
341 detention or retention. Upon a judgment in favor of the motor
342 vehicle repair shop, the shop may be entitled to reasonable
343 attorney's fees.

344 (3) Any motor vehicle repair shop which, or any employee
345 or agent thereof who is authorized to release the motor vehicle
346 who, upon receiving a copy of a certificate giving notice of the
347 posting of the bond in the required amount and directing release
348 of the motor vehicle, fails to release or return the property to
349 the customer, owner, or lienholder pursuant to this section
350 commits ~~is guilty of~~ a misdemeanor of the second degree,
351 punishable as provided in s. 775.082 or s. 775.083.

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

358 Section 10. Section 713.585, Florida Statutes, is amended
359 to read:

360 713.585 Enforcement of lien by sale of motor vehicle.--A
 361 person claiming a lien under s. 713.58 for performing labor or
 362 services on a motor vehicle may enforce such lien by sale of the
 363 vehicle in accordance with the following procedures:

364 (1) The lienor must give notice, by certified mail, ~~return~~
 365 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding
 366 Saturday and Sunday, from the beginning date of the assessment
 367 of storage charges on the ~~said~~ motor vehicle, to the registered
 368 owner of the vehicle, to the customer as indicated on the order
 369 for repair, and to all other persons claiming an interest in or
 370 lien thereon, as disclosed by the records of the Department of
 371 Highway Safety and Motor Vehicles or of a corresponding agency
 372 of any other state in which the vehicle appears registered. Such
 373 notice must contain:

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

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

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

380 (d) Notice that the lienor claims a lien on the vehicle
 381 for labor and services performed and storage charges, if any,
 382 and the cash sum which, if paid to the lienor, would be
 383 sufficient to redeem the vehicle from the lien claimed by the
 384 lienor.

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

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

391 (g) Notice that the owner of the vehicle or any person
392 claiming an interest in or lien thereon has a right to a hearing
393 at any time prior to the scheduled date of sale by filing a
394 demand for hearing with the clerk of the circuit court in the
395 county in which the vehicle is held and mailing copies of the
396 demand for hearing to all other owners and lienors as reflected
397 on the notice.

398 (h) Notice that the owner or lienholder of the vehicle has
399 a right to recover possession of the vehicle without instituting
400 judicial proceedings by posting bond in accordance with the
401 provisions of s. 559.917.

402 (i) Notice that any proceeds from the sale of the vehicle
403 remaining after payment of the amount claimed to be due and
404 owing to the lienor will be deposited with the clerk of the
405 circuit court for disposition upon court order pursuant to
406 subsection (8).

407 (2) If attempts to locate the owner or lienholder are
408 unsuccessful, the lienor must notify the local law enforcement
409 agency in writing by certified mail or acknowledged hand
410 delivery that the lienor has been unable to locate the owner or
411 lienholder, that a physical search of the vehicle has disclosed
412 no ownership information, and that a good faith effort has been
413 made. A description of the motor vehicle which includes the
414 year, make, and identification number must be given on the
415 notice. This notification must take place within 10 ~~15~~ business

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

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

423 (b) A check of vehicle for inspection sticker or other
 424 stickers and decals that could indicate the state of possible
 425 registration; and

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

429 (3) If the date of the sale was not included in the notice
 430 required in subsection (1), notice of the sale must be sent by
 431 certified mail, ~~return receipt requested,~~ not less than 15 days
 432 before the date of sale, to the customer as indicated on the
 433 order for repair, and to all other persons claiming an interest
 434 in or lien on the motor vehicle, as disclosed by the records of
 435 the Department of Highway Safety and Motor Vehicles or of a
 436 corresponding agency of any other state in which the vehicle
 437 appears to have been registered. After diligent search and
 438 inquiry, if the name and address of the registered owner or the
 439 owner of the recorded lien cannot be ascertained, the
 440 requirements for this notice may be disregarded.

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

444 county where the vehicle is held. A certificate of compliance
445 with the notification provisions of this section, verified by
446 the lienor, together with a copy of the notice ~~and return~~
447 ~~receipt for mailing of the notice required by this section,~~ and
448 proof of publication, must be duly and expeditiously filed with
449 the clerk of the circuit court in the county where the vehicle
450 is held. The lienor, at the time of filing the certificate of
451 compliance, must pay to the clerk of that court a service charge
452 of \$10 for indexing and recording the certificate.

453 (5) At any time prior to the proposed or scheduled date of
454 sale of a vehicle, the owner of the vehicle, or any person
455 claiming an interest in the vehicle or a lien thereon, may file
456 a demand for hearing with the clerk of the circuit court in the
457 county in which the vehicle is held to determine whether the
458 vehicle has been wrongfully taken or withheld from her or him.
459 Any person who files a demand for hearing shall mail copies of
460 the demand to all other owners and lienors as reflected on the
461 notice required in subsection (1). Upon the filing of a demand
462 for hearing, a hearing shall be held prior to the proposed or
463 scheduled date of sale of the vehicle.

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

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

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

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

474 (c) The distribution of any proceeds of the sale by the
475 clerk of the circuit court;

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

478 (e) The reasonableness of storage charges.

479 (8) A vehicle subject to lien enforcement pursuant to this
480 section must be sold by the lienor at public sale. Immediately
481 upon the sale of the vehicle and payment in cash of the purchase
482 price, the lienor shall deposit with the clerk of the circuit
483 court the proceeds of the sale less the amount claimed by the
484 lienor for work done and storage, if any, and all reasonable
485 costs and expenses incurred in conducting the sale, including
486 any attorney's fees and costs ordered by the court.

487 Simultaneously with depositing the proceeds of sale remaining
488 after payment to the lienor, the lienor shall file with the
489 clerk a verified report of the sale stating a description of the
490 vehicle sold, including the vehicle identification number; the
491 name and address of the purchaser; the date of the sale; and the
492 selling price. The report shall also itemize the amount retained
493 by the lienor pursuant to this section and shall indicate
494 whether a hearing was demanded and held. All proceeds held by
495 the court shall be held for the benefit of the owner of the
496 vehicle or any lienholder whose lien is discharged by the sale
497 and shall be disbursed only upon order of the court. Unless a
498 proceeding is initiated to validate a claim to such proceeds
499 within 1 year and a day from the date of the sale, the proceeds

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

504 (9) A copy of the certificate of compliance and the report
 505 of sale, certified by the clerk of the court, shall constitute
 506 satisfactory proof for application to the Department of Highway
 507 Safety and Motor Vehicles for transfer of title, together with
 508 any other proof required by any rules and regulations of the
 509 department.

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

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

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

522 (13) A failure to make good faith efforts as defined in
 523 subsection (2) precludes the imposition of any storage charges
 524 against the vehicle. If a lienor fails to provide notice to any
 525 person claiming a lien on a vehicle under subsection (1) within
 526 10 ~~15~~ business days, excluding Saturday or Sunday, after the
 527 assessment of storage charges have begun, then the lienor is

528 precluded from charging for more than 15 days of storage, but
 529 failure to provide timely notice does not affect charges made
 530 for repairs, adjustments, or modifications to the vehicle or the
 531 priority of liens on the vehicle.

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

534 322.34 Driving while license suspended, revoked, canceled,
 535 or disqualified.--

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

539 1. Whether the person's driver's license is suspended or
 540 revoked.

541 2. Whether the person's driver's license has remained
 542 suspended or revoked since a conviction for the offense of
 543 driving with a suspended or revoked license.

544 3. Whether the suspension or revocation was made under s.
 545 316.646 or s. 627.733, relating to failure to maintain required
 546 security, or under s. 322.264, relating to habitual traffic
 547 offenders.

548 4. Whether the driver is the registered owner or coowner
 549 of the vehicle.

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

553 (c) Within 7 business days after the date the arresting
 554 agency impounds or immobilizes the vehicle, either the arresting
 555 agency or the towing service, whichever is in possession of the

556 vehicle, shall send notice by certified mail, ~~return receipt~~
557 ~~requested~~, to any coregistered owners of the vehicle other than
558 the person arrested and to each person of record claiming a lien
559 against the vehicle. All costs and fees for the impoundment or
560 immobilization, including the cost of notification, must be paid
561 by the owner of the vehicle or, if the vehicle is leased, by the
562 person leasing the vehicle.

563 (d) Either the arresting agency or the towing service,
564 whichever is in possession of the vehicle, shall determine
565 whether any vehicle impounded or immobilized under this section
566 has been leased or rented or if there are any persons of record
567 with a lien upon the vehicle. Either the arresting agency or the
568 towing service, whichever is in possession of the vehicle, shall
569 notify by express courier service with receipt or certified
570 mail, ~~return receipt requested~~, within 7 business days after the
571 date of the immobilization or impoundment of the vehicle, the
572 registered owner and all persons having a recorded lien against
573 the vehicle that the vehicle has been impounded or immobilized.
574 A lessor, rental car company, or lienholder may then obtain the
575 vehicle, upon payment of any lawful towing or storage charges.
576 If the vehicle is a rental vehicle subject to a written
577 contract, the charges may be separately charged to the renter,
578 in addition to the rental rate, along with other separate fees,
579 charges, and recoupments disclosed on the rental agreement. If
580 the storage facility fails to provide timely notice to a lessor,
581 rental car company, or lienholder as required by this paragraph,
582 the storage facility shall be responsible for payment of any
583 towing or storage charges necessary to release the vehicle to a

584 lessor, rental car company, or lienholder that accrue after the
585 notice period, which charges may then be assessed against the
586 driver of the vehicle if the vehicle was lawfully impounded or
587 immobilized.

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

591 1. The owner presents proof of insurance to the arresting
592 agency; or

593 2. The owner presents proof of sale of the vehicle to the
594 arresting agency and the buyer presents proof of insurance to
595 the arresting agency.

596

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

600 (f) The owner of a vehicle that is impounded or
601 immobilized under this subsection may, within 10 days after the
602 date the owner has knowledge of the location of the vehicle,
603 file a complaint in the county in which the owner resides to
604 determine whether the vehicle was wrongfully taken or withheld.
605 Upon the filing of a complaint, the owner or lienholder may have
606 the vehicle released by posting with the court a bond or other
607 adequate security equal to the amount of the costs and fees for
608 impoundment or immobilization, including towing or storage, to
609 ensure the payment of such costs and fees if the owner or
610 lienholder does not prevail. When the vehicle owner or
611 lienholder does not prevail on a complaint that the vehicle was

612 wrongfully taken or withheld, he or she must pay the accrued
 613 charges for the immobilization or impoundment, including any
 614 towing and storage charges assessed against the vehicle. When
 615 the bond is posted and the fee is paid as set forth in s. 28.24,
 616 the clerk of the court shall issue a certificate releasing the
 617 vehicle. At the time of release, after reasonable inspection,
 618 the owner must give a receipt to the towing or storage company
 619 indicating any loss or damage to the vehicle or to the contents
 620 of the vehicle.

621 Section 12. Subsections (4), (5), (6), and (10) of section
 622 713.78, Florida Statutes, are amended to read:

623 713.78 Liens for recovering, towing, or storing vehicles
 624 and vessels.--

625 (4) (a) Any person regularly engaged in the business of
 626 recovering, towing, or storing vehicles or vessels who comes
 627 into possession of a vehicle or vessel pursuant to subsection
 628 (2), and who claims a lien for recovery, towing, or storage
 629 services, shall give notice to the registered owner, the
 630 insurance company insuring the vehicle notwithstanding the
 631 provisions of s. 627.736, and to all persons claiming a lien
 632 thereon, as disclosed by the records in the Department of
 633 Highway Safety and Motor Vehicles or of a corresponding agency
 634 in any other state.

635 (b) Whenever any law enforcement agency authorizes the
 636 removal of a vehicle or vessel or whenever any towing service,
 637 garage, repair shop, or automotive service, storage, or parking
 638 place notifies the law enforcement agency of possession of a
 639 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~

640 law enforcement agency of the jurisdiction where the vehicle or
641 vessel is stored shall contact the Department of Highway Safety
642 and Motor Vehicles, or the appropriate agency of the state of
643 registration, if known, within 24 hours through the medium of
644 electronic communications, giving the full description of the
645 vehicle or vessel. Upon receipt of the full description of the
646 vehicle or vessel, the department shall search its files to
647 determine the owner's name, the insurance company insuring the
648 vehicle or vessel, and whether any person has filed a lien upon
649 the vehicle or vessel as provided in s. 319.27(2) and (3) and
650 notify the applicable law enforcement agency within 72 hours.
651 The person in charge of the towing service, garage, repair shop,
652 or automotive service, storage, or parking place shall obtain
653 such information from the applicable law enforcement agency
654 within 5 days after the date of storage and shall give notice
655 pursuant to paragraph (a). The department may release the
656 insurance company information to the requestor notwithstanding
657 the provisions of s. 627.736.

658 (c) Notice by certified mail, ~~return receipt requested,~~
659 shall be sent within 7 business days after the date of storage
660 of the vehicle or vessel to the registered owner, the insurance
661 company insuring the vehicle notwithstanding the provisions of
662 s. 627.736, and all persons of record claiming a lien against
663 the vehicle or vessel. It shall state the fact of possession of
664 the vehicle or vessel, that a lien as provided in subsection (2)
665 is claimed, that charges have accrued and the amount thereof,
666 that the lien is subject to enforcement pursuant to law, and
667 that the owner or lienholder, if any, has the right to a hearing

668 as set forth in subsection (5), and that any vehicle or vessel
 669 which remains unclaimed, or for which the charges for recovery,
 670 towing, or storage services remain unpaid, may be sold free of
 671 all prior liens after 35 days if the vehicle or vessel is more
 672 than 3 years of age or after 50 days if the vehicle or vessel is
 673 3 years of age or less.

674 (d) If attempts to locate the name and address of the
 675 owner or lienholder prove unsuccessful, the towing-storage
 676 operator shall, after 7 working days, excluding Saturday and
 677 Sunday, of the initial tow or storage, notify the public agency
 678 of jurisdiction where the vehicle or vessel is stored in writing
 679 by certified mail or acknowledged hand delivery that the towing-
 680 storage company has been unable to locate the name and address
 681 of the owner or lienholder and a physical search of the vehicle
 682 or vessel has disclosed no ownership information and a good
 683 faith effort has been made. For purposes of this paragraph and
 684 subsection (9), "good faith effort" means that the following
 685 checks have been performed by the company to establish prior
 686 state of registration and for title:

- 687 1. Check of vehicle or vessel for any type of tag, tag
 688 record, temporary tag, or regular tag.
- 689 2. Check of law enforcement report for tag number or other
 690 information identifying the vehicle or vessel, if the vehicle or
 691 vessel was towed at the request of a law enforcement officer.
- 692 3. Check of trip sheet or tow ticket of tow truck operator
 693 to see if a tag was on vehicle or vessel at beginning of tow, if
 694 private tow.
- 695 4. If there is no address of the owner on the impound

696 | report, check of law enforcement report to see if an out-of-
 697 | state address is indicated from driver license information.

698 | 5. Check of vehicle or vessel for inspection sticker or
 699 | other stickers and decals that may indicate a state of possible
 700 | registration.

701 | 6. Check of the interior of the vehicle or vessel for any
 702 | papers that may be in the glove box, trunk, or other areas for a
 703 | state of registration.

704 | 7. Check of vehicle for vehicle identification number.

705 | 8. Check of vessel for vessel registration number.

706 | 9. Check of vessel hull for a hull identification number
 707 | which should be carved, burned, stamped, embossed, or otherwise
 708 | permanently affixed to the outboard side of the transom or, if
 709 | there is no transom, to the outmost seaboard side at the end of
 710 | the hull that bears the rudder or other steering mechanism.

711 | (5) (a) The owner of a vehicle or vessel removed pursuant
 712 | to the provisions of subsection (2), or any person claiming a
 713 | lien, other than the towing-storage operator, within 10 days
 714 | after the time she or he has knowledge of the location of the
 715 | vehicle or vessel, may file a complaint in the county court of
 716 | the county in which the vehicle or vessel is stored ~~or in which~~
 717 | ~~the owner resides~~ to determine if her or his property was
 718 | wrongfully taken or withheld from her or him.

719 | (b) Upon filing of a complaint, an owner or lienholder may
 720 | have her or his vehicle or vessel released upon posting with the
 721 | court a cash or surety bond or other adequate security equal to
 722 | the amount of the charges for towing or storage and lot rental
 723 | amount to ensure the payment of such charges in the event she or

724 he does not prevail. Upon the posting of the bond and the
725 payment of the applicable fee set forth in s. 28.24, the clerk
726 of the court shall issue a certificate notifying the lienor of
727 the posting of the bond and directing the lienor to release the
728 vehicle or vessel. At the time of such release, after reasonable
729 inspection, she or he shall give a receipt to the towing-storage
730 company reciting any claims she or he has for loss or damage to
731 the vehicle or vessel or the contents thereof.

732 (c) Upon determining the respective rights of the parties,
733 the court may award damages, attorney's fees, and costs in favor
734 of the prevailing party. In any event, the final order shall
735 provide for immediate payment in full of recovery, towing, and
736 storage fees by the vehicle or vessel owner or lienholder; or
737 the agency ordering the tow; or the owner, lessee, or agent
738 thereof of the property from which the vehicle or vessel was
739 removed.

740 (6) Any vehicle or vessel which is stored pursuant to
741 subsection (2) and which remains unclaimed, or for which
742 reasonable charges for recovery, towing, or storing remain
743 unpaid, and any contents not released pursuant to subsection
744 (10), may be sold by the owner or operator of the storage space
745 for such towing or storage charge after 35 days from the time
746 the vehicle or vessel is stored therein if the vehicle or vessel
747 is more than 3 years of age or after 50 days following the time
748 the vehicle or vessel is stored therein if the vehicle or vessel
749 is 3 years of age or less. The sale shall be at public sale
750 ~~auction~~ for cash. If the date of the sale was not included in
751 the notice required in subsection (4), notice of the sale shall

752 be given to the person in whose name the vehicle or vessel is
 753 registered and to all persons claiming a lien on the vehicle or
 754 vessel as shown on the records of the Department of Highway
 755 Safety and Motor Vehicles or of the corresponding agency in any
 756 other state. Notice shall be sent by certified mail, ~~return~~
 757 ~~receipt requested,~~ to the owner of the vehicle or vessel and the
 758 person having the recorded lien on the vehicle or vessel at the
 759 address shown on the records of the registering agency and shall
 760 be mailed not less than 15 days before the date of the sale.
 761 After diligent search and inquiry, if the name and address of
 762 the registered owner or the owner of the recorded lien cannot be
 763 ascertained, the requirements of notice by mail may be dispensed
 764 with. In addition to the notice by mail, public notice of the
 765 time and place of sale shall be made by publishing a notice
 766 thereof one time, at least 10 days prior to the date of the
 767 sale, in a newspaper of general circulation in the county in
 768 which the sale is to be held. The proceeds of the sale, after
 769 payment of reasonable towing and storage charges, and costs of
 770 the sale, in that order of priority, shall be deposited with the
 771 clerk of the circuit court for the county if the owner or
 772 lienholder is absent, and the clerk shall hold such proceeds
 773 subject to the claim of the owner or lienholder ~~person~~ legally
 774 entitled thereto. The clerk shall be entitled to receive 5
 775 percent of such proceeds for the care and disbursement thereof.
 776 The certificate of title issued under this law shall be
 777 discharged of all liens unless otherwise provided by court
 778 order. The owner or lienholder may file a complaint after the
 779 vehicle or vessel has been sold in the county court of the

780 county in which it is stored. Upon determining the respective
781 rights of the parties, the court may award damages, attorney's
782 fees, and costs in favor of the prevailing party.

783 (10) Persons who provide services pursuant to this section
784 shall permit vehicle or vessel owners, lienholders, or their
785 agents, which agency is evidenced by an original writing
786 acknowledged by the owner before a notary public or other person
787 empowered by law to administer oaths, to inspect the towed
788 vehicle or vessel and shall release to the owner, lienholder, or
789 agent the vehicle, vessel, or all personal property not affixed
790 to the vehicle or vessel which was in the vehicle or vessel at
791 the time the vehicle or vessel came into the custody of the
792 person providing such services.

793 Section 13. Effective October 1, 2009, paragraph (c) is
794 added to subsection (2) of section 320.0609, Florida Statutes,
795 to read:

796 320.0609 Transfer and exchange of registration license
797 plates; transfer fee.--

798 (2)

799 (c) If a retail sale by a licensed independent motor
800 vehicle dealer results in the transfer of a registration license
801 plate, a temporary tag shall be issued and displayed during the
802 time that the application for transfer of such registration
803 license plate is being processed unless the department's records
804 reflect that the transfer has occurred. However, this paragraph
805 shall not apply to independent motor vehicle dealers that are
806 owned by principals that also hold a franchise motor vehicle

807 dealer license in this state. This paragraph is repealed June
808 30, 2010.

809 Section 14. Effective July 1, 2010, subsection (8) is
810 added to section 320.0609, Florida Statutes, to read:

811 320.0609 Transfer and exchange of registration license
812 plates; transfer fee.--

813 (8) (a) When the owner of a vehicle transfers a
814 registration license plate to a replacement or substitute
815 vehicle acquired from a motor vehicle dealer licensed under this
816 chapter, the dealer shall timely provide to the department, via
817 an electronic system administered by the department for this
818 purpose, information regarding the transfer which is required by
819 the department. The dealer shall also give the owner written
820 notice documenting the transfer if the dealer cannot timely
821 provide the required transfer information to the department due
822 to system or connectivity problems. The dealer shall maintain
823 all records required by the department which must be open to
824 inspection by the department or its agents during reasonable
825 business hours. The dealer may charge the vehicle owner a fee to
826 comply with this subsection. The department may charge a fee of
827 \$2 to be deposited into the Highway Safety Operating Trust Fund
828 for each transfer in addition to any other fee imposed by law.

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

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

834 Section 15. Effective October 1, 2009, paragraph (m) is
835 added to subsection (1) of section 320.131, Florida Statutes, to
836 read:

837 320.131 Temporary tags.--

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

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

845
846 Further, the department is authorized to disallow the purchase
847 of temporary tags by licensed dealers, common carriers, or
848 financial institutions in those cases where abuse has occurred.

849 Section 16. Paragraphs (d) and (i) of subsection (6) of
850 section 316.193, Florida Statutes, are amended, and subsections
851 (13) and (14) are added to that section, to read:

852 316.193 Driving under the influence; penalties.--

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

856 (d) The court must at the time of sentencing the defendant
857 issue an order for the impoundment or immobilization of a
858 vehicle. The order of impoundment or immobilization must include
859 the name and telephone numbers of all immobilization agencies
860 meeting all of the conditions of subsection (13). Within 7
861 business days after the date that the court issues the order of

862 impoundment or immobilization, the clerk of the court must send
863 notice by certified mail, return receipt requested, to the
864 registered owner of each vehicle, if the registered owner is a
865 person other than the defendant, and to each person of record
866 claiming a lien against the vehicle.

867 (i) All costs and fees for the impoundment or
868 immobilization, including the cost of notification, must be paid
869 by the owner of the vehicle or, if the vehicle is leased or
870 rented, by the person leasing or renting the vehicle, unless the
871 impoundment or immobilization order is dismissed. All provisions
872 of s. 713.78 shall apply. The costs and fees for the impoundment
873 or immobilization must be paid directly to the person impounding
874 or immobilizing the vehicle.

875

876 For the purposes of this section, any conviction for a violation
877 of s. 327.35; a previous conviction for the violation of former
878 s. 316.1931, former s. 860.01, or former s. 316.028; or a
879 previous conviction outside this state for driving under the
880 influence, driving while intoxicated, driving with an unlawful
881 blood-alcohol level, driving with an unlawful breath-alcohol
882 level, or any other similar alcohol-related or drug-related
883 traffic offense, is also considered a previous conviction for
884 violation of this section. However, in satisfaction of the fine
885 imposed pursuant to this section, the court may, upon a finding
886 that the defendant is financially unable to pay either all or
887 part of the fine, order that the defendant participate for a
888 specified additional period of time in public service or a
889 community work project in lieu of payment of that portion of the

890 fine which the court determines the defendant is unable to pay.
891 In determining such additional sentence, the court shall
892 consider the amount of the unpaid portion of the fine and the
893 reasonable value of the services to be ordered; however, the
894 court may not compute the reasonable value of services at a rate
895 less than the federal minimum wage at the time of sentencing.

896 (13) If personnel of the circuit court or the sheriff do
897 not immobilize vehicles, only immobilization agencies that meet
898 the conditions of this subsection shall immobilize vehicles in
899 that judicial circuit.

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

903 1. Any immobilization agency engaged in the business of
904 immobilizing vehicles shall:

905 a. Have a class "R" license issued pursuant to part IV of
906 chapter 493;

907 b. Have at least 3 years of verifiable experience in
908 immobilizing vehicles; and

909 c. Maintain accurate and complete records of all payments
910 for the immobilization, copies of all documents pertaining to
911 the court's order of impoundment or immobilization, and any
912 other documents relevant to each immobilization. Such records
913 must be maintained by the immobilization agency for at least 3
914 years.

915 2. The person who immobilizes a vehicle must never have
916 been convicted of any felony or of driving or boating under the

917 influence of alcohol or a controlled substance in the last 3
 918 years.

919 (b) A person who violates paragraph (a) commits a
 920 misdemeanor of the first degree, punishable as provided in s.
 921 775.082 or s. 775.083.

922 (c) Any immobilization agency who is aggrieved by a
 923 person's violation of paragraph (a) may bring a civil action
 924 against the person who violated paragraph (a) seeking injunctive
 925 relief, damages, reasonable attorney's fees and costs, and any
 926 other remedy available at law or in equity as may be necessary
 927 to enforce this subsection. In any action to enforce this
 928 subsection, establishment of a violation of paragraph (a) shall
 929 conclusively establish a clear legal right to injunctive relief,
 930 that irreparable harm will be caused if an injunction does not
 931 issue, that no adequate remedy at law exists, and that public
 932 policy favors issuance of injunctive relief.

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

934 (a) "Immobilization," "immobilizing," or "immobilize"
 935 means the act of installing a vehicle antitheft device on the
 936 steering wheel of a vehicle, the act of placing a tire lock or
 937 wheel clamp on a vehicle, or a governmental agency's act of
 938 taking physical possession of the license tag and vehicle
 939 registration rendering a vehicle legally inoperable to prevent
 940 any person from operating the vehicle pursuant to an order of
 941 impoundment or immobilization under subsection (6).

942 (b) "Immobilization agency" or "immobilization agencies"
 943 means any firm, company, agency, organization, partnership,
 944 corporation, association, trust, or other business entity of any

945 kind whatsoever that meets all of the conditions of subsection
946 (13).

947 (c) "Impoundment," "impounding," or "impound" means the
948 act of storing a vehicle at a storage facility pursuant to an
949 order of impoundment or immobilization under subsection (6)
950 where the person impounding the vehicle exercises control,
951 supervision, and responsibility over the vehicle.

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

955 Section 17. Except as otherwise expressly provided in this
956 act, this act shall take effect July 1, 2009.