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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/15/2009	.	
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The Committee on Judiciary (Constantine) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

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



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

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

23 30.30 Writs, process; duties and liabilities in levying.-

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

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

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



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

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

45 78.065 Order to show cause; contents.—

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

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

55 78.068 Prejudgment writ of replevin.—

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

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

65 320.02 Registration required; application for registration;
66 forms.—

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



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

84 Section 6. Subsection (2) of section 320.0609, Florida
85 Statutes, are amended to read:

86 320.0609 Transfer and exchange of registration license
87 plates; transfer fee.—

88 (2) (a) Upon a sale, trade, transfer, or other disposition
89 of a motor vehicle, the owner shall remove the registration
90 license plate therefrom and either return it or transfer it to a
91 replacement motor vehicle. No registration license plate shall
92 be temporarily or permanently attached to any new or used
93 replacement or substitute vehicle without filing an application
94 for transfer of such registration license plate and paying the
95 transfer fee of \$4.50 to the department.

96 (b) The requirement to pay a transfer fee does not apply
97 when the replacement vehicle is classified under s.
98 320.08(2) (b), (c), or (d) or (3) (a), (b), or (c) and the



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99 original vehicle to be replaced is also classified under s.
100 320.08(2)(b), (c), or (d) or (3)(a), (b), or (c).

101 (c) If a retail sale by a licensed independent motor
102 vehicle dealer results in the transfer of a license plate, a
103 temporary tag shall be issued and displayed during the time that
104 the application for transfer of such registration license plate
105 is being processed, unless the department's records reflect that
106 the transfer has occurred.

107 Section 7. Paragraph (m) is added to subsection (1) of
108 section 320.131, Florida Statutes, to read:

109 320.131 Temporary tags.-

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

113 (m) For a retail sale by a licensed independent motor
114 vehicle dealer when an application for the transfer of a
115 registration license plate is being processed.

116
117 Further, the department is authorized to disallow the purchase
118 of temporary tags by licensed dealers, common carriers, or
119 financial institutions in those cases where abuse has occurred.

120 Section 8. Section 320.1316, Florida Statutes, is created
121 to read:

122 320.1316 Failure to surrender vehicle or vessel.-

123 (1) Upon receipt, from a lienor who claims a lien on a
124 vehicle pursuant to s. 319.27, of written notice to surrender a
125 vehicle or vessel that has been disposed of, concealed, removed,
126 or destroyed by the lienee, the department shall place the name
127 of the registered owner of that vehicle on the list of those



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128 persons who, under s. 320.03(8), may not be issued a license
129 plate, revalidation sticker, or replacement license plate for
130 any motor vehicle owned by the lienee at the time the notice was
131 given by the lienor. If the vehicle is owned jointly by more
132 than one person, the name of each registered owner shall be
133 placed on the list.

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

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

137 (b) The name of the registered owner of the vehicle and the
138 address to which the lienor provided notice to the registered
139 owner to surrender the vehicle.

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

142 (d) The vehicle identification number, registration license
143 plate number, if known, or other identification number, as
144 applicable.

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

152 Section 9. Subsection (8) of section 322.34, Florida
153 Statutes, is amended to read:

154 322.34 Driving while license suspended, revoked, canceled,
155 or disqualified.—

156 (8) (a) Upon the arrest of a person for the offense of



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157 driving while the person's driver's license or driving privilege
158 is suspended or revoked, the arresting officer shall determine:

159 1. Whether the person's driver's license is suspended or
160 revoked.

161 2. Whether the person's driver's license has remained
162 suspended or revoked since a conviction for the offense of
163 driving with a suspended or revoked license.

164 3. Whether the suspension or revocation was made under s.
165 316.646 or s. 627.733, relating to failure to maintain required
166 security, or under s. 322.264, relating to habitual traffic
167 offenders.

168 4. Whether the driver is the registered owner or coowner of
169 the vehicle.

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

173 (c) Within 7 business days after the date the arresting
174 agency impounds or immobilizes the vehicle, either the arresting
175 agency or the towing service, whichever is in possession of the
176 vehicle, shall send notice by certified mail, ~~return receipt~~
177 ~~requested,~~ to any coregistered owners of the vehicle other than
178 the person arrested and to each person of record claiming a lien
179 against the vehicle. All costs and fees for the impoundment or
180 immobilization, including the cost of notification, must be paid
181 by the owner of the vehicle or, if the vehicle is leased, by the
182 person leasing the vehicle.

183 (d) Either the arresting agency or the towing service,
184 whichever is in possession of the vehicle, shall determine
185 whether any vehicle impounded or immobilized under this section



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186 has been leased or rented or if there are any persons of record
187 with a lien upon the vehicle. Either the arresting agency or the
188 towing service, whichever is in possession of the vehicle, shall
189 notify by express courier service with receipt or certified
190 mail, ~~return receipt requested~~, within 7 business days after the
191 date of the immobilization or impoundment of the vehicle, the
192 registered owner and all persons having a recorded lien against
193 the vehicle that the vehicle has been impounded or immobilized.
194 A lessor, rental car company, or lienholder may then obtain the
195 vehicle, upon payment of any lawful towing or storage charges.
196 If the vehicle is a rental vehicle subject to a written
197 contract, the charges may be separately charged to the renter,
198 in addition to the rental rate, along with other separate fees,
199 charges, and recoupments disclosed on the rental agreement. If
200 the storage facility fails to provide timely notice to a lessor,
201 rental car company, or lienholder as required by this paragraph,
202 the storage facility shall be responsible for payment of any
203 towing or storage charges necessary to release the vehicle to a
204 lessor, rental car company, or lienholder that accrue after the
205 notice period, which charges may then be assessed against the
206 driver of the vehicle if the vehicle was lawfully impounded or
207 immobilized.

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

211 1. The owner presents proof of insurance to the arresting
212 agency; or

213 2. The owner presents proof of sale of the vehicle to the
214 arresting agency and the buyer presents proof of insurance to



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215 the arresting agency.

216

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

220 (f) The owner of a vehicle that is impounded or immobilized
221 under this subsection may, within 10 days after the date the
222 owner has knowledge of the location of the vehicle, file a
223 complaint in the county in which the owner resides to determine
224 whether the vehicle was wrongfully taken or withheld. Upon the
225 filing of a complaint, the owner or lienholder may have the
226 vehicle released by posting with the court a bond or other
227 adequate security equal to the amount of the costs and fees for
228 impoundment or immobilization, including towing or storage, to
229 ensure the payment of such costs and fees if the owner or
230 lienholder does not prevail. When the vehicle owner or
231 lienholder does not prevail on a complaint that the vehicle was
232 wrongfully taken or withheld, he or she must pay the accrued
233 charges for the immobilization or impoundment, including any
234 towing and storage charges assessed against the vehicle. When
235 the bond is posted and the fee is paid as set forth in s. 28.24,
236 the clerk of the court shall issue a certificate releasing the
237 vehicle. At the time of release, after reasonable inspection,
238 the owner must give a receipt to the towing or storage company
239 indicating any loss or damage to the vehicle or to the contents
240 of the vehicle.

241 Section 10. Section 559.903, Florida Statutes, is amended
242 to read:

243 559.903 Definitions.—As used in this act:



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244 (1) "Customer" means the person who signs the written
245 repair estimate or any other person whom the person who signs
246 the written repair estimate designates on the written repair
247 estimate as a person who may authorize repair work.

248 (2) "Department" means the Department of Agriculture and
249 Consumer Services.

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

253 (4) "Final estimate" means the last estimate approved by
254 the customer either in writing or orally, as evidenced by the
255 written repair estimate.

256 (5) "Lienholder" means the person or entity that holds a
257 lien or security interest on the motor vehicle and who perfected
258 the lien or security interest on the motor vehicle pursuant to
259 s. 319.27.

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

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



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273 ~~person who engages solely in the maintenance or repair of the~~
274 ~~coach portion of a recreational vehicle is not a motor vehicle~~
275 ~~repair shop.~~

276 ~~(7) "Place of business" means a physical place where the~~
277 ~~business of motor vehicle repair is conducted, including any~~
278 ~~vehicle constituting a mobile motor vehicle repair shop from~~
279 ~~which the business of motor vehicle repair is conducted.~~

280 ~~(7)-(8) "Motor vehicle repair" means all maintenance of and~~
281 ~~modifications and repairs to motor vehicles, and diagnostic work~~
282 ~~incident thereto, including, but not limited to, the rebuilding~~
283 ~~or restoring of rebuilt vehicles, body work, painting, warranty~~
284 ~~work, and other work customarily undertaken by motor vehicle~~
285 ~~repair shops.~~

286 (8) "Motor vehicle repair shop" means any person who, for
287 compensation, engages or attempts to engage in the repair of
288 motor vehicles owned by other persons. Motor vehicle repair
289 shops include, but are not limited to, mobile motor vehicle
290 repair shops; motor vehicle and recreational vehicle dealers;
291 garages; service stations; self-employed individuals; truck
292 stops; paint and body shops; brake, muffler, or transmission
293 shops; and shops doing glass work. Any person who engages solely
294 in the maintenance or repair of the coach portion of a
295 recreational vehicle is not a motor vehicle repair shop.

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

298 (10) "Place of business" means a physical place where the
299 business of motor vehicle repair is conducted, including any
300 vehicle constituting a mobile motor vehicle repair shop from
301 which the business of motor vehicle repair is conducted.



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302 Section 11. Section 559.917, Florida Statutes, is amended
303 to read:

304 559.917 Bond to release possessory lien claimed by motor
305 vehicle repair shop.—

306 (1) (a) Any customer may obtain the release of her or his
307 motor vehicle from any lien claimed under part II of chapter 713
308 by a motor vehicle repair shop for repair work performed under a
309 written repair estimate by filing with the clerk of the court in
310 the circuit in which the disputed transaction occurred a cash or
311 surety bond, payable to the person claiming the lien and
312 conditioned for the payment of any judgment which may be entered
313 on the lien. The bond shall be in the amount stated on the
314 invoice required by s. 559.911, plus accrued storage charges, if
315 any, less any amount paid to the motor vehicle repair shop as
316 indicated on the invoice. The customer shall not be required to
317 institute judicial proceedings in order to post the bond in the
318 registry of the court, nor shall the customer be required to use
319 a particular form for posting the bond, unless the clerk shall
320 provide such form to the customer for filing. Upon the posting
321 of such bond, the clerk of the court shall automatically issue a
322 certificate notifying the lienor of the posting of the bond and
323 directing the lienor to release the customer's motor vehicle.

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

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



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331 (2) The failure of a lienor to release or return to the
332 customer, owner, or lienholder the motor vehicle upon which any
333 lien is claimed, upon receiving a copy of a certificate giving
334 notice of the posting of the bond and directing release of the
335 motor vehicle, shall subject the lienor to judicial proceedings
336 which may be brought by the customer, owner, or lienholder to
337 compel compliance with the certificate. Whenever a customer,
338 owner, or lienholder brings an action to compel compliance with
339 the certificate, the customer, owner, or lienholder need only
340 establish that:

341 (a) Bond in the amount of the invoice, plus accrued storage
342 charges, if any, less any amount paid to the motor vehicle
343 repair shop as indicated on the invoice, plus 15 percent, was
344 posted;

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

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

349 (d) The motor vehicle repair shop or employee authorized to
350 release the motor vehicle failed to release the motor vehicle.

351
352 The customer, owner, or lienholder, upon a judgment in her or
353 his favor in an action brought under this subsection, may be
354 entitled to damages plus court costs and reasonable attorney's
355 fees sustained by her or him by reason of such wrongful
356 detention or retention. Upon a judgment in favor of the motor
357 vehicle repair shop, the shop may be entitled to reasonable
358 attorney's fees.

359 (3) Any motor vehicle repair shop which, or any employee or



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360 agent thereof who is authorized to release the motor vehicle
361 who, upon receiving a copy of a certificate giving notice of the
362 posting of the bond in the required amount and directing release
363 of the motor vehicle, fails to release or return the property to
364 the customer, owner, or lienholder pursuant to this section
365 commits ~~is guilty of~~ a misdemeanor of the second degree,
366 punishable as provided in s. 775.082 or s. 775.083.

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

373 Section 12. Section 713.585, Florida Statutes, is amended
374 to read:

375 713.585 Enforcement of lien by sale of motor vehicle.—A
376 person claiming a lien under s. 713.58 for performing labor or
377 services on a motor vehicle may enforce such lien by sale of the
378 vehicle in accordance with the following procedures:

379 (1) The lienor must give notice, by certified mail, ~~return~~
380 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding
381 Saturday and Sunday, from the beginning date of the assessment
382 of storage charges on the ~~said~~ motor vehicle, to the registered
383 owner of the vehicle, to the customer as indicated on the order
384 for repair, and to all other persons claiming an interest in or
385 lien thereon, as disclosed by the records of the Department of
386 Highway Safety and Motor Vehicles or of a corresponding agency
387 of any other state in which the vehicle appears registered. Such
388 notice must contain:



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- 389 (a) A description of the vehicle (year, make, vehicle
390 identification number) and its location.
- 391 (b) The name and address of the owner of the vehicle, the
392 customer as indicated on the order for repair, and any person
393 claiming an interest in or lien thereon.
- 394 (c) The name, address, and telephone number of the lienor.
- 395 (d) Notice that the lienor claims a lien on the vehicle for
396 labor and services performed and storage charges, if any, and
397 the cash sum which, if paid to the lienor, would be sufficient
398 to redeem the vehicle from the lien claimed by the lienor.
- 399 (e) Notice that the lien claimed by the lienor is subject
400 to enforcement pursuant to this section and that the vehicle may
401 be sold to satisfy the lien.
- 402 (f) If known, the date, time, and location of any proposed
403 or scheduled sale of the vehicle. No vehicle may be sold earlier
404 than 50 ~~60~~ days after completion of the repair work.
- 405 (g) Notice that the owner of the vehicle or any person
406 claiming an interest in or lien thereon has a right to a hearing
407 at any time prior to the scheduled date of sale by filing a
408 demand for hearing with the clerk of the circuit court in the
409 county in which the vehicle is held and mailing copies of the
410 demand for hearing to all other owners and lienors as reflected
411 on the notice.
- 412 (h) Notice that the owner or lienholder of the vehicle has
413 a right to recover possession of the vehicle without instituting
414 judicial proceedings by posting bond in accordance with the
415 provisions of s. 559.917.
- 416 (i) Notice that any proceeds from the sale of the vehicle
417 remaining after payment of the amount claimed to be due and



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418 owing to the lienor will be deposited with the clerk of the
419 circuit court for disposition upon court order pursuant to
420 subsection (8).

421 (2) If attempts to locate the owner or lienholder are
422 unsuccessful, the lienor must notify the local law enforcement
423 agency in writing by certified mail or acknowledged hand
424 delivery that the lienor has been unable to locate the owner or
425 lienholder, that a physical search of the vehicle has disclosed
426 no ownership information, and that a good faith effort has been
427 made. A description of the motor vehicle which includes the
428 year, make, and identification number must be given on the
429 notice. This notification must take place within 10 ~~15~~ business
430 days, excluding Saturday and Sunday, from the beginning date of
431 the assessment of storage charges on the ~~said~~ motor vehicle. For
432 purposes of this paragraph, the term "good faith effort" means
433 that the following checks have been performed by the company to
434 establish the prior state of registration and title:

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

437 (b) A check of vehicle for inspection sticker or other
438 stickers and decals that could indicate the state of possible
439 registration; and

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

443 (3) If the date of the sale was not included in the notice
444 required in subsection (1), notice of the sale must be sent by
445 certified mail, ~~return receipt requested~~, not less than 15 days
446 before the date of sale, to the customer as indicated on the



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447 order for repair, and to all other persons claiming an interest
448 in or lien on the motor vehicle, as disclosed by the records of
449 the Department of Highway Safety and Motor Vehicles or of a
450 corresponding agency of any other state in which the vehicle
451 appears to have been registered. After diligent search and
452 inquiry, if the name and address of the registered owner or the
453 owner of the recorded lien cannot be ascertained, the
454 requirements for this notice may be disregarded.

455 (4) The lienor, at least 15 days before the proposed or
456 scheduled date of sale of the vehicle, shall publish the notice
457 required by this section once in a newspaper circulated in the
458 county where the vehicle is held. A certificate of compliance
459 with the notification provisions of this section, verified by
460 the lienor, together with a copy of the notice ~~and return~~
461 ~~receipt for mailing of the notice required by this section,~~ and
462 proof of publication, must be duly and expeditiously filed with
463 the clerk of the circuit court in the county where the vehicle
464 is held. The lienor, at the time of filing the certificate of
465 compliance, must pay to the clerk of that court a service charge
466 of \$10 for indexing and recording the certificate.

467 (5) At any time prior to the proposed or scheduled date of
468 sale of a vehicle, the owner of the vehicle, or any person
469 claiming an interest in the vehicle or a lien thereon, may file
470 a demand for hearing with the clerk of the circuit court in the
471 county in which the vehicle is held to determine whether the
472 vehicle has been wrongfully taken or withheld from her or him.
473 Any person who files a demand for hearing shall mail copies of
474 the demand to all other owners and lienors as reflected on the
475 notice required in subsection (1). Upon the filing of a demand



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476 for hearing, a hearing shall be held prior to the proposed or
477 scheduled date of sale of the vehicle.

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

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

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

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

488 (c) The distribution of any proceeds of the sale by the
489 clerk of the circuit court;

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

492 (e) The reasonableness of storage charges.

493 (8) A vehicle subject to lien enforcement pursuant to this
494 section must be sold by the lienor at public sale. Immediately
495 upon the sale of the vehicle and payment in cash of the purchase
496 price, the lienor shall deposit with the clerk of the circuit
497 court the proceeds of the sale less the amount claimed by the
498 lienor for work done and storage, if any, and all reasonable
499 costs and expenses incurred in conducting the sale, including
500 any attorney's fees and costs ordered by the court.

501 Simultaneously with depositing the proceeds of sale remaining
502 after payment to the lienor, the lienor shall file with the
503 clerk a verified report of the sale stating a description of the
504 vehicle sold, including the vehicle identification number; the



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505 name and address of the purchaser; the date of the sale; and the
506 selling price. The report shall also itemize the amount retained
507 by the lienor pursuant to this section and shall indicate
508 whether a hearing was demanded and held. All proceeds held by
509 the court shall be held for the benefit of the owner of the
510 vehicle or any lienholder whose lien is discharged by the sale
511 and shall be disbursed only upon order of the court. Unless a
512 proceeding is initiated to validate a claim to such proceeds
513 within 1 year and a day from the date of the sale, the proceeds
514 shall be deemed abandoned property and disposition thereof shall
515 be governed by s. 705.103. The clerk shall receive 5 percent of
516 the proceeds deposited with her or him, not to exceed \$25, for
517 her or his services under this section.

518 (9) A copy of the certificate of compliance and the report
519 of sale, certified by the clerk of the court, shall constitute
520 satisfactory proof for application to the Department of Highway
521 Safety and Motor Vehicles for transfer of title, together with
522 any other proof required by any rules and regulations of the
523 department.

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

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

532 (12) When a vehicle is sold by a lienor in accordance with
533 this law, a purchaser for value takes title to the vehicle free



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534 and clear of all claims, liens, and encumbrances whatsoever,
535 unless otherwise provided by court order.

536 (13) A failure to make good faith efforts as defined in
537 subsection (2) precludes the imposition of any storage charges
538 against the vehicle. If a lienor fails to provide notice to any
539 person claiming a lien on a vehicle under subsection (1) within
540 10 ~~15~~ business days, excluding Saturday or Sunday, after the
541 assessment of storage charges have begun, then the lienor is
542 precluded from charging for more than 15 days of storage, but
543 failure to provide timely notice does not affect charges made
544 for repairs, adjustments, or modifications to the vehicle or the
545 priority of liens on the vehicle.

546 Section 13. Subsections (4), (5), (6), and (10) of section
547 713.78, Florida Statutes, are amended to read:

548 713.78 Liens for recovering, towing, or storing vehicles
549 and vessels.-

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

560 (b) Whenever any law enforcement agency authorizes the
561 removal of a vehicle or vessel or whenever any towing service,
562 garage, repair shop, or automotive service, storage, or parking



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563 place notifies the law enforcement agency of possession of a
564 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
565 law enforcement agency of the jurisdiction where the vehicle or
566 vessel is stored shall contact the Department of Highway Safety
567 and Motor Vehicles, or the appropriate agency of the state of
568 registration, if known, within 24 hours through the medium of
569 electronic communications, giving the full description of the
570 vehicle or vessel. Upon receipt of the full description of the
571 vehicle or vessel, the department shall search its files to
572 determine the owner's name, the insurance company insuring the
573 vehicle or vessel, and whether any person has filed a lien upon
574 the vehicle or vessel as provided in s. 319.27(2) and (3) and
575 notify the applicable law enforcement agency within 72 hours.
576 The person in charge of the towing service, garage, repair shop,
577 or automotive service, storage, or parking place shall obtain
578 such information from the applicable law enforcement agency
579 within 5 days after the date of storage and shall give notice
580 pursuant to paragraph (a). The department may release the
581 insurance company information to the requestor notwithstanding
582 the provisions of s. 627.736.

583 (c) Notice by certified mail, ~~return receipt requested,~~
584 shall be sent within 7 business days after the date of storage
585 of the vehicle or vessel to the registered owner, the insurance
586 company insuring the vehicle notwithstanding the provisions of
587 s. 627.736, and all persons of record claiming a lien against
588 the vehicle or vessel. It shall state the fact of possession of
589 the vehicle or vessel, that a lien as provided in subsection (2)
590 is claimed, that charges have accrued and the amount thereof,
591 that the lien is subject to enforcement pursuant to law, and



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592 that the owner or lienholder, if any, has the right to a hearing
593 as set forth in subsection (5), and that any vehicle or vessel
594 which remains unclaimed, or for which the charges for recovery,
595 towing, or storage services remain unpaid, may be sold free of
596 all prior liens after 35 days if the vehicle or vessel is more
597 than 3 years of age or after 50 days if the vehicle or vessel is
598 3 years of age or less.

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

612 1. Check of vehicle or vessel for any type of tag, tag
613 record, temporary tag, or regular tag.

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

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

620 4. If there is no address of the owner on the impound



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

623 5. Check of vehicle or vessel for inspection sticker or
624 other stickers and decals that may indicate a state of possible
625 registration.

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

629 7. Check of vehicle for vehicle identification number.

630 8. Check of vessel for vessel registration number.

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

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

644 (b) Upon filing of a complaint, an owner or lienholder may
645 have her or his vehicle or vessel released upon posting with the
646 court a cash or surety bond or other adequate security equal to
647 the amount of the charges for towing or storage and lot rental
648 amount to ensure the payment of such charges in the event she or
649 he does not prevail. Upon the posting of the bond and the



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650 payment of the applicable fee set forth in s. 28.24, the clerk
651 of the court shall issue a certificate notifying the lienor of
652 the posting of the bond and directing the lienor to release the
653 vehicle or vessel. At the time of such release, after reasonable
654 inspection, she or he shall give a receipt to the towing-storage
655 company reciting any claims she or he has for loss or damage to
656 the vehicle or vessel or the contents thereof.

657 (c) Upon determining the respective rights of the parties,
658 the court may award damages, attorney's fees, and costs in favor
659 of the prevailing party. In any event, the final order shall
660 provide for immediate payment in full of recovery, towing, and
661 storage fees by the vehicle or vessel owner or lienholder; or
662 the agency ordering the tow; or the owner, lessee, or agent
663 thereof of the property from which the vehicle or vessel was
664 removed.

665 (6) Any vehicle or vessel which is stored pursuant to
666 subsection (2) and which remains unclaimed, or for which
667 reasonable charges for recovery, towing, or storing remain
668 unpaid, and any contents not released pursuant to subsection
669 (10), may be sold by the owner or operator of the storage space
670 for such towing or storage charge after 35 days from the time
671 the vehicle or vessel is stored therein if the vehicle or vessel
672 is more than 3 years of age or after 50 days following the time
673 the vehicle or vessel is stored therein if the vehicle or vessel
674 is 3 years of age or less. The sale shall be at public sale
675 ~~auction~~ for cash. If the date of the sale was not included in
676 the notice required in subsection (4), notice of the sale shall
677 be given to the person in whose name the vehicle or vessel is
678 registered and to all persons claiming a lien on the vehicle or



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679 vessel as shown on the records of the Department of Highway
680 Safety and Motor Vehicles or of the corresponding agency in any
681 other state. Notice shall be sent by certified mail, ~~return~~
682 ~~receipt requested,~~ to the owner of the vehicle or vessel and the
683 person having the recorded lien on the vehicle or vessel at the
684 address shown on the records of the registering agency and shall
685 be mailed not less than 15 days before the date of the sale.
686 After diligent search and inquiry, if the name and address of
687 the registered owner or the owner of the recorded lien cannot be
688 ascertained, the requirements of notice by mail may be dispensed
689 with. In addition to the notice by mail, public notice of the
690 time and place of sale shall be made by publishing a notice
691 thereof one time, at least 10 days prior to the date of the
692 sale, in a newspaper of general circulation in the county in
693 which the sale is to be held. The proceeds of the sale, after
694 payment of reasonable towing and storage charges, and costs of
695 the sale, in that order of priority, shall be deposited with the
696 clerk of the circuit court for the county if the owner or
697 lienholder is absent, and the clerk shall hold such proceeds
698 subject to the claim of the owner or lienholder ~~person~~ legally
699 entitled thereto. The clerk shall be entitled to receive 5
700 percent of such proceeds for the care and disbursement thereof.
701 The certificate of title issued under this law shall be
702 discharged of all liens unless otherwise provided by court
703 order. The owner or lienholder may file a complaint after the
704 vehicle or vessel has been sold in the county court of the
705 county in which it is stored. Upon determining the respective
706 rights of the parties, the court may award damages, attorney's
707 fees, and costs in favor of the prevailing party.



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708 (10) Persons who provide services pursuant to this section
709 shall permit vehicle or vessel owners, lienholders, or their
710 agents, which agency is evidenced by an original writing
711 acknowledged by the owner before a notary public or other person
712 empowered by law to administer oaths, to inspect the towed
713 vehicle or vessel and shall release to the owner, lienholder, or
714 agent the vehicle, vessel, or all personal property not affixed
715 to the vehicle or vessel which was in the vehicle or vessel at
716 the time the vehicle or vessel came into the custody of the
717 person providing such services.

718 Section 14. This act shall take effect July 1, 2009.

719
720 ===== T I T L E A M E N D M E N T =====

721 And the title is amended as follows:

722 Delete everything before the enacting clause
723 and insert:

724 A bill to be entitled
725 An act relating to motor vehicle lien enforcement;
726 amending s. 30.231, F.S.; authorizing sheriffs
727 expediting execution of a writ of replevin to recover
728 certain additional expenses; amending s. 30.30, F.S.;
729 requiring sheriffs to expedite certain writs of
730 replevin within a specified amount of time; amending
731 s. 78.065, F.S.; requiring courts to advance certain
732 matters related to writs of replevin on the calendar;
733 amending s. 78.068, F.S.; requiring courts to advance
734 certain matters related to prejudgment writs of
735 replevin on the calendar; amending s. 320.02, F.S.;
736 authorizing the Department of Highway Safety and Motor



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737 Vehicles to withhold renewal of registration or
738 replacement registration of specified motor vehicles
739 under certain circumstances; prohibiting the
740 department from issuing a revalidation ticket or
741 replacement license plate under certain circumstances;
742 prohibiting the department from withholding an initial
743 registration under certain circumstances; amending s.
744 320.0609, F.S.; revising provisions relating to the
745 transfer and exchange of registration license plates
746 and transfer fees; requiring that a temporary tag be
747 issued and displayed during the time that an
748 application for a transfer of a registration license
749 plate is being processed; amending s. 320.131, F.S.;
750 conforming provisions relating to temporary tags to
751 changes made by the act; creating s. 320.1316, F.S.;
752 providing responsibilities of the department relating
753 to the issuance of a license plate, revalidation
754 sticker, or replacement license plate for certain
755 vehicles; requiring the department to create a notice
756 to surrender form; providing procedures for the
757 dispute of a notice to surrender; amending s. 322.34,
758 F.S.; creating certain rights for lienholders;
759 deleting a return receipt mailing requirement;
760 amending s. 559.903, F.S.; defining the terms
761 "lienholder," "motor vehicle repair shop," "owner,"
762 and "place of business" for purposes of the Florida
763 Motor Vehicle Repair Act; amending s. 559.917, F.S.;
764 providing for a motor vehicle owner or lienholder to
765 obtain the release of a motor vehicle from a motor



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766 vehicle repair shop; revising criteria required to
767 establish an action to compel compliance; amending s.
768 713.585, F.S.; modifying procedures for enforcing
769 liens for labor or services by sale of a motor
770 vehicle; amending s. 713.78, F.S.; clarifying
771 provisions; deleting a return receipt mailing
772 requirement; creating certain rights for lienholders;
773 deleting a provision that allows a complaint to be
774 filed in the county where the owner resides; creating
775 a cause of action to determine the rights of the
776 parties after a vehicle or vessel has been sold;
777 providing for attorney's fees and costs; providing a
778 right of inspection to lienholders; providing an
779 effective date.