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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/25/2009	.	
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The Committee on Transportation (Constantine) recommended the following:

Senate Amendment (with title amendment)

Between lines 607 and 608
insert:

Section 14. Subsection (8) of section 322.34, Florida Statutes, is amended to read:

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

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



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

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

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

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

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

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

36 (d) Either the arresting agency or the towing service,
37 whichever is in possession of the vehicle, shall determine
38 whether any vehicle impounded or immobilized under this section
39 has been leased or rented or if there are any persons of record
40 with a lien upon the vehicle. Either the arresting agency or the



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41 towing service, whichever is in possession of the vehicle, shall
42 notify by express courier service with receipt or certified
43 mail, ~~return receipt requested,~~ within 7 business days after the
44 date of the immobilization or impoundment of the vehicle, the
45 registered owner and all persons having a recorded lien against
46 the vehicle that the vehicle has been impounded or immobilized.
47 A lessor, rental car company, or lienholder may then obtain the
48 vehicle, upon payment of any lawful towing or storage charges.
49 If the vehicle is a rental vehicle subject to a written
50 contract, the charges may be separately charged to the renter,
51 in addition to the rental rate, along with other separate fees,
52 charges, and recoupments disclosed on the rental agreement. If
53 the storage facility fails to provide timely notice to a lessor,
54 rental car company, or lienholder as required by this paragraph,
55 the storage facility shall be responsible for payment of any
56 towing or storage charges necessary to release the vehicle to a
57 lessor, rental car company, or lienholder that accrue after the
58 notice period, which charges may then be assessed against the
59 driver of the vehicle if the vehicle was lawfully impounded or
60 immobilized.

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

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

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

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

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

94 Section 15. Subsections (4), (5), (6), and (10) of section
95 713.78, Florida Statutes, are amended to read:

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

98 (4) (a) Any person regularly engaged in the business of



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

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



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128 pursuant to paragraph (a). The department may release the
129 insurance company information to the requestor notwithstanding
130 the provisions of s. 627.736.

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

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



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157 subsection (9), "good faith effort" means that the following
158 checks have been performed by the company to establish prior
159 state of registration and for title:

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

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

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

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

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

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

177 7. Check of vehicle for vehicle identification number.

178 8. Check of vessel for vessel registration number.

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

184 (5)(a) The owner of a vehicle or vessel removed pursuant to
185 the provisions of subsection (2), or any person claiming a lien,



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186 other than the towing-storage operator, within 10 days after the
187 time she or he has knowledge of the location of the vehicle or
188 vessel, may file a complaint in the county court of the county
189 in which the vehicle or vessel is stored ~~or in which the owner~~
190 ~~resides~~ to determine if her or his property was wrongfully taken
191 or withheld from her or him.

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

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

213 (6) Any vehicle or vessel which is stored pursuant to
214 subsection (2) and which remains unclaimed, or for which



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215 reasonable charges for recovery, towing, or storing remain
216 unpaid, and any contents not released pursuant to subsection
217 (10), may be sold by the owner or operator of the storage space
218 for such towing or storage charge after 35 days from the time
219 the vehicle or vessel is stored therein if the vehicle or vessel
220 is more than 3 years of age or after 50 days following the time
221 the vehicle or vessel is stored therein if the vehicle or vessel
222 is 3 years of age or less. The sale shall be at public sale
223 ~~auction~~ for cash. If the date of the sale was not included in
224 the notice required in subsection (4), notice of the sale shall
225 be given to the person in whose name the vehicle or vessel is
226 registered and to all persons claiming a lien on the vehicle or
227 vessel as shown on the records of the Department of Highway
228 Safety and Motor Vehicles or of the corresponding agency in any
229 other state. Notice shall be sent by certified mail, ~~return~~
230 ~~receipt requested,~~ to the owner of the vehicle or vessel and the
231 person having the recorded lien on the vehicle or vessel at the
232 address shown on the records of the registering agency and shall
233 be mailed not less than 15 days before the date of the sale.
234 After diligent search and inquiry, if the name and address of
235 the registered owner or the owner of the recorded lien cannot be
236 ascertained, the requirements of notice by mail may be dispensed
237 with. In addition to the notice by mail, public notice of the
238 time and place of sale shall be made by publishing a notice
239 thereof one time, at least 10 days prior to the date of the
240 sale, in a newspaper of general circulation in the county in
241 which the sale is to be held. The proceeds of the sale, after
242 payment of reasonable towing and storage charges, and costs of
243 the sale, in that order of priority, shall be deposited with the



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244 clerk of the circuit court for the county if the owner or
245 lienholder is absent, and the clerk shall hold such proceeds
246 subject to the claim of the owner or lienholder ~~person~~ legally
247 entitled thereto. The clerk shall be entitled to receive 5
248 percent of such proceeds for the care and disbursement thereof.
249 The certificate of title issued under this law shall be
250 discharged of all liens unless otherwise provided by court
251 order. The owner or lienholder may file a complaint after the
252 vehicle or vessel has been sold in the county court of the
253 county in which it is stored. Upon determining the respective
254 rights of the parties, the court may award damages, attorney's
255 fees, and costs in favor of the prevailing party.

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

266
267 ===== T I T L E A M E N D M E N T =====

268 And the title is amended as follows:

269 Delete line 54

270 and insert:

271 debt; amending s. 322.34, F.S.; creating certain rights for
272 lienholders; deleting a return receipt mailing requirement;



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273 amending s. 713.78, F.S.; clarifying provisions; deleting a
274 return receipt mailing requirement; creating certain rights for
275 lienholders; deleting a provision that allows a complaint to be
276 filed in the county where the owner resides; creating a cause of
277 action to determine the rights of the parties after a vehicle or
278 vessel has been sold; providing for attorney's fees and costs;
279 providing a right of inspection to lienholders; providing an
280 effective date.