

By the Committee on Commerce; and Senator Constantine

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1 A bill to be entitled
2 An act relating to motor vehicle lien enforcement;
3 amending s. 30.231, F.S.; authorizing sheriffs
4 expediting execution of a writ of replevin to recover
5 certain additional expenses; amending s. 30.30, F.S.;
6 requiring sheriffs to expedite certain writs of
7 replevin within a specified amount of time; amending
8 s. 78.065, F.S.; requiring courts to advance certain
9 matters related to writs of replevin on the calendar
10 and provide a ruling within a specified amount of
11 time; amending s. 78.068, F.S.; requiring courts to
12 advance certain matters related to prejudgment writs
13 of replevin on the calendar and provide a ruling
14 within a specified amount of time; amending s. 319.24,
15 F.S.; extending the time certain motor vehicle
16 lienholders have to deliver a certificate of title
17 indicating a lien satisfaction or notify the person
18 satisfying the lien that the title is not available;
19 amending s. 320.02, F.S.; authorizing the Department
20 of Highway Safety and Motor Vehicles to withhold
21 registration, renewal of registration, or replacement
22 registration of specified motor vehicles; requiring
23 the department to implement a system to notify motor
24 vehicle floor-plan financiers when a motor vehicle is
25 sold by a licensed dealer; providing system
26 requirements; providing fees for users of the system
27 and providing for disposition of the fees; amending s.
28 322.34, F.S.; creating certain rights for lienholders;
29 deleting a return receipt mailing requirement;

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30 amending s. 559.903, F.S.; defining the terms
31 "lienholder" and "owner" for purposes of the "Florida
32 Motor Vehicle Repair Act"; amending s. 559.917, F.S.;
33 providing for a motor vehicle owner or lienholder to
34 obtain the release of a motor vehicle from a motor
35 vehicle repair shop; amending s. 713.585, F.S.;
36 modifying procedures for enforcing liens for labor or
37 services by sale of a motor vehicle; amending s.
38 713.78, F.S.; clarifying provisions; deleting a return
39 receipt mailing requirement; creating certain rights
40 for lienholders; deleting a provision that allows a
41 complaint to be filed in the county where the owner
42 resides; creating a cause of action to determine the
43 rights of the parties after a vehicle or vessel has
44 been sold; providing for attorney's fees and costs;
45 providing a right of inspection to lienholders;
46 amending s. 818.01, F.S.; providing penalties for the
47 encumbrance, removal, destruction, or concealment of
48 certain personal property; providing responsibilities
49 of the department relating to the issuance of a
50 license plate, revalidation sticker, or replacement
51 license plate; requiring the department to create a
52 notice to surrender form; providing procedures for the
53 dispute of a notice to surrender; authorizing certain
54 secured parties to move in a court of competent
55 jurisdiction that the party be allowed to retain
56 possession of collateral as security for a debt;
57 providing an effective date.

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59 Be It Enacted by the Legislature of the State of Florida:

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

63 30.231 Sheriffs' fees for service of summons, subpoenas,
64 and executions.—

65 (2) For levying on property and for the seizure of persons,
66 the sheriff shall be allowed anticipated expenses necessary for
67 the execution of the process directing such levy or seizure and
68 for the safekeeping of property and persons in the custody of
69 the sheriff. A reasonable cost deposit to cover said fees and
70 expenses in connection with the requested services shall be
71 deposited in advance, by the party requesting the service, with
72 the officer requested to perform the service. If the sheriff is
73 required to expedite execution of a writ of replevin pursuant to
74 s. 30.30, the sheriff may recover additional expenses, including
75 payment of off-duty deputy sheriffs, to expedite execution of
76 the writ of replevin.

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

79 30.30 Writs, process; duties and liabilities in levying.—

80 (1) Whenever any writ~~7~~ issuing out of any court of this
81 state ~~is, shall be~~ delivered to a sheriff~~7~~, commanding the
82 sheriff to levy upon property specifically described therein, it
83 shall be his or her duty to levy upon such property. If a party
84 to whom a writ of replevin has been issued requests expedited
85 service of the writ, the sheriff shall expedite service no later
86 than 3 days after such request, subject to payment of the
87 additional expenses allowed by s. 30.231(2). If no property is

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88 specifically described in the writ, the sheriff ~~he or she~~ shall
89 levy upon:

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

92 (b) Upon any property assessed against the defendant on the
93 current tax rolls of the county or registered in his or her name
94 under any law of the United States or of the state, upon the
95 request of the plaintiff or the plaintiff's attorney listing
96 such property in an instructions for levy. The instructions for
97 levy shall state the balance due on such writ.

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

100 78.065 Order to show cause; contents.—

101 (1) The court without delay shall examine the complaint
102 filed; and, if on the basis of the complaint and further showing
103 of the plaintiff in support of it the court finds that the
104 defendant has waived in accordance with s. 78.075 his or her
105 right to be notified and heard, the court shall promptly issue
106 an order authorizing the clerk of the court to issue a writ of
107 replevin. The court shall advance the cause on the calendar and
108 shall rule on whether a writ of replevin will be issued within 3
109 days after the date the civil action seeking issuance of the
110 writ of replevin is filed.

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

113 78.068 Prejudgment writ of replevin.—

114 (1) A prejudgment writ of replevin may be issued and the
115 property seized delivered forthwith to the petitioners when the
116 nature of the claim and the amount thereof, if any, and the

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117 grounds relied upon for the issuance of the writ clearly appear
118 from specific facts shown by the verified petition or by
119 separate affidavit of the petitioner. The court shall advance
120 the cause on the calendar and shall rule on whether a writ of
121 replevin will be issued within 3 days after the date the civil
122 action seeking issuance of the writ of replevin is filed.

123 Section 5. Paragraph (a) of subsection (5) of section
124 319.24, Florida Statutes, is amended to read:

125 319.24 Issuance in duplicate; delivery; liens and
126 encumbrances.—

127 (5) (a) Upon satisfaction of any first lien or encumbrance
128 recorded at the department, the owner of the motor vehicle or
129 mobile home, as shown on the title certificate, or the person
130 satisfying the lien shall be entitled to demand and receive from
131 the lienholder a satisfaction of the lien. If the lienholder,
132 upon satisfaction of the lien and upon demand, fails or refuses
133 to furnish a satisfaction thereof within 30 days after demand,
134 he or she shall be held liable for all costs, damages, and
135 expenses, including reasonable attorney's fees, lawfully
136 incurred by the titled owner or person satisfying the lien in
137 any suit brought in this state for cancellation of the lien. A
138 motor vehicle dealer acquiring ownership of a motor vehicle with
139 an outstanding purchase money lien, shall pay and satisfy the
140 outstanding lien within 10 working days after ~~of~~ acquiring
141 ownership. The lienholder receiving final payment as defined in
142 s. 674.215 shall mail or otherwise deliver a lien satisfaction
143 and the certificate of title indicating the satisfaction within
144 15 ~~10~~ working days after ~~of~~ receipt of such final payment or
145 notify the person satisfying the lien that the title is not

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146 available within 15 ~~10~~ working days after ~~of~~ receipt of such
147 final payment. If the lienholder is unable to provide the
148 certificate of title and notifies the person of such, the
149 lienholder shall provide a lien satisfaction and shall be
150 responsible for the cost of a duplicate title, including fast
151 title charges as provided in s. 319.323. The provisions of this
152 paragraph shall not apply to electronic transactions pursuant to
153 subsection (9).

154 Section 6. Subsection (17) is added to section 320.02,
155 Florida Statutes, to read:

156 320.02 Registration required; application for registration;
157 forms.—

158 (17) If any applicant's name appears on a list of persons
159 who may not be issued a license plate, revalidation sticker, or
160 replacement license plate pursuant to a written notice to
161 surrender a vehicle submitted to the department by a lienor as
162 provided in s. 818.01(3), the department may withhold
163 registration, renewal of registration, or replacement
164 registration of any motor vehicle owned by the applicant at the
165 time the notice was submitted by the lienor. The lienor must
166 maintain proof that written notice to surrender the vehicle was
167 sent to each registered owner pursuant to s. 818.01(3). A
168 license plate, revalidation sticker, or replacement license
169 plate may not be issued until that person's name no longer
170 appears on the list or until the person presents documentation
171 from the lienor that the vehicle has been surrendered to the
172 lienor.

173 Section 7. (1) By January 1, 2010, the Department of
174 Highway Safety and Motor Vehicles shall implement a system that

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175 will provide daily electronic notification to motor vehicle
176 floor-plan financiers when a motor vehicle is sold by a licensed
177 motor vehicle dealer.

178 (2) The department may use its temporary tag database,
179 permanent tag database, or any other electronic database
180 available to expedite the notification process. The notification
181 must include, at a minimum, the year, make, model, vehicle
182 identification number, and dealer identification.

183 (3) (a) To assist the department, each floor-plan financier
184 shall notify the department of the motor vehicle dealer name and
185 license number of the vehicle of which the floor-plan financier
186 has perfected a security interest pursuant to chapter 679,
187 Florida Statutes, or other applicable law.

188 (b) A floor-plan financier may authorize a third-party
189 entity to provide information to and receive information from
190 the department.

191 (c) Upon termination of a perfected security interest in
192 the inventory of a secured debtor, a motor vehicle floor-plan
193 financier shall notify the department of such termination and the
194 department shall no longer be required to notify the financier of
195 sales made by such dealer.

196 (4) The department may charge an entity receiving the
197 notification up to 25 cents per motor vehicle record and such
198 revenues shall be deposited into the Highway Safety Operating
199 Trust Fund.

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

202 322.34 Driving while license suspended, revoked, canceled,
203 or disqualified.-

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

207 1. Whether the person's driver's license is suspended or
208 revoked.

209 2. Whether the person's driver's license has remained
210 suspended or revoked since a conviction for the offense of
211 driving with a suspended or revoked license.

212 3. Whether the suspension or revocation was made under s.
213 316.646 or s. 627.733, relating to failure to maintain required
214 security, or under s. 322.264, relating to habitual traffic
215 offenders.

216 4. Whether the driver is the registered owner or coowner of
217 the vehicle.

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

221 (c) Within 7 business days after the date the arresting
222 agency impounds or immobilizes the vehicle, either the arresting
223 agency or the towing service, whichever is in possession of the
224 vehicle, shall send notice by certified mail, ~~return receipt~~
225 ~~requested~~, to any coregistered owners of the vehicle other than
226 the person arrested and to each person of record claiming a lien
227 against the vehicle. All costs and fees for the impoundment or
228 immobilization, including the cost of notification, must be paid
229 by the owner of the vehicle or, if the vehicle is leased, by the
230 person leasing the vehicle.

231 (d) Either the arresting agency or the towing service,
232 whichever is in possession of the vehicle, shall determine

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233 whether any vehicle impounded or immobilized under this section
234 has been leased or rented or if there are any persons of record
235 with a lien upon the vehicle. Either the arresting agency or the
236 towing service, whichever is in possession of the vehicle, shall
237 notify by express courier service with receipt or certified
238 mail, ~~return receipt requested,~~ within 7 business days after the
239 date of the immobilization or impoundment of the vehicle, the
240 registered owner and all persons having a recorded lien against
241 the vehicle that the vehicle has been impounded or immobilized.
242 A lessor, rental car company, or lienholder may then obtain the
243 vehicle, upon payment of any lawful towing or storage charges.
244 If the vehicle is a rental vehicle subject to a written
245 contract, the charges may be separately charged to the renter,
246 in addition to the rental rate, along with other separate fees,
247 charges, and recoupments disclosed on the rental agreement. If
248 the storage facility fails to provide timely notice to a lessor,
249 rental car company, or lienholder as required by this paragraph,
250 the storage facility shall be responsible for payment of any
251 towing or storage charges necessary to release the vehicle to a
252 lessor, rental car company, or lienholder that accrue after the
253 notice period, which charges may then be assessed against the
254 driver of the vehicle if the vehicle was lawfully impounded or
255 immobilized.

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

- 259 1. The owner presents proof of insurance to the arresting
260 agency; or
- 261 2. The owner presents proof of sale of the vehicle to the

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262 arresting agency and the buyer presents proof of insurance to
263 the arresting agency.

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

268 (f) The owner of a vehicle that is impounded or immobilized
269 under this subsection may, within 10 days after the date the
270 owner has knowledge of the location of the vehicle, file a
271 complaint in the county in which the owner resides to determine
272 whether the vehicle was wrongfully taken or withheld. Upon the
273 filing of a complaint, the owner or lienholder may have the
274 vehicle released by posting with the court a bond or other
275 adequate security equal to the amount of the costs and fees for
276 impoundment or immobilization, including towing or storage, to
277 ensure the payment of such costs and fees if the owner or
278 lienholder does not prevail. When the vehicle owner or
279 lienholder does not prevail on a complaint that the vehicle was
280 wrongfully taken or withheld, he or she must pay the accrued
281 charges for the immobilization or impoundment, including any
282 towing and storage charges assessed against the vehicle. When
283 the bond is posted and the fee is paid as set forth in s. 28.24,
284 the clerk of the court shall issue a certificate releasing the
285 vehicle. At the time of release, after reasonable inspection,
286 the owner must give a receipt to the towing or storage company
287 indicating any loss or damage to the vehicle or to the contents
288 of the vehicle.

289 Section 9. Section 559.903, Florida Statutes, is amended to
290 read:

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291 559.903 Definitions.—As used in this act:

292 (1) "Customer" means the person who signs the written
293 repair estimate or any other person whom the person who signs
294 the written repair estimate designates on the written repair
295 estimate as a person who may authorize repair work.

296 (2) "Department" means the Department of Agriculture and
297 Consumer Services.

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

301 (4) "Final estimate" means the last estimate approved by
302 the customer either in writing or orally, as evidenced by the
303 written repair estimate.

304 (5) "Lienholder" means the person or entity that holds a
305 lien or security interest on the motor vehicle and who perfected
306 the lien or security interest on the motor vehicle pursuant to
307 s. 319.27.

308 (6)~~(5)~~ "Motor vehicle" means any automobile, truck, bus,
309 recreational vehicle, motorcycle, motor scooter, or other motor
310 powered vehicle, but does not include trailers, mobile homes,
311 travel trailers, trailer coaches without independent motive
312 power, watercraft or aircraft, or special mobile equipment as
313 defined in s. 316.003(48).

314 (7)~~(8)~~ "Motor vehicle repair" means all maintenance of and
315 modifications and repairs to motor vehicles, and diagnostic work
316 incident thereto, including, but not limited to, the rebuilding
317 or restoring of rebuilt vehicles, body work, painting, warranty
318 work, and other work customarily undertaken by motor vehicle
319 repair shops.

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320 (8)~~(6)~~ "Motor vehicle repair shop" means any person who,
321 for compensation, engages or attempts to engage in the repair of
322 motor vehicles owned by other persons and includes, but is not
323 limited to: mobile motor vehicle repair shops, motor vehicle and
324 recreational vehicle dealers; garages; service stations; self-
325 employed individuals; truck stops; paint and body shops; brake,
326 muffler, or transmission shops; and shops doing glass work. Any
327 person who engages solely in the maintenance or repair of the
328 coach portion of a recreational vehicle is not a motor vehicle
329 repair shop.

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

332 (10)~~(7)~~ "Place of business" means a physical place where
333 the business of motor vehicle repair is conducted, including any
334 vehicle constituting a mobile motor vehicle repair shop from
335 which the business of motor vehicle repair is conducted.

336 Section 10. Section 559.917, Florida Statutes, is amended
337 to read:

338 559.917 Bond to release possessory lien claimed by motor
339 vehicle repair shop.—

340 (1) (a) Any customer may obtain the release of her or his
341 motor vehicle from any lien claimed under part II of chapter 713
342 by a motor vehicle repair shop for repair work performed under a
343 written repair estimate by filing with the clerk of the court in
344 the circuit in which the disputed transaction occurred a cash or
345 surety bond, payable to the person claiming the lien and
346 conditioned for the payment of any judgment which may be entered
347 on the lien. The bond shall be in the amount stated on the
348 invoice required by s. 559.911, plus accrued storage charges, if

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349 any, less any amount paid to the motor vehicle repair shop as
350 indicated on the invoice. The customer shall not be required to
351 institute judicial proceedings in order to post the bond in the
352 registry of the court, nor shall the customer be required to use
353 a particular form for posting the bond, unless the clerk shall
354 provide such form to the customer for filing. Upon the posting
355 of such bond, the clerk of the court shall automatically issue a
356 certificate notifying the lienor of the posting of the bond and
357 directing the lienor to release the customer's motor vehicle.

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

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

365 (2) The failure of a lienor to release or return to the
366 customer, owner, or lienholder the motor vehicle upon which any
367 lien is claimed, upon receiving a copy of a certificate giving
368 notice of the posting of the bond and directing release of the
369 motor vehicle, shall subject the lienor to judicial proceedings
370 which may be brought by the customer, owner, or lienholder to
371 compel compliance with the certificate. Whenever a customer,
372 owner, or lienholder brings an action to compel compliance with
373 the certificate, the customer, owner, or lienholder need only
374 establish that:

375 (a) Bond in the amount of the invoice, plus accrued storage
376 charges, if any, less any amount paid to the motor vehicle
377 repair shop as indicated on the invoice, was posted;

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

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

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

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385 The customer, owner, or lienholder, upon a judgment in her or
386 his favor in an action brought under this subsection, may be
387 entitled to damages plus court costs and reasonable attorney's
388 fees sustained by her or him by reason of such wrongful
389 detention or retention. Upon a judgment in favor of the motor
390 vehicle repair shop, the shop may be entitled to reasonable
391 attorney's fees.

392 (3) Any motor vehicle repair shop which, or any employee or
393 agent thereof who is authorized to release the motor vehicle
394 who, upon receiving a copy of a certificate giving notice of the
395 posting of the bond in the required amount and directing release
396 of the motor vehicle, fails to release or return the property to
397 the customer, owner, or lienholder pursuant to this section
398 commits ~~is guilty of~~ a misdemeanor of the second degree,
399 punishable as provided in s. 775.082 or s. 775.083.

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

406 Section 11. Section 713.585, Florida Statutes, is amended

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407 to read:

408 713.585 Enforcement of lien by sale of motor vehicle.—A
409 person claiming a lien under s. 713.58 for performing labor or
410 services on a motor vehicle may enforce such lien by sale of the
411 vehicle in accordance with the following procedures:

412 (1) The lienor must give notice, by certified mail, ~~return~~
413 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding
414 Saturday and Sunday, from the beginning date of the assessment
415 of storage charges on the ~~said~~ motor vehicle, to the registered
416 owner of the vehicle, to the customer as indicated on the order
417 for repair, and to all other persons claiming an interest in or
418 lien thereon, as disclosed by the records of the Department of
419 Highway Safety and Motor Vehicles or of a corresponding agency
420 of any other state in which the vehicle appears registered. Such
421 notice must contain:

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

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

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

428 (d) Notice that the lienor claims a lien on the vehicle for
429 labor and services performed and storage charges, if any, and
430 the cash sum which, if paid to the lienor, would be sufficient
431 to redeem the vehicle from the lien claimed by the lienor.

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

435 (f) If known, the date, time, and location of any proposed

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436 or scheduled sale of the vehicle. No vehicle may be sold earlier
437 than 50 ~~60~~ days after completion of the repair work.

438 (g) Notice that the owner of the vehicle or any person
439 claiming an interest in or lien thereon has a right to a hearing
440 at any time prior to the scheduled date of sale by filing a
441 demand for hearing with the clerk of the circuit court in the
442 county in which the vehicle is held and mailing copies of the
443 demand for hearing to all other owners and lienors as reflected
444 on the notice.

445 (h) Notice that the owner or lienholder of the vehicle has
446 a right to recover possession of the vehicle without instituting
447 judicial proceedings by posting bond in accordance with the
448 provisions of s. 559.917.

449 (i) Notice that any proceeds from the sale of the vehicle
450 remaining after payment of the amount claimed to be due and
451 owing to the lienor will be deposited with the clerk of the
452 circuit court for disposition upon court order pursuant to
453 subsection (8).

454 (2) If attempts to locate the owner or lienholder are
455 unsuccessful, the lienor must notify the local law enforcement
456 agency in writing by certified mail or acknowledged hand
457 delivery that the lienor has been unable to locate the owner or
458 lienholder, that a physical search of the vehicle has disclosed
459 no ownership information, and that a good faith effort has been
460 made. A description of the motor vehicle which includes the
461 year, make, and identification number must be given on the
462 notice. This notification must take place within 10 ~~15~~ business
463 days, excluding Saturday and Sunday, from the beginning date of
464 the assessment of storage charges on the ~~said~~ motor vehicle. For

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465 purposes of this paragraph, the term "good faith effort" means
466 that the following checks have been performed by the company to
467 establish the prior state of registration and title:

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

470 (b) A check of vehicle for inspection sticker or other
471 stickers and decals that could indicate the state of possible
472 registration; and

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

476 (3) If the date of the sale was not included in the notice
477 required in subsection (1), notice of the sale must be sent by
478 certified mail, ~~return receipt requested,~~ not less than 15 days
479 before the date of sale, to the customer as indicated on the
480 order for repair, and to all other persons claiming an interest
481 in or lien on the motor vehicle, as disclosed by the records of
482 the Department of Highway Safety and Motor Vehicles or of a
483 corresponding agency of any other state in which the vehicle
484 appears to have been registered. After diligent search and
485 inquiry, if the name and address of the registered owner or the
486 owner of the recorded lien cannot be ascertained, the
487 requirements for this notice may be disregarded.

488 (4) The lienor, at least 15 days before the proposed or
489 scheduled date of sale of the vehicle, shall publish the notice
490 required by this section once in a newspaper circulated in the
491 county where the vehicle is held. A certificate of compliance
492 with the notification provisions of this section, verified by
493 the lienor, together with a copy of the notice ~~and return~~

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494 ~~receipt for mailing of the notice required by this section,~~ and
495 proof of publication, must be duly and expeditiously filed with
496 the clerk of the circuit court in the county where the vehicle
497 is held. The lienor, at the time of filing the certificate of
498 compliance, must pay to the clerk of that court a service charge
499 of \$10 for indexing and recording the certificate.

500 (5) At any time prior to the proposed or scheduled date of
501 sale of a vehicle, the owner of the vehicle, or any person
502 claiming an interest in the vehicle or a lien thereon, may file
503 a demand for hearing with the clerk of the circuit court in the
504 county in which the vehicle is held to determine whether the
505 vehicle has been wrongfully taken or withheld from her or him.
506 Any person who files a demand for hearing shall mail copies of
507 the demand to all other owners and lienors as reflected on the
508 notice required in subsection (1). Upon the filing of a demand
509 for hearing, a hearing shall be held prior to the proposed or
510 scheduled date of sale of the vehicle.

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

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

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

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

521 (c) The distribution of any proceeds of the sale by the
522 clerk of the circuit court;

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

525 (e) The reasonableness of storage charges.

526 (8) A vehicle subject to lien enforcement pursuant to this
527 section must be sold by the lienor at public sale. Immediately
528 upon the sale of the vehicle and payment in cash of the purchase
529 price, the lienor shall deposit with the clerk of the circuit
530 court the proceeds of the sale less the amount claimed by the
531 lienor for work done and storage, if any, and all reasonable
532 costs and expenses incurred in conducting the sale, including
533 any attorney's fees and costs ordered by the court.

534 Simultaneously with depositing the proceeds of sale remaining
535 after payment to the lienor, the lienor shall file with the
536 clerk a verified report of the sale stating a description of the
537 vehicle sold, including the vehicle identification number; the
538 name and address of the purchaser; the date of the sale; and the
539 selling price. The report shall also itemize the amount retained
540 by the lienor pursuant to this section and shall indicate
541 whether a hearing was demanded and held. All proceeds held by
542 the court shall be held for the benefit of the owner of the
543 vehicle or any lienholder whose lien is discharged by the sale
544 and shall be disbursed only upon order of the court. Unless a
545 proceeding is initiated to validate a claim to such proceeds
546 within 1 year and a day from the date of the sale, the proceeds
547 shall be deemed abandoned property and disposition thereof shall
548 be governed by s. 705.103. The clerk shall receive 5 percent of
549 the proceeds deposited with her or him, not to exceed \$25, for
550 her or his services under this section.

551 (9) A copy of the certificate of compliance and the report

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552 of sale, certified by the clerk of the court, shall constitute
553 satisfactory proof for application to the Department of Highway
554 Safety and Motor Vehicles for transfer of title, together with
555 any other proof required by any rules and regulations of the
556 department.

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

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

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

569 (13) A failure to make good faith efforts as defined in
570 subsection (2) precludes the imposition of any storage charges
571 against the vehicle. If a lienor fails to provide notice to any
572 person claiming a lien on a vehicle under subsection (1) within
573 10 ~~15~~ business days, excluding Saturday or Sunday, after the
574 assessment of storage charges have begun, then the lienor is
575 precluded from charging for more than 15 days of storage, but
576 failure to provide timely notice does not affect charges made
577 for repairs, adjustments, or modifications to the vehicle or the
578 priority of liens on the vehicle.

579 Section 12. Subsections (4), (5), (6), and (10) of section
580 713.78, Florida Statutes, are amended to read:

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581 713.78 Liens for recovering, towing, or storing vehicles
582 and vessels.-

583 (4) (a) Any person regularly engaged in the business of
584 recovering, towing, or storing vehicles or vessels who comes
585 into possession of a vehicle or vessel pursuant to subsection
586 (2), and who claims a lien for recovery, towing, or storage
587 services, shall give notice to the registered owner, the
588 insurance company insuring the vehicle notwithstanding the
589 provisions of s. 627.736, and to all persons claiming a lien
590 thereon, as disclosed by the records in the Department of
591 Highway Safety and Motor Vehicles or of a corresponding agency
592 in any other state.

593 (b) Whenever any law enforcement agency authorizes the
594 removal of a vehicle or vessel or whenever any towing service,
595 garage, repair shop, or automotive service, storage, or parking
596 place notifies the law enforcement agency of possession of a
597 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
598 law enforcement agency of the jurisdiction where the vehicle or
599 vessel is stored shall contact the Department of Highway Safety
600 and Motor Vehicles, or the appropriate agency of the state of
601 registration, if known, within 24 hours through the medium of
602 electronic communications, giving the full description of the
603 vehicle or vessel. Upon receipt of the full description of the
604 vehicle or vessel, the department shall search its files to
605 determine the owner's name, the insurance company insuring the
606 vehicle or vessel, and whether any person has filed a lien upon
607 the vehicle or vessel as provided in s. 319.27(2) and (3) and
608 notify the applicable law enforcement agency within 72 hours.
609 The person in charge of the towing service, garage, repair shop,

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610 or automotive service, storage, or parking place shall obtain
611 such information from the applicable law enforcement agency
612 within 5 days after the date of storage and shall give notice
613 pursuant to paragraph (a). The department may release the
614 insurance company information to the requestor notwithstanding
615 the provisions of s. 627.736.

616 (c) Notice by certified mail, ~~return receipt requested,~~
617 shall be sent within 7 business days after the date of storage
618 of the vehicle or vessel to the registered owner, the insurance
619 company insuring the vehicle notwithstanding the provisions of
620 s. 627.736, and all persons of record claiming a lien against
621 the vehicle or vessel. It shall state the fact of possession of
622 the vehicle or vessel, that a lien as provided in subsection (2)
623 is claimed, that charges have accrued and the amount thereof,
624 that the lien is subject to enforcement pursuant to law, and
625 that the owner or lienholder, if any, has the right to a hearing
626 as set forth in subsection (5), and that any vehicle or vessel
627 which remains unclaimed, or for which the charges for recovery,
628 towing, or storage services remain unpaid, may be sold free of
629 all prior liens after 35 days if the vehicle or vessel is more
630 than 3 years of age or after 50 days if the vehicle or vessel is
631 3 years of age or less.

632 (d) If attempts to locate the name and address of the owner
633 or lienholder prove unsuccessful, the towing-storage operator
634 shall, after 7 working days, excluding Saturday and Sunday, of
635 the initial tow or storage, notify the public agency of
636 jurisdiction where the vehicle or vessel is stored in writing by
637 certified mail or acknowledged hand delivery that the towing-
638 storage company has been unable to locate the name and address

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639 of the owner or lienholder and a physical search of the vehicle
640 or vessel has disclosed no ownership information and a good
641 faith effort has been made. For purposes of this paragraph and
642 subsection (9), "good faith effort" means that the following
643 checks have been performed by the company to establish prior
644 state of registration and for title:

645 1. Check of vehicle or vessel for any type of tag, tag
646 record, temporary tag, or regular tag.

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

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

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

656 5. Check of vehicle or vessel for inspection sticker or
657 other stickers and decals that may indicate a state of possible
658 registration.

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

662 7. Check of vehicle for vehicle identification number.

663 8. Check of vessel for vessel registration number.

664 9. Check of vessel hull for a hull identification number
665 which should be carved, burned, stamped, embossed, or otherwise
666 permanently affixed to the outboard side of the transom or, if
667 there is no transom, to the outmost seaboard side at the end of

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668 the hull that bears the rudder or other steering mechanism.

669 (5) (a) The owner of a vehicle or vessel removed pursuant to
670 the provisions of subsection (2), or any person claiming a lien,
671 other than the towing-storage operator, within 10 days after the
672 time she or he has knowledge of the location of the vehicle or
673 vessel, may file a complaint in the county court of the county
674 in which the vehicle or vessel is stored ~~or in which the owner~~
675 ~~resides~~ to determine if her or his property was wrongfully taken
676 or withheld from her or him.

677 (b) Upon filing of a complaint, an owner or lienholder may
678 have her or his vehicle or vessel released upon posting with the
679 court a cash or surety bond or other adequate security equal to
680 the amount of the charges for towing or storage and lot rental
681 amount to ensure the payment of such charges in the event she or
682 he does not prevail. Upon the posting of the bond and the
683 payment of the applicable fee set forth in s. 28.24, the clerk
684 of the court shall issue a certificate notifying the lienor of
685 the posting of the bond and directing the lienor to release the
686 vehicle or vessel. At the time of such release, after reasonable
687 inspection, she or he shall give a receipt to the towing-storage
688 company reciting any claims she or he has for loss or damage to
689 the vehicle or vessel or the contents thereof.

690 (c) Upon determining the respective rights of the parties,
691 the court may award damages, attorney's fees, and costs in favor
692 of the prevailing party. In any event, the final order shall
693 provide for immediate payment in full of recovery, towing, and
694 storage fees by the vehicle or vessel owner or lienholder; or
695 the agency ordering the tow; or the owner, lessee, or agent
696 thereof of the property from which the vehicle or vessel was

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697 removed.

698 (6) Any vehicle or vessel which is stored pursuant to
699 subsection (2) and which remains unclaimed, or for which
700 reasonable charges for recovery, towing, or storing remain
701 unpaid, and any contents not released pursuant to subsection
702 (10), may be sold by the owner or operator of the storage space
703 for such towing or storage charge after 35 days from the time
704 the vehicle or vessel is stored therein if the vehicle or vessel
705 is more than 3 years of age or after 50 days following the time
706 the vehicle or vessel is stored therein if the vehicle or vessel
707 is 3 years of age or less. The sale shall be at public sale
708 ~~auction~~ for cash. If the date of the sale was not included in
709 the notice required in subsection (4), notice of the sale shall
710 be given to the person in whose name the vehicle or vessel is
711 registered and to all persons claiming a lien on the vehicle or
712 vessel as shown on the records of the Department of Highway
713 Safety and Motor Vehicles or of the corresponding agency in any
714 other state. Notice shall be sent by certified mail, ~~return~~
715 ~~receipt requested,~~ to the owner of the vehicle or vessel and the
716 person having the recorded lien on the vehicle or vessel at the
717 address shown on the records of the registering agency and shall
718 be mailed not less than 15 days before the date of the sale.
719 After diligent search and inquiry, if the name and address of
720 the registered owner or the owner of the recorded lien cannot be
721 ascertained, the requirements of notice by mail may be dispensed
722 with. In addition to the notice by mail, public notice of the
723 time and place of sale shall be made by publishing a notice
724 thereof one time, at least 10 days prior to the date of the
725 sale, in a newspaper of general circulation in the county in

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726 which the sale is to be held. The proceeds of the sale, after
727 payment of reasonable towing and storage charges, and costs of
728 the sale, in that order of priority, shall be deposited with the
729 clerk of the circuit court for the county if the owner or
730 lienholder is absent, and the clerk shall hold such proceeds
731 subject to the claim of the owner or lienholder ~~person~~ legally
732 entitled thereto. The clerk shall be entitled to receive 5
733 percent of such proceeds for the care and disbursement thereof.
734 The certificate of title issued under this law shall be
735 discharged of all liens unless otherwise provided by court
736 order. The owner or lienholder may file a complaint after the
737 vehicle or vessel has been sold in the county court of the
738 county in which it is stored. Upon determining the respective
739 rights of the parties, the court may award damages, attorney's
740 fees, and costs in favor of the prevailing party.

741 (10) Persons who provide services pursuant to this section
742 shall permit vehicle or vessel owners, lienholders, or their
743 agents, which agency is evidenced by an original writing
744 acknowledged by the owner before a notary public or other person
745 empowered by law to administer oaths, to inspect the towed
746 vehicle or vessel and shall release to the owner, lienholder, or
747 agent the vehicle, vessel, or all personal property not affixed
748 to the vehicle or vessel which was in the vehicle or vessel at
749 the time the vehicle or vessel came into the custody of the
750 person providing such services.

751 Section 13. Section 818.01, Florida Statutes, is amended to
752 read:

753 818.01 Disposing of or concealing personal property under
754 lien or subject to conditional sale.-

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755 (1) Any person who:
756 (a) Pledges, mortgages, sells, encumbers, removes,
757 destroys, conceals ~~Whoever shall pledge, mortgage, sell,~~ or
758 otherwise disposes of, or conspires, aids, abets, or assents in
759 the disposal ~~dispose of,~~ any personal property, including any
760 motor vehicle, ~~to him or her~~ belonging to the person, or ~~which~~
761 ~~shall be in~~ the person's ~~his or her~~ possession, and which
762 property is ~~shall be~~ subject to any written lien, or ~~which shall~~
763 ~~be subject to any~~ statutory lien, ~~whether written or not,~~ or is
764 ~~which shall be~~ the subject of any written conditional sale
765 contract under which the title is retained by the lienor ~~vendor,~~
766 without the written consent of the person holding such lien, or
767 retaining such title;
768 (b) Removes or causes the removal of any such property and
769 ~~whoever shall remove or cause to be removed~~ beyond the limits of
770 the county where such lien was created or such conditional sale
771 contract was entered into, ~~any such property,~~ without the
772 written consent of the person holding such lien or retaining
773 such title; aforesaid, or
774 (c) Hides, conceals, or transfers ~~shall hide, conceal or~~
775 ~~transfer,~~ such property with intent to defeat, hinder, or delay
776 the enforcement of such lien, or the recovery of such property
777 by the lienor
778
779 commits ~~vendor,~~ ~~shall be guilty of~~ a misdemeanor of the first
780 degree, punishable as provided in s. 775.082 or s. 775.083.
781 (2) It is ~~shall be~~ prima facie evidence of concealing,
782 selling, or disposing of such personal property whenever the
783 person owning the property at the time the lien was created, or

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784 who bought the property ~~same~~ under such retained title contract,
785 fails or refuses to produce such property for inspection within
786 the county where the lien was created, or the property
787 delivered, upon demand of the person holding ~~having~~ such lien,
788 or retaining such title, after the debt secured by such lien has
789 become enforceable, or the lienee ~~vendee~~ has substantially
790 defaulted in the performance of such retained title contract.

791 (3) Upon receipt from a lienor who claims a lien on a
792 vehicle pursuant to s. 319.27 by the Department of Highway
793 Safety and Motor Vehicles of written notice to surrender a
794 vehicle or vessel that has been disposed of, concealed, removed,
795 or destroyed by the lienee, the department shall place the name
796 of the registered owner of that vehicle on the list of those
797 persons who may not be issued a license plate, revalidation
798 sticker, or replacement license plate for any motor vehicle
799 under s. 320.03(8) owned by the lienee at the time the notice
800 was given by the lienor. If the vehicle is owned jointly by more
801 than one person, the name of each registered owner shall be
802 placed on the list.

803 (a) The notice to surrender the vehicle shall be submitted
804 on forms developed by the department, which must include:

805 1. The name, address, and telephone number of the lienor.

806 2. The name of the registered owner of the vehicle and the
807 address to which the lienor provided notice to surrender the
808 vehicle to the registered owner.

809 3. A general description of the vehicle, including its
810 color, make, model, body style, and year.

811 4. The vehicle identification number, registration license
812 plate number, if known, or other identification number, as

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813 applicable.

814 (b) The registered owner of the vehicle may dispute a
815 notice to surrender the vehicle by notifying the department of
816 the dispute in writing on forms provided by the department and
817 presenting proof that the vehicle was sold to a motor vehicle
818 dealer licensed under s. 320.27, a mobile home dealer licensed
819 under s. 320.77, or a recreational vehicle dealer licensed under
820 s. 320.771.

821 (4) A secured party who reasonably believes that an
822 individual intends to conceal or remove property subject to a
823 lien from the county where the lien was created or a conditional
824 sale contract was entered into may, within 10 days after
825 retaking possession of the property, move in a court of
826 competent jurisdiction that the secured party be allowed to
827 retain possession of the property as security for the debt. If
828 the court finds reasonable cause to believe that the individual
829 intends to conceal the property or remove it from this state, it
830 shall order that the property remain in the possession of the
831 secured party, notwithstanding the other provisions of this
832 section.

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