

By the Committees on Judiciary; and Commerce; and Senator
Constantine

590-05185-09

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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 amending s. 78.068, F.S.; requiring courts to advance
11 certain matters related to prejudgment writs of
12 replevin on the calendar; amending s. 320.02, F.S.;
13 authorizing the Department of Highway Safety and Motor
14 Vehicles to withhold renewal of registration or
15 replacement registration of specified motor vehicles
16 under certain circumstances; prohibiting the
17 department from issuing a revalidation ticket or
18 replacement license plate under certain circumstances;
19 prohibiting the department from withholding an initial
20 registration under certain circumstances; amending s.
21 320.0609, F.S.; revising provisions relating to the
22 transfer and exchange of registration license plates
23 and transfer fees; requiring that a temporary tag be
24 issued and displayed during the time that an
25 application for a transfer of a registration license
26 plate is being processed; amending s. 320.131, F.S.;
27 conforming provisions relating to temporary tags to
28 changes made by the act; creating s. 320.1316, F.S.;
29 providing responsibilities of the department relating

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30 to the issuance of a license plate, revalidation
31 sticker, or replacement license plate for certain
32 vehicles; requiring the department to create a notice
33 to surrender form; providing procedures for the
34 dispute of a notice to surrender; amending s. 322.34,
35 F.S.; creating certain rights for lienholders;
36 deleting a return receipt mailing requirement;
37 amending s. 559.903, F.S.; defining the terms
38 "lienholder," "motor vehicle repair shop," "owner,"
39 and "place of business" for purposes of the Florida
40 Motor Vehicle Repair Act; amending s. 559.917, F.S.;
41 providing for a motor vehicle owner or lienholder to
42 obtain the release of a motor vehicle from a motor
43 vehicle repair shop; revising criteria required to
44 establish an action to compel compliance; amending s.
45 713.585, F.S.; modifying procedures for enforcing
46 liens for labor or services by sale of a motor
47 vehicle; amending s. 713.78, F.S.; clarifying
48 provisions; deleting a return receipt mailing
49 requirement; creating certain rights for lienholders;
50 deleting a provision that allows a complaint to be
51 filed in the county where the owner resides; creating
52 a cause of action to determine the rights of the
53 parties after a vehicle or vessel has been sold;
54 providing for attorney's fees and costs; providing a
55 right of inspection to lienholders; providing an
56 effective date.

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

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

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

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

(1) Whenever any writ~~7~~ issuing out of any court of this state ~~is, shall be~~ delivered to a sheriff~~7~~ commanding the sheriff to levy upon property specifically described therein, it shall be his or her duty to levy upon such property. If a party to whom a writ of replevin has been issued requests expedited service of the writ because the writ is upon property that includes motor vehicles, the sheriff shall expedite service no later than 3 days after such request, subject to payment of the 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.

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

110 78.068 Prejudgment writ of replevin.—

111 (1) A prejudgment writ of replevin may be issued and the
112 property seized delivered forthwith to the petitioners when the
113 nature of the claim and the amount thereof, if any, and the
114 grounds relied upon for the issuance of the writ clearly appear
115 from specific facts shown by the verified petition or by
116 separate affidavit of the petitioner. The court shall advance

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117 the cause on the calendar.

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

120 320.02 Registration required; application for registration;
121 forms.—

122 (17) If any applicant's name appears on a list of persons
123 who may not be issued a license plate, revalidation sticker, or
124 replacement license plate after a written notice to surrender a
125 vehicle was submitted to the department by a lienor as provided
126 in s. 320.1316, the department may withhold renewal of
127 registration or replacement registration of any motor vehicle
128 owned by the applicant at the time the notice was submitted by
129 the lienor. The lienor must maintain proof that written notice
130 to surrender the vehicle was sent to each registered owner
131 pursuant to s. 320.1316(1). A revalidation sticker or
132 replacement license plate may not be issued until that person's
133 name no longer appears on the list or until the person presents
134 documentation from the lienor that the vehicle has been
135 surrendered to the lienor. The department may not withhold an
136 initial registration in connection with an applicant's purchase
137 or lease of a motor vehicle solely because the applicant's name
138 is on the list created by s. 320.1316.

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

141 320.0609 Transfer and exchange of registration license
142 plates; transfer fee.—

143 (2) (a) Upon a sale, trade, transfer, or other disposition
144 of a motor vehicle, the owner shall remove the registration
145 license plate therefrom and either return it or transfer it to a

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146 replacement motor vehicle. No registration license plate shall
147 be temporarily or permanently attached to any new or used
148 replacement or substitute vehicle without filing an application
149 for transfer of such registration license plate and paying the
150 transfer fee of \$4.50 to the department.

151 (b) The requirement to pay a transfer fee does not apply
152 when the replacement vehicle is classified under s.
153 320.08(2)(b), (c), or (d) or (3)(a), (b), or (c) and the
154 original vehicle to be replaced is also classified under s.
155 320.08(2)(b), (c), or (d) or (3)(a), (b), or (c).

156 (c) If a retail sale by a licensed independent motor
157 vehicle dealer results in the transfer of a license plate, a
158 temporary tag shall be issued and displayed during the time that
159 the application for transfer of such registration license plate
160 is being processed, unless the department's records reflect that
161 the transfer has occurred.

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

164 320.131 Temporary tags.—

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

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

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

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175 Section 8. Section 320.1316, Florida Statutes, is created
176 to read:

177 320.1316 Failure to surrender vehicle or vessel.-

178 (1) Upon receipt, from a lienor who claims a lien on a
179 vehicle pursuant to s. 319.27, of written notice to surrender a
180 vehicle or vessel that has been disposed of, concealed, removed,
181 or destroyed by the lienee, the department shall place the name
182 of the registered owner of that vehicle on the list of those
183 persons who, under s. 320.03(8), may not be issued a license
184 plate, revalidation sticker, or replacement license plate for
185 any motor vehicle owned by the lienee at the time the notice was
186 given by the lienor. If the vehicle is owned jointly by more
187 than one person, the name of each registered owner shall be
188 placed on the list.

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

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

192 (b) The name of the registered owner of the vehicle and the
193 address to which the lienor provided notice to the registered
194 owner to surrender the vehicle.

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

197 (d) The vehicle identification number, registration license
198 plate number, if known, or other identification number, as
199 applicable.

200 (3) The registered owner of the vehicle may dispute a
201 notice to surrender the vehicle by notifying the department of
202 the dispute in writing on forms provided by the department and
203 by presenting proof that the vehicle was sold to a motor vehicle

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204 dealer licensed under s. 320.27, a mobile home dealer licensed
205 under s. 320.77, or a recreational vehicle dealer licensed under
206 s. 320.771.

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

209 322.34 Driving while license suspended, revoked, canceled,
210 or disqualified.—

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

214 1. Whether the person's driver's license is suspended or
215 revoked.

216 2. Whether the person's driver's license has remained
217 suspended or revoked since a conviction for the offense of
218 driving with a suspended or revoked license.

219 3. Whether the suspension or revocation was made under s.
220 316.646 or s. 627.733, relating to failure to maintain required
221 security, or under s. 322.264, relating to habitual traffic
222 offenders.

223 4. Whether the driver is the registered owner or coowner of
224 the vehicle.

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

228 (c) Within 7 business days after the date the arresting
229 agency impounds or immobilizes the vehicle, either the arresting
230 agency or the towing service, whichever is in possession of the
231 vehicle, shall send notice by certified mail, ~~return receipt~~
232 ~~requested,~~ to any coregistered owners of the vehicle other than

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233 the person arrested and to each person of record claiming a lien
234 against the vehicle. All costs and fees for the impoundment or
235 immobilization, including the cost of notification, must be paid
236 by the owner of the vehicle or, if the vehicle is leased, by the
237 person leasing the vehicle.

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

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262 immobilized.

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

266 1. The owner presents proof of insurance to the arresting
267 agency; or

268 2. The owner presents proof of sale of the vehicle to the
269 arresting agency and the buyer presents proof of insurance to
270 the arresting agency.

271
272 If proof is not presented within 35 days after the impoundment
273 or immobilization, a lien shall be placed upon such vehicle
274 pursuant to s. 713.78.

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

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291 the clerk of the court shall issue a certificate releasing the
292 vehicle. At the time of release, after reasonable inspection,
293 the owner must give a receipt to the towing or storage company
294 indicating any loss or damage to the vehicle or to the contents
295 of the vehicle.

296 Section 10. Section 559.903, Florida Statutes, is amended
297 to read:

298 559.903 Definitions.—As used in this act:

299 (1) "Customer" means the person who signs the written
300 repair estimate or any other person whom the person who signs
301 the written repair estimate designates on the written repair
302 estimate as a person who may authorize repair work.

303 (2) "Department" means the Department of Agriculture and
304 Consumer Services.

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

308 (4) "Final estimate" means the last estimate approved by
309 the customer either in writing or orally, as evidenced by the
310 written repair estimate.

311 (5) "Lienholder" means the person or entity that holds a
312 lien or security interest on the motor vehicle and who perfected
313 the lien or security interest on the motor vehicle pursuant to
314 s. 319.27.

315 (6)~~(5)~~ "Motor vehicle" means any automobile, truck, bus,
316 recreational vehicle, motorcycle, motor scooter, or other motor
317 powered vehicle, but does not include trailers, mobile homes,
318 travel trailers, trailer coaches without independent motive
319 power, watercraft or aircraft, or special mobile equipment as

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320 defined in s. 316.003(48).

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

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

335 ~~(7)-(8)~~ (7) "Motor vehicle repair" means all maintenance of and
336 modifications and repairs to motor vehicles, and diagnostic work
337 incident thereto, including, but not limited to, the rebuilding
338 or restoring of rebuilt vehicles, body work, painting, warranty
339 work, and other work customarily undertaken by motor vehicle
340 repair shops.

341 (8) "Motor vehicle repair shop" means any person who, for
342 compensation, engages or attempts to engage in the repair of
343 motor vehicles owned by other persons. Motor vehicle repair
344 shops include, but are not limited to, mobile motor vehicle
345 repair shops; motor vehicle and recreational vehicle dealers;
346 garages; service stations; self-employed individuals; truck
347 stops; paint and body shops; brake, muffler, or transmission
348 shops; and shops doing glass work. Any person who engages solely

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349 in the maintenance or repair of the coach portion of a
350 recreational vehicle is not a motor vehicle repair shop.

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

353 (10) "Place of business" means a physical place where the
354 business of motor vehicle repair is conducted, including any
355 vehicle constituting a mobile motor vehicle repair shop from
356 which the business of motor vehicle repair is conducted.

357 Section 11. Section 559.917, Florida Statutes, is amended
358 to read:

359 559.917 Bond to release possessory lien claimed by motor
360 vehicle repair shop.—

361 (1) (a) Any customer may obtain the release of her or his
362 motor vehicle from any lien claimed under part II of chapter 713
363 by a motor vehicle repair shop for repair work performed under a
364 written repair estimate by filing with the clerk of the court in
365 the circuit in which the disputed transaction occurred a cash or
366 surety bond, payable to the person claiming the lien and
367 conditioned for the payment of any judgment which may be entered
368 on the lien. The bond shall be in the amount stated on the
369 invoice required by s. 559.911, plus accrued storage charges, if
370 any, less any amount paid to the motor vehicle repair shop as
371 indicated on the invoice. The customer shall not be required to
372 institute judicial proceedings in order to post the bond in the
373 registry of the court, nor shall the customer be required to use
374 a particular form for posting the bond, unless the clerk shall
375 provide such form to the customer for filing. Upon the posting
376 of such bond, the clerk of the court shall automatically issue a
377 certificate notifying the lienor of the posting of the bond and

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378 directing the lienor to release the customer's motor vehicle.

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

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

386 (2) The failure of a lienor to release or return to the
387 customer, owner, or lienholder the motor vehicle upon which any
388 lien is claimed, upon receiving a copy of a certificate giving
389 notice of the posting of the bond and directing release of the
390 motor vehicle, shall subject the lienor to judicial proceedings
391 which may be brought by the customer, owner, or lienholder to
392 compel compliance with the certificate. Whenever a customer,
393 owner, or lienholder brings an action to compel compliance with
394 the certificate, the customer, owner, or lienholder need only
395 establish that:

396 (a) Bond in the amount of the invoice, plus accrued storage
397 charges, if any, less any amount paid to the motor vehicle
398 repair shop as indicated on the invoice, plus 15 percent, was
399 posted;

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

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

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

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407 The customer, owner, or lienholder, upon a judgment in her or
408 his favor in an action brought under this subsection, may be
409 entitled to damages plus court costs and reasonable attorney's
410 fees sustained by her or him by reason of such wrongful
411 detention or retention. Upon a judgment in favor of the motor
412 vehicle repair shop, the shop may be entitled to reasonable
413 attorney's fees.

414 (3) Any motor vehicle repair shop which, or any employee or
415 agent thereof who is authorized to release the motor vehicle
416 who, upon receiving a copy of a certificate giving notice of the
417 posting of the bond in the required amount and directing release
418 of the motor vehicle, fails to release or return the property to
419 the customer, owner, or lienholder pursuant to this section
420 commits ~~is guilty of~~ a misdemeanor of the second degree,
421 punishable as provided in s. 775.082 or s. 775.083.

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

428 Section 12. Section 713.585, Florida Statutes, is amended
429 to read:

430 713.585 Enforcement of lien by sale of motor vehicle.—A
431 person claiming a lien under s. 713.58 for performing labor or
432 services on a motor vehicle may enforce such lien by sale of the
433 vehicle in accordance with the following procedures:

434 (1) The lienor must give notice, by certified mail, ~~return~~
435 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding

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436 Saturday and Sunday, from the beginning date of the assessment
437 of storage charges on the ~~said~~ motor vehicle, to the registered
438 owner of the vehicle, to the customer as indicated on the order
439 for repair, and to all other persons claiming an interest in or
440 lien thereon, as disclosed by the records of the Department of
441 Highway Safety and Motor Vehicles or of a corresponding agency
442 of any other state in which the vehicle appears registered. Such
443 notice must contain:

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

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

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

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

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

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

460 (g) Notice that the owner of the vehicle or any person
461 claiming an interest in or lien thereon has a right to a hearing
462 at any time prior to the scheduled date of sale by filing a
463 demand for hearing with the clerk of the circuit court in the
464 county in which the vehicle is held and mailing copies of the

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465 demand for hearing to all other owners and lienors as reflected
466 on the notice.

467 (h) Notice that the owner or lienholder of the vehicle has
468 a right to recover possession of the vehicle without instituting
469 judicial proceedings by posting bond in accordance with the
470 provisions of s. 559.917.

471 (i) Notice that any proceeds from the sale of the vehicle
472 remaining after payment of the amount claimed to be due and
473 owing to the lienor will be deposited with the clerk of the
474 circuit court for disposition upon court order pursuant to
475 subsection (8).

476 (2) If attempts to locate the owner or lienholder are
477 unsuccessful, the lienor must notify the local law enforcement
478 agency in writing by certified mail or acknowledged hand
479 delivery that the lienor has been unable to locate the owner or
480 lienholder, that a physical search of the vehicle has disclosed
481 no ownership information, and that a good faith effort has been
482 made. A description of the motor vehicle which includes the
483 year, make, and identification number must be given on the
484 notice. This notification must take place within 10 ~~15~~ business
485 days, excluding Saturday and Sunday, from the beginning date of
486 the assessment of storage charges on the ~~said~~ motor vehicle. For
487 purposes of this paragraph, the term "good faith effort" means
488 that the following checks have been performed by the company to
489 establish the prior state of registration and title:

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

492 (b) A check of vehicle for inspection sticker or other
493 stickers and decals that could indicate the state of possible

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494 registration; and

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

498 (3) If the date of the sale was not included in the notice
499 required in subsection (1), notice of the sale must be sent by
500 certified mail, ~~return receipt requested~~, not less than 15 days
501 before the date of sale, to the customer as indicated on the
502 order for repair, and to all other persons claiming an interest
503 in or lien on the motor vehicle, as disclosed by the records of
504 the Department of Highway Safety and Motor Vehicles or of a
505 corresponding agency of any other state in which the vehicle
506 appears to have been registered. After diligent search and
507 inquiry, if the name and address of the registered owner or the
508 owner of the recorded lien cannot be ascertained, the
509 requirements for this notice may be disregarded.

510 (4) The lienor, at least 15 days before the proposed or
511 scheduled date of sale of the vehicle, shall publish the notice
512 required by this section once in a newspaper circulated in the
513 county where the vehicle is held. A certificate of compliance
514 with the notification provisions of this section, verified by
515 the lienor, together with a copy of the notice ~~and return~~
516 ~~receipt for mailing of the notice required by this section~~, and
517 proof of publication, must be duly and expeditiously filed with
518 the clerk of the circuit court in the county where the vehicle
519 is held. The lienor, at the time of filing the certificate of
520 compliance, must pay to the clerk of that court a service charge
521 of \$10 for indexing and recording the certificate.

522 (5) At any time prior to the proposed or scheduled date of

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523 sale of a vehicle, the owner of the vehicle, or any person
524 claiming an interest in the vehicle or a lien thereon, may file
525 a demand for hearing with the clerk of the circuit court in the
526 county in which the vehicle is held to determine whether the
527 vehicle has been wrongfully taken or withheld from her or him.
528 Any person who files a demand for hearing shall mail copies of
529 the demand to all other owners and lienors as reflected on the
530 notice required in subsection (1). Upon the filing of a demand
531 for hearing, a hearing shall be held prior to the proposed or
532 scheduled date of sale of the vehicle.

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

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

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

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

543 (c) The distribution of any proceeds of the sale by the
544 clerk of the circuit court;

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

547 (e) The reasonableness of storage charges.

548 (8) A vehicle subject to lien enforcement pursuant to this
549 section must be sold by the lienor at public sale. Immediately
550 upon the sale of the vehicle and payment in cash of the purchase
551 price, the lienor shall deposit with the clerk of the circuit

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552 court the proceeds of the sale less the amount claimed by the
553 lienor for work done and storage, if any, and all reasonable
554 costs and expenses incurred in conducting the sale, including
555 any attorney's fees and costs ordered by the court.
556 Simultaneously with depositing the proceeds of sale remaining
557 after payment to the lienor, the lienor shall file with the
558 clerk a verified report of the sale stating a description of the
559 vehicle sold, including the vehicle identification number; the
560 name and address of the purchaser; the date of the sale; and the
561 selling price. The report shall also itemize the amount retained
562 by the lienor pursuant to this section and shall indicate
563 whether a hearing was demanded and held. All proceeds held by
564 the court shall be held for the benefit of the owner of the
565 vehicle or any lienholder whose lien is discharged by the sale
566 and shall be disbursed only upon order of the court. Unless a
567 proceeding is initiated to validate a claim to such proceeds
568 within 1 year and a day from the date of the sale, the proceeds
569 shall be deemed abandoned property and disposition thereof shall
570 be governed by s. 705.103. The clerk shall receive 5 percent of
571 the proceeds deposited with her or him, not to exceed \$25, for
572 her or his services under this section.

573 (9) A copy of the certificate of compliance and the report
574 of sale, certified by the clerk of the court, shall constitute
575 satisfactory proof for application to the Department of Highway
576 Safety and Motor Vehicles for transfer of title, together with
577 any other proof required by any rules and regulations of the
578 department.

579 (10) Nothing contained in this section shall be construed
580 as affecting an owner's right to redeem her or his vehicle from

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581 the lien at any time prior to sale by paying the amount claimed
582 by the lienor for work done and assessed storage charges, plus
583 any costs incurred by the repair shop for utilizing enforcement
584 procedures under this section.

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

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

591 (13) A failure to make good faith efforts as defined in
592 subsection (2) precludes the imposition of any storage charges
593 against the vehicle. If a lienor fails to provide notice to any
594 person claiming a lien on a vehicle under subsection (1) within
595 10 ~~15~~ business days, excluding Saturday or Sunday, after the
596 assessment of storage charges have begun, then the lienor is
597 precluded from charging for more than 15 days of storage, but
598 failure to provide timely notice does not affect charges made
599 for repairs, adjustments, or modifications to the vehicle or the
600 priority of liens on the vehicle.

601 Section 13. Subsections (4), (5), (6), and (10) of section
602 713.78, Florida Statutes, are amended to read:

603 713.78 Liens for recovering, towing, or storing vehicles
604 and vessels.—

605 (4) (a) Any person regularly engaged in the business of
606 recovering, towing, or storing vehicles or vessels who comes
607 into possession of a vehicle or vessel pursuant to subsection
608 (2), and who claims a lien for recovery, towing, or storage
609 services, shall give notice to the registered owner, the

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610 insurance company insuring the vehicle notwithstanding the
611 provisions of s. 627.736, and to all persons claiming a lien
612 thereon, as disclosed by the records in the Department of
613 Highway Safety and Motor Vehicles or of a corresponding agency
614 in any other state.

615 (b) Whenever any law enforcement agency authorizes the
616 removal of a vehicle or vessel or whenever any towing service,
617 garage, repair shop, or automotive service, storage, or parking
618 place notifies the law enforcement agency of possession of a
619 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
620 law enforcement agency of the jurisdiction where the vehicle or
621 vessel is stored shall contact the Department of Highway Safety
622 and Motor Vehicles, or the appropriate agency of the state of
623 registration, if known, within 24 hours through the medium of
624 electronic communications, giving the full description of the
625 vehicle or vessel. Upon receipt of the full description of the
626 vehicle or vessel, the department shall search its files to
627 determine the owner's name, the insurance company insuring the
628 vehicle or vessel, and whether any person has filed a lien upon
629 the vehicle or vessel as provided in s. 319.27(2) and (3) and
630 notify the applicable law enforcement agency within 72 hours.
631 The person in charge of the towing service, garage, repair shop,
632 or automotive service, storage, or parking place shall obtain
633 such information from the applicable law enforcement agency
634 within 5 days after the date of storage and shall give notice
635 pursuant to paragraph (a). The department may release the
636 insurance company information to the requestor notwithstanding
637 the provisions of s. 627.736.

638 (c) Notice by certified mail, ~~return receipt requested,~~

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639 shall be sent within 7 business days after the date of storage
640 of the vehicle or vessel to the registered owner, the insurance
641 company insuring the vehicle notwithstanding the provisions of
642 s. 627.736, and all persons of record claiming a lien against
643 the vehicle or vessel. It shall state the fact of possession of
644 the vehicle or vessel, that a lien as provided in subsection (2)
645 is claimed, that charges have accrued and the amount thereof,
646 that the lien is subject to enforcement pursuant to law, and
647 that the owner or lienholder, if any, has the right to a hearing
648 as set forth in subsection (5), and that any vehicle or vessel
649 which remains unclaimed, or for which the charges for recovery,
650 towing, or storage services remain unpaid, may be sold free of
651 all prior liens after 35 days if the vehicle or vessel is more
652 than 3 years of age or after 50 days if the vehicle or vessel is
653 3 years of age or less.

654 (d) If attempts to locate the name and address of the owner
655 or lienholder prove unsuccessful, the towing-storage operator
656 shall, after 7 working days, excluding Saturday and Sunday, of
657 the initial tow or storage, notify the public agency of
658 jurisdiction where the vehicle or vessel is stored in writing by
659 certified mail or acknowledged hand delivery that the towing-
660 storage company has been unable to locate the name and address
661 of the owner or lienholder and a physical search of the vehicle
662 or vessel has disclosed no ownership information and a good
663 faith effort has been made. For purposes of this paragraph and
664 subsection (9), "good faith effort" means that the following
665 checks have been performed by the company to establish prior
666 state of registration and for title:

667 1. Check of vehicle or vessel for any type of tag, tag

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668 record, temporary tag, or regular tag.

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

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

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

678 5. Check of vehicle or vessel for inspection sticker or
679 other stickers and decals that may indicate a state of possible
680 registration.

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

684 7. Check of vehicle for vehicle identification number.

685 8. Check of vessel for vessel registration number.

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

691 (5) (a) The owner of a vehicle or vessel removed pursuant to
692 the provisions of subsection (2), or any person claiming a lien,
693 other than the towing-storage operator, within 10 days after the
694 time she or he has knowledge of the location of the vehicle or
695 vessel, may file a complaint in the county court of the county
696 in which the vehicle or vessel is stored ~~or in which the owner~~

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697 ~~resides~~ to determine if her or his property was wrongfully taken
698 or withheld from her or him.

699 (b) Upon filing of a complaint, an owner or lienholder may
700 have her or his vehicle or vessel released upon posting with the
701 court a cash or surety bond or other adequate security equal to
702 the amount of the charges for towing or storage and lot rental
703 amount to ensure the payment of such charges in the event she or
704 he does not prevail. Upon the posting of the bond and the
705 payment of the applicable fee set forth in s. 28.24, the clerk
706 of the court shall issue a certificate notifying the lienor of
707 the posting of the bond and directing the lienor to release the
708 vehicle or vessel. At the time of such release, after reasonable
709 inspection, she or he shall give a receipt to the towing-storage
710 company reciting any claims she or he has for loss or damage to
711 the vehicle or vessel or the contents thereof.

712 (c) Upon determining the respective rights of the parties,
713 the court may award damages, attorney's fees, and costs in favor
714 of the prevailing party. In any event, the final order shall
715 provide for immediate payment in full of recovery, towing, and
716 storage fees by the vehicle or vessel owner or lienholder; or
717 the agency ordering the tow; or the owner, lessee, or agent
718 thereof of the property from which the vehicle or vessel was
719 removed.

720 (6) Any vehicle or vessel which is stored pursuant to
721 subsection (2) and which remains unclaimed, or for which
722 reasonable charges for recovery, towing, or storing remain
723 unpaid, and any contents not released pursuant to subsection
724 (10), may be sold by the owner or operator of the storage space
725 for such towing or storage charge after 35 days from the time

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726 the vehicle or vessel is stored therein if the vehicle or vessel
727 is more than 3 years of age or after 50 days following the time
728 the vehicle or vessel is stored therein if the vehicle or vessel
729 is 3 years of age or less. The sale shall be at public sale
730 ~~auction~~ for cash. If the date of the sale was not included in
731 the notice required in subsection (4), notice of the sale shall
732 be given to the person in whose name the vehicle or vessel is
733 registered and to all persons claiming a lien on the vehicle or
734 vessel as shown on the records of the Department of Highway
735 Safety and Motor Vehicles or of the corresponding agency in any
736 other state. Notice shall be sent by certified mail, ~~return~~
737 ~~receipt requested,~~ to the owner of the vehicle or vessel and the
738 person having the recorded lien on the vehicle or vessel at the
739 address shown on the records of the registering agency and shall
740 be mailed not less than 15 days before the date of the sale.
741 After diligent search and inquiry, if the name and address of
742 the registered owner or the owner of the recorded lien cannot be
743 ascertained, the requirements of notice by mail may be dispensed
744 with. In addition to the notice by mail, public notice of the
745 time and place of sale shall be made by publishing a notice
746 thereof one time, at least 10 days prior to the date of the
747 sale, in a newspaper of general circulation in the county in
748 which the sale is to be held. The proceeds of the sale, after
749 payment of reasonable towing and storage charges, and costs of
750 the sale, in that order of priority, shall be deposited with the
751 clerk of the circuit court for the county if the owner or
752 lienholder is absent, and the clerk shall hold such proceeds
753 subject to the claim of the owner or lienholder ~~person~~ legally
754 entitled thereto. The clerk shall be entitled to receive 5

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755 percent of such proceeds for the care and disbursement thereof.
756 The certificate of title issued under this law shall be
757 discharged of all liens unless otherwise provided by court
758 order. The owner or lienholder may file a complaint after the
759 vehicle or vessel has been sold in the county court of the
760 county in which it is stored. Upon determining the respective
761 rights of the parties, the court may award damages, attorney's
762 fees, and costs in favor of the prevailing party.

763 (10) Persons who provide services pursuant to this section
764 shall permit vehicle or vessel owners, lienholders, or their
765 agents, which agency is evidenced by an original writing
766 acknowledged by the owner before a notary public or other person
767 empowered by law to administer oaths, to inspect the towed
768 vehicle or vessel and shall release to the owner, lienholder, or
769 agent the vehicle, vessel, or all personal property not affixed
770 to the vehicle or vessel which was in the vehicle or vessel at
771 the time the vehicle or vessel came into the custody of the
772 person providing such services.

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