

By Senator Crist

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1 A bill to be entitled
2 An act relating to liens for recovering, towing, or
3 storing vehicles and vessels; amending s. 322.34,
4 F.S.; creating certain rights for lienholders;
5 deleting a return receipt mailing requirement;
6 amending s. 713.78, F.S.; clarifying provisions;
7 deleting a return receipt mailing requirement;
8 creating certain rights for lienholders; deleting a
9 provision that allows a complaint to be filed in the
10 county where the owner resides; creating a cause of
11 action to determine the rights of the parties after a
12 vehicle or vessel has been sold; providing for
13 attorney's fees and costs; providing a right of
14 inspection to lienholders; providing an effective
15 date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Subsection (8) of section 322.34, Florida
20 Statutes, is amended to read:

21 322.34 Driving while license suspended, revoked, canceled,
22 or disqualified.—

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

26 1. Whether the person's driver's license is suspended or
27 revoked.

28 2. Whether the person's driver's license has remained
29 suspended or revoked since a conviction for the offense of

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30 driving with a suspended or revoked license.

31 3. Whether the suspension or revocation was made under s.
32 316.646 or s. 627.733, relating to failure to maintain required
33 security, or under s. 322.264, relating to habitual traffic
34 offenders.

35 4. Whether the driver is the registered owner or coowner of
36 the vehicle.

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

40 (c) Within 7 business days after the date the arresting
41 agency impounds or immobilizes the vehicle, either the arresting
42 agency or the towing service, whichever is in possession of the
43 vehicle, shall send notice by certified mail, ~~return receipt~~
44 ~~requested~~, to any coregistered owners of the vehicle other than
45 the person arrested and to each person of record claiming a lien
46 against the vehicle. All costs and fees for the impoundment or
47 immobilization, including the cost of notification, must be paid
48 by the owner of the vehicle or, if the vehicle is leased, by the
49 person leasing the vehicle.

50 (d) Either the arresting agency or the towing service,
51 whichever is in possession of the vehicle, shall determine
52 whether any vehicle impounded or immobilized under this section
53 has been leased or rented or if there are any persons of record
54 with a lien upon the vehicle. Either the arresting agency or the
55 towing service, whichever is in possession of the vehicle, shall
56 notify by express courier service with receipt or certified
57 mail, ~~return receipt requested~~, within 7 business days after the
58 date of the immobilization or impoundment of the vehicle, the

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59 registered owner and all persons having a recorded lien against
60 the vehicle that the vehicle has been impounded or immobilized.
61 A lessor, rental car company, or lienholder may then obtain the
62 vehicle, upon payment of any lawful towing or storage charges.
63 If the vehicle is a rental vehicle subject to a written
64 contract, the charges may be separately charged to the renter,
65 in addition to the rental rate, along with other separate fees,
66 charges, and recoupments disclosed on the rental agreement. If
67 the storage facility fails to provide timely notice to a lessor,
68 rental car company, or lienholder as required by this paragraph,
69 the storage facility shall be responsible for payment of any
70 towing or storage charges necessary to release the vehicle to a
71 lessor, rental car company, or lienholder that accrue after the
72 notice period, which charges may then be assessed against the
73 driver of the vehicle if the vehicle was lawfully impounded or
74 immobilized.

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

78 1. The owner presents proof of insurance to the arresting
79 agency; or

80 2. The owner presents proof of sale of the vehicle to the
81 arresting agency and the buyer presents proof of insurance to
82 the arresting agency.

83

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

87 (f) The owner of a vehicle that is impounded or immobilized

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88 under this subsection may, within 10 days after the date the
89 owner has knowledge of the location of the vehicle, file a
90 complaint in the county in which the owner resides to determine
91 whether the vehicle was wrongfully taken or withheld. Upon the
92 filing of a complaint, the owner or lienholder may have the
93 vehicle released by posting with the court a bond or other
94 adequate security equal to the amount of the costs and fees for
95 impoundment or immobilization, including towing or storage, to
96 ensure the payment of such costs and fees if the owner or
97 lienholder does not prevail. When the vehicle owner or
98 lienholder does not prevail on a complaint that the vehicle was
99 wrongfully taken or withheld, he or she must pay the accrued
100 charges for the immobilization or impoundment, including any
101 towing and storage charges assessed against the vehicle. When
102 the bond is posted and the fee is paid as set forth in s. 28.24,
103 the clerk of the court shall issue a certificate releasing the
104 vehicle. At the time of release, after reasonable inspection,
105 the owner must give a receipt to the towing or storage company
106 indicating any loss or damage to the vehicle or to the contents
107 of the vehicle.

108 Section 2. Subsections (4), (5), (6), and (10) of section
109 713.78, Florida Statutes, are amended to read:

110 713.78 Liens for recovering, towing, or storing vehicles
111 and vessels.-

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

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117 insurance company insuring the vehicle notwithstanding the
118 provisions of s. 627.736, and to all persons claiming a lien
119 thereon, as disclosed by the records in the Department of
120 Highway Safety and Motor Vehicles or of a corresponding agency
121 in any other state.

122 (b) Whenever any law enforcement agency authorizes the
123 removal of a vehicle or vessel or whenever any towing service,
124 garage, repair shop, or automotive service, storage, or parking
125 place notifies the law enforcement agency of possession of a
126 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
127 law enforcement agency of the jurisdiction where the vehicle or
128 vessel is stored shall contact the Department of Highway Safety
129 and Motor Vehicles, or the appropriate agency of the state of
130 registration, if known, within 24 hours through the medium of
131 electronic communications, giving the full description of the
132 vehicle or vessel. Upon receipt of the full description of the
133 vehicle or vessel, the department shall search its files to
134 determine the owner's name, the insurance company insuring the
135 vehicle or vessel, and whether any person has filed a lien upon
136 the vehicle or vessel as provided in s. 319.27(2) and (3) and
137 notify the applicable law enforcement agency within 72 hours.
138 The person in charge of the towing service, garage, repair shop,
139 or automotive service, storage, or parking place shall obtain
140 such information from the applicable law enforcement agency
141 within 5 days after the date of storage and shall give notice
142 pursuant to paragraph (a). The department may release the
143 insurance company information to the requestor notwithstanding
144 the provisions of s. 627.736.

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

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146 shall be sent within 7 business days after the date of storage
147 of the vehicle or vessel to the registered owner, the insurance
148 company insuring the vehicle notwithstanding the provisions of
149 s. 627.736, and all persons of record claiming a lien against
150 the vehicle or vessel. It shall state the fact of possession of
151 the vehicle or vessel, that a lien as provided in subsection (2)
152 is claimed, that charges have accrued and the amount thereof,
153 that the lien is subject to enforcement pursuant to law, and
154 that the owner or lienholder, if any, has the right to a hearing
155 as set forth in subsection (5), and that any vehicle or vessel
156 which remains unclaimed, or for which the charges for recovery,
157 towing, or storage services remain unpaid, may be sold free of
158 all prior liens after 35 days if the vehicle or vessel is more
159 than 3 years of age or after 50 days if the vehicle or vessel is
160 3 years of age or less.

161 (d) If attempts to locate the name and address of the owner
162 or lienholder prove unsuccessful, the towing-storage operator
163 shall, after 7 working days, excluding Saturday and Sunday, of
164 the initial tow or storage, notify the public agency of
165 jurisdiction where the vehicle or vessel is stored in writing by
166 certified mail or acknowledged hand delivery that the towing-
167 storage company has been unable to locate the name and address
168 of the owner or lienholder and a physical search of the vehicle
169 or vessel has disclosed no ownership information and a good
170 faith effort has been made. For purposes of this paragraph and
171 subsection (9), "good faith effort" means that the following
172 checks have been performed by the company to establish prior
173 state of registration and for title:

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

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175 record, temporary tag, or regular tag.

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

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

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

185 5. Check of vehicle or vessel for inspection sticker or
186 other stickers and decals that may indicate a state of possible
187 registration.

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

191 7. Check of vehicle for vehicle identification number.

192 8. Check of vessel for vessel registration number.

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

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

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

206 (b) Upon filing of a complaint, an owner or lienholder may
207 have her or his vehicle or vessel released upon posting with the
208 court a cash or surety bond or other adequate security equal to
209 the amount of the charges for towing or storage and lot rental
210 amount to ensure the payment of such charges in the event she or
211 he does not prevail. Upon the posting of the bond and the
212 payment of the applicable fee set forth in s. 28.24, the clerk
213 of the court shall issue a certificate notifying the lienor of
214 the posting of the bond and directing the lienor to release the
215 vehicle or vessel. At the time of such release, after reasonable
216 inspection, she or he shall give a receipt to the towing-storage
217 company reciting any claims she or he has for loss or damage to
218 the vehicle or vessel or the contents thereof.

219 (c) Upon determining the respective rights of the parties,
220 the court may award damages, attorney's fees, and costs in favor
221 of the prevailing party. In any event, the final order shall
222 provide for immediate payment in full of recovery, towing, and
223 storage fees by the vehicle or vessel owner or lienholder; or
224 the agency ordering the tow; or the owner, lessee, or agent
225 thereof of the property from which the vehicle or vessel was
226 removed.

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

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233 the vehicle or vessel is stored therein if the vehicle or vessel
234 is more than 3 years of age or after 50 days following the time
235 the vehicle or vessel is stored therein if the vehicle or vessel
236 is 3 years of age or less. The sale shall be at public sale
237 ~~auction~~ for cash. If the date of the sale was not included in
238 the notice required in subsection (4), notice of the sale shall
239 be given to the person in whose name the vehicle or vessel is
240 registered and to all persons claiming a lien on the vehicle or
241 vessel as shown on the records of the Department of Highway
242 Safety and Motor Vehicles or of the corresponding agency in any
243 other state. Notice shall be sent by certified mail, ~~return~~
244 ~~receipt requested~~, to the owner of the vehicle or vessel and the
245 person having the recorded lien on the vehicle or vessel at the
246 address shown on the records of the registering agency and shall
247 be mailed not less than 15 days before the date of the sale.
248 After diligent search and inquiry, if the name and address of
249 the registered owner or the owner of the recorded lien cannot be
250 ascertained, the requirements of notice by mail may be dispensed
251 with. In addition to the notice by mail, public notice of the
252 time and place of sale shall be made by publishing a notice
253 thereof one time, at least 10 days prior to the date of the
254 sale, in a newspaper of general circulation in the county in
255 which the sale is to be held. The proceeds of the sale, after
256 payment of reasonable towing and storage charges, and costs of
257 the sale, in that order of priority, shall be deposited with the
258 clerk of the circuit court for the county if the owner or
259 lienholder is absent, and the clerk shall hold such proceeds
260 subject to the claim of the owner or lienholder ~~person~~ legally
261 entitled thereto. The clerk shall be entitled to receive 5

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

270 (10) Persons who provide services pursuant to this section
271 shall permit vehicle or vessel owners, lienholders, or their
272 agents, which agency is evidenced by an original writing
273 acknowledged by the owner before a notary public or other person
274 empowered by law to administer oaths, to inspect the towed
275 vehicle or vessel and shall release to the owner, lienholder, or
276 agent the vehicle, vessel, or all personal property not affixed
277 to the vehicle or vessel which was in the vehicle or vessel at
278 the time the vehicle or vessel came into the custody of the
279 person providing such services.

280 Section 3. This act shall take effect July 1, 2009.