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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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04/28/2009 04:52 PM

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Senator Constantine moved the following:

Senate Amendment (with title amendment)

Delete line 181

and insert:

Section 5. 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



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

21 Section 6. Subsection (1) of section 30.30, Florida
22 Statutes, is amended to read:

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

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

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

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



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42 levy shall state the balance due on such writ.

43 Section 7. Subsection (1) of section 78.065, Florida
44 Statutes, is amended to read:

45 78.065 Order to show cause; contents.-

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

53 Section 8. Subsection (1) of section 78.068, Florida
54 Statutes, is amended to read:

55 78.068 Prejudgment writ of replevin.-

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

63 Section 9. Subsection (17) is added to section 320.02,
64 Florida Statutes, to read:

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

67 (17) If any applicant's name appears on a list of persons
68 who may not be issued a license plate, revalidation sticker, or
69 replacement license plate after a written notice to surrender a
70 vehicle was submitted to the department by a lienor as provided



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

84 Section 10. Subsection (10) is added to section 320.03,
85 Florida Statutes, to read:

86 320.03 Registration; duties of tax collectors;
87 International Registration Plan.-

88 (10) Jurisdiction over the outsourced electronic filing
89 system for use by licensed motor vehicle dealers electronically
90 to title and to register motor vehicles and to issue or to
91 transfer registration license plates or decals is expressly
92 preempted to the state. The department shall continue its
93 current outsourcing of the existing electronic filing system,
94 including its program standards. The electronic filing system is
95 approved for use in all counties, shall apply uniformly to all
96 tax collectors of the state, and no tax collector may add or
97 detract from the program standards in his or her respective
98 county. A motor vehicle dealer licensed under this chapter may
99 charge a fee to the customer for use of the electronic filing



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100 system and such fee is not a component of the program standards.
101 Final authority over disputes relating to program standards lies
102 with the department. By January 1, 2010, the Office of Program
103 Policy Analysis and Government Accountability, with input from
104 the department and from affected parties, including tax
105 collectors, service providers, and motor vehicle dealers, shall
106 report to the President of the Senate and the Speaker of the
107 House of Representatives on the status of the outsourced
108 electronic filing system, including the program standards, and
109 its compliance with this subsection. The report shall identify
110 all public and private alternatives for continued operation of
111 the electronic filing system and shall include any and all
112 appropriate recommendations, including revisions to the program
113 standards.

114 Section 11. Section 320.1316, Florida Statutes, is created
115 to read:

116 320.1316 Failure to surrender vehicle or vessel.-

117 (1) Upon receipt from a lienor who claims a lien on a
118 vehicle pursuant to s. 319.27 by the Department of Highway
119 Safety and Motor Vehicles of written notice to surrender a
120 vehicle or vessel that has been disposed of, concealed, removed,
121 or destroyed by the lienee, the department shall place the name
122 of the registered owner of that vehicle on the list of those
123 persons who may not be issued a license plate, revalidation
124 sticker, or replacement license plate for any motor vehicle
125 under s. 320.03(8) owned by the lienee at the time the notice
126 was given by the lienor. If the vehicle is owned jointly by more
127 than one person, the name of each registered owner shall be
128 placed on the list.



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

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

132 (b) The name of the registered owner of the vehicle and the
133 address to which the lienor provided notice to surrender the
134 vehicle to the registered owner.

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

137 (d) The vehicle identification number, registration license
138 plate number, if known, or other identification number, as
139 applicable.

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

147 Section 12. Section 559.903, Florida Statutes, is amended
148 to read:

149 559.903 Definitions.—As used in this act:

150 (1) "Customer" means the person who signs the written
151 repair estimate or any other person whom the person who signs
152 the written repair estimate designates on the written repair
153 estimate as a person who may authorize repair work.

154 (2) "Department" means the Department of Agriculture and
155 Consumer Services.

156 (3) "Employee" means an individual who is employed full
157 time or part time by a motor vehicle repair shop and performs



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158 motor vehicle repair.

159 (4) "Final estimate" means the last estimate approved by
160 the customer either in writing or orally, as evidenced by the
161 written repair estimate.

162 (5) "Lienholder" means the person or entity that holds a
163 lien or security interest on the motor vehicle and who perfected
164 the lien or security interest on the motor vehicle pursuant to
165 s. 319.27.

166 (6)~~(5)~~ "Motor vehicle" means any automobile, truck, bus,
167 recreational vehicle, motorcycle, motor scooter, or other motor
168 powered vehicle, but does not include trailers, mobile homes,
169 travel trailers, trailer coaches without independent motive
170 power, watercraft or aircraft, or special mobile equipment as
171 defined in s. 316.003(48).

172 (7) "Motor vehicle repair" means all maintenance of and
173 modifications and repairs to motor vehicles, and diagnostic work
174 incident thereto, including, but not limited to, the rebuilding
175 or restoring of rebuilt vehicles, body work, painting, warranty
176 work, and other work customarily undertaken by motor vehicle
177 repair shops.

178 (8)~~(6)~~ "Motor vehicle repair shop" means any person who,
179 for compensation, engages or attempts to engage in the repair of
180 motor vehicles owned by other persons and includes, but is not
181 limited to: mobile motor vehicle repair shops, motor vehicle and
182 recreational vehicle dealers; garages; service stations; self-
183 employed individuals; truck stops; paint and body shops; brake,
184 muffler, or transmission shops; and shops doing glass work. Any
185 person who engages solely in the maintenance or repair of the
186 coach portion of a recreational vehicle is not a motor vehicle



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187 repair shop.

188 ~~(7) "Place of business" means a physical place where the~~
189 ~~business of motor vehicle repair is conducted, including any~~
190 ~~vehicle constituting a mobile motor vehicle repair shop from~~
191 ~~which the business of motor vehicle repair is conducted.~~

192 ~~(8) "Motor vehicle repair" means all maintenance of and~~
193 ~~modifications and repairs to motor vehicles, and diagnostic work~~
194 ~~incident thereto, including, but not limited to, the rebuilding~~
195 ~~or restoring of rebuilt vehicles, body work, painting, warranty~~
196 ~~work, and other work customarily undertaken by motor vehicle~~
197 ~~repair shops.~~

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

200 (10) "Place of business" means a physical place where the
201 business of motor vehicle repair is conducted, including any
202 vehicle constituting a mobile motor vehicle repair shop from
203 which the business of motor vehicle repair is conducted.

204 Section 13. Section 559.917, Florida Statutes, is amended
205 to read:

206 559.917 Bond to release possessory lien claimed by motor
207 vehicle repair shop.—

208 (1) (a) Any customer may obtain the release of her or his
209 motor vehicle from any lien claimed under part II of chapter 713
210 by a motor vehicle repair shop for repair work performed under a
211 written repair estimate by filing with the clerk of the court in
212 the circuit in which the disputed transaction occurred a cash or
213 surety bond, payable to the person claiming the lien and
214 conditioned for the payment of any judgment which may be entered
215 on the lien. The bond shall be in the amount stated on the



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216 invoice required by s. 559.911, plus accrued storage charges, if
217 any, less any amount paid to the motor vehicle repair shop as
218 indicated on the invoice, plus 15 percent. The customer shall
219 not be required to institute judicial proceedings in order to
220 post the bond in the registry of the court, nor shall the
221 customer be required to use a particular form for posting the
222 bond, unless the clerk shall provide such form to the customer
223 for filing. Upon the posting of such bond, the clerk of the
224 court shall automatically issue a certificate notifying the
225 lienor of the posting of the bond and directing the lienor to
226 release the customer's motor vehicle.

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

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

234 (2) The failure of a lienor to release or return to the
235 customer, owner, or lienholder the motor vehicle upon which any
236 lien is claimed, upon receiving a copy of a certificate giving
237 notice of the posting of the bond and directing release of the
238 motor vehicle, shall subject the lienor to judicial proceedings
239 which may be brought by the customer, owner, or lienholder to
240 compel compliance with the certificate. Whenever a customer,
241 owner, or lienholder brings an action to compel compliance with
242 the certificate, the customer, owner, or lienholder need only
243 establish that:

244 (a) Bond in the amount of the invoice, plus accrued storage



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245 charges, if any, less any amount paid to the motor vehicle
246 repair shop as indicated on the invoice, plus 15 percent, was
247 posted;

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

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

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

254

255 The customer, owner, or lienholder, upon a judgment in her or
256 his favor in an action brought under this subsection, may be
257 entitled to damages plus court costs and reasonable attorney's
258 fees sustained by her or him by reason of such wrongful
259 detention or retention. Upon a judgment in favor of the motor
260 vehicle repair shop, the shop may be entitled to reasonable
261 attorney's fees.

262 (3) Any motor vehicle repair shop which, or any employee or
263 agent thereof who is authorized to release the motor vehicle
264 who, upon receiving a copy of a certificate giving notice of the
265 posting of the bond in the required amount and directing release
266 of the motor vehicle, fails to release or return the property to
267 the customer, owner, or lienholder pursuant to this section
268 commits ~~is guilty of~~ a misdemeanor of the second degree,
269 punishable as provided in s. 775.082 or s. 775.083.

270 (4) Any customer, owner, or lienholder who stops payment on
271 a credit card charge or a check drawn in favor of a motor
272 vehicle repair shop on account of an invoice or who fails to
273 post a cash or surety bond pursuant to this section shall be



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274 prohibited from any recourse under this section with respect to
275 the motor vehicle repair shop.

276 Section 14. Section 713.585, Florida Statutes, is amended
277 to read:

278 713.585 Enforcement of lien by sale of motor vehicle.—A
279 person claiming a lien under s. 713.58 for performing labor or
280 services on a motor vehicle may enforce such lien by sale of the
281 vehicle in accordance with the following procedures:

282 (1) The lienor must give notice, by certified mail, ~~return~~
283 ~~receipt requested,~~ within 10 ~~15~~ business days, excluding
284 Saturday and Sunday, from the beginning date of the assessment
285 of storage charges on the ~~said~~ motor vehicle, to the registered
286 owner of the vehicle, to the customer as indicated on the order
287 for repair, and to all other persons claiming an interest in or
288 lien thereon, as disclosed by the records of the Department of
289 Highway Safety and Motor Vehicles or of a corresponding agency
290 of any other state in which the vehicle appears registered. Such
291 notice must contain:

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

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

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

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

302 (e) Notice that the lien claimed by the lienor is subject



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303 to enforcement pursuant to this section and that the vehicle may
304 be sold to satisfy the lien.

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

308 (g) Notice that the owner of the vehicle or any person
309 claiming an interest in or lien thereon has a right to a hearing
310 at any time prior to the scheduled date of sale by filing a
311 demand for hearing with the clerk of the circuit court in the
312 county in which the vehicle is held and mailing copies of the
313 demand for hearing to all other owners and lienors as reflected
314 on the notice.

315 (h) Notice that the owner or lienholder of the vehicle has
316 a right to recover possession of the vehicle without instituting
317 judicial proceedings by posting bond in accordance with the
318 provisions of s. 559.917.

319 (i) Notice that any proceeds from the sale of the vehicle
320 remaining after payment of the amount claimed to be due and
321 owing to the lienor will be deposited with the clerk of the
322 circuit court for disposition upon court order pursuant to
323 subsection (8).

324 (2) If attempts to locate the owner or lienholder are
325 unsuccessful, the lienor must notify the local law enforcement
326 agency in writing by certified mail or acknowledged hand
327 delivery that the lienor has been unable to locate the owner or
328 lienholder, that a physical search of the vehicle has disclosed
329 no ownership information, and that a good faith effort has been
330 made. A description of the motor vehicle which includes the
331 year, make, and identification number must be given on the



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332 notice. This notification must take place within 10 ~~15~~ business
333 days, excluding Saturday and Sunday, from the beginning date of
334 the assessment of storage charges on the ~~said~~ motor vehicle. For
335 purposes of this paragraph, the term "good faith effort" means
336 that the following checks have been performed by the company to
337 establish the prior state of registration and title:

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

340 (b) A check of vehicle for inspection sticker or other
341 stickers and decals that could indicate the state of possible
342 registration; and

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

346 (3) If the date of the sale was not included in the notice
347 required in subsection (1), notice of the sale must be sent by
348 certified mail, ~~return receipt requested~~, not less than 15 days
349 before the date of sale, to the customer as indicated on the
350 order for repair, and to all other persons claiming an interest
351 in or lien on the motor vehicle, as disclosed by the records of
352 the Department of Highway Safety and Motor Vehicles or of a
353 corresponding agency of any other state in which the vehicle
354 appears to have been registered. After diligent search and
355 inquiry, if the name and address of the registered owner or the
356 owner of the recorded lien cannot be ascertained, the
357 requirements for this notice may be disregarded.

358 (4) The lienor, at least 15 days before the proposed or
359 scheduled date of sale of the vehicle, shall publish the notice
360 required by this section once in a newspaper circulated in the



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361 county where the vehicle is held. A certificate of compliance
362 with the notification provisions of this section, verified by
363 the lienor, together with a copy of the notice ~~and return~~
364 ~~receipt for mailing of the notice required by this section,~~ and
365 proof of publication, must be duly and expeditiously filed with
366 the clerk of the circuit court in the county where the vehicle
367 is held. The lienor, at the time of filing the certificate of
368 compliance, must pay to the clerk of that court a service charge
369 of \$10 for indexing and recording the certificate.

370 (5) At any time prior to the proposed or scheduled date of
371 sale of a vehicle, the owner of the vehicle, or any person
372 claiming an interest in the vehicle or a lien thereon, may file
373 a demand for hearing with the clerk of the circuit court in the
374 county in which the vehicle is held to determine whether the
375 vehicle has been wrongfully taken or withheld from her or him.
376 Any person who files a demand for hearing shall mail copies of
377 the demand to all other owners and lienors as reflected on the
378 notice required in subsection (1). Upon the filing of a demand
379 for hearing, a hearing shall be held prior to the proposed or
380 scheduled date of sale of the vehicle.

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

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

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

389 (b) The priority of the lien of the lienor as against any



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390 existing security interest in the vehicle;
391 (c) The distribution of any proceeds of the sale by the
392 clerk of the circuit court;
393 (d) The award of reasonable attorney's fees and costs to
394 the prevailing party; and
395 (e) The reasonableness of storage charges.
396 (8) A vehicle subject to lien enforcement pursuant to this
397 section must be sold by the lienor at public sale. Immediately
398 upon the sale of the vehicle and payment in cash of the purchase
399 price, the lienor shall deposit with the clerk of the circuit
400 court the proceeds of the sale less the amount claimed by the
401 lienor for work done and storage, if any, and all reasonable
402 costs and expenses incurred in conducting the sale, including
403 any attorney's fees and costs ordered by the court.
404 Simultaneously with depositing the proceeds of sale remaining
405 after payment to the lienor, the lienor shall file with the
406 clerk a verified report of the sale stating a description of the
407 vehicle sold, including the vehicle identification number; the
408 name and address of the purchaser; the date of the sale; and the
409 selling price. The report shall also itemize the amount retained
410 by the lienor pursuant to this section and shall indicate
411 whether a hearing was demanded and held. All proceeds held by
412 the court shall be held for the benefit of the owner of the
413 vehicle or any lienholder whose lien is discharged by the sale
414 and shall be disbursed only upon order of the court. Unless a
415 proceeding is initiated to validate a claim to such proceeds
416 within 1 year and a day from the date of the sale, the proceeds
417 shall be deemed abandoned property and disposition thereof shall
418 be governed by s. 705.103. The clerk shall receive 5 percent of



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419 the proceeds deposited with her or him, not to exceed \$25, for
420 her or his services under this section.

421 (9) A copy of the certificate of compliance and the report
422 of sale, certified by the clerk of the court, shall constitute
423 satisfactory proof for application to the Department of Highway
424 Safety and Motor Vehicles for transfer of title, together with
425 any other proof required by any rules and regulations of the
426 department.

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

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

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

439 (13) A failure to make good faith efforts as defined in
440 subsection (2) precludes the imposition of any storage charges
441 against the vehicle. If a lienor fails to provide notice to any
442 person claiming a lien on a vehicle under subsection (1) within
443 10 ~~15~~ business days, excluding Saturday or Sunday, after the
444 assessment of storage charges have begun, then the lienor is
445 precluded from charging for more than 15 days of storage, but
446 failure to provide timely notice does not affect charges made
447 for repairs, adjustments, or modifications to the vehicle or the



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448 priority of liens on the vehicle.

449 Section 15. Subsection (8) of section 322.34, Florida
450 Statutes, is amended to read:

451 322.34 Driving while license suspended, revoked, canceled,
452 or disqualified.—

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

456 1. Whether the person's driver's license is suspended or
457 revoked.

458 2. Whether the person's driver's license has remained
459 suspended or revoked since a conviction for the offense of
460 driving with a suspended or revoked license.

461 3. Whether the suspension or revocation was made under s.
462 316.646 or s. 627.733, relating to failure to maintain required
463 security, or under s. 322.264, relating to habitual traffic
464 offenders.

465 4. Whether the driver is the registered owner or coowner of
466 the vehicle.

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

470 (c) Within 7 business days after the date the arresting
471 agency impounds or immobilizes the vehicle, either the arresting
472 agency or the towing service, whichever is in possession of the
473 vehicle, shall send notice by certified mail, ~~return receipt~~
474 ~~requested,~~ to any coregistered owners of the vehicle other than
475 the person arrested and to each person of record claiming a lien
476 against the vehicle. All costs and fees for the impoundment or



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477 immobilization, including the cost of notification, must be paid
478 by the owner of the vehicle or, if the vehicle is leased, by the
479 person leasing the vehicle.

480 (d) Either the arresting agency or the towing service,
481 whichever is in possession of the vehicle, shall determine
482 whether any vehicle impounded or immobilized under this section
483 has been leased or rented or if there are any persons of record
484 with a lien upon the vehicle. Either the arresting agency or the
485 towing service, whichever is in possession of the vehicle, shall
486 notify by express courier service with receipt or certified
487 mail, ~~return receipt requested,~~ within 7 business days after the
488 date of the immobilization or impoundment of the vehicle, the
489 registered owner and all persons having a recorded lien against
490 the vehicle that the vehicle has been impounded or immobilized.
491 A lessor, rental car company, or lienholder may then obtain the
492 vehicle, upon payment of any lawful towing or storage charges.
493 If the vehicle is a rental vehicle subject to a written
494 contract, the charges may be separately charged to the renter,
495 in addition to the rental rate, along with other separate fees,
496 charges, and recoupments disclosed on the rental agreement. If
497 the storage facility fails to provide timely notice to a lessor,
498 rental car company, or lienholder as required by this paragraph,
499 the storage facility shall be responsible for payment of any
500 towing or storage charges necessary to release the vehicle to a
501 lessor, rental car company, or lienholder that accrue after the
502 notice period, which charges may then be assessed against the
503 driver of the vehicle if the vehicle was lawfully impounded or
504 immobilized.

505 (e) Except as provided in paragraph (d), the vehicle shall



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506 remain impounded or immobilized for any period imposed by the
507 court until:

508 1. The owner presents proof of insurance to the arresting
509 agency; or

510 2. The owner presents proof of sale of the vehicle to the
511 arresting agency and the buyer presents proof of insurance to
512 the arresting agency.

513

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

517 (f) The owner of a vehicle that is impounded or immobilized
518 under this subsection may, within 10 days after the date the
519 owner has knowledge of the location of the vehicle, file a
520 complaint in the county in which the owner resides to determine
521 whether the vehicle was wrongfully taken or withheld. Upon the
522 filing of a complaint, the owner or lienholder may have the
523 vehicle released by posting with the court a bond or other
524 adequate security equal to the amount of the costs and fees for
525 impoundment or immobilization, including towing or storage, to
526 ensure the payment of such costs and fees if the owner or
527 lienholder does not prevail. When the vehicle owner or
528 lienholder does not prevail on a complaint that the vehicle was
529 wrongfully taken or withheld, he or she must pay the accrued
530 charges for the immobilization or impoundment, including any
531 towing and storage charges assessed against the vehicle. When
532 the bond is posted and the fee is paid as set forth in s. 28.24,
533 the clerk of the court shall issue a certificate releasing the
534 vehicle. At the time of release, after reasonable inspection,



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535 the owner must give a receipt to the towing or storage company
536 indicating any loss or damage to the vehicle or to the contents
537 of the vehicle.

538 Section 16. Subsections (4), (5), (6), and (10) of section
539 713.78, Florida Statutes, are amended to read:

540 713.78 Liens for recovering, towing, or storing vehicles
541 and vessels.-

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

552 (b) Whenever any law enforcement agency authorizes the
553 removal of a vehicle or vessel or whenever any towing service,
554 garage, repair shop, or automotive service, storage, or parking
555 place notifies the law enforcement agency of possession of a
556 vehicle or vessel pursuant to s. 715.07(2)(a)2., the ~~applicable~~
557 law enforcement agency of the jurisdiction where the vehicle or
558 vessel is stored shall contact the Department of Highway Safety
559 and Motor Vehicles, or the appropriate agency of the state of
560 registration, if known, within 24 hours through the medium of
561 electronic communications, giving the full description of the
562 vehicle or vessel. Upon receipt of the full description of the
563 vehicle or vessel, the department shall search its files to



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564 determine the owner's name, the insurance company insuring the
565 vehicle or vessel, and whether any person has filed a lien upon
566 the vehicle or vessel as provided in s. 319.27(2) and (3) and
567 notify the applicable law enforcement agency within 72 hours.
568 The person in charge of the towing service, garage, repair shop,
569 or automotive service, storage, or parking place shall obtain
570 such information from the applicable law enforcement agency
571 within 5 days after the date of storage and shall give notice
572 pursuant to paragraph (a). The department may release the
573 insurance company information to the requestor notwithstanding
574 the provisions of s. 627.736.

575 (c) Notice by certified mail, ~~return receipt requested,~~
576 shall be sent within 7 business days after the date of storage
577 of the vehicle or vessel to the registered owner, the insurance
578 company insuring the vehicle notwithstanding the provisions of
579 s. 627.736, and all persons of record claiming a lien against
580 the vehicle or vessel. It shall state the fact of possession of
581 the vehicle or vessel, that a lien as provided in subsection (2)
582 is claimed, that charges have accrued and the amount thereof,
583 that the lien is subject to enforcement pursuant to law, and
584 that the owner or lienholder, if any, has the right to a hearing
585 as set forth in subsection (5), and that any vehicle or vessel
586 which remains unclaimed, or for which the charges for recovery,
587 towing, or storage services remain unpaid, may be sold free of
588 all prior liens after 35 days if the vehicle or vessel is more
589 than 3 years of age or after 50 days if the vehicle or vessel is
590 3 years of age or less.

591 (d) If attempts to locate the name and address of the owner
592 or lienholder prove unsuccessful, the towing-storage operator



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

- 604 1. Check of vehicle or vessel for any type of tag, tag
605 record, temporary tag, or regular tag.
- 606 2. Check of law enforcement report for tag number or other
607 information identifying the vehicle or vessel, if the vehicle or
608 vessel was towed at the request of a law enforcement officer.
- 609 3. Check of trip sheet or tow ticket of tow truck operator
610 to see if a tag was on vehicle or vessel at beginning of tow, if
611 private tow.
- 612 4. If there is no address of the owner on the impound
613 report, check of law enforcement report to see if an out-of-
614 state address is indicated from driver license information.
- 615 5. Check of vehicle or vessel for inspection sticker or
616 other stickers and decals that may indicate a state of possible
617 registration.
- 618 6. Check of the interior of the vehicle or vessel for any
619 papers that may be in the glove box, trunk, or other areas for a
620 state of registration.
- 621 7. Check of vehicle for vehicle identification number.



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622 8. Check of vessel for vessel registration number.

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

628 (5) (a) The owner of a vehicle or vessel removed pursuant to
629 the provisions of subsection (2), or any person claiming a lien,
630 other than the towing-storage operator, within 10 days after the
631 time she or he has knowledge of the location of the vehicle or
632 vessel, may file a complaint in the county court of the county
633 in which the vehicle or vessel is stored ~~or in which the owner~~
634 ~~resides~~ to determine if her or his property was wrongfully taken
635 or withheld from her or him.

636 (b) Upon filing of a complaint, an owner or lienholder may
637 have her or his vehicle or vessel released upon posting with the
638 court a cash or surety bond or other adequate security equal to
639 the amount of the charges for towing or storage and lot rental
640 amount to ensure the payment of such charges in the event she or
641 he does not prevail. Upon the posting of the bond and the
642 payment of the applicable fee set forth in s. 28.24, the clerk
643 of the court shall issue a certificate notifying the lienor of
644 the posting of the bond and directing the lienor to release the
645 vehicle or vessel. At the time of such release, after reasonable
646 inspection, she or he shall give a receipt to the towing-storage
647 company reciting any claims she or he has for loss or damage to
648 the vehicle or vessel or the contents thereof.

649 (c) Upon determining the respective rights of the parties,
650 the court may award damages, attorney's fees, and costs in favor



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651 of the prevailing party. In any event, the final order shall
652 provide for immediate payment in full of recovery, towing, and
653 storage fees by the vehicle or vessel owner or lienholder; or
654 the agency ordering the tow; or the owner, lessee, or agent
655 thereof of the property from which the vehicle or vessel was
656 removed.

657 (6) Any vehicle or vessel which is stored pursuant to
658 subsection (2) and which remains unclaimed, or for which
659 reasonable charges for recovery, towing, or storing remain
660 unpaid, and any contents not released pursuant to subsection
661 (10), may be sold by the owner or operator of the storage space
662 for such towing or storage charge after 35 days from the time
663 the vehicle or vessel is stored therein if the vehicle or vessel
664 is more than 3 years of age or after 50 days following the time
665 the vehicle or vessel is stored therein if the vehicle or vessel
666 is 3 years of age or less. The sale shall be at public sale
667 ~~auction~~ for cash. If the date of the sale was not included in
668 the notice required in subsection (4), notice of the sale shall
669 be given to the person in whose name the vehicle or vessel is
670 registered and to all persons claiming a lien on the vehicle or
671 vessel as shown on the records of the Department of Highway
672 Safety and Motor Vehicles or of the corresponding agency in any
673 other state. Notice shall be sent by certified mail, ~~return~~
674 ~~receipt requested~~, to the owner of the vehicle or vessel and the
675 person having the recorded lien on the vehicle or vessel at the
676 address shown on the records of the registering agency and shall
677 be mailed not less than 15 days before the date of the sale.
678 After diligent search and inquiry, if the name and address of
679 the registered owner or the owner of the recorded lien cannot be



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680 ascertained, the requirements of notice by mail may be dispensed
681 with. In addition to the notice by mail, public notice of the
682 time and place of sale shall be made by publishing a notice
683 thereof one time, at least 10 days prior to the date of the
684 sale, in a newspaper of general circulation in the county in
685 which the sale is to be held. The proceeds of the sale, after
686 payment of reasonable towing and storage charges, and costs of
687 the sale, in that order of priority, shall be deposited with the
688 clerk of the circuit court for the county if the owner or
689 lienholder is absent, and the clerk shall hold such proceeds
690 subject to the claim of the owner or lienholder ~~person~~ legally
691 entitled thereto. The clerk shall be entitled to receive 5
692 percent of such proceeds for the care and disbursement thereof.
693 The certificate of title issued under this law shall be
694 discharged of all liens unless otherwise provided by court
695 order. The owner or lienholder may file a complaint after the
696 vehicle or vessel has been sold in the county court of the
697 county in which it is stored. Upon determining the respective
698 rights of the parties, the court may award damages, attorney's
699 fees, and costs in favor of the prevailing party.

700 (10) Persons who provide services pursuant to this section
701 shall permit vehicle or vessel owners, lienholders, or their
702 agents, which agency is evidenced by an original writing
703 acknowledged by the owner before a notary public or other person
704 empowered by law to administer oaths, to inspect the towed
705 vehicle or vessel and shall release to the owner, lienholder, or
706 agent the vehicle, vessel, or all personal property not affixed
707 to the vehicle or vessel which was in the vehicle or vessel at
708 the time the vehicle or vessel came into the custody of the



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709 person providing such services.

710 Section 17. Effective October 1, 2009, paragraph (c) is
711 added to subsection (2) of section 320.0609, Florida Statutes,
712 to read:

713 320.0609 Transfer and exchange of registration license
714 plates; transfer fee.-

715 (2)

716 (c) If a retail sale by a licensed independent motor
717 vehicle dealer results in the transfer of a registration license
718 plate, a temporary tag shall be issued and displayed during the
719 time that the application for transfer of such registration
720 license plate is being processed unless the department's records
721 reflect that the transfer has occurred. However, this paragraph
722 shall not apply to independent motor vehicle dealers that are
723 owned by principals that also hold a franchise motor vehicle
724 dealer license in this state. This paragraph is repealed June
725 30, 2010.

726 Section 18. Effective July 1, 2010, subsection (8) is added
727 to section 320.0609, Florida Statutes, to read:

728 320.0609 Transfer and exchange of registration license
729 plates; transfer fee.-

730 (8) (a) When the owner of a vehicle transfers a registration
731 license plate to a replacement or substitute vehicle acquired
732 from a motor vehicle dealer licensed under this chapter, the
733 dealer shall timely provide to the department, via an electronic
734 system administered by the department for this purpose,
735 information regarding the transfer which is required by the
736 department. The dealer shall also give the owner written notice
737 documenting the transfer if the dealer cannot timely provide the



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738 required transfer information to the department due to system or
739 connectivity problems. The dealer shall maintain all records
740 required by the department which must be open to inspection by
741 the department or its agents during reasonable business hours.
742 The dealer may charge the vehicle owner a fee to comply with
743 this subsection. The department may charge a fee of \$2 to be
744 deposited into the Highway Safety Operating Trust Fund for each
745 transfer in addition to any other fee imposed by law.

746 (b) A dealer is not required to comply with paragraph (a)
747 if the department's records are otherwise modified on the date
748 of transfer to reflect that the transfer has occurred.

749 (c) The department has authority to adopt rules pursuant to
750 ss. 120.536(1) and 120.54 to administer this subsection.

751 Section 19. Effective October 1, 2009, paragraph (m) is
752 added to subsection (1) of section 320.131, Florida Statutes, to
753 read:

754 320.131 Temporary tags.-

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

758 (m) For a retail sale by a licensed independent motor
759 vehicle dealer when an application for the transfer of a
760 registration license plate is being processed. This paragraph is
761 repealed June 30, 2010.

762
763 Further, the department is authorized to disallow the purchase
764 of temporary tags by licensed dealers, common carriers, or
765 financial institutions in those cases where abuse has occurred.

766 Section 20. Paragraphs (d) and (i) of subsection (6) of



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767 section 316.193, Florida Statutes, are amended, and subsections
768 (13) and (14) are added to that section, to read:

769 316.193 Driving under the influence; penalties.—

770 (6) With respect to any person convicted of a violation of
771 subsection (1), regardless of any penalty imposed pursuant to
772 subsection (2), subsection (3), or subsection (4):

773 (d) The court must at the time of sentencing the defendant
774 issue an order for the impoundment or immobilization of a
775 vehicle. The order of impoundment or immobilization must include
776 the name and telephone numbers of all immobilization agencies
777 meeting all of the conditions of subsection (13). Within 7
778 business days after the date that the court issues the order of
779 impoundment or immobilization, the clerk of the court must send
780 notice by certified mail, return receipt requested, to the
781 registered owner of each vehicle, if the registered owner is a
782 person other than the defendant, and to each person of record
783 claiming a lien against the vehicle.

784 (i) All costs and fees for the impoundment or
785 immobilization, including the cost of notification, must be paid
786 by the owner of the vehicle or, if the vehicle is leased or
787 rented, by the person leasing or renting the vehicle, unless the
788 impoundment or immobilization order is dismissed. All provisions
789 of s. 713.78 shall apply. The costs and fees for the impoundment
790 or immobilization must be paid directly to the person impounding
791 or immobilizing the vehicle.

792
793 For the purposes of this section, any conviction for a violation
794 of s. 327.35; a previous conviction for the violation of former
795 s. 316.1931, former s. 860.01, or former s. 316.028; or a



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796 previous conviction outside this state for driving under the
797 influence, driving while intoxicated, driving with an unlawful
798 blood-alcohol level, driving with an unlawful breath-alcohol
799 level, or any other similar alcohol-related or drug-related
800 traffic offense, is also considered a previous conviction for
801 violation of this section. However, in satisfaction of the fine
802 imposed pursuant to this section, the court may, upon a finding
803 that the defendant is financially unable to pay either all or
804 part of the fine, order that the defendant participate for a
805 specified additional period of time in public service or a
806 community work project in lieu of payment of that portion of the
807 fine which the court determines the defendant is unable to pay.
808 In determining such additional sentence, the court shall
809 consider the amount of the unpaid portion of the fine and the
810 reasonable value of the services to be ordered; however, the
811 court may not compute the reasonable value of services at a rate
812 less than the federal minimum wage at the time of sentencing.

813 (13) If personnel of the circuit court or the sheriff do
814 not immobilize vehicles, only immobilization agencies that meet
815 the conditions of this subsection shall immobilize vehicles in
816 that judicial circuit.

817 (a) The immobilization agency responsible for immobilizing
818 vehicles in that judicial circuit shall be subject to strict
819 compliance with all of the following conditions and
820 restrictions:

821 1. Any immobilization agency engaged in the business of
822 immobilizing vehicles shall:

823 a. Have a class "R" license issued pursuant to part IV of
824 chapter 493;



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825 b. Have at least 3 years of verifiable experience in
826 immobilizing vehicles; and

827 c. Maintain accurate and complete records of all payments
828 for the immobilization, copies of all documents pertaining to
829 the court's order of impoundment or immobilization, and any
830 other documents relevant to each immobilization. Such records
831 must be maintained by the immobilization agency for at least 3
832 years.

833 2. The person who immobilizes a vehicle must never have
834 been convicted of any felony or of driving or boating under the
835 influence of alcohol or a controlled substance in the last 3
836 years.

837 (b) A person who violates paragraph (a) commits a
838 misdemeanor of the first degree, punishable as provided in s.
839 775.082 or s. 775.083.

840 (c) Any immobilization agency who is aggrieved by a
841 person's violation of paragraph (a) may bring a civil action
842 against the person who violated paragraph (a) seeking injunctive
843 relief, damages, reasonable attorney's fees and costs, and any
844 other remedy available at law or in equity as may be necessary
845 to enforce this subsection. In any action to enforce this
846 subsection, establishment of a violation of paragraph (a) shall
847 conclusively establish a clear legal right to injunctive relief,
848 that irreparable harm will be caused if an injunction does not
849 issue, that no adequate remedy at law exists, and that public
850 policy favors issuance of injunctive relief.

851 (14) As used in this chapter, the term:

852 (a) "Immobilization," "immobilizing," or "immobilize" means
853 the act of installing a vehicle antitheft device on the steering



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854 wheel of a vehicle, the act of placing a tire lock or wheel
855 clamp on a vehicle, or a governmental agency's act of taking
856 physical possession of the license tag and vehicle registration
857 rendering a vehicle legally inoperable to prevent any person
858 from operating the vehicle pursuant to an order of impoundment
859 or immobilization under subsection (6).

860 (b) "Immobilization agency" or "immobilization agencies"
861 means any firm, company, agency, organization, partnership,
862 corporation, association, trust, or other business entity of any
863 kind whatsoever that meets all of the conditions of subsection
864 (13).

865 (c) "Impoundment," "impounding," or "impound" means the act
866 of storing a vehicle at a storage facility pursuant to an order
867 of impoundment or immobilization under subsection (6) where the
868 person impounding the vehicle exercises control, supervision,
869 and responsibility over the vehicle.

870 (d) "Person" means any individual, firm, company, agency,
871 organization, partnership, corporation, association, trust, or
872 other business entity of any kind whatsoever.

873 Section 21. Except as otherwise expressly provided in this
874 act, this act shall take effect July 1, 2009.

875
876 ===== T I T L E A M E N D M E N T =====

877 And the title is amended as follows:

878 Delete line 16

879 and insert:

880 trauma centers; amending s. 30.231, F.S.; authorizing
881 sheriffs expediting execution of a writ of replevin to
882 recover certain additional expenses; amending s.



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883 30.30, F.S.; requiring sheriffs to expedite certain
884 writs of replevin within a specified amount of time;
885 amending s. 78.065, F.S.; requiring courts to advance
886 certain matters related to writs of replevin on the
887 calendar; amending s. 78.068, F.S.; requiring courts
888 to advance certain matters related to prejudgment
889 writs of replevin on the calendar; amending s. 320.02,
890 F.S.; authorizing the Department of Highway Safety and
891 Motor Vehicles to withhold renewal of registration or
892 replacement registration of specified motor vehicles
893 under certain circumstances; amending s. 320.03, F.S.;
894 preemption jurisdiction over the outsourced electronic
895 filing system to the state; requiring the department
896 to continue its current outsourcing of the existing
897 electronic filing system; approving the system for use
898 in all counties; authorizing motor vehicle dealers to
899 charge certain fees; requiring a report from the
900 Office of Program Policy Analysis and Government
901 Accountability by a specified date; creating s.
902 320.1316, F.S.; providing responsibilities of the
903 department relating to the issuance of a license
904 plate, revalidation sticker, or replacement license
905 plate for certain vehicles; requiring the department
906 to create a notice to surrender form; providing
907 procedures for the dispute of a notice to surrender;
908 amending s. 559.903, F.S.; defining the terms
909 "lienholder" and "owner" for purposes of the Florida
910 Motor Vehicle Repair Act; amending s. 559.917, F.S.;
911 revising the amount of the bond required to release a



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912 possessory lien claimed by a motor vehicle repair
913 shop; providing for a motor vehicle owner or
914 lienholder to obtain the release of a motor vehicle
915 from a motor vehicle repair shop; revising criteria
916 required to establish an action to compel compliance;
917 amending s. 713.585, F.S.; modifying procedures for
918 enforcing liens for labor or services by sale of a
919 motor vehicle; amending s. 322.34, F.S.; creating
920 certain rights for lienholders; deleting a return
921 receipt mailing requirement; amending s. 713.78, F.S.;
922 clarifying provisions; deleting a return receipt
923 mailing requirement; creating certain rights for
924 lienholders; deleting a provision that allows a
925 complaint to be filed in the county where the owner
926 resides; creating a cause of action to determine the
927 rights of the parties after a vehicle or vessel has
928 been sold; providing for attorney's fees and costs;
929 providing a right of inspection to lienholders;
930 amending s. 320.0609, F.S., relating to the transfer
931 and exchange of registration license plates and
932 transfer fees; requiring that a temporary tag be
933 issued and displayed during the time that an
934 application for a transfer of a registration license
935 plate is being processed; providing exceptions;
936 amending s. 320.131, F.S.; authorizing the department
937 to issue temporary tags for the time that an
938 application for a transfer of a registration license
939 plate is being processed; amending s. 320.0609, F.S.,
940 relating to the transfer and exchange of registration



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941 license plates and transfer fees; requiring a licensed
942 motor vehicle dealer to provide certain required
943 information via an electronic system to the department
944 when the owner of a vehicle transfers a registration
945 license plate to a replacement or substitute vehicle
946 acquired from the dealer; providing that the
947 electronic system shall be administered by the
948 department; requiring the dealer to give the owner
949 written notice documenting the transfer if the dealer
950 cannot provide the required transfer information to
951 the department under certain circumstances; requiring
952 the dealer to maintain certain records; providing for
953 the dealer and the department to charge a fee;
954 providing for exceptions; authorizing the department
955 to adopt rules; amending s. 316.193, F.S.; requiring
956 the court to include in the order of impoundment or
957 immobilization the names and telephone numbers of
958 immobilization agencies that meet specified
959 requirements; requiring the person whose vehicle is
960 ordered to be impounded or immobilized to pay the
961 impoundment or immobilization fees and costs directly
962 to the person impounding or immobilizing the vehicle;
963 establishing conditions and restrictions for
964 immobilization agencies who are engaged in the
965 business of immobilizing vehicles in judicial circuits
966 where personnel of the court or sheriff do not
967 immobilize vehicles; providing penalties for violating
968 such conditions and restrictions; authorizing
969 aggrieved immobilization agency to initiate a civil



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970 action against a person who commits such violation;
971 providing for attorney's fees and costs; defining the
972 terms "immobilization," "immobilize," "immobilizing,"
973 "immobilization agency," "immobilization agencies,"
974 "impound," "impounding," "impoundment," and "person";
975 providing effective dates.