

By Senator Simmons

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1 A bill to be entitled
2 An act relating to liens for recovering, towing, or
3 storing vehicles or vessels; amending s. 713.78, F.S.;
4 defining the term "department"; revising procedures
5 for notification concerning liens for the recovery of
6 certain costs for recovering, towing, or storing a
7 vehicle or vessel; removing the authority of the
8 Department of Highway Safety and Motor Vehicles to
9 release information concerning the insurance company;
10 establishing fees for the lien notification; revising
11 requirements governing the contents of the
12 notification; revising requirements for locating and
13 notifying persons about the impending sale of an
14 unclaimed vehicle or vessel or its contents; revising
15 requirements concerning public notice of the impending
16 sale; removing duplicative provisions concerning
17 rulemaking by the department; amending s. 715.07,
18 F.S.; conforming cross-references to changes made by
19 the act; providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsections (1), (4), and (6), paragraphs (b)
24 and (c) of subsection (11), paragraph (d) of subsection (12),
25 and paragraphs (a) and (g) of subsection (13) of section 713.78,
26 Florida Statutes, are amended to read:

27 713.78 Liens for recovering, towing, or storing vehicles
28 and vessels.—

29 (1) For the purposes of this section, the term:

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30 (a) "Department" means the Department of Highway Safety and
31 Motor Vehicles.

32 (b)~~(a)~~ "Vehicle" means any mobile item, whether motorized
33 or not, which is mounted on wheels.

34 (c)~~(b)~~ "Vessel" means every description of watercraft,
35 barge, and airboat used or capable of being used as a means of
36 transportation on water, other than a seaplane or a "documented
37 vessel" as defined in s. 327.02(9).

38 (d)~~(e)~~ "Wrecker" means any truck or other vehicle which is
39 used to tow, carry, or otherwise transport motor vehicles or
40 vessels upon the streets and highways of this state and which is
41 equipped for that purpose with a boom, winch, car carrier, or
42 other similar equipment.

43 (4) (a) Any person regularly engaged in the business of
44 recovering, towing, or storing vehicles or vessels who comes
45 into possession of a vehicle or vessel pursuant to subsection
46 (2), and who claims a lien for recovery, towing, or storage
47 services, shall give notice to the registered owner, the
48 insurance company insuring the vehicle notwithstanding the
49 provisions of s. 627.736, and ~~to~~ all persons claiming a lien
50 thereon by submitting an application for notifications to the
51 department on a form prescribed by the department within 7
52 business days after the date of storage of the vehicle or vessel
53 and shall maintain an invoice for such services with the
54 signature of the operator who provided the service or the
55 signature of an employee of the business attesting to the
56 accuracy of the information on the invoice, ~~as disclosed by the~~
57 ~~records in the Department of Highway Safety and Motor Vehicles~~
58 ~~or of a corresponding agency in any other state.~~

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59 (b) When a ~~Whenever any~~ law enforcement agency authorizes
60 the removal of a vehicle or vessel or a ~~whenever any~~ towing
61 service, garage, repair shop, or automotive service, storage, or
62 parking place notifies the law enforcement agency of possession
63 of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law
64 enforcement agency of the jurisdiction where the vehicle or
65 vessel is stored shall contact the department ~~of Highway Safety~~
66 ~~and Motor Vehicles,~~ or the appropriate agency of the state of
67 registration, if known, within 24 hours through the medium of
68 electronic communications, giving the full description of the
69 vehicle or vessel. Upon receipt of the full description of the
70 vehicle or vessel, the department shall search its files to
71 determine the owner's name, the insurance company insuring the
72 vehicle or vessel, and whether any person has filed a lien upon
73 the vehicle or vessel as provided in s. 319.27(2) and (3) and
74 notify the applicable law enforcement agency within 72 hours.
75 The person in charge of the towing service, garage, repair shop,
76 or automotive service, storage, or parking place shall obtain
77 such information from the applicable law enforcement agency
78 within 5 days after the date of storage and shall give notice
79 pursuant to paragraph (a). ~~The department may release the~~
80 ~~insurance company information to the requester notwithstanding~~
81 ~~the provisions of s. 627.736.~~

82 (c) Upon receipt of a valid and complete application for
83 notifications, the required notification fee of \$4, and the
84 service fees required under s. 320.04, the department shall
85 notify ~~Notice by certified mail shall be sent within 7 business~~
86 ~~days after the date of storage of the vehicle or vessel to the~~
87 registered owner, the insurance company insuring the vehicle

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88 notwithstanding the provisions of s. 627.736, and all persons of
89 record claiming a lien against the vehicle or vessel. The
90 notification must indicate the company or individual who has ~~it~~
91 ~~shall state the fact of possession of the vehicle or vessel,~~
92 that a lien as provided in subsection (2) is claimed, that
93 charges have accrued and the amount thereof, that the lien is
94 subject to enforcement pursuant to law, ~~and~~ that the owner or
95 lienholder, if any, has the right to a hearing as set forth in
96 subsection (5), and that any vehicle or vessel that ~~which~~
97 remains unclaimed, or for which the charges for recovery,
98 towing, or storage services remain unpaid, may be sold free of
99 all prior liens ~~after~~ 35 days after the date of the notification
100 if the vehicle or vessel is more than 3 years of age or ~~after~~ 50
101 days after the date of notification if the vehicle or vessel is
102 3 years of age or less.

103 (d) If the department is unable ~~attempts~~ to locate the name
104 and address of the owner or lienholder ~~prove unsuccessful~~, the
105 department shall notify the towing-storage operator. Upon
106 receipt of such notice, the towing-storage operator shall
107 conduct, ~~after 7 working days, excluding Saturday and Sunday,~~ of
108 ~~the initial tow or storage, notify the public agency of~~
109 ~~jurisdiction where the vehicle or vessel is stored in writing by~~
110 ~~certified mail or acknowledged hand delivery that the towing-~~
111 ~~storage company has been unable to locate the name and address~~
112 ~~of the owner or lienholder and a physical search of the vehicle~~
113 or vessel and make a good faith effort to determine ~~has~~
114 ~~disclosed no ownership information and a good faith effort has~~
115 ~~been made.~~ The towing-storage operator shall send notice of the
116 sale by certified mail to any potential owner, lienor, or

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117 insurance company discovered through the physical search and
118 good faith effort.

119 (e) As used in ~~For purposes of this~~ paragraph (d) and
120 subsection (9), the term "good faith effort" means that the
121 following checks have been performed by the company to establish
122 prior state of registration and for title:

123 1. Check of vehicle or vessel for any type of tag, tag
124 record, temporary tag, or regular tag.

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

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

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

134 5. Check of vehicle or vessel for inspection sticker or
135 other stickers and decals that may indicate a state of possible
136 registration.

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

140 7. Check of vehicle for vehicle identification number.

141 8. Check of vessel for vessel registration number.

142 9. Check of vessel hull for a hull identification number
143 that ~~which~~ should be carved, burned, stamped, embossed, or
144 otherwise permanently affixed to the outboard side of the
145 transom or, if there is no transom, to the outmost seaboard side

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146 at the end of the hull which ~~that~~ bears the rudder or other
147 steering mechanism.

148 (6) Any vehicle or vessel that ~~which~~ is stored pursuant to
149 subsection (2) and that ~~which~~ remains unclaimed, or for which
150 reasonable charges for recovery, towing, or storing remain
151 unpaid, and any contents not released pursuant to subsection
152 (10), may be sold by the owner or operator of the storage space
153 for such towing or storage charge ~~after~~ 35 days after ~~from~~ the
154 date notification was sent under subsection (4) that ~~time~~ the
155 vehicle or vessel is stored therein if the vehicle or vessel is
156 more than 3 years of age or ~~after~~ 50 days after the date that
157 such notification was sent ~~following the time the vehicle or~~
158 ~~vessel is stored therein~~ if the vehicle or vessel is 3 years of
159 age or less. The sale shall be at public sale for cash. ~~If the~~
160 ~~date of the sale was not included in the notice required in~~
161 ~~subsection (4), notice of the sale shall be given to the person~~
162 ~~in whose name the vehicle or vessel is registered and to all~~
163 ~~persons claiming a lien on the vehicle or vessel as shown on the~~
164 ~~records of the Department of Highway Safety and Motor Vehicles~~
165 ~~or of the corresponding agency in any other state. Notice shall~~
166 ~~be sent by certified mail to the owner of the vehicle or vessel~~
167 ~~and the person having the recorded lien on the vehicle or vessel~~
168 ~~at the address shown on the records of the registering agency~~
169 ~~and shall be mailed not less than 15 days before the date of the~~
170 ~~sale. After diligent search and inquiry, if the name and address~~
171 ~~of the registered owner or the owner of the recorded lien cannot~~
172 ~~be ascertained, the requirements of notice by mail may be~~
173 ~~dispensed with.~~ In addition to the notice by mail, public notice
174 of the time and place of sale shall be made by publishing a

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175 notice thereof one time, at least 10 days before ~~prior to~~ the
176 date of the sale, in a newspaper of general circulation in the
177 county in which the sale is to be held. The public notice must
178 include the vehicle or vessel identification or hull number and
179 a description of the vehicle or vessel, including make, model,
180 and year of manufacture. The proceeds of the sale, after payment
181 of reasonable towing and storage charges, and costs of the sale,
182 in that order of priority, shall be deposited with the clerk of
183 the circuit court for the county where the sale was held if the
184 owner or lienholder is absent, and the clerk shall hold such
185 proceeds subject to the claim of the owner or lienholder legally
186 entitled thereto. The clerk shall be entitled to receive 5
187 percent of such proceeds for the care and disbursement thereof.
188 The certificate of title issued under this law shall be
189 discharged of all liens unless otherwise provided by court
190 order. The owner or lienholder may file a complaint after the
191 vehicle or vessel has been sold in the county court of the
192 county in which it is stored. Upon determining the respective
193 rights of the parties, the court may award damages, attorney's
194 fees, and costs in favor of the prevailing party.

195 (11)

196 (b) The department ~~of Highway Safety and Motor Vehicles~~
197 shall charge a fee of \$3 for each certificate of destruction. A
198 service charge of \$4.25 shall be collected and retained by the
199 tax collector who processes the application.

200 ~~(c) The Department of Highway Safety and Motor Vehicles may~~
201 ~~adopt such rules as it deems necessary or proper for the~~
202 ~~administration of this subsection.~~

203 (12)

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204 (d) Employees of the department ~~of Highway Safety and Motor~~
205 ~~Vehicles~~ and law enforcement officers may ~~are authorized to~~
206 inspect the records of any person regularly engaged in the
207 business of recovering, towing, or storing vehicles or vessels
208 or transporting vehicles or vessels by wrecker, tow truck, or
209 car carrier, to ensure compliance with the requirements of this
210 section. Any person who fails to maintain records, or fails to
211 produce records when required in a reasonable manner and at a
212 reasonable time, commits a misdemeanor of the first degree,
213 punishable as provided in s. 775.082 or s. 775.083.

214 (13) (a) Upon the department's receipt ~~by the department of~~
215 ~~Highway Safety and Motor Vehicles~~ of written notice from a
216 wrecker operator who claims a wrecker operator's lien under
217 paragraph (2) (c) or paragraph (2) (d) for recovery, towing, or
218 storage of an abandoned vehicle or vessel upon instructions from
219 any law enforcement agency, for which a certificate of
220 destruction has been issued under subsection (11), the
221 department shall place the name of the registered owner of that
222 vehicle or vessel on the list of those persons who may not be
223 issued a license plate or revalidation sticker for any motor
224 vehicle under s. 320.03(8). If the vehicle or vessel is owned
225 jointly by more than one person, the name of each registered
226 owner shall be placed on the list. The notice of wrecker
227 operator's lien shall be submitted on forms provided by the
228 department, which must include:

229 1. The name, address, and telephone number of the wrecker
230 operator.

231 2. The name of the registered owner of the vehicle or
232 vessel and the address to which the wrecker operator provided

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233 notice of the lien to the registered owner under subsection (4).

234 3. A general description of the vehicle or vessel,
235 including its color, make, model, body style, and year.

236 4. The vehicle identification number (VIN); registration
237 license plate number, state, and year; validation decal number,
238 state, and year; vessel registration number; hull identification
239 number; or other identification number, as applicable.

240 5. The name of the person or the corresponding law
241 enforcement agency that requested that the vehicle or vessel be
242 recovered, towed, or stored.

243 6. The amount of the wrecker operator's lien, not to exceed
244 the amount allowed by paragraph (b).

245 (g) ~~The department of Highway Safety and Motor Vehicles~~ may
246 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
247 this section ~~subsection~~.

248 Section 2. Paragraph (a) of subsection (2) of section
249 715.07, Florida Statutes, is amended to read:

250 715.07 Vehicles or vessels parked on private property;
251 towing.—

252 (2) The owner or lessee of real property, or any person
253 authorized by the owner or lessee, which person may be the
254 designated representative of the condominium association if the
255 real property is a condominium, may cause any vehicle or vessel
256 parked on such property without her or his permission to be
257 removed by a person regularly engaged in the business of towing
258 vehicles or vessels, without liability for the costs of removal,
259 transportation, or storage or damages caused by such removal,
260 transportation, or storage, under any of the following
261 circumstances:

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262 (a) The towing or removal of any vehicle or vessel from
263 private property without the consent of the registered owner or
264 other legally authorized person in control of that vehicle or
265 vessel is subject to strict compliance with the following
266 conditions and restrictions:

267 1.a. Any towed or removed vehicle or vessel must be stored
268 at a site within a 10-mile radius of the point of removal in any
269 county of 500,000 population or more, and within a 15-mile
270 radius of the point of removal in any county of less than
271 500,000 population. That site must be open for the purpose of
272 redemption of vehicles on any day that the person or firm towing
273 such vehicle or vessel is open for towing purposes, from 8:00
274 a.m. to 6:00 p.m., and, when closed, shall have prominently
275 posted a sign indicating a telephone number where the operator
276 of the site can be reached at all times. Upon receipt of a
277 telephoned request to open the site to redeem a vehicle or
278 vessel, the operator shall return to the site within 1 hour or
279 she or he will be in violation of this section.

280 b. If no towing business providing such service is located
281 within the area of towing limitations set forth in sub-
282 subparagraph a., the following limitations apply: any towed or
283 removed vehicle or vessel must be stored at a site within a 20-
284 mile radius of the point of removal in any county of 500,000
285 population or more, and within a 30-mile radius of the point of
286 removal in any county of less than 500,000 population.

287 2. The person or firm towing or removing the vehicle or
288 vessel shall, within 30 minutes after completion of such towing
289 or removal, notify the municipal police department or, in an
290 unincorporated area, the sheriff, of such towing or removal, the

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291 storage site, the time the vehicle or vessel was towed or
292 removed, and the make, model, color, and license plate number of
293 the vehicle or description and registration number of the vessel
294 and shall obtain the name of the person at that department to
295 whom such information was reported and note that name on the
296 trip record.

297 3. A person in the process of towing or removing a vehicle
298 or vessel from the premises or parking lot in which the vehicle
299 or vessel is not lawfully parked must stop when a person seeks
300 the return of the vehicle or vessel. The vehicle or vessel must
301 be returned upon the payment of a reasonable service fee of not
302 more than one-half of the posted rate for the towing or removal
303 service as provided in subparagraph 6. The vehicle or vessel may
304 be towed or removed if, after a reasonable opportunity, the
305 owner or legally authorized person in control of the vehicle or
306 vessel is unable to pay the service fee. If the vehicle or
307 vessel is redeemed, a detailed signed receipt must be given to
308 the person redeeming the vehicle or vessel.

309 4. A person may not pay or accept money or other valuable
310 consideration for the privilege of towing or removing vehicles
311 or vessels from a particular location.

312 5. Except for property appurtenant to and obviously a part
313 of a single-family residence, and except for instances when
314 notice is personally given to the owner or other legally
315 authorized person in control of the vehicle or vessel that the
316 area in which that vehicle or vessel is parked is reserved or
317 otherwise unavailable for unauthorized vehicles or vessels and
318 that the vehicle or vessel is subject to being removed at the
319 owner's or operator's expense, any property owner or lessee, or

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320 person authorized by the property owner or lessee, before ~~prior~~
321 ~~to~~ towing or removing any vehicle or vessel from private
322 property without the consent of the owner or other legally
323 authorized person in control of that vehicle or vessel, must
324 post a notice meeting the following requirements:

325 a. The notice must be prominently placed at each driveway
326 access or curb cut allowing vehicular access to the property,
327 within 5 feet from the public right-of-way line. If there are no
328 curbs or access barriers, the signs must be posted not less than
329 one sign for each 25 feet of lot frontage.

330 b. The notice must clearly indicate, in not less than 2-
331 inch high, light-reflective letters on a contrasting background,
332 that unauthorized vehicles will be towed away at the owner's
333 expense. The words "tow-away zone" must be included on the sign
334 in not less than 4-inch high letters.

335 c. The notice must also provide the name and current
336 telephone number of the person or firm towing or removing the
337 vehicles or vessels.

338 d. The sign structure containing the required notices must
339 be permanently installed with the words "tow-away zone" not less
340 than 3 feet and not more than 6 feet above ground level and must
341 be continuously maintained on the property for not less than 24
342 hours before ~~prior to~~ the towing or removal of any vehicles or
343 vessels.

344 e. The local government may require permitting and
345 inspection of these signs before ~~prior to~~ any towing or removal
346 of vehicles or vessels is being authorized.

347 f. A business with 20 or fewer parking spaces satisfies the
348 notice requirements of this subparagraph by prominently

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349 displaying a sign stating "Reserved Parking for Customers Only
350 Unauthorized Vehicles or Vessels Will be Towed Away At the
351 Owner's Expense" in not less than 4-inch high, light-reflective
352 letters on a contrasting background.

353 g. A property owner towing or removing vessels from real
354 property must post notice, consistent with the requirements in
355 sub-subparagraphs a.-f., which apply to vehicles, that
356 unauthorized vehicles or vessels will be towed away at the
357 owner's expense.

358

359 A business owner or lessee may authorize the removal of a
360 vehicle or vessel by a towing company when the vehicle or vessel
361 is parked in such a manner that restricts the normal operation
362 of business; and if a vehicle or vessel parked on a public
363 right-of-way obstructs access to a private driveway the owner,
364 lessee, or agent may have the vehicle or vessel removed by a
365 towing company upon signing an order that the vehicle or vessel
366 be removed without a posted tow-away zone sign.

367 6. Any person or firm that tows or removes vehicles or
368 vessels and proposes to require an owner, operator, or person in
369 control of a vehicle or vessel to pay the costs of towing and
370 storage before ~~prior to~~ redemption of the vehicle or vessel must
371 file and keep on record with the local law enforcement agency a
372 complete copy of the current rates to be charged for such
373 services and post at the storage site an identical rate schedule
374 and any written contracts with property owners, lessees, or
375 persons in control of property which authorize such person or
376 firm to remove vehicles or vessels as provided in this section.

377 7. Any person or firm towing or removing any vehicles or

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378 vessels from private property without the consent of the owner
379 or other legally authorized person in control of the vehicles or
380 vessels shall, on any trucks, wreckers as defined in s.
381 713.78(1) ~~s. 713.78(1)(e)~~, or other vehicles used in the towing
382 or removal, have the name, address, and telephone number of the
383 company performing such service clearly printed in contrasting
384 colors on the driver and passenger sides of the vehicle. The
385 name shall be in at least 3-inch permanently affixed letters,
386 and the address and telephone number shall be in at least 1-inch
387 permanently affixed letters.

388 8. Vehicle entry for the purpose of removing the vehicle or
389 vessel shall be allowed with reasonable care on the part of the
390 person or firm towing the vehicle or vessel. Such person or firm
391 shall be liable for any damage occasioned to the vehicle or
392 vessel if such entry is not in accordance with the standard of
393 reasonable care.

394 9. When a vehicle or vessel has been towed or removed
395 pursuant to this section, it must be released to its owner or
396 custodian within one hour after requested. Any vehicle or vessel
397 owner or agent shall have the right to inspect the vehicle or
398 vessel before accepting its return, and no release or waiver of
399 any kind which would release the person or firm towing the
400 vehicle or vessel from liability for damages noted by the owner
401 or other legally authorized person at the time of the redemption
402 may be required from any vehicle or vessel owner, custodian, or
403 agent as a condition of release of the vehicle or vessel to its
404 owner. A detailed, signed receipt showing the legal name of the
405 company or person towing or removing the vehicle or vessel must
406 be given to the person paying towing or storage charges at the

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407 time of payment, whether requested or not.

408 Section 3. This act shall take effect October 1, 2011.