

1 A bill to be entitled
 2 An act relating to towing-storage operator liens;
 3 amending s. 713.78, F.S.; requiring certain lien
 4 notices be sent through a third-party mailing service;
 5 providing a definition; requiring third-party mailing
 6 services to apply to the Department of Highway Safety
 7 and Motor Vehicles; requiring the department to
 8 approve an application if certain conditions are met;
 9 authorizing the department to deny, suspend, or revoke
 10 its approval under certain circumstances; requiring a
 11 third-party mailing service to maintain certain
 12 records for a specified period and allow inspection of
 13 such records by the department; requiring the
 14 department to adopt rules; providing an effective
 15 date.

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

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 19 Section 1. Paragraphs (c) and (d) of subsection (4) and
 20 subsection (6) of section 713.78, Florida Statutes, are amended,
 21 and subsection (14) is added to that section, to read:

22 713.78 Liens for recovering, towing, or storing vehicles
 23 and vessels.—

24 (4)

25 (c) ~~Notice by certified mail shall be sent~~ Within 7

26 | business days after the date of storage of the vehicle or
27 | vessel, the towing-storage operator shall, through a third-party
28 | mailing service approved by the Department of Highway Safety and
29 | Motor Vehicles, send notice by certified mail to the registered
30 | owner, the insurance company insuring the vehicle
31 | notwithstanding the provisions of s. 627.736, and all persons of
32 | record claiming a lien against the vehicle or vessel. The notice
33 | ~~It~~ shall state the fact of possession of the vehicle or vessel,
34 | that a lien as provided in subsection (2) is claimed, that
35 | charges have accrued and the amount thereof, that the lien is
36 | subject to enforcement pursuant to law, and that the owner or
37 | lienholder, if any, has the right to a hearing as set forth in
38 | subsection (5), and that any vehicle or vessel which remains
39 | unclaimed, or for which the charges for recovery, towing, or
40 | storage services remain unpaid, may be sold free of all prior
41 | liens after 35 days if the vehicle or vessel is more than 3
42 | years of age or after 50 days if the vehicle or vessel is 3
43 | years of age or less.

44 | (d) If attempts to locate the name and address of the
45 | owner or lienholder prove unsuccessful, ~~the towing-storage~~
46 | ~~operator shall, after 7 business working days, excluding~~
47 | ~~Saturday and Sunday,~~ of the initial tow or storage, the towing-
48 | storage operator shall, through a third-party mailing service
49 | approved by the Department of Highway Safety and Motor Vehicles,
50 | send notice by certified mail to ~~notify~~ the public agency of

51 jurisdiction where the vehicle or vessel is stored ~~in writing by~~
52 ~~certified mail or acknowledged hand delivery~~ that the towing-
53 storage company has been unable to locate the name and address
54 of the owner or lienholder and a physical search of the vehicle
55 or vessel has disclosed no ownership information and a good
56 faith effort has been made, including records checks of the
57 Department of Highway Safety and Motor Vehicles database and the
58 National Motor Vehicle Title Information System or an equivalent
59 commercially available system. For purposes of this paragraph
60 and subsection (9), "good faith effort" means that the following
61 checks have been performed by the company to establish prior
62 state of registration and for title:

63 1. Check of the Department of Highway Safety and Motor
64 Vehicles database for the owner and any lienholder.

65 2. Check of the electronic National Motor Vehicle Title
66 Information System or an equivalent commercially available
67 system to determine the state of registration when there is not
68 a current registration record for the vehicle on file with the
69 Department of Highway Safety and Motor Vehicles.

70 3. Check of vehicle or vessel for any type of tag, tag
71 record, temporary tag, or regular tag.

72 4. Check of law enforcement report for tag number or other
73 information identifying the vehicle or vessel, if the vehicle or
74 vessel was towed at the request of a law enforcement officer.

75 5. Check of trip sheet or tow ticket of tow truck operator

76 | to see if a tag was on vehicle or vessel at beginning of tow, if
77 | private tow.

78 | 6. If there is no address of the owner on the impound
79 | report, check of law enforcement report to see if an out-of-
80 | state address is indicated from driver license information.

81 | 7. Check of vehicle or vessel for inspection sticker or
82 | other stickers and decals that may indicate a state of possible
83 | registration.

84 | 8. Check of the interior of the vehicle or vessel for any
85 | papers that may be in the glove box, trunk, or other areas for a
86 | state of registration.

87 | 9. Check of vehicle for vehicle identification number.

88 | 10. Check of vessel for vessel registration number.

89 | 11. Check of vessel hull for a hull identification number
90 | which should be carved, burned, stamped, embossed, or otherwise
91 | permanently affixed to the outboard side of the transom or, if
92 | there is no transom, to the outmost seaboard side at the end of
93 | the hull that bears the rudder or other steering mechanism.

94 | (6) Any vehicle or vessel which is stored pursuant to
95 | subsection (2) and which remains unclaimed, or for which
96 | reasonable charges for recovery, towing, or storing remain
97 | unpaid, and any contents not released pursuant to subsection
98 | (10), may be sold by the owner or operator of the storage space
99 | for such towing or storage charge after 35 days from the time
100 | the vehicle or vessel is stored therein if the vehicle or vessel

101 is more than 3 years of age or after 50 days following the time
102 the vehicle or vessel is stored therein if the vehicle or vessel
103 is 3 years of age or less. The sale shall be at public sale for
104 cash. If the date of the sale was not included in the notice
105 required in subsection (4), notice of the sale shall be given to
106 the person in whose name the vehicle or vessel is registered and
107 to all persons claiming a lien on the vehicle or vessel as shown
108 on the records of the Department of Highway Safety and Motor
109 Vehicles or of any corresponding agency in any other state in
110 which the vehicle is identified through a records check of the
111 National Motor Vehicle Title Information System or an equivalent
112 commercially available system as being titled. The towing-
113 storage operator shall, through a third-party mailing service
114 approved by the Department of Highway Safety and Motor Vehicles,
115 send notice ~~shall be sent~~ by certified mail to the owner of the
116 vehicle or vessel and the person having the recorded lien on the
117 vehicle or vessel at the address shown on the records of the
118 registering agency and shall be mailed not less than 15 days
119 before the date of the sale. After diligent search and inquiry,
120 if the name and address of the registered owner or the owner of
121 the recorded lien cannot be ascertained, the requirements of
122 notice by mail may be dispensed with. In addition to the notice
123 by mail, public notice of the time and place of sale shall be
124 made by publishing a notice thereof one time, at least 10 days
125 before ~~prior to~~ the date of the sale, in a newspaper of general

126 | circulation in the county in which the sale is to be held. The
127 | proceeds of the sale, after payment of reasonable towing and
128 | storage charges, and costs of the sale, in that order of
129 | priority, shall be deposited with the clerk of the circuit court
130 | for the county if the owner or lienholder is absent, and the
131 | clerk shall hold such proceeds subject to the claim of the owner
132 | or lienholder legally entitled thereto. The clerk shall be
133 | entitled to receive 5 percent of such proceeds for the care and
134 | disbursement thereof. The certificate of title issued under this
135 | law shall be discharged of all liens unless otherwise provided
136 | by court order. The owner or lienholder may file a complaint
137 | after the vehicle or vessel has been sold in the county court of
138 | the county in which it is stored. Upon determining the
139 | respective rights of the parties, the court may award damages,
140 | attorney's fees, and costs in favor of the prevailing party.

141 | (14) (a) For purposes of this section, the term "third-
142 | party mailing service" means a person who, upon a request
143 | submitted through a website by a towing-storage operator:

144 | 1. Obtains the owner, lienholder, or insurer information,
145 | as applicable, for a vehicle or vessel from the Department of
146 | Highway Safety and Motor Vehicles.

147 | 2. Prepares or assists the towing-storage operator in
148 | preparing a notice required by this section through the website.

149 | 3. Prints and sends the notice to the intended recipient
150 | by certified mail.

151 4. Electronically returns tracking information or other
152 proof of mailing and delivery of the notice to the towing-
153 storage operator.

154 (b) A third-party mailing service must apply to the
155 department and be approved in order to provide notices under
156 this section. The department shall prescribe the format for such
157 applications. The department must approve a third-party mailing
158 service if the applicant is qualified to provide the services
159 described in paragraph (a). The department may deny, suspend, or
160 revoke approval of a third-party mailing service if the
161 department determines that the third-party mailing service has
162 committed an act of fraud or misrepresentation related to a
163 notice required by this section.

164 (c) A third-party mailing service must maintain all
165 records related to providing notices under this section for 3
166 years and allow the department to inspect such records upon
167 request. The records may be maintained in electronic format.

168 (d) The department shall adopt rules to administer this
169 section.

170 Section 2. This act shall take effect July 1, 2019.