

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 specified third-party  
5 mailing service; deleting authorization of certain  
6 attorney fees; revising requirements for the  
7 inspection and release of vehicles or vessels and  
8 personal property in such vehicles or vessels;  
9 providing a definition; requiring third-party mailing  
10 services to apply to the Department of Highway Safety  
11 and Motor Vehicles; authorizing the department to  
12 approve an application if certain conditions are met;  
13 requiring approved third-party notification services  
14 to maintain a performance bond and conduct an annual  
15 audit; authorizing the department to deny, suspend, or  
16 revoke its approval under certain circumstances;  
17 requiring a third-party mailing service to maintain  
18 certain records for a specified period and allow  
19 inspection and copying of such records by the  
20 department; authorizing towing-storage operators to  
21 send notices on their own behalf under certain  
22 circumstances; providing an effective date.

23  
24 Be It Enacted by the Legislature of the State of Florida:  
25

26 Section 1. Paragraphs (c) and (d) of subsection (4) and  
 27 subsections (6) and (10) of section 713.78, Florida Statutes,  
 28 are amended, and subsection (14) is added to that section, to  
 29 read:

30 713.78 Liens for recovering, towing, or storing vehicles  
 31 and vessels.—

32 (4)

33 (c) ~~Notice by certified mail shall be sent~~ Within 7  
 34 business days after the date of storage of the vehicle or  
 35 vessel, the towing-storage operator shall, through a third-party  
 36 notification service approved by the Department of Highway  
 37 Safety and Motor Vehicles, send notice by certified mail to the  
 38 registered owner, the insurance company insuring the vehicle or  
 39 vessel notwithstanding the provisions of s. 627.736, and all  
 40 persons of record claiming a lien against the vehicle or vessel.  
 41 The notice ~~It~~ shall state the fact of possession of the vehicle  
 42 or vessel, that a lien as provided in subsection (2) is claimed,  
 43 that charges have accrued and the amount thereof, that the lien  
 44 is subject to enforcement pursuant to law, and that the owner or  
 45 lienholder, if any, has the right to a hearing as set forth in  
 46 subsection (5), and that any vehicle or vessel which remains  
 47 unclaimed, or for which the charges for recovery, towing, or  
 48 storage services remain unpaid, may be sold free of all prior  
 49 liens after 35 days if the vehicle or vessel is more than 3  
 50 years of age or after 50 days if the vehicle or vessel is 3

51 | years of age or less.

52 |         (d) If attempts to locate the name and address of the  
 53 | owner or lienholder prove unsuccessful, ~~the towing-storage~~  
 54 | ~~operator shall,~~ after 7 business working days, ~~excluding~~  
 55 | ~~Saturday and Sunday,~~ of the initial tow or storage, the towing-  
 56 | storage operator shall, through a third-party notification  
 57 | service approved by the Department of Highway Safety and Motor  
 58 | Vehicles, send notice by certified mail to notify the public  
 59 | agency of jurisdiction where the vehicle or vessel is stored ~~in~~  
 60 | ~~writing by certified mail or acknowledged hand delivery~~ that the  
 61 | towing-storage company has been unable to locate the name and  
 62 | address of the owner or lienholder and a physical search of the  
 63 | vehicle or vessel has disclosed no ownership information and a  
 64 | good faith effort has been made, including records checks of the  
 65 | Department of Highway Safety and Motor Vehicles database and the  
 66 | National Motor Vehicle Title Information System or an equivalent  
 67 | commercially available system. For purposes of this paragraph  
 68 | and subsection (9), "good faith effort" means that the following  
 69 | checks have been performed by the company to establish prior  
 70 | state of registration and for title:

71 |             1. Check of the Department of Highway Safety and Motor  
 72 | Vehicles database for the owner and any lienholder.

73 |             2. Check of the electronic National Motor Vehicle Title  
 74 | Information System or an equivalent commercially available  
 75 | system to determine the state of registration when there is not

76 a current registration record for the vehicle on file with the  
77 Department of Highway Safety and Motor Vehicles.

78 3. Check of vehicle or vessel for any type of tag, tag  
79 record, temporary tag, or regular tag.

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

83 5. Check of trip sheet or tow ticket of tow truck operator  
84 to see if a tag was on vehicle or vessel at beginning of tow, if  
85 private tow.

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

89 7. Check of vehicle or vessel for inspection sticker or  
90 other stickers and decals that may indicate a state of possible  
91 registration.

92 8. Check of the interior of the vehicle or vessel for any  
93 papers that may be in the glove box, trunk, or other areas for a  
94 state of registration.

95 9. Check of vehicle for vehicle identification number.

96 10. Check of vessel for vessel registration number.

97 11. Check of vessel hull for a hull identification number  
98 which should be carved, burned, stamped, embossed, or otherwise  
99 permanently affixed to the outboard side of the transom or, if  
100 there is no transom, to the outmost seaboard side at the end of

101 the hull that bears the rudder or other steering mechanism.

102 (6) Any vehicle or vessel which is stored pursuant to  
103 subsection (2) and which remains unclaimed, or for which  
104 reasonable charges for recovery, towing, or storing remain  
105 unpaid, and any contents not released pursuant to subsection  
106 (10), may be sold by the owner or operator of the storage space  
107 for such towing or storage charge after 35 days from the time  
108 the vehicle or vessel is stored therein if the vehicle or vessel  
109 is more than 3 years of age or after 50 days following the time  
110 the vehicle or vessel is stored therein if the vehicle or vessel  
111 is 3 years of age or less. The sale shall be at public sale for  
112 cash. If the date of the sale was not included in the notice  
113 required in subsection (4), notice of the sale shall be given to  
114 the person in whose name the vehicle or vessel is registered and  
115 to all persons claiming a lien on the vehicle or vessel as shown  
116 on the records of the Department of Highway Safety and Motor  
117 Vehicles or of any corresponding agency in any other state in  
118 which the vehicle is identified through a records check of the  
119 National Motor Vehicle Title Information System or an equivalent  
120 commercially available system as being titled. The towing-  
121 storage operator shall, through a third-party notification  
122 service approved by the Department of Highway Safety and Motor  
123 Vehicles, send notice ~~shall be sent~~ by certified mail to the  
124 owner of the vehicle or vessel and the person having the  
125 recorded lien on the vehicle or vessel at the address shown on

126 | the records of the registering agency and shall be mailed not  
127 | less than 15 days before the date of the sale. After diligent  
128 | search and inquiry, if the name and address of the registered  
129 | owner or the owner of the recorded lien cannot be ascertained,  
130 | the requirements of notice by mail may be dispensed with. In  
131 | addition to the notice by mail, public notice of the time and  
132 | place of sale shall be made by publishing a notice thereof one  
133 | time, at least 10 days before ~~prior to~~ the date of the sale, in  
134 | a newspaper of general circulation in the county in which the  
135 | sale is to be held. The proceeds of the sale, after payment of  
136 | reasonable towing and storage charges, and costs of the sale, in  
137 | that order of priority, shall be deposited with the clerk of the  
138 | circuit court for the county if the owner or lienholder is  
139 | absent, and the clerk shall hold such proceeds subject to the  
140 | claim of the owner or lienholder legally entitled thereto. The  
141 | clerk shall be entitled to receive 5 percent of such proceeds  
142 | for the care and disbursement thereof. The certificate of title  
143 | issued under this law shall be discharged of all liens unless  
144 | otherwise provided by court order. The owner or lienholder may  
145 | file a complaint after the vehicle or vessel has been sold in  
146 | the county court of the county in which it is stored. Upon  
147 | determining the respective rights of the parties, the court may  
148 | award damages, ~~attorney's fees,~~ and costs in favor of the  
149 | prevailing party.

150 |       (10) Immediately upon the arrival of a vehicle or vessel

151 owner, lienholder, insurance company representative, or agent of  
 152 the vehicle or vessel owner, and before the payment of any  
 153 towing or storage charges, a person ~~Persons~~ who provides ~~provide~~  
 154 services under ~~pursuant to~~ this section shall permit:

155 (a) The vehicle or vessel owner, lienholder, or insurance  
 156 company representative, upon presentation of documentation of  
 157 ownership or the recorded claim of lien, such as the vehicle or  
 158 vessel registration, lease or contract, title certificate,  
 159 electronic title, or lien sale notice; or ~~owners, lienholders,~~  
 160 ~~insurance company representatives, or their agents,~~

161 (b) The agent of the vehicle or vessel owner, which agency  
 162 is evidenced by an original writing acknowledged by the owner  
 163 before a notary public or other person empowered by law to  
 164 administer oaths,

165  
 166 to inspect the towed vehicle or vessel and shall release to the  
 167 owner, lienholder, insurance company representative, or agent  
 168 ~~the vehicle, vessel, or~~ all personal property not affixed to the  
 169 vehicle or vessel which was in the vehicle or vessel at the time  
 170 the vehicle or vessel came into the custody of the person  
 171 providing such services. Upon receipt of the documentation  
 172 required under paragraph (a) or paragraph (b) and payment of the  
 173 towing and storage charges, the person providing such services  
 174 shall release the vehicle or vessel to the owner, lienholder,  
 175 insurance company representative, or agent paying the charges.

- 176        (14) (a) For purposes of this section, the term "third-  
177 party notification service" means a qualified business entity  
178 that, upon a request submitted through a website by a towing-  
179 storage operator:
- 180            1. Accesses the Department of Highway Safety and Motor  
181 Vehicles' database and the National Motor Vehicle Title  
182 Information System, or an equivalent commercially available  
183 system, to obtain any owner, lienholder, or insurer information  
184 necessary for sending a notice required by this section.
- 185            2. Electronically generates, and provides for the printing  
186 and mailing of, the notice on behalf of the towing-storage  
187 operator.
- 188            3. Electronically returns tracking information or other  
189 proof of mailing and delivery of the notice to the towing-  
190 storage operator.
- 191            4. Electronically reports to the department using an  
192 Internet interface the following information, as applicable:
- 193                a. The vehicle identification number.
- 194                b. The vessel registration number or vessel hull  
195 identification number.
- 196                c. The license plate number of the vehicle or vessel.
- 197                d. The name and address of the towing-storage operator.
- 198                e. The physical location of the vehicle or vessel.
- 199                f. The date the vehicle or vessel was towed.
- 200                g. The amount of towing and storage charges owed as of the



201 date the notice is generated.

202 h. The date that the notice is mailed and delivered.

203 (b) A third-party notification service must apply to the  
204 department and be approved in order to provide notices under  
205 this section. The department shall prescribe the format for such  
206 applications. The department may approve a third-party  
207 notification service applicant to provide the services described  
208 in paragraph (a) if the applicant:

209 1. Provides the department with a performance bond in the  
210 amount of \$1 million issued by a surety company authorized to do  
211 business in the state;

212 2. Submits a level 2 internal control and data security  
213 audit, or the equivalent, which must have been conducted within  
214 1 year before applying to the department, from an independent  
215 certified public accountant licensed in the state; and

216 3. Successfully demonstrates its ability to electronically  
217 report to the department the information required in  
218 subparagraph (a)4.

219  
220 After initial approval by the department, to remain eligible to  
221 provide notices under this section, a third-party notification  
222 service must annually submit proof to the department that it has  
223 maintained the performance bond required in subparagraph (b)1.  
224 and has had an acceptable audit within the past 12 months as  
225 required in subparagraph (b)2.

226        (c) The department may deny, suspend, or revoke approval  
227 of a third-party notification service if the department  
228 determines that the third-party notification service has  
229 committed an act of fraud or misrepresentation related to a  
230 notice required by this section.

231        (d) A third-party notification service must maintain all  
232 records related to providing notices under this section for 5  
233 years and allow the department to inspect and copy such records  
234 upon request. The records may be maintained in electronic  
235 format.

236        (e) If the department does not approve any third-party  
237 notification services, the towing-storage operator may send any  
238 notice required by this section on his or her own behalf and  
239 must, upon submission of an application for a certificate of  
240 title or certificate of destruction, submit proof of compliance  
241 with this section.

242        Section 2. This act shall take effect January 1, 2020.