



917578

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/20/2019	.	
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The Committee on Judiciary (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(4)



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12 (c) ~~Notice by certified mail shall be sent~~ Within 7
13 business days after the date of storage of the vehicle or
14 vessel, the towing-storage operator shall, through a third-party
15 notification service approved by the Department of Highway
16 Safety and Motor Vehicles, send notice by certified mail to the
17 registered owner, the insurance company insuring the vehicle
18 notwithstanding the provisions of s. 627.736, and all persons of
19 record claiming a lien against the vehicle or vessel. The notice
20 must ~~it shall~~ state the fact of possession of the vehicle or
21 vessel, that a lien as provided in subsection (2) is claimed,
22 that charges have accrued and the amount thereof, that the lien
23 is subject to enforcement pursuant to law, and that the owner or
24 lienholder, if any, has the right to a hearing as set forth in
25 subsection (5), and that any vehicle or vessel which remains
26 unclaimed, or for which the charges for recovery, towing, or
27 storage services remain unpaid, may be sold free of all prior
28 liens after 35 days if the vehicle or vessel is more than 3
29 years of age or after 50 days if the vehicle or vessel is 3
30 years of age or less.

31 (d) If attempts to locate the name and address of the owner
32 or lienholder prove unsuccessful, ~~the towing-storage operator~~
33 ~~shall,~~ after 7 business working days, excluding Saturday and
34 Sunday, of the initial tow or storage, the towing-storage
35 operator, through a third-party notification service approved by
36 the Department of Highway Safety and Motor Vehicles, shall send
37 notice by certified mail to ~~notify~~ the public agency of
38 jurisdiction where the vehicle or vessel is stored ~~in writing by~~
39 ~~certified mail or acknowledged hand delivery~~ that the towing-
40 storage company has been unable to locate the name and address



41 of the owner or lienholder and a physical search of the vehicle
42 or vessel has disclosed no ownership information and a good
43 faith effort has been made, including records checks of the
44 Department of Highway Safety and Motor Vehicles database and the
45 National Motor Vehicle Title Information System or an equivalent
46 commercially available system. For purposes of this paragraph
47 and subsection (9), "good faith effort" means that the following
48 checks have been performed by the company to establish prior
49 state of registration and for title:

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

52 2. Check of the electronic National Motor Vehicle Title
53 Information System or an equivalent commercially available
54 system to determine the state of registration when there is not
55 a current registration record for the vehicle on file with the
56 Department of Highway Safety and Motor Vehicles.

57 3. Check of vehicle or vessel for any type of tag, tag
58 record, temporary tag, or regular tag.

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

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

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

68 7. Check of vehicle or vessel for inspection sticker or
69 other stickers and decals that may indicate a state of possible



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70 registration.

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

74 9. Check of vehicle for vehicle identification number.

75 10. Check of vessel for vessel registration number.

76 11. Check of vessel hull for a hull identification number
77 which should be carved, burned, stamped, embossed, or otherwise
78 permanently affixed to the outboard side of the transom or, if
79 there is no transom, to the outmost seaboard side at the end of
80 the hull that bears the rudder or other steering mechanism.

81 (6) Any vehicle or vessel which is stored pursuant to
82 subsection (2) and which remains unclaimed, or for which
83 reasonable charges for recovery, towing, or storing remain
84 unpaid, and any contents not released pursuant to subsection
85 (10), may be sold by the owner or operator of the storage space
86 for such towing or storage charge after 35 days from the time
87 the vehicle or vessel is stored therein if the vehicle or vessel
88 is more than 3 years of age or after 50 days following the time
89 the vehicle or vessel is stored therein if the vehicle or vessel
90 is 3 years of age or less. The sale shall be at public sale for
91 cash. If the date of the sale was not included in the notice
92 required in subsection (4), notice of the sale shall be given to
93 the person in whose name the vehicle or vessel is registered and
94 to all persons claiming a lien on the vehicle or vessel as shown
95 on the records of the Department of Highway Safety and Motor
96 Vehicles or of any corresponding agency in any other state in
97 which the vehicle is identified through a records check of the
98 National Motor Vehicle Title Information System or an equivalent



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99 commercially available system as being titled. The towing-
100 storage operator, through a third-party notification service
101 approved by the Department of Highway Safety and Motor Vehicles,
102 shall send notice ~~shall be sent~~ by certified mail to the owner
103 of the vehicle or vessel and the person having the recorded lien
104 on the vehicle or vessel at the address shown on the records of
105 the registering agency and shall be mailed not less than 15 days
106 before the date of the sale. After diligent search and inquiry,
107 if the name and address of the registered owner or the owner of
108 the recorded lien cannot be ascertained, the requirements of
109 notice by mail may be dispensed with. In addition to the notice
110 by mail, public notice of the time and place of sale shall be
111 made by publishing a notice thereof one time, at least 10 days
112 before ~~prior to~~ the date of the sale, in a newspaper of general
113 circulation in the county in which the sale is to be held. The
114 proceeds of the sale, after payment of reasonable towing and
115 storage charges, and costs of the sale, in that order of
116 priority, shall be deposited with the clerk of the circuit court
117 for the county if the owner or lienholder is absent, and the
118 clerk shall hold such proceeds subject to the claim of the owner
119 or lienholder legally entitled thereto. The clerk shall be
120 entitled to receive 5 percent of such proceeds for the care and
121 disbursement thereof. The certificate of title issued under this
122 law shall be discharged of all liens unless otherwise provided
123 by court order. The owner or lienholder may file a complaint
124 after the vehicle or vessel has been sold in the county court of
125 the county in which it is stored. Upon determining the
126 respective rights of the parties, the court may award damages,
127 ~~attorney's fees,~~ and costs in favor of the prevailing party.



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128 (10) Persons who provide services pursuant to this section
129 shall permit:

130 (a) A vehicle or vessel owner, a lienholder, or an owners,
131 lienholders, insurance company representative, upon presentation
132 of documentation of ownership or recorded claim of lien,

133 including the vehicle or vessel registration, lease or contract,
134 title certificate, electronic title, or lien sale notice; or

135 (b) An agent of the vehicle or vessel owner

136 representatives, or their agents, which agency is evidenced by
137 an original writing acknowledged by the owner before a notary
138 public or other person empowered by law to administer oaths,

139
140 immediately upon his or her arrival at the storage facility and

141 before payment of any charges, to inspect the towed vehicle or
142 vessel and shall release to the owner, lienholder, or agent the
143 vehicle, vessel, or all personal property not affixed to the

144 vehicle or vessel which was in the vehicle or vessel at the time
145 the vehicle or vessel came into the custody of the person

146 providing such services. Upon receiving the documentation

147 required under paragraph (a) or paragraph (b) and payment of the

148 towing and storage charges, the person providing such services

149 must release the vehicle or vessel to the owner, lienholder, or

150 agent who paid the charges.

151 (14) (a) For purposes of this section, the term "third-party
152 notification service" means a qualified business entity that,

153 upon a request submitted through a website by a towing-storage
154 operator:

155 1. Accesses the Department of Highway Safety and Motor
156 Vehicles' database and the National Motor Vehicle Title



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157 Information System to obtain any owner, lienholder, or insurer
158 information necessary for sending a notice required by this
159 section;

160 2. Electronically generates, and provides for the printing
161 and mailing of, the notice on behalf of the towing-storage
162 operator;

163 3. Electronically returns tracking information or other
164 proof of mailing and delivery of the notice to the towing-
165 storage operator; and

166 4. Electronically reports to the Department of Highway
167 Safety and Motor Vehicles, through an electronic data exchange
168 process that uses the Internet, the following information, as
169 applicable, related to the notice:

170 a. The vehicle identification number or vessel hull
171 identification number;

172 b. The license plate number;

173 c. The name and address of the towing-storage operator;

174 d. The physical location of the vehicle or vessel;

175 e. The date of the tow;

176 f. The amount of towing and storage charges owed when the
177 notice is generated; and

178 g. The date the notice is mailed and delivered.

179 (b) A third-party notification service must apply to the
180 Department of Highway Safety and Motor Vehicles and be approved
181 in order to provide notices under this section. The department
182 shall prescribe the format for such applications. The department
183 may approve a third-party notification service applicant as
184 qualified to provide the services described in paragraph (a) if
185 the applicant:



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186 1. Provides the department with a performance bond in the
187 amount of \$1 million issued by a surety company authorized to do
188 business in this state;

189 2. Submits an acceptable level 2 internal control and data
190 security audit, or the equivalent, from an independent certified
191 public accountant licensed in this state, which audit must have
192 been conducted within 1 year before applying to the department;
193 and

194 3. Successfully demonstrates its ability to electronically
195 report to the department the required information related a
196 towing-storage notice through an electronic data exchange
197 process that uses the Internet.

198
199 To remain eligible to provide notices under this section, an
200 approved third-party notification service must annually provide
201 the department with proof it has maintained the performance bond
202 required under subparagraph 1. and must annually submit to the
203 department an acceptable audit required under subparagraph 2.
204 which was conducted within 1 year after the previously submitted
205 audit.

206 (c) The department may deny, suspend, or revoke approval of
207 a third-party notification service if the department determines
208 that the third-party notification service has committed an act
209 of fraud or misrepresentation related to a notice required by
210 this section.

211 (d) A third-party notification service must maintain all
212 records related to providing notices under this section for 5
213 years and allow the department to inspect and copy such records
214 upon request. The records may be maintained in electronic



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215 format.

216 (e) In the event there are no third-party notification
217 services approved by the department, the towing-storage operator
218 may send any notice required by this section on its own behalf
219 and must, upon submission of an application for a certificate of
220 title or certificate of destruction, submit proof of compliance
221 with this section.

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

223
224 ===== T I T L E A M E N D M E N T =====

225 And the title is amended as follows:

226 Delete everything before the enacting clause
227 and insert:

228 A bill to be entitled
229 An act relating to towing-storage operator liens;
230 amending s. 713.78, F.S.; requiring certain lien
231 notices be sent through a third-party notification
232 service; deleting a provision authorizing the award of
233 attorney fees to the prevailing party in court
234 proceedings determining the respective rights of
235 owners or lienholders of vehicles or vessels and
236 towing-storage operators; revising requirements for
237 the inspection and release of vehicles or vessels and
238 personal property in such vehicles or vessels;
239 defining the term "third-party notification service";
240 requiring third-party notification services to apply
241 to the Department of Highway Safety and Motor Vehicles
242 for approval; authorizing the department to approve an
243 application if certain conditions are met; requiring



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244 approved third-party notification services to provide
245 the department with proof that it has maintained the
246 performance bond; requiring approved third-party
247 notification services to submit a specified annual
248 audit to the department; authorizing the department to
249 deny, suspend, or revoke its approval under certain
250 circumstances; requiring a third-party notification
251 service to maintain certain records for a specified
252 period and allow for the inspection and copying of
253 such records by the department; authorizing towing-
254 storage operators to send notices on their own behalf
255 if there are no approved third-party notification
256 services; providing an effective date.