

By Senator Rouson

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

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

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

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

25 (4)

26 (c) ~~Notice by certified mail shall be sent~~ Within 7
27 business days after the date of storage of the vehicle or
28 vessel, the towing-storage operator shall, through an electronic
29 third-party mailing service approved by the Department of

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30 Highway Safety and Motor Vehicles, send notice by certified mail
31 to the registered owner, the insurance company insuring the
32 vehicle notwithstanding the provisions of s. 627.736, and all
33 persons of record claiming a lien against the vehicle or vessel.
34 The notice must ~~it shall~~ state the fact of possession of the
35 vehicle or vessel, that a lien as provided in subsection (2) is
36 claimed, that charges have accrued and the amount thereof, that
37 the lien is subject to enforcement pursuant to law, and that the
38 owner or lienholder, if any, has the right to a hearing as set
39 forth in subsection (5), and that any vehicle or vessel which
40 remains unclaimed, or for which the charges for recovery,
41 towing, or storage services remain unpaid, may be sold free of
42 all prior liens after 35 days if the vehicle or vessel is more
43 than 3 years of age or after 50 days if the vehicle or vessel is
44 3 years of age or less.

45 (d) If attempts to locate the name and address of the owner
46 or lienholder prove unsuccessful, ~~the towing-storage operator~~
47 ~~shall, after 7 business working days, excluding Saturday and~~
48 ~~Sunday, of the initial tow or storage, the towing-storage~~
49 operator, through an electronic third-party mailing service
50 approved by the Department of Highway Safety and Motor Vehicles,
51 shall send notice by certified mail to ~~notify~~ the public agency
52 of jurisdiction where the vehicle or vessel is stored ~~in writing~~
53 ~~by certified mail or acknowledged hand delivery~~ that the towing-
54 storage company has been unable to locate the name and address
55 of the owner or lienholder and a physical search of the vehicle
56 or vessel has disclosed no ownership information and a good
57 faith effort has been made, including records checks of the
58 Department of Highway Safety and Motor Vehicles database and the

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59 National Motor Vehicle Title Information System or an equivalent
60 commercially available system. For purposes of this paragraph
61 and subsection (9), "good faith effort" means that the following
62 checks have been performed by the company to establish prior
63 state of registration and for title:

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

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

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

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

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

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

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

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

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88 9. Check of vehicle for vehicle identification number.

89 10. Check of vessel for vessel registration number.

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

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

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

143 (14) (a) As used in this section, the term "electronic
144 third-party mailing service" means a person who, upon a request
145 submitted through a website by a towing-storage operator:

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

149 2. Prepares or assists the towing-storage operator in
150 preparing a notice required by this section through the website;

151 3. Prints and sends the notice to the intended recipient by
152 certified mail; and

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

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

168 (c) An electronic third-party mailing service shall
169 maintain all records related to the provision of services under
170 this section for 3 years and must allow the department to
171 inspect such records upon request. The records may be maintained
172 in electronic format.

173 (d) The department shall adopt rules to administer this
174 section.

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