

By the Committee on Judiciary; and 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 certain lien
4 notices be sent through a third-party notification
5 service; deleting a provision authorizing the award of
6 attorney fees to the prevailing party in court
7 proceedings determining the respective rights of
8 owners or lienholders of vehicles or vessels and
9 towing-storage operators; revising requirements for
10 the inspection and release of vehicles or vessels and
11 personal property in such vehicles or vessels;
12 defining the term "third-party notification service";
13 requiring third-party notification services to apply
14 to the Department of Highway Safety and Motor Vehicles
15 for approval; authorizing the department to approve an
16 application if certain conditions are met; requiring
17 approved third-party notification services to provide
18 the department with proof that it has maintained the
19 performance bond; requiring approved third-party
20 notification services to submit a specified annual
21 audit to the department; authorizing the department to
22 deny, suspend, or revoke its approval under certain
23 circumstances; requiring a third-party notification
24 service to maintain certain records for a specified
25 period and allow for the inspection and copying of
26 such records by the department; authorizing towing-
27 storage operators to send notices on their own behalf
28 if there are no approved third-party notification
29 services; providing an effective date.

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

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)

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

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

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

80 2. Check of the electronic National Motor Vehicle Title
81 Information System or an equivalent commercially available
82 system to determine the state of registration when there is not
83 a current registration record for the vehicle on file with the
84 Department of Highway Safety and Motor Vehicles.

85 3. Check of vehicle or vessel for any type of tag, tag
86 record, temporary tag, or regular tag.

87 4. Check of law enforcement report for tag number or other

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88 information identifying the vehicle or vessel, if the vehicle or
89 vessel was towed at the request of a law enforcement officer.

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

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

96 7. Check of vehicle or vessel for inspection sticker or
97 other stickers and decals that may indicate a state of possible
98 registration.

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

102 9. Check of vehicle for vehicle identification number.

103 10. Check of vessel for vessel registration number.

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

109 (6) Any vehicle or vessel which is stored pursuant to
110 subsection (2) and which remains unclaimed, or for which
111 reasonable charges for recovery, towing, or storing remain
112 unpaid, and any contents not released pursuant to subsection
113 (10), may be sold by the owner or operator of the storage space
114 for such towing or storage charge after 35 days from the time
115 the vehicle or vessel is stored therein if the vehicle or vessel
116 is more than 3 years of age or after 50 days following the time

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117 the vehicle or vessel is stored therein if the vehicle or vessel
118 is 3 years of age or less. The sale shall be at public sale for
119 cash. If the date of the sale was not included in the notice
120 required in subsection (4), notice of the sale shall be given to
121 the person in whose name the vehicle or vessel is registered and
122 to all persons claiming a lien on the vehicle or vessel as shown
123 on the records of the Department of Highway Safety and Motor
124 Vehicles or of any corresponding agency in any other state in
125 which the vehicle is identified through a records check of the
126 National Motor Vehicle Title Information System or an equivalent
127 commercially available system as being titled. The towing-
128 storage operator, through a third-party notification service
129 approved by the Department of Highway Safety and Motor Vehicles,
130 shall send notice ~~shall be sent~~ by certified mail to the owner
131 of the vehicle or vessel and the person having the recorded lien
132 on the vehicle or vessel at the address shown on the records of
133 the registering agency and shall be mailed not less than 15 days
134 before the date of the sale. After diligent search and inquiry,
135 if the name and address of the registered owner or the owner of
136 the recorded lien cannot be ascertained, the requirements of
137 notice by mail may be dispensed with. In addition to the notice
138 by mail, public notice of the time and place of sale shall be
139 made by publishing a notice thereof one time, at least 10 days
140 before ~~prior to~~ the date of the sale, in a newspaper of general
141 circulation in the county in which the sale is to be held. The
142 proceeds of the sale, after payment of reasonable towing and
143 storage charges, and costs of the sale, in that order of
144 priority, shall be deposited with the clerk of the circuit court
145 for the county if the owner or lienholder is absent, and the

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146 clerk shall hold such proceeds subject to the claim of the owner
147 or lienholder legally entitled thereto. The clerk shall be
148 entitled to receive 5 percent of such proceeds for the care and
149 disbursement thereof. The certificate of title issued under this
150 law shall be discharged of all liens unless otherwise provided
151 by court order. The owner or lienholder may file a complaint
152 after the vehicle or vessel has been sold in the county court of
153 the county in which it is stored. Upon determining the
154 respective rights of the parties, the court may award damages,
155 ~~attorney's fees,~~ and costs in favor of the prevailing party.

156 (10) Persons who provide services pursuant to this section
157 shall permit:

158 (a) A vehicle or vessel owner, a lienholder, or an owners,
159 lienholders, insurance company representative, upon presentation
160 of documentation of ownership or recorded claim of lien,
161 including the vehicle or vessel registration, lease or contract,
162 title certificate, electronic title, or lien sale notice; or

163 (b) An agent of the vehicle or vessel owner
164 ~~representatives, or their agents,~~ which agency is evidenced by
165 an original writing acknowledged by the owner before a notary
166 public or other person empowered by law to administer oaths,
167
168 immediately upon his or her arrival at the storage facility and
169 before payment of any charges, to inspect the towed vehicle or
170 vessel and shall release to the owner, lienholder, or agent ~~the~~
171 ~~vehicle, vessel, or~~ all personal property not affixed to the
172 vehicle or vessel which was in the vehicle or vessel at the time
173 the vehicle or vessel came into the custody of the person
174 providing such services. Upon receiving the documentation

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175 required under paragraph (a) or paragraph (b) and payment of the
176 towing and storage charges, the person providing such services
177 must release the vehicle or vessel to the owner, lienholder, or
178 agent who paid the charges.

179 (14) (a) For purposes of this section, the term "third-party
180 notification service" means a qualified business entity that,
181 upon a request submitted through a website by a towing-storage
182 operator:

183 1. Accesses the Department of Highway Safety and Motor
184 Vehicles' database and the National Motor Vehicle Title
185 Information System to obtain any owner, lienholder, or insurer
186 information necessary for sending a notice required by this
187 section;

188 2. Electronically generates, and provides for the printing
189 and mailing of, the notice on behalf of the towing-storage
190 operator;

191 3. Electronically returns tracking information or other
192 proof of mailing and delivery of the notice to the towing-
193 storage operator; and

194 4. Electronically reports to the Department of Highway
195 Safety and Motor Vehicles, through an electronic data exchange
196 process that uses the Internet, the following information, as
197 applicable, related to the notice:

198 a. The vehicle identification number or vessel hull
199 identification number;

200 b. The license plate number;

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

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

203 e. The date of the tow;

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

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

207 (b) A third-party notification service must apply to the
208 Department of Highway Safety and Motor Vehicles and be approved
209 in order to provide notices under this section. The department
210 shall prescribe the format for such applications. The department
211 may approve a third-party notification service applicant as
212 qualified to provide the services described in paragraph (a) if
213 the applicant:

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

217 2. Submits an acceptable level 2 internal control and data
218 security audit, or the equivalent, from an independent certified
219 public accountant licensed in this state, which audit must have
220 been conducted within 1 year before applying to the department;
221 and

222 3. Successfully demonstrates its ability to electronically
223 report to the department the required information related to a
224 towing-storage notice through an electronic data exchange
225 process that uses the Internet.

226
227 To remain eligible to provide notices under this section, an
228 approved third-party notification service must annually provide
229 the department with proof it has maintained the performance bond
230 required under subparagraph 1. and must annually submit to the
231 department an acceptable audit required under subparagraph 2.
232 which was conducted within 1 year after the previously submitted

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233 audit.

234 (c) The department may deny, suspend, or revoke approval of
235 a third-party notification service if the department determines
236 that the third-party notification service has committed an act
237 of fraud or misrepresentation related to a notice required by
238 this section.

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

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

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