

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Fischer offered the following:

Amendment

Remove lines 350-699 and insert:

administrative fee to the registered owner or a person of record
claiming a lien against the vehicle to obtain release of the
vehicle from the claim of lien imposed under this section. Such
administrative fee may not exceed \$250. For purposes of this
paragraph, the term "administrative fee" means a lien fee or any
fee imposed by the lienor or the lienor's agent for
administrative costs added to the amount due for storage,
repairs, adjustments, or modifications to the vehicle.

(b) A lienor or the lienor's agent may not charge fees or

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14 costs, other than those authorized in this section, that exceed
15 \$250.

16 (16) A motor vehicle repair shop, garage, automotive
17 service facility, or storage operator must use a third-party
18 service approved by the Department of Highway Safety and Motor
19 Vehicles to transmit all notices required by this section. If
20 there is no third-party service approved by the department, the
21 motor vehicle repair shop, garage, automotive service facility,
22 or storage operator may mail the notices and provide evidence of
23 compliance with this section upon submission of an application
24 for certificate of title or certificate of destruction.

25 (a) For purposes of this subsection, the term "third-party
26 service" means a qualified business entity that, upon a request
27 submitted through a website by a motor vehicle repair shop,
28 garage, automotive service facility, or storage operator:

29 1. Accesses the National Motor Vehicle Title Information
30 System records to obtain the last state of record of the
31 vehicle.

32 2. Accesses the owner, lienholder, and insurer
33 information, as applicable, for a vehicle from the department.

34 3. Electronically generates the notices required of a
35 motor vehicle repair shop, an automotive service facility, a
36 garage, and a towing-storage operator by this section through
37 the website.

38 4. Prints and sends the notices required under this

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39 section to each owner, lienholder, and insurer of record by
40 certified mail.

41 5. Electronically returns tracking information or other
42 proof of mailing and delivery of the notices to the motor
43 vehicle repair shop, automotive service facility, garage, and
44 towing-storage operator.

45 6. Electronically reports to the department, via an
46 electronic data exchange process using a web interface, the
47 following information related to the repair and storage notices:

48 a. The vehicle identification number.

49 b. The license plate number.

50 c. The name and address of the repair shop or lienor.

51 d. The physical location of the vehicle.

52 e. The date on which the vehicle was dropped off for
53 repairs.

54 f. The date on which the repairs were completed.

55 g. The amount due for repairs and the storage amount per
56 day.

57 h. The dates on which the notice was mailed and delivered.

58 i. The date on which the owner was notified that the
59 repairs were completed.

60 j. Other information required by the department.

61 (b) A third-party service must apply to and be approved by
62 the department in order to provide notices under this section.
63 The department shall prescribe the format for the application.

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64 The department may approve the applicant as qualified to perform
65 the services provided in paragraph (a) if the applicant:

66 1. Provides the department with a \$1 million bond.

67 2. Submits an acceptable internal control and data
68 security audit (Level 2) or its equivalent performed by a
69 licensed certified public accountant.

70 3. Successfully demonstrates the ability to electronically
71 provide required data to the department via an electronic data
72 exchange process using a web interface.

73 (c) The department may deny, suspend, or revoke approval
74 of a third-party service if the department determines that the
75 third-party service has committed an act of fraud or
76 misrepresentation related to a notice required by this section.

77 (d) A third-party service must maintain all records
78 related to providing notices under this section for 5 years and
79 allow the department to inspect and copy such records upon
80 request. The records may be maintained in an electronic format.

81 (e) A third-party service must annually provide the
82 department with evidence that it maintains a \$1 million bond and
83 must annually submit an internal control and data security audit
84 (Level 2) or its equivalent performed by a licensed certified
85 public accountant to continue its approved status each year.

86 (f) A third-party service must maintain a publicly
87 available website that allows owners, registrants, lienholders,
88 insurance companies, or their agents to search for notices sent

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89 pursuant to this section. The search results must exclude
90 personal identifying information but provide the same
91 information provided to the department.

92 (17) A lienor must release to the owner, lienholder, or
93 agent thereof all of the personal property found in but not
94 affixed to the vehicle. Upon payment of the charges owed, the
95 lienor must release the vehicle to the paying owner, lienholder,
96 or agent thereof.

97 (18) A lienor must accept either a copy of an electronic
98 title or a paper title as evidence of a person's interest in a
99 vehicle.

100 Section 4. Subsection (4), paragraphs (a) and (b) of
101 subsection (5), and subsections (6) and (9) of section 713.78,
102 Florida Statutes, are amended, and subsections (14) through (17)
103 are added to that section, to read:

104 713.78 Liens for recovering, towing, or storing vehicles
105 and vessels.—

106 (4) (a) A ~~Any~~ person regularly engaged in the business of
107 recovering, towing, or storing vehicles or vessels who comes
108 into possession of a vehicle or vessel pursuant to subsection
109 (2), and who claims a lien for recovery, towing, or storage
110 services, shall give notice, by certified mail, to the
111 registered owner, the insurance company insuring the vehicle
112 notwithstanding ~~the provisions of s. 627.736,~~ and ~~to~~ all persons
113 claiming a lien thereon, as disclosed by the records in the

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114 Department of Highway Safety and Motor Vehicles or as disclosed
115 by the records of any corresponding agency in any other state in
116 which the vehicle is identified through a records check of the
117 National Motor Vehicle Title Information System or an equivalent
118 commercially available system as being titled or registered.

119 (b) Whenever a ~~any~~ law enforcement agency authorizes the
120 removal of a vehicle or vessel or whenever a ~~any~~ towing service,
121 garage, repair shop, or automotive service, storage, or parking
122 place notifies the law enforcement agency of possession of a
123 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law
124 enforcement agency of the jurisdiction where the vehicle or
125 vessel is stored shall contact the Department of Highway Safety
126 and Motor Vehicles, or the appropriate agency of the state of
127 registration, if known, within 24 hours through the medium of
128 electronic communications, giving the full description of the
129 vehicle or vessel. Upon receipt of the full description of the
130 vehicle or vessel, the department shall search its files to
131 determine the owner's name, the insurance company insuring the
132 vehicle or vessel, and whether any person has filed a lien upon
133 the vehicle or vessel as provided in s. 319.27(2) and (3) and
134 notify the applicable law enforcement agency within 72 hours.
135 The person in charge of the towing service, garage, repair shop,
136 or automotive service, storage, or parking place shall obtain
137 such information from the applicable law enforcement agency
138 within 5 days after the date of storage and shall give notice

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139 pursuant to paragraph (a). The department may release the
140 insurance company information to the requestor notwithstanding
141 ~~the provisions of s. 627.736.~~

142 (c) The notice of lien must be sent by certified mail to
143 the registered owner, the insurance company insuring the vehicle
144 notwithstanding s. 627.736, and all other persons claiming a
145 lien thereon shall be sent within 7 business days, excluding
146 Saturday and Sunday, after the date of storage of the vehicle or
147 vessel. However, in no event shall the notice of lien be sent
148 less than 30 days before the sale of to the registered owner,
149 the insurance company insuring the vehicle notwithstanding the
150 provisions of s. 627.736, and all persons of record claiming a
151 lien against the vehicle or vessel. The notice must state:

152 1. If the claim of lien is for a vehicle, the last 8
153 digits of the vehicle identification number of the vehicle
154 subject to the lien, or, if the claim of lien is for a vessel,
155 the hull identification number of the vessel subject to the
156 lien, clearly printed in the delivery address box and on the
157 outside of the envelope sent to the registered owner and all
158 other persons claiming an interest therein or lien thereon.

159 2. The name, physical address, and telephone number of the
160 lienor, and the entity name, as registered with the Division of
161 Corporations, of the business where the towing and storage
162 occurred, which must also appear on the outside of the envelope
163 sent to the registered owner and all other persons claiming an

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164 interest in or lien on the vehicle or vessel.

165 3. ~~It shall state~~ The fact of possession of the vehicle or
166 vessel.

167 4. The name of the person or entity that authorized the
168 lienor to take possession of the vehicle or vessel.

169 5. That a lien as provided in subsection (2) is claimed.

170 6. That charges have accrued and include an itemized
171 statement of the amount thereof.

172 7. That the lien is subject to enforcement under ~~pursuant~~
173 ~~to law,~~ and that the owner or lienholder, if any, has the right
174 to a hearing as set forth in subsection (5). ~~and~~

175 8. That any vehicle or vessel that ~~which~~ remains
176 unclaimed, or for which the charges for recovery, towing, or
177 storage services remain unpaid, may be sold free of all prior
178 liens ~~after~~ 35 days after the vehicle or vessel is stored by the
179 lienor if the vehicle or vessel is more than 3 years of age or
180 ~~after~~ 50 days after the vehicle or vessel is stored by the
181 lienor if the vehicle or vessel is 3 years of age or less.

182 9. The address at which the vehicle or vessel is
183 physically located.

184 (d) The notice of lien may not be sent to the registered
185 owner, the insurance company insuring the vehicle or vessel, and
186 all other persons claiming a lien thereon less than 30 days
187 before the sale of the vehicle or vessel.

188 (e) ~~(d)~~ If attempts to locate the name and address of the

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189 owner or lienholder prove unsuccessful, the towing-storage
190 operator shall, after 7 business ~~working~~ days, excluding
191 Saturday and Sunday, after ~~of~~ the initial tow or storage, notify
192 the public agency of jurisdiction where the vehicle or vessel is
193 stored in writing by certified mail or acknowledged hand
194 delivery that the towing-storage company has been unable to
195 locate the name and address of the owner or lienholder and a
196 physical search of the vehicle or vessel has disclosed no
197 ownership information and a good faith effort has been made,
198 including records checks of the Department of Highway Safety and
199 Motor Vehicles database and the National Motor Vehicle Title
200 Information System or an equivalent commercially available
201 system. For purposes of this paragraph and subsection (9), the
202 term "good faith effort" means that the following checks have
203 been performed by the company to establish the prior state of
204 registration and for title:

205 1. A check of the department's ~~Department of Highway~~
206 ~~Safety and Motor Vehicles~~ database for the owner and any
207 lienholder.

208 2. A check of the electronic National Motor Vehicle Title
209 Information System or an equivalent commercially available
210 system to determine the state of registration when there is not
211 a current registration record for the vehicle or vessel on file
212 with the department ~~of Highway Safety and Motor Vehicles~~.

213 3. A check of the vehicle or vessel for any type of tag,

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214 tag record, temporary tag, or regular tag.

215 4. A check of the law enforcement report for a tag number
216 or other information identifying the vehicle or vessel, if the
217 vehicle or vessel was towed at the request of a law enforcement
218 officer.

219 5. A check of the trip sheet or tow ticket of the tow
220 truck operator to determine whether ~~see if~~ a tag was on the
221 vehicle or vessel at the beginning of the tow, if a private tow.

222 6. If there is no address of the owner on the impound
223 report, a check of the law enforcement report to determine
224 whether ~~see if~~ an out-of-state address is indicated from driver
225 license information.

226 7. A check of the vehicle or vessel for an inspection
227 sticker or other stickers and decals that may indicate a state
228 of possible registration.

229 8. A check of the interior of the vehicle or vessel for
230 any papers that may be in the glove box, trunk, or other areas
231 for a state of registration.

232 9. A check of the vehicle for a vehicle identification
233 number.

234 10. A check of the vessel for a vessel registration
235 number.

236 11. A check of the vessel hull for a hull identification
237 number which should be carved, burned, stamped, embossed, or
238 otherwise permanently affixed to the outboard side of the

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239 transom or, if there is no transom, to the outmost seaboard side
240 at the end of the hull that bears the rudder or other steering
241 mechanism.

242 (5) (a) The owner of a vehicle or vessel removed pursuant
243 to ~~the provisions of~~ subsection (2), or any person claiming a
244 lien, other than the towing-storage operator, within 10 days
245 after the time she or he has knowledge of the location of the
246 vehicle or vessel, may file a complaint in the county court of
247 the county in which the vehicle or vessel is stored to determine
248 whether ~~if~~ her or his property was wrongfully taken or withheld
249 ~~from her or him~~.

250 (b) At any time before the sale of the vehicle or vessel
251 ~~Upon filing of a complaint~~, an owner or lienholder may have her
252 or his vehicle or vessel released upon posting with the court a
253 cash or surety bond or other adequate security equal to the
254 amount of the charges for towing or storage and lot rental
255 amount to ensure the payment of such charges in the event she or
256 he does not prevail. Upon the posting of the bond and the
257 payment of the applicable fee set forth in s. 28.24, the clerk
258 of the court shall issue a certificate notifying the lienor of
259 the posting of the bond and directing the lienor to release the
260 vehicle or vessel. At the time of such release, after reasonable
261 inspection, she or he shall give a receipt to the towing-storage
262 company reciting any claims she or he has for loss or damage to
263 the vehicle or vessel or the contents thereof.

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264 (6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant
265 to subsection (2) and ~~which~~ remains unclaimed, or for which
266 reasonable charges for recovery, towing, or storing remain
267 unpaid, and any contents not released pursuant to subsection
268 (10), may be sold by the owner or operator of the storage space
269 for such towing or storage charge ~~after~~ 35 days after ~~from the~~
270 ~~time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if
271 the vehicle or vessel is more than 3 years of age or ~~after~~ 50
272 days after ~~following the time~~ the vehicle or vessel is stored by
273 the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or
274 less. The sale shall be at public sale for cash. If the date of
275 the sale was not included in the notice required in subsection
276 (4), notice of the sale shall be given to the person in whose
277 name the vehicle or vessel is registered and to all persons
278 claiming a lien on the vehicle or vessel as shown on the records
279 of the Department of Highway Safety and Motor Vehicles or of any
280 corresponding agency in any other state in which the vehicle is
281 identified through a records check of the National Motor Vehicle
282 Title Information System or an equivalent commercially available
283 system as being titled. Notice of the sale must ~~shall~~ be sent by
284 certified mail. The notice must have clearly identified and
285 printed, if the claim of lien is for a motor vehicle, the last 8
286 digits of the vehicle identification number of the motor vehicle
287 subject to the lien, or, if the claim of lien is for a vessel,
288 the hull identification number of the vessel subject to the

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289 lien, in the delivery address box and on the outside of the
290 envelope sent to the registered owner and all other persons
291 claiming an interest therein or lien thereon. The notice must be
292 sent to the owner of the vehicle or vessel and the person having
293 the recorded lien on the vehicle or vessel at the address shown
294 on the records of the registering agency ~~at least and shall be~~
295 ~~mailed not less than~~ 15 days before the sale of the vehicle or
296 vessel ~~date of the sale. The notice must state the name,~~
297 physical address, and telephone number of the lienor, and the
298 vehicle identification number if the claim of lien is for a
299 vehicle or the hull identification number if the claim of lien
300 is for a vessel, all of which must also appear in the return
301 address section on the outside of the envelope containing the
302 notice of sale. After diligent search and inquiry, if the name
303 and address of the registered owner or the owner of the recorded
304 lien cannot be ascertained, the requirements of notice by mail
305 may be dispensed with. In addition to the notice by mail, public
306 notice of the time and place of sale shall be made by publishing
307 a notice thereof one time, at least 10 days before ~~prior to~~ the
308 date of the sale, in a newspaper of general circulation in the
309 county in which the sale is to be held. The proceeds of the
310 sale, after payment of reasonable towing and storage charges,
311 and costs of the sale, in that order of priority, shall be
312 deposited with the clerk of the circuit court for the county if
313 the owner or lienholder is absent, and the clerk shall hold such

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314 proceeds subject to the claim of the owner or lienholder legally
315 entitled thereto. The clerk shall be entitled to receive 5
316 percent of such proceeds for the care and disbursement thereof.
317 The certificate of title issued under this law shall be
318 discharged of all liens unless otherwise provided by court
319 order. The owner or lienholder may file a complaint after the
320 vehicle or vessel has been sold in the county court of the
321 county in which it is stored. Upon determining the respective
322 rights of the parties, the court may award damages, attorney
323 ~~attorney's~~ fees, and costs in favor of the prevailing party.

324 (9) Failure to make good faith ~~best~~ efforts to comply with
325 the notice requirements of this section precludes ~~shall preclude~~
326 the imposition of any storage charges against the ~~such~~ vehicle
327 or vessel. If a lienor fails to provide notice to a person
328 claiming a lien on a vehicle or vessel in accordance with
329 subsection (4), the lienor may not charge the person for more
330 than 7 days of storage, but such failure does not affect charges
331 made for towing the vehicle or vessel or the priority of liens
332 on the vehicle or vessel.

333 (14) (a) A copy of the notice of lien required by
334 subsection (4) and the notice of sale required by subsection
335 (6), which must include the vehicle identification number if the
336 claim of lien is for a vehicle or the hull identification number
337 if the claim of lien is for a vessel, and proof of the required
338 check of the National Motor Vehicle Title Information System or

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339 an equivalent commercially available system shall constitute
340 satisfactory proof for application to the Department of Highway
341 Safety and Motor Vehicles for transfer of title, together with
342 any other proof required by any rules and regulations of the
343 department.

344 (b) The Department of Highway Safety and Motor Vehicles
345 may not approve an application for transfer of title if the
346 application fails to include a copy of the notice of lien
347 required by subsection (4) and the notice of sale required by
348 subsection (6). The vehicle or hull identification number on the
349 notice of lien must match the vehicle or hull identification
350 number of the vehicle or vessel that is the subject of the
351 transfer of title.

352 (15) (a) A lienor or the lienor's agent may charge an
353 administrative fee to the registered owner or a person claiming
354 a lien against the vehicle or vessel to obtain release of the
355 vehicle or vessel from the claim of lien imposed under this
356 section. Such administrative fee may not exceed \$250.

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