

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 i. Other information required by the department.

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

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

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

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

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

226 required in subparagraph (b)2.

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

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

237 (e) If the department does not approve any third-party  
238 notification services, the towing-storage operator may send any  
239 notice required by this section on his or her own behalf and  
240 must, upon submission of an application for a certificate of  
241 title or certificate of destruction, comply with subsection (4).

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