

Chapter 713 – Liens, Generally

Part II – Miscellaneous Liens

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

(1) For the purposes of this section, the term:

(a) "Vehicle" means any mobile item, whether motorized or not, which is mounted on wheels.

(b) "Vessel" means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(9).

(c) "Wrecker" means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

(2) Whenever a person regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or vessel upon instructions from:

(a) The owner thereof;

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle or vessel is wrongfully parked, and the removal is done in compliance with s. 715.07; or

(c) Any law enforcement agency,

she or he shall have a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee; except that no storage fee shall be charged if the vehicle is stored for less than 6 hours.

(3) This section does not authorize any person to claim a lien on a vehicle for fees or charges connected with the immobilization of such vehicle using a vehicle boot or other similar device pursuant to s. 715.07.

(4)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and to all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or of a corresponding agency in any other state.

(b) Whenever any law enforcement agency authorizes the removal of a vehicle or vessel or whenever any towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the applicable law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s.

319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor notwithstanding the provisions of s. 627.736.

(c) Notice by certified mail, return receipt requested, shall be sent within 7 business days after the date of storage of the vehicle or vessel 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. 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.

(d) If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 working days, excluding Saturday and Sunday, of the initial tow or storage, notify the public agency of jurisdiction in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made. For purposes of this paragraph and subsection (9), "good faith effort" means that the following checks have been performed by the company to establish prior state of registration and for title:

1. Check of vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.
2. Check of law enforcement report for tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.
3. Check of trip sheet or tow ticket of tow truck operator to see if a tag was on vehicle or vessel at beginning of tow, if private tow.
4. If there is no address of the owner on the impound report, check of law enforcement report to see if an out-of-state address is indicated from driver license information.
5. Check of vehicle or vessel for inspection sticker or other stickers and decals that may indicate a state of possible registration.
6. Check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.
7. Check of vehicle for vehicle identification number.
8. Check of vessel for vessel registration number.
9. Check of vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

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

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

(c) Upon determining the respective rights of the parties, the court may award damages, attorney's fees, and costs in favor of the prevailing party. In any event, the final order shall provide for immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder; or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.

(6) Any vehicle or vessel which is stored pursuant to subsection (2) and which remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge after 35 days from the time the vehicle or vessel is stored therein if the vehicle or vessel is more than 3 years of age or after 50 days following the time the vehicle or vessel is stored therein if the vehicle or vessel is 3 years of age or less. The sale shall be at public auction for cash. If the date of the sale was not included in the notice required in subsection (4), notice of the sale shall be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice shall be sent by certified mail, return receipt requested, to the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency and shall be mailed not less than 15 days before the date of the sale. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with. In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The proceeds of the sale, after payment of reasonable towing and storage charges, and costs of the sale, in that order of priority, shall be deposited with the clerk of the circuit court for the county if the owner is absent, and the clerk shall hold such proceeds subject to the claim of the person legally entitled thereto. The clerk shall be entitled to receive 5 percent of such proceeds for the care and disbursement thereof. The certificate of title issued under this law shall be discharged of all liens unless otherwise provided by court order.

(7)(a) A wrecker operator recovering, towing, or storing vehicles or vessels is not liable for damages connected with such services, theft of such vehicles or vessels, or theft of personal

property contained in such vehicles or vessels, provided that such services have been performed with reasonable care and provided, further, that, in the case of removal of a vehicle or vessel upon the request of a person purporting, and reasonably appearing, to be the owner or lessee, or a person authorized by the owner or lessee, of the property from which such vehicle or vessel is removed, such removal has been done in compliance with s. [715.07](#). Further, a wrecker operator is not liable for damage to a vehicle, vessel, or cargo that obstructs the normal movement of traffic or creates a hazard to traffic and is removed in compliance with the request of a law enforcement officer.

(b) For the purposes of this subsection, a wrecker operator is presumed to use reasonable care to prevent the theft of a vehicle or vessel or of any personal property contained in such vehicle stored in the wrecker operator's storage facility if all of the following apply:

1. The wrecker operator surrounds the storage facility with a chain-link or solid-wall type fence at least 6 feet in height;
2. The wrecker operator has illuminated the storage facility with lighting of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet during nighttime; and
3. The wrecker operator uses one or more of the following security methods to discourage theft of vehicles or vessels or of any personal property contained in such vehicles or vessels stored in the wrecker operator's storage facility:
 - a. A night dispatcher or watchman remains on duty at the storage facility from sunset to sunrise;
 - b. A security dog remains at the storage facility from sunset to sunrise;
 - c. Security cameras or other similar surveillance devices monitor the storage facility; or
 - d. A security guard service examines the storage facility at least once each hour from sunset to sunrise.

(c) Any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway must conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. However, if the owner or driver of the motor vehicle is present and accompanies the vehicle, no inventory by law enforcement is required. A wrecker operator is not liable for the loss of personal property alleged to be contained in such a vehicle when such personal property was not identified on the inventory record prepared by the law enforcement agency requesting the removal of the vehicle.

(8) A person regularly engaged in the business of recovering, towing, or storing vehicles or vessels, except a person licensed under chapter 493 while engaged in "repossession" activities as defined in s. 493.6101, may not operate a wrecker, tow truck, or car carrier unless the name, address, and telephone number of the company performing the service is clearly printed in contrasting colors on the driver and passenger sides of its vehicle. The name must be in at least 3-inch permanently affixed letters, and the address and telephone number must be in at least 1-inch permanently affixed letters.

(9) Failure to make good faith best efforts to comply with the notice requirements of this section shall preclude the imposition of any storage charges against such vehicle or vessel.

(10) Persons who provide services pursuant to this section shall permit vehicle or vessel owners or their agents, which agency is evidenced by an original writing acknowledged by the owner

before a notary public or other person empowered by law to administer oaths, to inspect the towed vehicle or vessel and shall release to the owner or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the person providing such services.

(11)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2) and who has complied with the provisions of subsections (3) and (6), when such vehicle or vessel is to be sold for purposes of being dismantled, destroyed, or changed in such manner that it is not the motor vehicle or vessel described in the certificate of title, shall apply to the county tax collector for a certificate of destruction. A certificate of destruction, which authorizes the dismantling or destruction of the vehicle or vessel described therein, shall be reassignable a maximum of two times before dismantling or destruction of the vehicle shall be required, and shall accompany the vehicle or vessel for which it is issued, when such vehicle or vessel is sold for such purposes, in lieu of a certificate of title. The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements of this section and, if the vehicle or vessel is not registered in this state, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen, and shall be accompanied by such documentation as may be required by the department.

(b) The Department of Highway Safety and Motor Vehicles shall charge a fee of \$3 for each certificate of destruction. A service charge of \$4.25 shall be collected and retained by the tax collector who processes the application.

(c) The Department of Highway Safety and Motor Vehicles may adopt such rules as it deems necessary or proper for the administration of this subsection.

(12)(a) Any person who violates any provision of subsection (1), subsection (2), subsection (4), subsection (5), subsection (6), or subsection (7) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who violates the provisions of subsections (8) through (11) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person who uses a false or fictitious name, gives a false or fictitious address, or makes any false statement in any application or affidavit required under the provisions of this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Employees of the Department of Highway Safety and Motor Vehicles and law enforcement officers are authorized to inspect the records of any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels or transporting vehicles or vessels by wrecker, tow truck, or car carrier, to ensure compliance with the requirements of this section. Any person who fails to maintain records, or fails to produce records when required in a reasonable manner and at a reasonable time, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(13)(a) Upon receipt by the Department of Highway Safety and Motor Vehicles of written notice from a wrecker operator who claims a wrecker operator's lien under paragraph (2)(c) or paragraph (2)(d) for recovery, towing, or storage of an abandoned vehicle or vessel upon instructions from any law enforcement agency, for which a certificate of destruction has been

issued under subsection (11), the department shall place the name of the registered owner of that vehicle or vessel on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. 320.03(8). If the vehicle or vessel is owned jointly by more than one person, the name of each registered owner shall be placed on the list. The notice of wrecker operator's lien shall be submitted on forms provided by the department, which must include:

1. The name, address, and telephone number of the wrecker operator.
2. The name of the registered owner of the vehicle or vessel and the address to which the wrecker operator provided notice of the lien to the registered owner under subsection (4).
3. A general description of the vehicle or vessel, including its color, make, model, body style, and year.
4. The vehicle identification number (VIN); registration license plate number, state, and year; validation decal number, state, and year; vessel registration number; hull identification number; or other identification number, as applicable.
5. The name of the person or the corresponding law enforcement agency that requested that the vehicle or vessel be recovered, towed, or stored.
6. The amount of the wrecker operator's lien, not to exceed the amount allowed by paragraph (b).

(b) For purposes of this subsection only, the amount of the wrecker operator's lien for which the department will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle or vessel for 7 days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality under ss. 125.0103(1)(c) and 166.043(1)(c). This paragraph does not limit the amount of a wrecker operator's lien claimed under subsection (2) or prevent a wrecker operator from seeking civil remedies for enforcement of the entire amount of the lien, but limits only that portion of the lien for which the department will prevent issuance of a license plate or revalidation sticker.

(c)1. The registered owner of a vehicle or vessel may dispute a wrecker operator's lien, by notifying the department of the dispute in writing on forms provided by the department, if at least one of the following applies:

- a. The registered owner presents a notarized bill of sale proving that the vehicle or vessel was sold in a private or casual sale before the vehicle or vessel was recovered, towed, or stored.
- b. The registered owner presents proof that the Florida certificate of title of the vehicle or vessel was sold to a licensed dealer as defined in s. 319.001 before the vehicle or vessel was recovered, towed, or stored.
- c. The records of the department were marked "sold" prior to the date of the tow.

If the registered owner's dispute of a wrecker operator's lien complies with one of these criteria, the department shall immediately remove the registered owner's name from the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. [320.03](#)(8), thereby allowing issuance of a license plate or revalidation sticker. If the vehicle or vessel is owned jointly by more than one person, each registered owner must dispute the wrecker

operator's lien in order to be removed from the list. However, the department shall deny any dispute and maintain the registered owner's name on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. 320.03(8) if the wrecker operator has provided the department with a certified copy of the judgment of a court which orders the registered owner to pay the wrecker operator's lien claimed under this section. In such a case, the amount of the wrecker operator's lien allowed by paragraph (b) may be increased to include no more than \$500 of the reasonable costs and attorney's fees incurred in obtaining the judgment. The department's action under this subparagraph is ministerial in nature, shall not be considered final agency action, and is appealable only to the county court for the county in which the vehicle or vessel was ordered removed.

2. A person against whom a wrecker operator's lien has been imposed may alternatively obtain a discharge of the lien by filing a complaint, challenging the validity of the lien or the amount thereof, in the county court of the county in which the vehicle or vessel was ordered removed. Upon filing of the complaint, the person may have her or his name removed from the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. 320.03(8), thereby allowing issuance of a license plate or revalidation sticker, upon posting with the court a cash or surety bond or other adequate security equal to the amount of the wrecker operator's lien to ensure the payment of such lien in the event she or he does not prevail. Upon the posting of the bond and the payment of the applicable fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the department of the posting of the bond and directing the department to release the wrecker operator's lien. Upon determining the respective rights of the parties, the court may award damages and costs in favor of the prevailing party.

3. If a person against whom a wrecker operator's lien has been imposed does not object to the lien, but cannot discharge the lien by payment because the wrecker operator has moved or gone out of business, the person may have her or his name removed from the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. 320.03(8), thereby allowing issuance of a license plate or revalidation sticker, upon posting with the clerk of court in the county in which the vehicle or vessel was ordered removed, a cash or surety bond or other adequate security equal to the amount of the wrecker operator's lien. Upon the posting of the bond and the payment of the application fee set forth in s. 28.24, the clerk of the court shall issue a certificate notifying the department of the posting of the bond and directing the department to release the wrecker operator's lien. The department shall mail to the wrecker operator, at the address upon the lien form, notice that the wrecker operator must claim the security within 60 days, or the security will be released back to the person who posted it. At the conclusion of the 60 days, the department shall direct the clerk as to which party is entitled to payment of the security, less applicable clerk's fees.

4. A wrecker operator's lien expires 5 years after filing.

(d) Upon discharge of the amount of the wrecker operator's lien allowed by paragraph (b), the wrecker operator must issue a certificate of discharged wrecker operator's lien on forms provided by the department to each registered owner of the vehicle or vessel attesting that the amount of the wrecker operator's lien allowed by paragraph (b) has been discharged. Upon presentation of the certificate of discharged wrecker operator's lien by the registered owner, the department shall immediately remove the registered owner's name from the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. [320.03\(8\)](#), thereby allowing issuance of a license plate or revalidation sticker. Issuance of a certificate of discharged

wrecker operator's lien under this paragraph does not discharge the entire amount of the wrecker operator's lien claimed under subsection (2), but only certifies to the department that the amount of the wrecker operator's lien allowed by paragraph (b), for which the department will prevent issuance of a license plate or revalidation sticker, has been discharged.

(e) When a wrecker operator files a notice of wrecker operator's lien under this subsection, the department shall charge the wrecker operator a fee of \$2, which shall be deposited into the General Revenue Fund established under s. 860.158. A service charge of \$2.50 shall be collected and retained by the tax collector who processes a notice of wrecker operator's lien.

(f) This subsection applies only to the annual renewal in the registered owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under chapter 320, except for the transfer of registrations which is inclusive of the annual renewals. This subsection does not apply to any vehicle registered in the name of the lessor. This subsection does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(7)(b).

(g) The Department of Highway Safety and Motor Vehicles may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

History.--s. 2, ch. 76-83; s. 1, ch. 79-206; s. 1, ch. 79-244; s. 1, ch. 79-410; s. 7, ch. 90-283; s. 2, ch. 92-148; s. 10, ch. 93-49; s. 830, ch. 97-102; s. 11, ch. 98-324; s. 64, ch. 99-248; s. 41, ch. 2000-362; s. 3, ch. 2001-164; s. 36, ch. 2001-196; s. 17, ch. 2002-235; s. 16, ch. 2003-179; s. 3, ch. 2005-137; s. 94, ch. 2005-164; s. 10, ch. 2006-172.