

Committee Substitute for
Committee Substitute for Senate Bill No. 492

An act relating to recovering, towing, and storage of motor vehicles, vessels, and mobile homes; amending s. 319.30, F.S.; redefining the term “certificate of destruction,” to conform; amending s. 323.001, F.S.; revising certain towing and storage rates; amending s. 713.78, F.S.; removing mobile homes from the application of a statutory lien for towing and storage; conforming provisions related to recovering, towing, or storing vessels; providing for attorney’s fees; creating s. 713.785, F.S.; authorizing the imposition of lien by a mobile home transport company for recovering, towing, or storing a mobile home; providing definitions; requiring a mobile home transport company to provide notice of recovery, towing, or storage services; providing for the filing of a complaint; providing procedures for the sale of an unclaimed mobile home; specifying circumstances under which a mobile home transport company must obtain a certificate of destruction; providing for fees; authorizing the department to adopt rules; providing for fees; providing for issuing certificates of destruction and revalidation stickers; providing procedures for disputing a lien and for discharge of a lien; providing for the posting and repayment of surety; providing for criminal penalties; amending s. 715.07, F.S.; defining the term “vessel”; conforming provisions related to towing vessels parked on private property; imposing criminal penalties for failure to comply with certain laws governing the towing of vehicles and vessels; providing effective dates.

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

Section 1. Paragraph (a) of subsection (1) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(1) As used in this section, the term:

(a) “Certificate of destruction” means the certificate issued pursuant to s. 713.78(11) or s. 713.785(7)(a).

Section 2. Subsection (1) of section 323.001, Florida Statutes, is republished, and paragraph (c) of subsection (2) of that section is amended, to read:

323.001 Wrecker operator storage facilities; vehicle holds.—

(1) An investigating agency may place a hold on a motor vehicle stored within a wrecker operator’s storage facility for a period not to exceed 5 days, excluding holidays and weekends, unless extended in writing.

(2) The investigating agency must notify the wrecker operator in writing within 5 days, excluding holidays and weekends, whether the hold is to be continued. If no notification follows this period of time, the wrecker operator may release the vehicle to the designated person pursuant to s. 713.78.

(c) The towing and storage rates for the owner or lienholder of the held vehicle shall not exceed the contract or county rates for the ~~investigating agency~~.

Section 3. Subsections (2), (4), (5), (6), (7), (10), (11), and (13) of section 713.78, Florida Statutes, are amended to read:

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

(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, ~~or mobile home~~ upon instructions from:

(a) The owner thereof; ~~or~~

(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 ~~such~~ removal is done in compliance with s. 715.07; or

(c) Any law enforcement agency; ~~or~~

~~(d) A mobile home park owner as defined in s. 723.003 who has a current writ of possession for a mobile home lot pursuant to s. 723.061,~~

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

(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~~ ~~from~~ 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 ~~or for which a lot rental amount is due and owing to the mobile home park owner, as evidenced by a judgment for unpaid rent,~~ 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 ~~or unpaid lot rental amount~~ 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, or mobile home is registered, ~~to the mobile home park owner,~~ 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, and the unpaid lot rental amount, 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. ~~connected with such services when complying with the lawful directions of a law enforcement officer to remove a vehicle stopped, standing, or parked upon a street or highway in such a position as to obstruct the normal movement of traffic or in such a condition as to create a hazard to other traffic upon the street or highway.~~

(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.

(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 a 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, or mobile home~~ 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.

(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 ~~or mobile home~~ 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, ~~or mobile home~~ 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, ~~or mobile home~~ 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, ~~or mobile home~~ 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, ~~or mobile home~~, 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; ~~mobile home sticker 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, ~~or mobile home~~ 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, ~~or mobile home~~ 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, ~~or mobile home~~ 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, ~~or mobile home~~ was sold in a private or casual sale before the vehicle or, vessel, ~~or mobile home~~ was recovered, towed, or stored.

b. The registered owner presents proof that the Florida certificate of title of the vehicle or, vessel, ~~or mobile home~~ was sold to a licensed dealer as defined in s. 319.001 before the vehicle or, vessel, ~~or mobile home~~ was recovered, towed, or stored.

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, ~~or mobile home~~ 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, ~~or mobile home~~ 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, ~~or mobile home~~ 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, or mobile home~~ 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, or mobile home~~ 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 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.

Section 4. Effective January 1, 2006, section 713.785, Florida Statutes, is created to read:

713.785 Liens for recovering, towing, or storing mobile homes.—

(1) As used in this section, the term:

(a) “Mobile home transport company” means a person regularly engaged in the business of transporting mobile homes.

(b) “Store” means a mobile home transport company has legal possession of a mobile home either on the mobile home transport company’s property or on any other property.

(c) “Unpaid lot rental amount” or “rent” means any unpaid financial obligations of the mobile home owner or tenant to the mobile home park owner defined as “lot rental amount” in s. 723.003 or “rent” in part II of chapter 83 and includes any amounts defined as storage charges in s. 723.084.

(2) If the mobile home transport company recovers, removes, or stores a mobile home upon instructions from:

(a) The owner of the mobile home;

(b) Any law enforcement agency; or

(c) A mobile home park owner as defined in s. 723.003 who has a current writ of possession for a mobile home lot under s. 723.062 or s. 83.62,

the mobile home transport company has a lien on the mobile home for a reasonable towing fee and for a reasonable storage fee.

(3)(a) A mobile home transport company that comes into possession of a mobile home under subsection (2) and that claims a lien for recovery, towing, or storage services must give notice to the registered owner and to all persons claiming a lien on the mobile home, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or of a corresponding agency in any other state.

(b) Notice by certified mail, return receipt requested, shall be sent within 7 business days after the date of storage of the mobile home to the registered owner at the owner’s last known address, and all persons of record claiming a lien against the mobile home. The notice shall state the fact of possession of the mobile home, 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 under law and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any mobile home which remains unclaimed, or for which charges remain unpaid, may be sold free of all prior liens after 35 days following the eviction proceeding that resulted in the issuance of the writ of possession, provided that any lienholder entitled to notice pursuant to s. 723.084 has received such notice and has failed to act pursuant to s. 723.084 to pay storage charges, take possession of the

home, or take legal action to foreclose its interest prior to issuance of the writ of possession.

(4)(a) The owner of a mobile home stored under subsection (2), or any person claiming a lien of record, other than the mobile home transport company, within 10 days after the time she or he has knowledge of the location of the mobile home, may file a complaint in the court of the county in which the mobile home is stored, 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 the mobile home 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 due and owing at that time to ensure the payment of the 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 mobile home transport company of the posting of the bond and directing the mobile home transport company to release the mobile home. At the time of the release, after reasonable inspection, she or he shall give a receipt to the mobile home transport company citing any claims she or he has for loss or damage to the mobile home or the contents thereof.

(c) Upon determining the respective rights of the parties, the court may award damages and costs in favor of the prevailing party. The final order shall provide for immediate payment in full of any lien for recovery, towing, and storage fees and any unpaid lot rental amount accruing until the time the home is removed from the property, by the mobile home owner or lienholder, or the owner, lessee, or agent thereof of the property from which the mobile home was removed.

(5) A mobile home that is stored under subsection (2) and which remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid or for which a lot rental amount is due and owing to the mobile home park owner as evidenced by a judgment for unpaid rent and any contents of the mobile home not released under subsection (9), may be sold by the mobile home transport company for the towing or storage charge and any unpaid lot rental amount 35 days after the mobile home is stored by a mobile home transport company. The sale shall be at public auction for cash. If the date of the sale was not included in the notice required by subsection (3), notice of the sale must be given to the person in whose name the mobile home is registered at her or his last known address, to the mobile home park owner, and to all persons claiming a lien on the mobile home as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice must be sent by certified mail, return receipt requested, at least 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 must be made by publishing a notice of the sale one time, at least 10 days before 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, costs of the sale, and the unpaid lot rental amount as evidenced by the judgment for unpaid lot rental and an affidavit executed by the mobile home park owner or the owner's agent establishing the amount of unpaid lot rental amount through the date of the sale, in that order of priority, must be deposited with the clerk of the circuit court for the county if the owner is absent, and the clerk shall hold the proceeds subject to the claim of the person legally entitled to those proceeds. The clerk is entitled to receive 5 percent of the proceeds for the care and disbursement of the proceeds. The certificate of title issued under this section shall be discharged of all liens unless otherwise provided by court order.

(6) The mobile home transport company, the landlord or his or her agent, or any subsequent purchaser for value are not responsible to the tenant or any other party for loss, destruction, or damage to the mobile home or other personal property after coming into possession of the mobile home under this section, provided the mobile home transport company, the landlord, or their agents use reasonable care in storing the mobile home. As used in this subsection, the term "reasonable care" means securing the mobile home by changing door locks, or any similar methods for securing the mobile home, in place in the mobile home park or in a separate storage area.

(7)(a) A mobile home transport company that comes into possession of a mobile home under subsection (2) and that complies with subsection (3), if the mobile home is to be sold for purposes of being dismantled, destroyed, or changed so that it is not the mobile home described in the certificate of title, must apply to the county tax collector for a certificate of destruction. A certificate of destruction, which authorizes the dismantling or destruction of the mobile home described in the certificate, is reassignable no more than twice before dismantling or destruction of the mobile home and the certificate must accompany the mobile home for which it is issued when the mobile home is sold for that purpose, 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; must, if the mobile home is not registered in this state, include a statement from a law enforcement officer that the mobile home is not reported stolen; and shall be accompanied by any other 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. The tax collector who processes the application shall collect and retain a service charge of \$4.25.

(c) The Department of Highway Safety and Motor Vehicles may adopt rules to administer this subsection.

(d) Employees of the Department of Highway Safety and Motor Vehicles and law enforcement officers may inspect the records of each mobile home transport company in this state to ensure compliance with this section.

(8)(a) Upon receipt by the Department of Highway Safety and Motor Vehicles of written notice from a mobile home transport company that claims a lien under paragraph (2)(b) or paragraph (2)(c) for recovery, towing,

or storage of a mobile home for which a certificate of destruction has been issued under subsection (7), the department shall place the name of the registered owner of that mobile home on the list of those persons who may not be issued a revalidation sticker under s. 320.03. If the mobile home is owned jointly by more than one person, the name of each registered owner must be placed on the list. The notice of a mobile home transport company's lien must be submitted on forms provided by the department, which must include:

1. The name, address, and telephone number of the mobile home transport company.

2. The name of the registered owner of the mobile home and the address to which the mobile home transport company provided notice of the lien to the registered owner under subsection (3).

3. A general description of the mobile home, including its color, make, model, body style, and year.

4. The mobile home sticker number, state, and year or other identification number, as applicable.

5. The name of the person or the corresponding law enforcement agency that requested that the mobile home be recovered, towed, or stored.

6. The amount of the lien, not to exceed the amount allowed by paragraph (b).

(b) For purposes of this subsection, the amount of the mobile home transport company's lien for which the department will prevent issuance of a revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the mobile home 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 mobile home transport company's lien claimed under subsection (2) or prevent a mobile home transport company 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 revalidation sticker.

(c)1. The registered owner of the mobile home may dispute the mobile home transport company'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 mobile home was sold in a private or casual sale before the mobile home was recovered, towed, or stored.

b. The registered owner presents proof that the Florida certificate of title of the mobile home was sold to a licensed dealer as defined in s. 319.001 before the mobile home was recovered, towed, or stored.

c. The records of the department were marked to indicate that the mobile home was sold before the issuance of the certificate of destruction under subsection (7).

If the registered owner's dispute of a mobile home transport company'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 revalidation sticker under s. 320.03. If the mobile home is owned jointly by more than one person, each registered owner must dispute the mobile home transport company'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 revalidation sticker if the mobile home transport company has provided the department with a certified copy of the judgment of a court which orders the registered owner to pay the mobile home transport company's lien claimed under this section. In such a case, the amount of the mobile home transport company'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, is not final agency action, and is appealable only to the county court for the county in which the mobile home was ordered removed.

2. A person against whom a mobile home transport company'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 mobile home 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 revalidation sticker for any mobile home under s. 320.03 upon posting with the court a cash or surety bond or other adequate security equal to the amount of the mobile home transport company's lien to ensure the payment of the 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 mobile home transport company'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 mobile home transport company's lien has been imposed does not object to the lien, but cannot discharge the lien by payment because the mobile home transport company 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 revalidation sticker under s. 320.03, upon posting with the clerk of court in the county in which the mobile home was ordered removed a cash or surety bond or other adequate security equal to the amount of the mobile home transport company'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 mobile home transport company's lien. The department shall mail to the mobile home

transport company, at the address upon the lien form, notice that the mobile home transport company must claim the security within 60 days or the security will be released 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 fees of the clerk.

4. A mobile home transport company's lien expires 5 years after filing.

(d) Upon discharge of the amount of the mobile home transport company's lien allowed under paragraph (b), the mobile home transport company must issue a certificate of discharged lien on a form provided by the department to each registered owner of the mobile home attesting that the amount of the mobile home transport company's lien allowed under paragraph (b) has been discharged. Upon presentation of the certificate of discharged 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 revalidation sticker under s. 320.03. Issuance of a certificate of discharged lien under this paragraph does not discharge the entire amount of the mobile home transport company's lien claimed under subsection (2), but certifies to the department only that the amount of the mobile home transport company's lien allowed by paragraph (b), for which the department will prevent issuance of a revalidation sticker, has been discharged.

(e) When a mobile home transport company files a notice of lien under this subsection, the department shall charge the mobile home transport company a fee of \$2, which must be deposited into the General Revenue Fund. The tax collector who processes a notice of lien shall collect and retain a service charge of \$2.50.

(f) The Department of Highway Safety and Motor Vehicles may adopt rules to administer this subsection.

(9) Persons who provide services under this section shall permit a mobile home owner or her or his agent, whose agency is evidenced by a writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths, to inspect the mobile home and shall release to the owner or agent all personal property not affixed to the mobile home, provided there exists no landlord's lien for rent under s. 713.691 or s. 713.77.

(10) Any person who violates subsection (3), subsection (5), subsection (6), subsection (7), or subsection (9) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 5. Section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles or vessels parked on private property; towing.—

(1) As used in this section, the term:

(a) "Vehicle" means any mobile item which normally uses wheels, whether motorized or not.

(b) "Vessel" means every description of watercraft, barge, and air boat 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(8).

(2) The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle or vessel parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, under any of the following circumstances:

(a) The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or other legally authorized person in control of that vehicle or vessel is subject to strict compliance with the following conditions and restrictions:

1.a. Any towed or removed vehicle or vessel must be stored at a site within a 10-mile radius ~~10 miles~~ of the point of removal in any county of 500,000 population or more, and within a 15-mile radius ~~15 miles~~ of the point of removal in any county of less than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle or vessel is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within 1 hour or she or he will be in violation of this section.

b. If no towing business providing such service is located within the area of towing limitations set forth in sub-subparagraph a., the following limitations apply: any towed or removed vehicle or vessel must be stored at a site within a 20-mile radius ~~20 miles~~ of the point of removal in any county of 500,000 population or more, and within a 30-mile radius ~~30 miles~~ of the point of removal in any county of less than 500,000 population.

2. The person or firm towing or removing the vehicle or vessel shall, within 30 minutes after ~~of~~ completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff, of such towing or removal, the storage site, the time the vehicle or vessel was towed or removed, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. A person in the process of towing or removing a vehicle or vessel from the premises or parking lot in which the vehicle or vessel is not lawfully parked must stop when a person seeks the return of the vehicle or vessel. The vehicle or vessel must be returned upon the payment of a reasonable service fee of not more than one-half of the posted rate for the towing or removal service as provided in subparagraph 6. The vehicle or vessel may be towed or removed if, after a reasonable opportunity, the owner or legally authorized person in control of the vehicle or vessel is unable to pay the service fee. If the vehicle or vessel is redeemed, a detailed signed receipt must be given to the person redeeming the vehicle or vessel. If the registered

~~owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service as provided in subparagraph 6., for which a receipt shall be given, unless that person refuses to remove the vehicle which is otherwise unlawfully parked.~~

4. ~~A person may not pay or accept money or other valuable consideration for the privilege of towing or removing vehicles or vessels from a particular location. The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited.~~

5. Except for property appurtenant to and obviously a part of a single-family residence, and except for instances when notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the owner's or operator's expense, any property owner or lessee, or person authorized by the property owner or lessee, prior to towing or removing any vehicle or vessel from private property without the consent of the owner or other legally authorized person in control of that vehicle or vessel, must post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.

b. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels, ~~if the property owner, lessee, or person in control of the property has a written contract with the towing company.~~

d. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles or vessels.

e. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles or vessels being authorized.

f. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating “Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner’s Expense” in not less than 4-inch high, light-reflective letters on a contrasting background.

g. A property owner towing or removing vessels from real property must post notice, consistent with the requirements in sub-subparagraphs a.-f., which apply to vehicles, that unauthorized vehicles or vessels will be towed away at the owner’s expense.

A business owner or lessee may authorize the removal of a vehicle or vessel by a towing company when the vehicle or vessel is parked in such a manner that restricts the normal operation of business; and if a vehicle or vessel parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle or vessel removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign.

6. Any person or firm that tows or removes vehicles or vessels and proposes to require an owner, operator, or person in control of a vehicle or vessel to pay the costs of towing and storage prior to redemption of the vehicle or vessel must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles or vessels as provided in this section.

7. Any person or firm towing or removing any vehicles or vessels from private property without the consent of the owner or other legally authorized person in control of the vehicles or vessels shall, on any trucks, wreckers as defined in s. 713.78(1)(c), or other vehicles used in the towing or removal, have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the vehicle. The name shall be in at least 3-inch permanently affixed letters, and the address and telephone number shall be in at least 1-inch permanently affixed letters.

8. Vehicle entry for the purpose of removing the vehicle or vessel shall be allowed with reasonable care on the part of the person or firm towing the vehicle or vessel. Such person or firm shall be liable for any damage occasioned to the vehicle or vessel if such entry is not in accordance with the standard of reasonable care.

9. When a vehicle or vessel has been towed or removed pursuant to this section, it must be released to its owner or custodian within one hour after requested. Any vehicle or vessel owner, ~~custodian~~, or agent shall have the right to inspect the vehicle or vessel before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle or vessel owner, custodian, or agent as a condition of

release of the vehicle or vessel to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle or vessel must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements ~~are shall be the~~ minimum standards and do shall not preclude enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles or vessels are towed from private property.

(3) This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles or vessels that which are marked as such or to property owned by any governmental entity.

(4) When a person improperly causes a vehicle or vessel to be removed, such person shall be liable to the owner or lessee of the vehicle or vessel for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney's attorneys' fees; and court costs.

(5)(a) Any person who violates ~~the provisions of~~ subparagraph (2)(a)2. or subparagraph (2)(a)6. commits 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 subparagraph (2)(a)1., subparagraph (2)(a)3., subparagraph (2)(a)4., the provisions of subparagraph (2)(a)7., or subparagraph (2)(a)9. commits is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2005.

Approved by the Governor June 3, 2005.

Filed in Office Secretary of State June 3, 2005.