

By Representative Dawson-White

1                                   A bill to be entitled  
2           An act relating to regulation of wrecker  
3           operators and persons immobilizing vehicles;  
4           amending s. 1.01, F.S.; defining the term  
5           "wrecker operator"; providing for a law  
6           enforcement officer to place a hold order on a  
7           motor vehicle in a wrecker operator's storage  
8           facility; prescribing conditions on such acts;  
9           authorizing county and municipal wrecker  
10          operator systems; prohibiting certain acts in  
11          contravention of such systems; providing  
12          penalties; amending ss. 125.0103, 166.043,  
13          F.S.; authorizing county and municipal  
14          regulation of the practice of immobilizing  
15          vehicles; amending s. 316.193, F.S.; providing  
16          for payment of charges when a vehicle is  
17          impounded or immobilized as a result of a  
18          charge of driving under the influence; amending  
19          s. 321.051, F.S.; revising provisions  
20          authorizing the Florida Highway Patrol to  
21          establish a wrecker operator system;  
22          prohibiting certain acts in contravention of  
23          such system; providing penalties; amending s.  
24          322.34, F.S.; revising provisions relating to  
25          impoundment or immobilization of vehicles being  
26          operated while the operator's license is  
27          suspended, revoked, canceled, or disqualified;  
28          providing for payment of accrued charges;  
29          amending s. 713.78, F.S.; providing that law  
30          allowing a lien for recovering, towing, or  
31          storing a vehicle does not authorize a lien for

1 immobilizing a vehicle; providing liability for  
2 damages or theft in connection with a towed  
3 vehicle; amending s. 715.07, F.S.; regulating  
4 the practice of immobilizing vehicles parked on  
5 private property; prohibiting certain practices  
6 and acts; providing penalties; amending s.  
7 319.30, F.S.; conforming a cross-reference;  
8 providing an effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Subsection (15) is added to section 1.01,  
13 Florida Statutes, 1996 Supplement, to read:

14 1.01 Definitions.--In construing these statutes and  
15 each and every word, phrase, or part hereof, where the context  
16 will permit:

17 (15) The term "wrecker operator" means any person or  
18 firm regularly engaged for hire in the business of towing or  
19 removing motor vehicles.

20 Section 2. Wrecker operator storage facilities; hold  
21 orders.--

22 (1) Unless extended by court order, a law enforcement  
23 officer may place a hold order on a motor vehicle stored  
24 within a wrecker operator's storage facility for a period not  
25 to exceed 72 hours when:

26 (a) The officer has probable cause to believe the  
27 vehicle should be seized and forfeited under the Florida  
28 Contraband Forfeiture Act, sections 932.701-932.704, Florida  
29 Statutes;

30  
31

- 1       (b) The officer has probable cause to believe the  
2 vehicle should be seized and forfeited under section 372.312,  
3 Florida Statutes;
- 4       (c) The officer has probable cause to believe the  
5 vehicle was used as the means of committing a crime;
- 6       (d) The officer has probable cause to believe that the  
7 vehicle is itself evidence that tends to show that a crime has  
8 been committed or that the vehicle contains evidence, which  
9 cannot readily be removed, which tends to show that a crime  
10 has been committed;
- 11       (e) The officer has probable cause to believe the  
12 vehicle was involved in a traffic accident resulting in death  
13 or personal injury and should be sealed for investigation and  
14 collection of evidence by a vehicular homicide investigator;
- 15       (f) The vehicle is impounded or immobilized pursuant  
16 to section 316.193 or section 322.34, Florida Statutes; or
- 17       (g) The officer is complying with a court order.
- 18       (2) The hold order must be in writing and must  
19 specify:
- 20       (a) The name and agency of the law enforcement officer  
21 placing the hold order on the vehicle;
- 22       (b) The date and time the hold order is placed on the  
23 vehicle;
- 24       (c) A general description of the vehicle including its  
25 color, make, model, body style, and year; VIN (Vehicle  
26 Identification Number); registration license plate number,  
27 state, and year; and validation sticker number, state, and  
28 year;
- 29       (d) The specific reason for placing the hold order;
- 30       (e) The condition of the vehicle;
- 31       (f) The location where the vehicle is being held; and

1       (g) The name, address, and telephone number of the  
2 wrecker operator and the storage facility.

3       (3) A wrecker operator's storage facility must comply  
4 with a hold order placed by a law enforcement officer,  
5 including instructions for inside or outside storage. A  
6 wrecker operator's storage facility may not release a motor  
7 vehicle subject to a hold order to any person except as  
8 directed by the law enforcement agency placing the hold order.

9       (4) When a vehicle owner is found guilty of, or pleads  
10 nolo contendere to, the offense that resulted in a hold order  
11 being placed on his or her vehicle, regardless of the  
12 adjudication of guilt, the owner must pay the accrued towing  
13 and storage charges assessed against the vehicle. When the  
14 vehicle owner is found not guilty, the law enforcement agency  
15 placing the hold order must pay the accrued towing and storage  
16 charges.

17       Section 3. County and municipal wrecker operator  
18 systems; penalties for operation outside of system.--

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

20       (a) "Authorized wrecker operator" means any wrecker  
21 operator who has been designated as part of the wrecker  
22 operator system established by the governmental unit having  
23 jurisdiction over the scene of a wrecked or disabled vehicle.

24       (b) "Unauthorized wrecker operator" means any wrecker  
25 operator who has not been designated as part of the wrecker  
26 operator system established by the governmental unit having  
27 jurisdiction over the scene of a wrecked or disabled vehicle.

28       (c) "Wrecker operator system" means a system for the  
29 towing or removal of wrecked, disabled, or abandoned vehicles,  
30 similar to the Florida Highway Patrol wrecker operator system  
31 described in section 321.051(2), Florida Statutes, under which

1 a county or municipality contracts with one or more wrecker  
2 operators for the towing or removal of wrecked, disabled, or  
3 abandoned vehicles from accident scenes, streets, or highways.  
4 A wrecker operator system normally uses a method for  
5 apportioning the towing assignments among the eligible wrecker  
6 operators through the creation of geographic zones, a rotation  
7 schedule, or a combination of these methods.  
8 (2) In any county or municipality that operates a  
9 wrecker operator system:  
10 (a) It is unlawful for an unauthorized wrecker  
11 operator or its employees or agents to monitor police radio  
12 for communications between field units and the dispatcher in  
13 order to determine the location of a wrecked or disabled  
14 vehicle for the purpose of driving by the scene of such  
15 vehicle in a manner described in paragraph (b) or paragraph  
16 (c). Any person who violates this paragraph is guilty of a  
17 noncriminal violation, punishable as provided in section  
18 775.083, Florida Statutes.  
19 (b) It is unlawful for an unauthorized wrecker  
20 operator to drive by the scene of a wrecked or disabled  
21 vehicle before the arrival of an authorized wrecker operator,  
22 initiate contact with the owner or operator of such vehicle by  
23 soliciting or offering towing services, and tow such vehicle.  
24 Any person who violates this paragraph is guilty of a  
25 misdemeanor of the second degree, punishable as provided in  
26 section 775.082 or section 775.083, Florida Statutes.  
27 (c) When an unauthorized wrecker operator drives by  
28 the scene of a wrecked or disabled vehicle and the owner or  
29 operator initiates contact by signaling the wrecker operator  
30 to stop and provide towing services, the unauthorized wrecker  
31 operator must disclose to the owner or operator of the vehicle

1 that he or she is not the authorized wrecker operator who has  
2 been designated as part of the wrecker operator system and  
3 must disclose what charges for towing and storage will apply  
4 before the vehicle is connected to the towing apparatus. Any  
5 person who violates this paragraph is guilty of a misdemeanor  
6 of the second degree, punishable as provided in section  
7 775.082 or section 775.083, Florida Statutes.

8 (d) At the scene of a wrecked or disabled vehicle, it  
9 is unlawful for a wrecker operator to falsely identify himself  
10 or herself as being part of the wrecker operator system. Any  
11 person who violates this paragraph is guilty of a misdemeanor  
12 of the first degree, punishable as provided in section 775.082  
13 or section 775.083, Florida Statutes.

14 (3) This section does not prohibit, or in any way  
15 prevent, the owner or operator of a vehicle involved in an  
16 accident or otherwise disabled from contacting any wrecker  
17 operator for the provision of towing services, whether the  
18 wrecker operator is an authorized wrecker operator or not.

19 Section 4. Paragraph (b) of subsection (1) of section  
20 125.0103, Florida Statutes, is amended to read:

21 125.0103 Ordinances and rules imposing price controls;  
22 findings required; procedures.--

23 (1)

24 (b) The provisions of this section shall not prevent  
25 the enactment by local governments of public service rates  
26 otherwise authorized by law, including water, sewer, solid  
27 waste, public transportation, taxicab, towing of vehicles from  
28 or immobilization of vehicles on private property, removal and  
29 storage of wrecked or disabled vehicles from an accident scene  
30 or for the removal and storage of vehicles, in the event the  
31 owner or operator is incapacitated, unavailable, leaves the

1 procurement of wrecker service to the law enforcement officer  
2 at the scene, or otherwise does not consent to the removal of  
3 the vehicle, or port rates.

4 Section 5. Paragraph (b) of subsection (1) of section  
5 166.043, Florida Statutes, is amended to read:

6 166.043 Ordinances and rules imposing price controls;  
7 findings required; procedures.--

8 (1)

9 (b) The provisions of this section shall not prevent  
10 the enactment by local governments of public service rates  
11 otherwise authorized by law, including water; sewer; solid  
12 waste; public transportation; taxicab; towing of vehicles from  
13 or immobilization of vehicles on private property; removal and  
14 storage of wrecked or disabled vehicles from an accident scene  
15 or for the removal and storage of vehicles, in the event the  
16 owner or operator is incapacitated, unavailable, leaves the  
17 procurement of wrecker service to the law enforcement officer  
18 at the scene, or otherwise does not consent to the removal of  
19 the vehicle; or port rates.

20 Section 6. Paragraph (d) of subsection (6) of section  
21 316.193, Florida Statutes, 1996 Supplement, is amended to  
22 read:

23 316.193 Driving under the influence; penalties.--

24 (6) With respect to any person convicted of a  
25 violation of subsection (1), regardless of any penalty imposed  
26 pursuant to subsection (2), subsection (3), or subsection (4):

27 (d) In addition to the penalty imposed under paragraph  
28 (a), paragraph (b), or paragraph (c), the court shall also  
29 order the impoundment or immobilization of the vehicle that  
30 was driven by, or in the actual physical control of, the  
31 offender, unless the court finds that the family of the owner

1 of the vehicle has no other public or private means of  
2 transportation. The period of impoundment or immobilization is  
3 10 days, or, for the second conviction within 3 years, 30  
4 days, or, for the third conviction within 5 years, 90 days and  
5 may not be concurrent with probation or imprisonment. If the  
6 vehicle is leased or rented, the period of impoundment or  
7 immobilization may not extend beyond the expiration of the  
8 lease or rental agreement. Within 7 business days after the  
9 date that the court issues the order of impoundment or  
10 immobilization, the clerk of the court shall send notice by  
11 certified mail, return receipt requested, to the registered  
12 owner of the vehicle if the registered owner is a person other  
13 than the offender and to each person of record claiming a lien  
14 against the vehicle. All costs and fees for the impoundment or  
15 immobilization, including the cost of notification, must be  
16 paid by the owner of the vehicle or, if the vehicle is leased  
17 or rented, by the person leasing or renting the vehicle. The  
18 person who owns a vehicle that is impounded or immobilized  
19 under this paragraph, or a person who has a lien of record  
20 against such a vehicle, may, within 10 days after the date  
21 that person has knowledge of the location of the vehicle, file  
22 a complaint in the county in which the owner resides to  
23 determine whether the vehicle was wrongfully taken or withheld  
24 from the owner or lienholder. Upon the filing of a complaint,  
25 the owner or lienholder may have the vehicle released by  
26 posting with the court a bond or other adequate security equal  
27 to the amount of the costs and fees for impoundment or  
28 immobilization, including towing or storage, to ensure the  
29 payment of such costs and fees if the owner or lienholder does  
30 not prevail. When the vehicle owner or lienholder does not  
31 prevail on a complaint that the vehicle was wrongfully taken



1 or withheld, he or she must pay the accrued charges for the  
2 immobilization or impoundment, including any towing and  
3 storage charges assessed against the vehicle. When a law  
4 enforcement agency that has the duty to immobilize or impound  
5 a motor vehicle pursuant to a court order issued under this  
6 subsection has contracted with a wrecker operator to perform  
7 the immobilization or impoundment procedure and the vehicle  
8 owner or lienholder does prevail, the law enforcement agency  
9 must pay the accrued charges for the immobilization or  
10 impoundment, including any towing and storage charges.When  
11 the bond is posted and the fee is paid as set forth in s.  
12 28.24, the clerk of the court shall issue a certificate  
13 releasing the vehicle. At the time of release, after  
14 reasonable inspection, the owner or lienholder must give a  
15 receipt to the wrecker operator ~~towing or storage company~~  
16 indicating any loss or damage to the vehicle or to the  
17 contents of the vehicle.

18  
19 For the purposes of this section, any conviction for a  
20 violation of s. 327.35; a previous conviction for the  
21 violation of former s. 316.1931, former s. 860.01, or former  
22 s. 316.028; or a previous conviction outside this state for  
23 driving under the influence, driving while intoxicated,  
24 driving with an unlawful blood-alcohol level, driving with an  
25 unlawful breath-alcohol level, or any other similar  
26 alcohol-related or drug-related traffic offense, is also  
27 considered a previous conviction for violation of this  
28 section. Notwithstanding any other provision of this section,  
29 \$100 shall be added to any fine imposed pursuant to this  
30 section, of which one-quarter shall be deposited in the  
31 Emergency Medical Services Trust Fund, one-half shall be

1 deposited in the Criminal Justice Standards and Training Trust  
2 Fund of the Department of Law Enforcement to be used for  
3 operational expenses of the Division of Local Law Enforcement  
4 Assistance in conducting the statewide criminal analysis  
5 laboratory system established in s. 943.32, and one-quarter  
6 shall be deposited in the Brain and Spinal Cord Injury  
7 Rehabilitation Trust Fund created in s. 413.613. However, in  
8 satisfaction of the fine imposed pursuant to this section, the  
9 court may, upon a finding that the defendant is financially  
10 unable to pay either all or part of the fine, order that the  
11 defendant participate for a specified additional period of  
12 time in public service or a community work project in lieu of  
13 payment of that portion of the fine which the court determines  
14 the defendant is unable to pay. In determining such additional  
15 sentence, the court shall consider the amount of the unpaid  
16 portion of the fine and the reasonable value of the services  
17 to be ordered; however, the court may not compute the  
18 reasonable value of services at a rate less than the federal  
19 minimum wage at the time of sentencing.

20 Section 7. Section 321.051, Florida Statutes, is  
21 amended to read:

22 321.051 Florida Highway Patrol ~~A wrecker operator~~  
23 ~~system; penalties for operation outside of system for removal~~  
24 ~~and storage of wrecked, disabled, or abandoned vehicles.--~~

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

26 (a) "Authorized wrecker operator" means any wrecker  
27 operator who has been designated by the Division of Florida  
28 Highway Patrol as part of the wrecker operator system.

29 (b) "Unauthorized wrecker operator" means any wrecker  
30 operator who has not been designated by the division as part  
31 of the wrecker operator system.

1           (2) The Division of Florida Highway Patrol of the  
2 Department of Highway Safety and Motor Vehicles is authorized  
3 to establish within areas designated by the patrol a wrecker  
4 operator system using ~~utilizing~~ qualified, reputable wrecker  
5 operators for removal and storage of wrecked or disabled  
6 vehicles from an accident scene or for removal and storage of  
7 abandoned vehicles, in the event the owner or operator is  
8 incapacitated or unavailable or leaves the procurement of  
9 wrecker service to the officer at the scene. All reputable  
10 wrecker operators shall be eligible for use in the system  
11 provided their equipment and drivers meet recognized safety  
12 qualifications and mechanical standards set by rules of the  
13 Division of Florida Highway Patrol for the size of vehicle it  
14 is designed to handle. The division is authorized to limit the  
15 number of wrecker operators participating in the wrecker  
16 operator system, which authority shall not affect wrecker  
17 operators currently participating in the system established by  
18 this section. The division is authorized to establish maximum  
19 rates for the towing and storage of vehicles removed at the  
20 division's request, where such rates have not been set by a  
21 county or municipality pursuant to s. 125.0103 or s. 166.043.  
22 Such rates shall not be considered rules for the purpose of  
23 chapter 120; however, the department shall establish by rule a  
24 procedure for setting such rates. Any provision in chapter  
25 120 to the contrary notwithstanding, a final order of the  
26 department denying, suspending, or revoking a wrecker  
27 operator's participation in the system shall be reviewable in  
28 the manner and within the time provided by the Florida Rules  
29 of Appellate Procedure only by a writ of certiorari issued by  
30 the circuit court in the county wherein such wrecker operator  
31 resides ~~shall reside~~.

1           (3)(a) It is unlawful for an unauthorized wrecker  
2 operator or its employees or agents to monitor police radio  
3 for communications between patrol field units and the  
4 dispatcher in order to determine the location of a wrecked or  
5 disabled vehicle for the purpose of driving by the scene of  
6 such vehicle in a manner described in paragraph (b) or  
7 paragraph (c). Any person who violates this paragraph is  
8 guilty of a noncriminal violation, punishable as provided in  
9 s. 775.083.

10           (b) It is unlawful for an unauthorized wrecker  
11 operator to drive by the scene of a wrecked or disabled  
12 vehicle before the arrival of the authorized wrecker operator,  
13 initiate contact with the owner or operator of such vehicle by  
14 soliciting or offering towing services, and tow such vehicle.  
15 Any person who violates this paragraph is guilty of a  
16 misdemeanor of the second degree, punishable as provided in s.  
17 775.082 or s. 775.083.

18           (c) When an unauthorized wrecker operator drives by  
19 the scene of a wrecked or disabled vehicle and the owner or  
20 operator initiates contact by signaling the wrecker operator  
21 to stop and provide towing services, the unauthorized wrecker  
22 operator must disclose to the owner or operator of the vehicle  
23 that he or she is not an authorized wrecker operator and must  
24 disclose what charges for towing and storage will apply before  
25 the vehicle is connected to the towing apparatus. Any person  
26 who violates this paragraph is guilty of a misdemeanor of the  
27 second degree, punishable as provided in s. 775.082 or s.  
28 775.083.

29           (d) At the scene of a wrecked or disabled vehicle, it  
30 is unlawful for a wrecker operator to falsely identify himself  
31 or herself as being part of the wrecker operator system. Any

1 person who violates this paragraph is guilty of a misdemeanor  
2 of the first degree, punishable as provided in s. 775.082 or  
3 s. 775.083.

4 (4) This section does not prohibit, or in any way  
5 prevent, the owner or operator of a vehicle involved in an  
6 accident or otherwise disabled from contacting any wrecker  
7 operator for the provision of towing services, whether the  
8 wrecker operator is an authorized wrecker operator or not.

9 Section 8. Paragraphs (d) and (f) of subsection (5) of  
10 section 322.34, Florida Statutes, are amended to read:

11 322.34 Driving while license suspended, revoked,  
12 canceled, or disqualified.--

13 (5)

14 (d) Either the arresting agency or the towing service,  
15 whichever is in possession of the vehicle, shall determine  
16 whether any vehicle impounded or immobilized under this  
17 section has been leased or if there are any persons of record  
18 with a lien upon the vehicle. Either the arresting agency or  
19 the towing service, whichever is in possession of the vehicle,  
20 shall notify by certified mail, return receipt requested,  
21 within 7 business days after the date of the immobilization or  
22 impoundment of the vehicle, the registered owner and all  
23 persons having a recorded lien against the vehicle ~~telephone~~  
24 ~~any lessor or lienholder before 5 p.m. on the business day~~  
25 ~~after the day~~ that the vehicle has been impounded or  
26 immobilized. A lessor or lienholder may then obtain the  
27 vehicle, upon payment of any lawful towing or storage charges.  
28 If the storage facility fails to provide timely notice to a  
29 lessor or lienholder as required by this paragraph, the  
30 storage facility shall be responsible for payment of any  
31 towing or storage charges necessary to release the vehicle to

1 a lessor or lienholder that accrue after the notice period,  
2 which charges may then be assessed against the driver of the  
3 vehicle if the vehicle was lawfully impounded or immobilized.  
4 (f) The owner of a vehicle that is impounded or  
5 immobilized under this subsection may, within 10 days after  
6 the date the owner has knowledge of the location of the  
7 vehicle, file a complaint in the county in which the owner  
8 resides to determine whether the vehicle was wrongfully taken  
9 or withheld. Upon the filing of a complaint, the owner may  
10 have the vehicle released by posting with the court a bond or  
11 other adequate security equal to the amount of the costs and  
12 fees for impoundment or immobilization, including towing or  
13 storage, to ensure the payment of such costs and fees if the  
14 owner does not prevail. When the vehicle owner does not  
15 prevail on a complaint that the vehicle was wrongfully taken  
16 or withheld, he or she must pay the accrued charges for the  
17 immobilization or impoundment, including any towing and  
18 storage charges assessed against the vehicle. When the  
19 arresting agency has contracted with a wrecker operator to  
20 perform the immobilization or impoundment procedure, and the  
21 vehicle owner does prevail, the arresting agency must pay the  
22 accrued charges for the immobilization or impoundment,  
23 including any towing and storage charges. When the bond is  
24 posted and the fee is paid as set forth in s. 28.24, the clerk  
25 of the court shall issue a certificate releasing the vehicle.  
26 At the time of release, after reasonable inspection, the owner  
27 must give a receipt to the towing or storage company  
28 indicating any loss or damage to the vehicle or to the  
29 contents of the vehicle.  
30 Section 9. Section 713.78, Florida Statutes, is  
31 amended to read:

1           713.78 Liens for recovering, towing, or storing  
2 vehicles.--

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

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

6           (b) "Wrecker" means any truck or other vehicle which  
7 is used to tow, carry, or otherwise transport motor vehicles  
8 and which is equipped for that purpose with a boom, winch, car  
9 carrier, or other similar equipment.

10          (2) Whenever a person regularly engaged in the  
11 business of transporting vehicles by wrecker, tow truck, or  
12 car carrier recovers, removes, or stores a vehicle or mobile  
13 home upon instructions from:

14          (a) The owner thereof; or

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

19          (c) Any law enforcement agency; or

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

23  
24 he shall have a lien on such vehicle for a reasonable towing  
25 fee and for a reasonable storage fee; except that no storage  
26 fee shall be charged if such vehicle is stored for less than 6  
27 hours.

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

1           (4)(a)~~(3)(a)~~ Any person regularly engaged in the  
2 business of recovering, towing, or storing vehicles who comes  
3 into possession of a vehicle pursuant to subsection (2), and  
4 who claims a lien for recovery, towing, or storage services,  
5 shall give notice to the registered owner and to all persons  
6 claiming a lien thereon, as disclosed by the records in the  
7 Department of Highway Safety and Motor Vehicles or of a  
8 corresponding agency in any other state.

9           (b) Notice by certified mail, return receipt  
10 requested, shall be sent within 7 business days after the date  
11 of storage of the vehicle to the registered owner and to all  
12 persons of record claiming a lien against the vehicle. It  
13 shall state the fact of possession of the vehicle, that a lien  
14 as provided in subsection (2) is claimed, that charges have  
15 accrued and the amount thereof, that the lien is subject to  
16 enforcement pursuant to law, and that the owner or lienholder,  
17 if any, has the right to a hearing as set forth in subsection  
18 (5)~~(4)~~, and that any vehicle which remains unclaimed, or for  
19 which the charges for recovery, towing, or storage services  
20 remain unpaid, may be sold in 35 days free of all prior liens.

21           (c) If attempts to locate the owner or lienholder  
22 prove unsuccessful, the towing-storage operator shall, after 7  
23 working days, excluding Saturday and Sunday, of the initial  
24 tow or storage, notify the public agency of jurisdiction in  
25 writing by certified mail or acknowledged hand delivery that  
26 the towing-storage company has been unable to locate the owner  
27 or lienholder and a physical search of the vehicle has  
28 disclosed no ownership information and a good faith effort has  
29 been made. For purposes of this paragraph, subsection(9)  
30 ~~(8)~~, and s. 715.05, "good faith effort" means that the  
31



1 following checks have been performed by the company to  
2 establish prior state of registration and for title:  
3 1. Check of vehicle for any type of tag, tag record,  
4 temporary tag, or regular tag.  
5 2. Check of law enforcement report for tag number, if  
6 the vehicle was towed at the request of a law enforcement  
7 officer.  
8 3. Check of trip sheet or tow ticket of tow truck  
9 operator to see if a tag was on vehicle at beginning of tow,  
10 if private tow.  
11 4. If there is no address of the owner on the impound  
12 report, check of law enforcement report to see if an  
13 out-of-state address is indicated from driver license  
14 information.  
15 5. Check of vehicle for inspection sticker or other  
16 stickers and decals that may indicate a state of possible  
17 registration.  
18 6. Check of the interior of the vehicle for any papers  
19 that may be in the glove box, trunk, or other areas for a  
20 state of registration.  
21 (5)(a)~~(4)(a)~~ The owner of a vehicle removed pursuant  
22 to the provisions of subsection (2), or any person claiming a  
23 lien, other than the towing-storage operator, within 10 days  
24 after the time he has knowledge of the location of the  
25 vehicle, may file a complaint in the county court of the  
26 county in which the vehicle is stored or in which the owner  
27 resides to determine if his property was wrongfully taken or  
28 withheld from him.  
29 (b) Upon filing of a complaint, an owner or lienholder  
30 may have his vehicle released upon posting with the court a  
31 cash or surety bond or other adequate security equal to the

1 amount of the charges for towing or storage and lot rental  
2 amount to ensure the payment of such charges in the event he  
3 does not prevail. Upon the posting of the bond and the  
4 payment of the applicable fee set forth in s. 28.24, the clerk  
5 of the court shall issue a certificate notifying the lienor of  
6 the posting of the bond and directing the lienor to release  
7 the vehicle. At the time of such release, after reasonable  
8 inspection, he shall give a receipt to the towing-storage  
9 company reciting any claims he has for loss or damage to the  
10 vehicle or the contents thereof.

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

18 (6)~~(5)~~ Any vehicle which is stored pursuant to  
19 subsection (2) and which remains unclaimed, or for which  
20 reasonable charges for recovery, towing, or storing remain  
21 unpaid or for which a lot rental amount is due and owing to  
22 the mobile home park owner, as evidenced by a judgment for  
23 unpaid rent, and any contents not released pursuant to  
24 subsection (10)~~(9)~~, may be sold by the owner or operator of  
25 the storage space for such towing or storage charge or unpaid  
26 lot rental amount after 35 days from the time the vehicle is  
27 stored therein. The sale shall be at public auction for cash.  
28 If the date of the sale was not included in the notice  
29 required in subsection (4)~~(3)~~, notice of the sale shall be  
30 given to the person in whose name the vehicle or mobile home  
31 is registered, to the mobile home park owner, and to all

1 persons claiming a lien on the vehicle as shown on the records  
2 of the Department of Highway Safety and Motor Vehicles or of  
3 the corresponding agency in any other state. Notice shall be  
4 sent by certified mail, return receipt requested, to the owner  
5 of the vehicle and the person having the recorded lien on the  
6 vehicle at the address shown on the records of the registering  
7 agency and shall be mailed not less than 15 days before the  
8 date of the sale. After diligent search and inquiry, if the  
9 name and address of the registered owner or the owner of the  
10 recorded lien cannot be ascertained, the requirements of  
11 notice by mail may be dispensed with. In addition to the  
12 notice by mail, public notice of the time and place of sale  
13 shall be made by publishing a notice thereof one time, at  
14 least 10 days prior to the date of the sale, in a newspaper of  
15 general circulation in the county in which the sale is to be  
16 held. The proceeds of the sale, after payment of reasonable  
17 towing and storage charges, costs of the sale, and the unpaid  
18 lot rental amount, in that order of priority, shall be  
19 deposited with the clerk of the circuit court for the county  
20 if the owner is absent, and the clerk shall hold such proceeds  
21 subject to the claim of the person legally entitled thereto.  
22 The clerk shall be entitled to receive 5 percent of such  
23 proceeds for the care and disbursement thereof. The  
24 certificate of title issued under this law shall be discharged  
25 of all liens unless otherwise provided by court order.

26 (7)(a)(6) A wrecker operator ~~No person regularly~~  
27 ~~engaged in the business of~~ recovering, towing, or storing  
28 vehicles is not shall be liable for damages connected with  
29 such services, theft of such vehicles, or theft of personal  
30 property contained in such vehicles, provided that such  
31 services ~~they~~ have been performed with reasonable care and

1 provided, further, that, in the case of removal of a vehicle  
2 upon the request of a person purporting, and reasonably  
3 appearing, to be the owner or lessee, or a person authorized  
4 by the owner or lessee, of the property from which such  
5 vehicle is removed, such removal has been done in compliance  
6 with s. 715.07. Further, a wrecker operator is not liable for  
7 damage connected with such services when complying with the  
8 lawful directions of a law enforcement officer to remove a  
9 vehicle stopped, standing, or parked upon a street or highway  
10 in such a position as to obstruct the normal movement of  
11 traffic or in such a condition as to create a hazard to other  
12 traffic upon the street or highway.

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

18 1. The wrecker operator surrounds the storage facility  
19 with a chain-link or solid-wall type fence at least 6 feet in  
20 height;

21 2. The wrecker operator has illuminated the storage  
22 facility with lighting of sufficient intensity to reveal  
23 persons and vehicles at a distance of at least 150 feet during  
24 nighttime; and

25 3. The wrecker operator uses one or more of the  
26 following security methods to discourage theft of vehicles or  
27 of any personal property contained in such vehicles stored in  
28 the wrecker operator's storage facility:

29 a. A night dispatcher or watchman remains on duty at  
30 the storage facility from sunset to sunrise;

31

1           b. A security dog remains at the storage facility from  
2 sunset to sunrise;

3           c. Security cameras or other similar surveillance  
4 devices monitor the storage facility; or

5           d. A security guard service examines the storage  
6 facility at least once each hour from sunset to sunrise.

7           (c) Any law enforcement agency requesting that a motor  
8 vehicle be removed from an accident scene, street, or highway  
9 must conduct an inventory and prepare a written record of all  
10 personal property found in the vehicle before the vehicle is  
11 removed by a wrecker operator. A wrecker operator is not  
12 liable for the loss of personal property alleged to be  
13 contained in such a vehicle when such personal property was  
14 not identified on the inventory record prepared by the law  
15 enforcement agency requesting the removal of the vehicle.

16           ~~(8)(7)~~ A person regularly engaged in the business of  
17 recovering, towing, or storing vehicles, except a person  
18 licensed under chapter 493 while engaged in "repossession"  
19 activities as defined in s. 493.6101, may not operate a  
20 wrecker, tow truck, or car carrier unless the name, address,  
21 and telephone number of the company performing the service is  
22 clearly printed in contrasting colors on the driver and  
23 passenger sides of its vehicle. The name must be in at least  
24 3-inch permanently affixed letters, and the address and  
25 telephone number must be in at least 1-inch permanently  
26 affixed letters.

27           ~~(9)(8)~~ Failure to make good faith best efforts to  
28 comply with the notice requirements of this section shall  
29 preclude the imposition of any storage charges against such  
30 vehicle.

31

1           (10)~~(9)~~ Persons who provide services pursuant to this  
2 section shall permit vehicle owners or their agents, which  
3 agency is evidenced by a writing acknowledged by the owner  
4 before a notary public or other person empowered by law to  
5 administer oaths, to inspect the towed vehicle and shall  
6 release to the owner or agent all personal property not  
7 affixed to the vehicle which was in the vehicle at the time  
8 the vehicle came into the custody of the person providing such  
9 services.

10           (11)~~(10)~~~~(a)~~ Any person regularly engaged in the  
11 business of recovering, towing, or storing vehicles who comes  
12 into possession of a vehicle pursuant to subsection (2) and  
13 who has complied with the provisions of subsections (3) and  
14 (6)~~(5)~~, when such vehicle is to be sold for purposes of being  
15 dismantled, destroyed, or changed in such manner that it is  
16 not the motor vehicle or mobile home described in the  
17 certificate of title, shall apply to the county tax collector  
18 for a certificate of destruction. A certificate of  
19 destruction, which authorizes the dismantling or destruction  
20 of the vehicle described therein, shall be reassignable and  
21 shall accompany the vehicle for which it is issued, when such  
22 vehicle is sold for such purposes, in lieu of a certificate of  
23 title. The application for a certificate of destruction shall  
24 include an affidavit from the applicant that it has complied  
25 with all applicable requirements of this section and, if the  
26 vehicle is not registered in this state, by a statement from a  
27 law enforcement officer that the vehicle is not reported  
28 stolen, and shall be accompanied by such documentation as may  
29 be required by the department.

30           (b) The Department of Highway Safety and Motor  
31 Vehicles shall charge a fee of \$3 for each certificate of

1 destruction. A service charge of \$4.25 shall be collected and  
2 retained by the tax collector who processes the application.

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

6 (12)(a)~~(11)(a)~~ Any person who violates any provision  
7 of subsection ~~subsections~~ (1) subsections (2), (4), (5), (6),  
8 or (7) through (6) is guilty of a misdemeanor of the first  
9 degree, punishable as provided in s. 775.082 or s. 775.083.

10 (b) Any person who violates the provisions of  
11 subsections(8)(7) through(11)(10) is guilty of a felony of  
12 the third degree, punishable as provided in s. 775.082, s.  
13 775.083, or s. 775.084.

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

20 Section 10. Section 715.07, Florida Statutes, is  
21 amended to read:

22 715.07 Vehicles parked on private property; towing and  
23 immobilization.--

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

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

27 (b) "Vehicle boot" means any mechanical device that  
28 attaches to a vehicle and, while attached, renders such  
29 vehicle immobile or unable to be moved without causing damage  
30 to the vehicle.

31

1           (2) The owner or lessee of real property, or any  
2 person authorized by the owner or lessee, which person may be  
3 the designated representative of the condominium association  
4 if the real property is a condominium, may cause any vehicle  
5 parked on such property without his or her permission to be  
6 immobilized using a vehicle boot or other similar device or  
7 removed by a wrecker operator ~~person regularly engaged in the~~  
8 ~~business of towing vehicles~~, without liability for the costs  
9 of removal, transportation, or storage or damages caused by  
10 such removal, transportation, or storage, under any of the  
11 following circumstances:

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

17           1.a. Any towed or removed vehicle must be stored at a  
18 site within 10 miles of the point of removal in any county of  
19 500,000 population or more, and within 15 miles of the point  
20 of removal in any county of less than 500,000 population. That  
21 site must be open for the purpose of redemption of vehicles on  
22 any day that the wrecker operator ~~person or firm~~ towing such  
23 vehicle is open for towing purposes, from 8:00 a.m. to 6:00  
24 p.m., and, when closed, shall have prominently posted a sign  
25 indicating a telephone number where the operator of the site  
26 can be reached at all times. Upon receipt of a telephoned  
27 request to open the site to redeem a vehicle, the operator  
28 shall return to the site within 1 hour or he or she will be in  
29 violation of this section.

30           b. If no towing business providing such service is  
31 located within the area of towing limitations set forth in



1 sub-subparagraph a., the following limitations apply: any  
2 towed or removed vehicle must be stored at a site within 20  
3 miles of the point of removal in any county of 500,000  
4 population or more, and within 30 miles of the point of  
5 removal in any county of less than 500,000 population.  
6         2. The wrecker operator ~~person or firm~~ towing or  
7 removing the vehicle shall, within 30 minutes of completion of  
8 such towing or removal, notify the municipal police department  
9 or, in an unincorporated area, the sheriff of such towing or  
10 removal, the storage site, the time the vehicle was towed or  
11 removed, and the make, model, color, and license plate number  
12 of the vehicle and shall obtain the name of the person at that  
13 department to whom such information was reported and note that  
14 name on the trip record.  
15         3. If the registered owner or other legally authorized  
16 person in control of the vehicle arrives at the scene prior to  
17 removal or towing of the vehicle, the vehicle shall be  
18 disconnected from the towing or removal apparatus, and that  
19 person shall be allowed to remove the vehicle without  
20 interference upon the payment of a reasonable service fee of  
21 not more than one-half of the posted rate for such towing  
22 service as provided in subparagraph 6., for which a receipt  
23 shall be given, unless that person refuses to remove the  
24 vehicle that ~~which~~ is otherwise unlawfully parked.  
25         4. The rebate or payment of money or any other  
26 valuable consideration from the individual or firm  
27 immobilizing, towing, or removing vehicles to the owners or  
28 operators of the premises from which the vehicles are towed or  
29 removed, for the privilege of immobilizing, removing, or  
30 towing those vehicles, is prohibited.  
31

1           5. Except for property appurtenant to and obviously a  
2 part of a single-family residence, and except for instances  
3 when notice is personally given to the owner or other legally  
4 authorized person in control of the vehicle that the area in  
5 which that vehicle is parked is reserved or otherwise  
6 unavailable for unauthorized vehicles and subject to being  
7 removed or immobilized at the owner's or operator's expense,  
8 any property owner or lessee, or person authorized by the  
9 property owner or lessee, before immobilizing,~~prior to~~  
10 towing, or removing any vehicle from private property without  
11 the consent of the owner or other legally authorized person in  
12 control of that vehicle, must post a notice meeting the  
13 following requirements:

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

20           b. The notice must clearly indicate, in not less than  
21 2-inch high, light-reflective letters on a contrasting  
22 background, that unauthorized vehicles will be towed away at  
23 the owner's expense. The words "tow-away zone" must be  
24 included on the sign in not less than 4-inch high letters.

25           c. The notice must also provide the name and current  
26 telephone number of the wrecker operator ~~person or firm~~ towing  
27 or removing such the vehicles or the person or firm  
28 immobilizing such vehicles, if the property owner, lessee, or  
29 person in control of the property has a written contract with  
30 the wrecker operator or other parking enforcement ~~towing~~  
31 company.

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

7           e. The local government may require permitting and  
8 inspection of these signs prior to any immobilization, towing,  
9 or removal of vehicles being authorized.

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

16  
17 A business owner or lessee may authorize the removal of a  
18 vehicle by a wrecker operator ~~towing company~~ when the vehicle  
19 is parked in such a manner that restricts the normal operation  
20 of business; and if a vehicle parked on a public right-of-way  
21 obstructs access to a private driveway the owner, lessee, or  
22 agent may have the vehicle removed by a wrecker operator  
23 ~~towing company~~ upon signing an order that the vehicle be  
24 removed without a posted tow-away zone sign.

25           6. Any wrecker operator ~~person or firm~~ that tows or  
26 removes vehicles and proposes to require an owner, operator,  
27 or person in control of a vehicle to pay the costs of towing  
28 and storage prior to redemption of the vehicle must file and  
29 keep on record with the local law enforcement agency a  
30 complete copy of the current rates to be charged for such  
31 services and post at the storage site an identical rate

1 schedule and any written contracts with property owners,  
2 lessees, or persons in control of property which authorize  
3 such person or firm to remove vehicles as provided in this  
4 section.

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

16         8.a. Vehicle entry for the purpose of removing the  
17 vehicle shall be allowed with reasonable care on the part of  
18 the wrecker operator ~~person or firm~~ towing the vehicle. Such  
19 wrecker operator is ~~person or firm shall be~~ liable for any  
20 damage occasioned to the vehicle if such entry is not in  
21 accordance with the standard of reasonable care.

22         b. Vehicle entry for the purpose of immobilizing the  
23 vehicle using a vehicle boot or other similar device is not  
24 permitted under any circumstances.

25         9. When a vehicle has been towed or removed pursuant  
26 to this section, it must be released to its owner or custodian  
27 within 1 ~~one~~ hour after requested unless a hold order has been  
28 placed on the vehicle under section 2 of this act. Any  
29 vehicle owner, custodian, or agent shall have the right to  
30 inspect the vehicle before accepting its return, and no  
31 release or waiver of any kind which would release the wrecker

1 ~~operator person or firm towing the vehicle~~ from liability for  
2 damages noted by the owner or other legally authorized person  
3 at the time of the redemption may be required from any vehicle  
4 owner, custodian, or agent as a condition of release of the  
5 vehicle to its owner. A detailed, signed receipt showing the  
6 legal name of the wrecker operator ~~company or person towing or~~  
7 ~~removing the vehicle~~ must be given to the person paying towing  
8 or storage charges at the time of payment, whether requested  
9 or not.

10 10.a. When a parked vehicle has been immobilized  
11 pursuant to this section, the site where the vehicle is  
12 immobilized must be open for the purpose of removing the  
13 vehicle boot or similar device and redemption of the vehicle  
14 on any day that the person or firm immobilizing vehicles  
15 parked on such site is open and engaged in immobilizing other  
16 vehicles, from 8:00 a.m. to 6:00 p.m., and, when closed, shall  
17 have prominently posted a sign indicating a telephone number  
18 where the operator of the site can be reached at all times.  
19 Upon receipt of a telephoned request to open the site to  
20 redeem a vehicle, the operator shall return to the site within  
21 1 hour or he or she will be in violation of this section.

22 b. The rates charged for removing a vehicle boot or  
23 other similar device used to immobilize the vehicle may not  
24 exceed the maximum rates for towing or removing such vehicle  
25 from private property as regulated by local government  
26 pursuant to s. 125.0103 or s. 166.043.

27 c. Any person or firm that immobilizes vehicles and  
28 proposes to require an owner, operator, or person in control  
29 of a vehicle to pay the costs of such immobilization before  
30 redemption of the vehicle must file and keep on record with  
31 the local law enforcement agency a complete copy of the

1 current rates to be charged for such services. A person or  
2 firm may not charge fees in excess of the rates on record with  
3 the local law enforcement agency.

4 (b) These requirements shall be the minimum standards  
5 and shall not preclude enactment of additional regulations by  
6 any municipality or county including the right to regulate  
7 rates when vehicles are towed from, or immobilized on, private  
8 property.

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

13 (4) When a person improperly causes a vehicle to be  
14 immobilized or removed, such person shall be liable to the  
15 owner or lessee of the vehicle for the cost of immobilization,  
16 removal, transportation, and storage; any damages resulting  
17 from the removal, transportation, or storage of the vehicle;  
18 attorneys' fees; and court costs.

19 (5)(a) Any person who violates the provisions of  
20 subparagraph (2)(a)2., or subparagraph (2)(a)6.,  
21 sub-subparagraph (2)(a)10.b., or sub-subparagraph (2)(a)10.c.  
22 is guilty of a misdemeanor of the first degree, punishable as  
23 provided in s. 775.082 or s. 775.083.

24 (b) Any person who violates the provisions of  
25 subparagraph (2)(a)7. is guilty of a felony of the third  
26 degree, punishable as provided in s. 775.082, s. 775.083, or  
27 s. 775.084.

28 Section 11. Paragraph (a) of subsection (1) of section  
29 319.30, Florida Statutes, is amended to read:

30 319.30 Definitions; dismantling, destruction, change  
31 of identity of motor vehicle or mobile home; salvage.--

1 (1) As used in this section, the term:  
2 (a) "Certificate of destruction" means the certificate  
3 issued pursuant to s. 713.78(11)~~s. 713.78(10)~~.  
4 Section 12. This act shall take effect October 1,  
5 1997.

6  
7 \*\*\*\*\*

8 SENATE SUMMARY

9 Defines the term "wrecker operator" for use in the  
10 Florida Statutes. Authorizes counties and  
11 municipalities, and revises the authority of the Florida  
12 Highway Patrol, to establish wrecker operator systems and  
13 prohibits certain acts by wrecker operators in  
14 contravention of such systems. Provides regulation for  
15 persons who immobilize motor vehicles by use of a "boot"  
16 or similar device. Describes the liability of wrecker  
17 operators for actions in the course of business.  
18 Prescribes liability for payment for charges in various  
19 circumstances.  
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