

Bill No. CS/HB 3345

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Silver moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 16, line 3, through		
15	page 24, line 22, delete those lines		
16			
17	and insert:		
18	713.78 Liens for recovering, towing, or storing		
19	vehicles <u>and undocumented vessels</u> .--		
20	(1) For the purposes of this section, the term:		
21	(a) "Vehicle" means any mobile item, whether motorized		
22	or not, which is mounted on wheels.		
23	(b) <u>"Vessel" has the same meaning as the term</u>		
24	<u>"undocumented vessel" as defined in s. 372.02(36).</u>		
25	<u>(c)(b)</u> "Wrecker" means any truck or other vehicle		
26	which is used to tow, carry, or otherwise transport motor		
27	vehicles <u>or vessels upon the streets and highways of this</u>		
28	<u>state</u> and which is equipped for that purpose with a boom,		
29	winch, car carrier, or other similar equipment.		
30	(2) Whenever a person regularly engaged in the		
31	business of transporting vehicles <u>or vessels</u> by wrecker, tow		

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1 truck, or car carrier recovers, removes, or stores a vehicle,
2 vessel, or mobile home upon instructions from:

3 (a) The owner thereof; or

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

8 (c) Any law enforcement agency; or

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

12
13 she or he shall have a lien on such vehicle or vessel for a
14 reasonable towing fee and for a reasonable storage fee; except
15 that no storage fee shall be charged if such vehicle is stored
16 for less than 6 hours.

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

21 (4)(a)(3)(a) Any person regularly engaged in the
22 business of recovering, towing, or storing vehicles or vessels
23 who comes into possession of a vehicle or vessel pursuant to
24 subsection (2), and who claims a lien for recovery, towing, or
25 storage services, shall give notice to the registered owner
26 and to all persons claiming a lien thereon, as disclosed by
27 the records in the Department of Highway Safety and Motor
28 Vehicles or of a corresponding agency in any other state.

29 (b) Notice by certified mail, return receipt
30 requested, shall be sent within 7 business days after the date
31 of storage of the vehicle or vessel to the registered owner

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1 and to all persons of record claiming a lien against the
2 vehicle or vessel. It shall state the fact of possession of
3 the vehicle or vessel, that a lien as provided in subsection
4 (2) is claimed, that charges have accrued and the amount
5 thereof, that the lien is subject to enforcement pursuant to
6 law, and that the owner or lienholder, if any, has the right
7 to a hearing as set forth in subsection ~~(5)~~(4), and that any
8 vehicle or vessel which remains unclaimed, or for which the
9 charges for recovery, towing, or storage services remain
10 unpaid, may be sold in 35 days free of all prior liens.

11 (c) If attempts to locate the owner or lienholder
12 prove unsuccessful, the towing-storage operator shall, after 7
13 working days, excluding Saturday and Sunday, of the initial
14 tow or storage, notify the public agency of jurisdiction in
15 writing by certified mail or acknowledged hand delivery that
16 the towing-storage company has been unable to locate the owner
17 or lienholder and a physical search of the vehicle or vessel
18 has disclosed no ownership information and a good faith effort
19 has been made. For purposes of this paragraph, subsection ~~(9)~~
20 ~~(8)~~, and s. 715.05, "good faith effort" means that the
21 following checks have been performed by the company to
22 establish prior state of registration and for title:

23 1. Check of vehicle or vessel for any type of tag, tag
24 record, temporary tag, or regular tag.

25 2. Check of law enforcement report for tag number or
26 other information identifying the vehicle or vessel, if the
27 vehicle or vessel was towed at the request of a law
28 enforcement officer.

29 3. Check of trip sheet or tow ticket of tow truck
30 operator to see if a tag was on vehicle at beginning of tow,
31 if private tow.

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1 4. If there is no address of the owner on the impound
2 report, check of law enforcement report to see if an
3 out-of-state address is indicated from driver license
4 information.

5 5. Check of vehicle or vessel for inspection sticker
6 or other stickers and decals that may indicate a state of
7 possible registration.

8 6. Check of the interior of the vehicle or vessel for
9 any papers that may be in the glove box, trunk, or other areas
10 for a state of registration.

11 7. Check of vehicle for vehicle identification number.

12 8. Check of vessel for vessel registration number.

13 9. Check of vessel hull for a hull identification
14 number which should be carved, burned, stamped, embossed, or
15 otherwise permanently affixed to the outboard side of the
16 transom or, if there is no transom, to the outmost seaboard
17 side at the end of the hull that bears the rudder or other
18 steering mechanism.

19 ~~(5)(a)(4)(a)~~ The owner of a vehicle or vessel removed
20 pursuant to the provisions of subsection (2), or any person
21 claiming a lien, other than the towing-storage operator,
22 within 10 days after the time she or he has knowledge of the
23 location of the vehicle or vessel, may file a complaint in the
24 county court of the county in which the vehicle or vessel is
25 stored or in which the owner resides to determine if her or
26 his property was wrongfully taken or withheld from her or him.

27 (b) Upon filing of a complaint, an owner or lienholder
28 may have her or his vehicle or vessel released upon posting
29 with the court a cash or surety bond or other adequate
30 security equal to the amount of the charges for towing or
31 storage and lot rental amount to ensure the payment of such

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

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

18 ~~(6)(5)~~ Any vehicle or vessel which is stored pursuant
19 to 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 or
27 vessel is stored therein. The sale shall be at public auction
28 for cash. If the date of the sale was not included in the
29 notice required in subsection ~~(4)(3)~~, notice of the sale
30 shall be given to the person in whose name the vehicle,
31 vessel, or mobile home is registered, to the mobile home park

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

27 (7)(a)(6) A wrecker operator ~~No person regularly~~
28 ~~engaged in the business of recovering, towing, or storing~~
29 vehicles or vessels is not ~~shall be~~ liable for damages
30 connected with such services, theft of such vehicles or
31 vessels, or theft of personal property contained in such

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

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

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

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

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

31 a. A night dispatcher or watchman remains on duty at

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1 the storage facility from sunset to sunrise;

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

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

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

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

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

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

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

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

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

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

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

13 (b) Any person who violates the provisions of
14 subsections~~(8)(7)~~through~~(11)(10)~~is guilty of a felony of
15 the third degree, punishable as provided in s. 775.082, s.
16 775.083, or s. 775.084.

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

23
24

25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 On page 2, lines 1-4, delete those lines

28

29 and insert:

30 storing a vehicle or vessel does not authorize

31 a lien for immobilizing a vehicle or vessel;

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1 creating a procedure for liens for towing and
2 storage charges on undocumented vessels in the
3 same manner as currently permitted for
4 vehicles; providing liability for damages or
5 theft in connection with a towed vehicle or
6 vessel; amending s. 319.30, F.S.; conforming a
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