

Bill No. CS for SB 2044

Amendment No. 1 Barcode 872888

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Judiciary recommended the following amendment
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Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (8) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.--

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), ~~or~~ s. 316.1967(6), or s. 713.78(13) a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the clerk showing that the fines outstanding have been paid. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the

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1 term "civil penalties and fines" does not include a wrecker
2 operator's lien as described in s. 713.78(13).If the tax
3 collector has private tag agents, such tag agents are entitled
4 to receive a pro rata share of the amount paid to the tax
5 collector, based upon the percentage of license plates and
6 revalidation stickers issued by the tag agent compared to the
7 total issued within the county. The authority of any private
8 agent to issue license plates shall be revoked, after notice
9 and a hearing as provided in chapter 120, if he or she issues
10 any license plate or revalidation sticker contrary to the
11 provisions of this subsection. This section applies only to
12 the annual renewal in the owner's birth month of a motor
13 vehicle registration and does not apply to the transfer of a
14 registration of a motor vehicle sold by a motor vehicle dealer
15 licensed under this chapter, except for the transfer of
16 registrations which is inclusive of the annual renewals. This
17 section does not affect the issuance of the title to a motor
18 vehicle, notwithstanding s. 319.23(7)(b).

19 Section 2. Paragraph (b) of subsection (4) and
20 subsection (6) are amended, and subsection (13) is added to
21 section 713.78, Florida Statutes, to read:

22 713.78 Liens for recovering, towing, or storing
23 vehicles and documented vessels.--

24 (4)

25 (b) Notice by certified mail, return receipt
26 requested, shall be sent within 7 business days after the date
27 of storage of the vehicle or vessel to the registered owner
28 and to all persons of record claiming a lien against the
29 vehicle or vessel. It shall state the fact of possession of
30 the vehicle or vessel, that a lien as provided in subsection
31 (2) is claimed, that charges have accrued and the amount

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1 thereof, that the lien is subject to enforcement pursuant to
 2 law, and that the owner or lienholder, if any, has the right
 3 to a hearing as set forth in subsection (5), and that any
 4 vehicle or vessel which remains unclaimed, or for which the
 5 charges for recovery, towing, or storage services remain
 6 unpaid, may be sold ~~after 35 days~~ free of all prior liens
 7 after 35 days if the vehicle or vessel is more than 3 years of
 8 age or after 50 days if the vehicle or vessel is 3 years of
 9 age or less.

10 (6) Any vehicle or vessel which is stored pursuant to
 11 subsection (2) and which remains unclaimed, or for which
 12 reasonable charges for recovery, towing, or storing remain
 13 unpaid or for which a lot rental amount is due and owing to
 14 the mobile home park owner, as evidenced by a judgment for
 15 unpaid rent, and any contents not released pursuant to
 16 subsection (10), may be sold by the owner or operator of the
 17 storage space for such towing or storage charge or unpaid lot
 18 rental amount after 35 days following ~~from~~ the time the
 19 vehicle or vessel is stored therein if the vehicle or vessel
 20 is more than 3 years of age or after 50 days following the
 21 time the vehicle or vessel is stored therein if the vehicle or
 22 vessel is 3 years of age or less. The sale shall be at public
 23 auction for cash. If the date of the sale was not included in
 24 the notice required in subsection (4), notice of the sale
 25 shall be given to the person in whose name the vehicle,
 26 vessel, or mobile home is registered, to the mobile home park
 27 owner, and to all persons claiming a lien on the vehicle or
 28 vessel as shown on the records of the Department of Highway
 29 Safety and Motor Vehicles or of the corresponding agency in
 30 any other state. Notice shall be sent by certified mail,
 31 return receipt requested, to the owner of the vehicle or

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

22 (13)(a) Upon receipt by the Department of Highway
23 Safety and Motor Vehicles of written notice from a wrecker
24 operator who claims a wrecker operator's lien under paragraph
25 (2)(c) or paragraph (2)(d) for recovery, towing, or storage of
26 a vehicle, vessel, or mobile home, upon instructions from any
27 law enforcement agency, for which a certificate of destruction
28 has been issued under subsection (11), the department shall
29 place the name of the registered owner of that vehicle,
30 vessel, or mobile home on the list of those persons who may
31 not be issued a license plate or revalidation sticker for any

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1 motor vehicle under s. 320.03(8). If the vehicle, vessel, or
2 mobile home is owned jointly by more than one person, the name
3 of each registered owner shall be placed on the list. The
4 notice of wrecker operator's lien shall be submitted on forms
5 provided by the department, which must include:

6 1. The name, address, and telephone number of the
7 wrecker operator.

8 2. The name of the registered owner of the vehicle,
9 vessel, or mobile home and the address to which the wrecker
10 operator provided notice of the lien to the registered owner
11 under subsection (4).

12 3. A general description of the vehicle, vessel, or
13 mobile home, including its color, make, model, body style, and
14 year.

15 4. The vehicle identification number (VIN);
16 registration license plate number, state, and year; validation
17 decal number, state, and year; mobile home sticker number,
18 state, and year; vessel registration number; hull
19 identification number; or other identification number, as
20 applicable.

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

24 6. The amount of the wrecker operator's lien, not to
25 exceed the amount allowed by paragraph (b).

26 (b) For purposes of this subsection only, the amount
27 of the wrecker operator's lien for which the department will
28 prevent issuance of a license plate or revalidation sticker
29 may not exceed the amount of the charges for recovery, towing,
30 and storage of the vehicle, vessel, or mobile home for 7 days.
31 These charges may not exceed the maximum rates imposed by the

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1 ordinances of the respective county or municipality under ss.
2 125.0103(1)(c) and 166.043(1)(c). This paragraph does not
3 limit the amount of a wrecker operator's lien claimed under
4 subsection (2) or prevent a wrecker operator from seeking
5 civil remedies for enforcement of the entire amount of the
6 lien, but limits only that portion of the lien for which the
7 department will prevent issuance of a license plate or
8 revalidation sticker.

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

14 a. The registered owner presents a notarized bill of
15 sale proving that the vehicle, vessel, or mobile home was sold
16 in a private or casual sale before the vehicle, vessel, or
17 mobile home was recovered, towed, or stored.

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

23
24 If the registered owner's dispute of a wrecker operator's lien
25 complies with one of these criteria, the department shall
26 immediately remove the registered owner's name from the list
27 of those persons who may not be issued a licensed plate or
28 revalidation sticker for any motor vehicle under s. 320.03(8),
29 thereby allowing issuance of a license plate or revalidation
30 sticker. If the vehicle, vessel, or mobile home is owned
31 jointly by more than one person, each registered owner must

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

17 2. A person against whom a wrecker operator's lien has
18 been imposed may alternatively obtain a discharge of the lien
19 by filing a complaint challenging the validity of the lien or
20 the amount thereof in the county court of the county in which
21 the vehicle, vessel, or mobile home was ordered removed. Upon
22 filing of the complaint, the person may have her or his name
23 removed from the list of those persons who may not be issued a
24 licensed plate or revalidation sticker for any motor vehicle
25 under s. 320.03(8), thereby allowing issuance of a license
26 plate or revalidation sticker, upon posting with the court a
27 cash or surety bond or other adequate security equal to the
28 amount of the wrecker operator's lien to ensure the payment of
29 such lien in the event she or he does not prevail. Upon the
30 posting of the bond and the payment of the applicable fee set
31 forth in s. 28.24, the clerk of the court shall issue a

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1 certificate notifying the department of the posting of the
2 bond and directing the department to release the wrecker
3 operator's lien. Upon determining the respective rights of the
4 parties, the court may award damages and costs in favor of the
5 prevailing party.

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

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

31 (d) Upon discharge of the amount of the wrecker

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1 operator's lien allowed by paragraph (b), the wrecker operator
2 must issue a certificate of discharged wrecker operator's lien
3 on forms provided by the department to each registered owner
4 of the vehicle, vessel, or mobile home attesting that the
5 amount of the wrecker operator's lien allowed by paragraph (b)
6 has been discharged. Upon presentation of the certificate of
7 discharged wrecker operator's lien by the registered owner,
8 the department shall immediately remove the registered owner's
9 name from the list of those persons who may not be issued a
10 license plate or revalidation sticker for any motor vehicle
11 under s. 320.03(8), thereby allowing issuance of a license
12 plate or revalidation sticker. Issuance of a certificate of
13 discharged wrecker operator's lien under this paragraph does
14 not discharge the entire amount of the wrecker operator's lien
15 claimed under subsection (2), but only certifies to the
16 department that the amount of the wrecker operator's lien
17 allowed by paragraph (b), for which the department will
18 prevent issuance of a license plate or revalidation sticker,
19 has been discharged.

20 (e) When a wrecker operator files a notice of wrecker
21 operator's lien under this subsection, the department shall
22 charge the wrecker operator a fee of \$2, which shall be
23 deposited into the Florida Motor Vehicle Theft Prevention
24 Trust Fund established under s. 860.158. A service charge of
25 \$2.50 shall be collected and retained by the tax collector who
26 processes a notice of wrecker operator's lien.

27 (f) This subsection applies only to the annual renewal
28 in the registered owner's birth month of a motor vehicle
29 registration and does not apply to the transfer of a
30 registration of a motor vehicle sold by a motor vehicle dealer
31 licensed under chapter 320, except for the transfer of

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1 registrations which is inclusive of the annual renewals. This
2 subsection does not affect the issuance of the title to a
3 motor vehicle, notwithstanding s. 319.23(7)(b).

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

7 Section 3. This act shall take effect July 1, 2001.

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

11 And the title is amended as follows:

12 Delete everything before the enacting clause

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14 and insert:

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A bill to be entitled

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An act relating to wrecker liens; amending s.

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320.03, F.S.; including a cross-reference;

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providing that the term "civil penalties and

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finances" does not include reference to a wrecker

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operator's lien; amending s. 713.78, F.S.;

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revising requirements for the sale of an

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unclaimed vehicle or vessel; providing that the

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Department of Highway Safety and Motor Vehicles

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shall not issue a license plate or revalidation

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sticker for certain motor vehicles, vessels, or

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motor homes for which a wrecker operator's lien

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has been issued; providing procedures with

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respect to such liens; providing an effective

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date.

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