

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2044

SPONSOR: Transportation Committee and Senator Burt

SUBJECT: Wrecker Liens

DATE: April 16, 2001 REVISED: 04/17/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Vickers</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	<u>Johnson</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This CS creates the right of a wrecker operator who has towed a motor vehicle, mobile home, or vessel at the request of a law enforcement officer, and which motor vehicle, motor home, or vessel, is sold for salvage, to impose a wrecker operator's lien. A person against whom a wrecker operator's lien has been imposed may not receive a license plate or registration decal until the lien is discharged.

The CS also revises requirements relating to the sale of unclaimed vehicles. Currently, s. 713.78, F.S., provides that an unclaimed vehicle may be sold after 35 days free of all prior liens. The CS provides that a vehicle may be sold after 35 days if the vehicle is 3 years of age or older, or after 50 days if the vehicle is 3 years of age or less.

This CS substantially amends sections 320.03 and 713.78 of the Florida Statutes.

II. Present Situation:

Section 320.03, F.S., provides the procedures for registration of motor vehicles and mobile homes. County tax collectors are deemed agents of the state for the purpose of collecting fees, entering tag and title information, and issuing license plates and registration stickers. Section 320.03(4), F.S., requires a tax collector that has on-line information capability to refuse to issue a vehicle registration if the owner has refused to surrender a suspended or revoked driver's license. Section 320.03(8), F.S., requires a tax collector to check the lists maintained by DHSMV under s. 316.1001(4), F.S. (list of persons who have 3 or more outstanding citations for failure to pay a toll), and s. 316.1967(6), F.S. (list of persons who have 3 or more outstanding parking violations). Should an applicant for a license plate or an annual registration sticker be on either list, a license plate or registration sticker may not be issued until the applicant's name has been

removed or that person presents a receipt showing that the outstanding fines have been paid. Tax collectors (and their authorized agents) and clerks of the court are each entitled to receive monthly, as costs for implementing and administering the collection of fines through this procedure, 10 percent of the civil penalties and fines recovered from such persons.

Section 713.78, F.S., provides a wrecker company may impose a lien against any motor vehicle, mobile home, or vessel for reasonable towing and storage fees regarding that motor vehicle, mobile home, or vessel. A wrecker lien is not a recorded lien as, for instance, a bank lien is. A wrecker lien is a possessory lien, that is, the wrecker operator may take and hold the motor vehicle, mobile home, or vessel, until the lien is satisfied. There is no statutory requirement that DHSMV receive written notice from a wrecker operator who claims a wrecker operator's lien for recovery, towing, or storage of a vehicle, vessel or mobile home.

Section 713.78, F.S., also provides for the sale of unclaimed vehicles and vessels. Currently, this section provides that a towing operator, after providing the required notification to specified parties, may sale at auction the unclaimed vehicle or vessel after 35 days free of all prior liens.

III. Effect of Proposed Changes:

This CS amends s. 320.03, F.S., to provide that if the applicant's name appears on a list as a result of a wrecker operator's lien filed in accordance with s. 713.78(13), F.S., a license plate or revalidation decal may not be issued. The license plate or revalidation decal may be issued once the person's name no longer appears on the list or the person presents a receipt from the clerk showing that the outstanding fines have been paid. This section also clarifies the term "civil penalty and fines" does not include a wrecker operator's lien as described in s. 713.78(13), F.S.

This CS revises requirements relating to the sale of unclaimed vehicles. Currently, s. 713.78, F.S., provides that an unclaimed vehicle may be sold after 35 days free of all prior liens. The CS provides that a vehicle may be sold after 35 days if the vehicle is more than 3 years of age, or after 50 days if the vehicle is 3 years of age or less.

This CS amends s. 713.78, F.S., to provide for DHSMV to create a wrecker operator's lien list. A wrecker operator may claim a lien for the cost of recovery, towing, or storage of a motor vehicle, mobile home or vessel that was ordered towed by a law enforcement operator and for which a certificate of destruction has been issued. The lien is applicable against all owners of the motor vehicle, mobile home, or vessel. A notice of wrecker operator's lien must be submitted on forms provided by DHSMV, which form must include:

- The name, address, and telephone number of the wrecker operator.
- The name of the registered owner or owners of the motor vehicle, mobile home, or vessel.
- A general description of the motor vehicle, mobile home, or vessel, including its color, make, model, body style, and year.

- 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.
- The name of the person and the corresponding law enforcement agency that requested that the motor vehicle, mobile home, or vessel, be recovered, towed, or stored.
- The amount of the wrecker operator's lien.

For purposes of a wrecker operator's recorded lien only, the amount of a wrecker operator's lien may not exceed the amount of the charges for recovery and towing of the motor vehicle, mobile home, or vessel, plus no more than 7 days storage charges. 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 limit does not apply to a possessory wrecker operator's lien, nor does it prevent a wrecker operator from seeking civil remedies for enforcement of the entire amount of the charges claimed.

Any registered owner of a motor vehicle, mobile home, or vessel, may dispute a wrecker operator's lien, by notifying DHSMV of the dispute. If at least one of the following applies, the Department must remove that registered owner's name from the list of those persons who may not be issued a license plate or registration sticker for any motor vehicle under s. 320.03(8), F.S.:

- The registered owner presents a notarized CS of sale proving the motor vehicle, mobile home, or vessel, was sold in a private or casual sale before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.
- The registered owner presents proof the Florida certificate of title of the motor vehicle, mobile home, or vessel, was sold to a licensed dealer before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.
- The registered owner submitted to the Department a notice of transfer of the Florida certificate of title of the motor vehicle, mobile home, or vessel, before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.

A registered owner may not dispute a wrecker operator's lien if the wrecker operator has provided DHSMV with a certified copy of a judgment against the registered owner requiring the registered owner to pay the wrecker operator's lien. A wrecker operator's lien may be increased to include no more than \$500 of the reasonable costs and attorney's fees incurred in obtaining the judgment.

A wrecker operator must issue a certificate of discharge to each registered owner of the motor vehicle, mobile home, or vessel, attesting that the amount of the wrecker operator's lien has been discharged. Upon presentation of the certificate of discharge, the department must remove the registered owner's name from the list. Discharge of the lien does not discharge the debt that may be owed to the wrecker operator for amounts in excess of the lien.

The cost to record a notice of wrecker operator's lien is \$4.50, distributed as follows: \$1.00 to the Florida Motor Vehicle Theft Prevention Trust Fund; \$1.00 to DHSMV for operating costs; and \$2.50 to the tax collector for operating costs.

Like the liens for toll and parking fines, a wrecker operator's lien 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 ch. 320, F.S., 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), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This CS imposes a \$4.50 fee for the recordation of a wrecker lien.

B. Private Sector Impact:

This CS will assist towing firms to collect on wrecker operator liens.

The CS revises provisions relating to the sale of unclaimed vehicles and vessels to provide that a vehicle may be sold after 35 days if the vehicle is 3 years of age or older, or after 50 days if the vehicle is 3 years of age or less.

C. Government Sector Impact:

The CS provides for the following distribution of the \$4.50 fee: \$1.00 to the Florida Motor Vehicle Theft Prevention Trust Fund; \$1.00 to DHSMV for operating costs; and \$2.50 to the tax collector for operating costs. The Department expects the revenue impact from assessing the wrecker lien fee to be minimal.

The Department anticipates implementation of wrecker liens will require a non-recurring start-up cost of \$27,000. Future costs are expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Section 320.03, F.S., is amended to prohibit the Department of Highway Safety and Motor Vehicles from issuing a license plate or revalidation sticker to anyone whose name appears on a list of persons with outstanding towing liens. The tax collectors and clerks of the court are prohibited from retaining 10 percent of any amount collected when a person pays a towing lien in order to be able to obtain their license plate or validation sticker.

The amendment provides that an unclaimed vehicle may be sold after 35 days if the vehicle is more than 3 years of age, or after 50 days if the vehicle is 3 years of age or less.

The Department of Highway Safety and Motor Vehicles is directed to create a list of registered owners with outstanding wrecker liens who can not be issued a license plate or revalidation sticker. A name will appear on this list only upon notification of the department by a wrecker operator who claims a lien based on a towing, storage, or recovery of a vehicle, vessel, or mobile home as instructed by a law enforcement officer. The wrecker operator must also have the certificate of destruction for the vehicle. This would mean that the vehicle has been towed at the request of a law enforcement officer, that notice was given to the registered owner that the vehicle had been towed, that the vehicle had been stored for the requisite 35 or 50 days and that it was eligible to be sold but was to be sold for purposes of being dismantled or destroyed or changed such that it will not be the same motor vehicle. Then it is eligible to be sold at auction with notice to the owner.

The amendment provides that where there is more than one registered owner of the vehicle the names of all registered owners are to be placed on the list of persons with outstanding wrecker liens.

A notice of wrecker operator's lien must be submitted on forms provided by DHSMV, which form must include:

- The name, address, and telephone number of the wrecker operator.
- The name of the registered owner or owners of the motor vehicle, mobile home, or vessel and the address to which the wrecker operator provided notice of the lien to the registered owner.
- A general description of the motor vehicle, mobile home, or vessel, including its color, make, model, body style, and year.

- 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.
- The name of the person or the corresponding law enforcement agency that requested that the motor vehicle, mobile home, or vessel, be recovered, towed, or stored.
- The amount of the wrecker operator's lien not to exceed the amount allowed by the amendment.

For purposes of the prohibition on issuance of a license plate or revalidation sticker only, the amount of a wrecker operator's lien may not exceed the amount of the charges for recovery and towing of the motor vehicle, mobile home, or vessel, plus no more than 7 days storage charges. 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 limit does not prevent a wrecker operator from seeking civil remedies for enforcement of the entire amount of the charges claimed.

Any registered owner of a motor vehicle, mobile home, or vessel, may dispute a wrecker operator's lien, by notifying DHSMV of the dispute in writing on forms provided by the department. If at least one of the following applies, the Department must remove that registered owner's name from the list of those persons who may not be issued a license plate or registration sticker for any motor vehicle under s. 320.03(8), F.S.:

- The registered owner presents a notarized bill of sale proving the motor vehicle, mobile home, or vessel, was sold in a private or casual sale before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.
- The registered owner presents proof the Florida certificate of title of the motor vehicle, mobile home, or vessel, was sold to a licensed dealer before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.

If there is more than one registered owner, each owner must dispute the wrecker operator's lien in order to be removed from the list.

The Department of Highway Safety and Motor Vehicles may not remove the name of a registered owner from the list if the wrecker operator has provided DHSMV with a certified copy of a judgment against the registered owner requiring the registered owner to pay the wrecker operator's lien. A wrecker operator's lien may be increased to include no more than \$500 of the reasonable costs and attorney's fees incurred in obtaining the judgment. The action of the department is to be considered ministerial and not final agency action and can only be appealed to the county court in the county where the vehicle was ordered removed.

A person against whom a wrecker operator's lien has been filed may obtain a discharge of the lien by filing a complaint challenging the lien or the amount of the lien in the county court of the

county where the vehicle, vessel, or mobile home was ordered removed. The person's name may be removed from the department's list upon filing of the complaint if the person files a bond with the court in the amount of the lien.

When the person attempts to pay the lien but cannot locate the wrecker operator because the operator has moved or gone out of business they may have their name removed by posting a bond with the clerk of the court in the amount of the lien. The Department of Highway Safety and Motor Vehicles must then notify the wrecker operator at the address on the lien form that the operator has 60 days to claim the lien amount or it will be released back to the person paying the lien.

The amendment provides that the wrecker operator's lien expires 5-years after filing.

A wrecker operator must issue a certificate of discharge to each registered owner of the motor vehicle, mobile home, or vessel, attesting that the amount of the wrecker operator's lien has been discharged. Upon presentation of the certificate of discharge, the department must remove the registered owner's name from the list. The issuance of a certificate of discharge does not discharge the debt that may be owed to the wrecker operator for amounts in excess of the lien allowed by this bill.

The cost to record a notice of wrecker operator's lien is \$4.50, distributed as follows: \$2.00 to the Florida Motor Vehicle Theft Prevention Trust Fund; and, \$2.50 to the tax collector for operating costs.

Like the liens for toll and parking fines, a wrecker operator's lien 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 ch. 320, F.S., 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), F.S. (WITH TITLE AMENDMENT)