

STORAGE NAME: h0757a.jo.doc
DATE: March 27, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 757
RELATING TO: Wrecker Liens
SPONSOR(S): Representatives Barreiro, Bennett & Flanagan
TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 7 NAYS 0
- (2) TRANSPORTATION
- (3) SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

Current law provides that law enforcement officers may order that illegally parked or wrecked motor vehicles, mobile homes, and vessels, be towed away. In general, wrecker operators are employed off of a rotation list, and are required to respond when their name is next on the rotation list. A wrecker operator has the right to impose a possessory lien against a motor vehicle, mobile home, or vessel that is towed at the request of law enforcement.

This bill 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.

This bill further requires that all sellers of a motor vehicle, mobile home, or vessel, file a form entitled "notice of transfer" with the Department of Highway Safety and Motor Vehicles, within thirty days of sale of the motor vehicle, mobile home, or vessel. Should the purchaser fail to register the motor vehicle, mobile home, or vessel, and should the seller fail to file the notice of transfer, the seller will be liable for any wrecker operator's lien as to the motor vehicle, mobile home, or vessel.

This bill provides a \$4.50 charge for recording a wrecker operator's lien. The Department of Highway Safety and Motor Vehicles will incur a non-recurring cost of \$27,000 implementing the requirements of this bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill creates additional responsibilities for any person selling a motor vehicle, mobile home, or vessel, titled in Florida.

B. PRESENT SITUATION:

Law enforcement officers may order that illegally parked and wrecked motor vehicles, mobile homes, and vessels, be towed away. In general, wrecker operators are employed off of a rotation list, and are required to respond when their name is next on the rotation list. A wrecker operator has the right to impose a possessory lien against a motor vehicle, mobile home, or vessel that is towed at the request of law enforcement.

C. EFFECT OF PROPOSED CHANGES:

This bill 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.

This bill further requires that all sellers of a motor vehicle, mobile home, or vessel, file a form entitled “notice of transfer” with the Department of Highway Safety and Motor Vehicles, within thirty days of sale of the motor vehicle, mobile home, or vessel. Should the purchaser fail to register the motor vehicle, mobile home, or vessel, and should the seller fail to file the notice of transfer, the seller will be liable for any wrecker operator’s lien as to the motor vehicle, mobile home, or vessel.

See “Section-by-Section Analysis” for details.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. – Creates s. 319.227, regarding notice of transfer of motor vehicle or mobile home.

Present Situation: Chapter 319, F.S., sets forth title provisions regarding motor vehicles and mobile homes titled in Florida. Currently, there is no provision in ch. 319, F.S., that requires a “notice of transfer” to be submitted to the Department of Highway Safety and Motor Vehicles (DHSMV) for a motor vehicle or mobile home within any set period of time after sale.

Section 319.22, F.S., provides that a person acquiring a motor vehicle or mobile home from the owner thereof, whether or not the owner is a licensed dealer, does not acquire marketable title to the motor vehicle or mobile home until he or she has had issued to him or her a certificate of title to the motor vehicle or mobile home. Section 319.23, F.S., provides that an application for a certificate of title must be made upon a form prescribed by the department, must be filed with the department, and must be accompanied by the appropriate fee.

Effect of Proposed Changes: This bill creates s. 319.227, which requires that the seller of a motor vehicle or mobile home give a “notice of transfer” to DHSMV within thirty days after transferring a Florida certificate of title in connection with the transfer of ownership of a motor vehicle or mobile home. The DHSMV is directed to create the required notice of transfer form, which must the following information:

- The Florida certificate of title number.
- The name and address of each seller.
- The name and address of each purchaser.
- A general description of the motor vehicle or mobile home, 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; and mobile home sticker number, state, and year, as applicable.
- The price at which the motor vehicle or mobile home was sold.

Section 2. – Amends s. 320.03(8), F.S., regarding registration of motor vehicles and duties of tax collectors.

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.

Effect of Proposed Changes: This bill amends s. 320.03(8), F.S., to add that if the name of an applicant for a license plate or an annual registration sticker appears on a list of persons who owe a debt to a wrecker operator, as provided for in new s. 713.78(13), a license plate or registration sticker may not be issued until the applicant’s name is removed

from the list. Additionally, the 10 percent collection fee payable to the clerk of court and to the tax collector for unpaid parking and toll collections does not apply to wrecker lien collections.

Section 3. – Amends s. 713.78, F.S., regarding wrecker liens.

Present Situation: Section 713.78, F.S., provides that a wrecker company may impose a lien against any motor vehicle, mobile home, or vessel for a 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; nor is there any statutory provision for recording such a lien. Section 713.78(2)(c), F.S., provides that a law enforcement officer may order that a motor vehicle, mobile home, or vessel be towed. Section 713.78(11), F.S., provides for obtaining a certificate of destruction, which certificate allows for the dismantling of a motor vehicle, mobile home, or vessel (in other words, taken to a junkyard and sold for parts).

Effect of Proposed Changes: This bill creates s. 713.78(13), 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.
- The address to which the wrecker operator provided notice of the lien to the registered owner or owners, as required.
- 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 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 that 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 that 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.

However, a registered owner may not dispute a wrecker operator's lien if the wrecker operator has provided the department 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.
- \$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.

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

Section 4. – Creates s. 328.25, regarding notice of transfer of vessel.

Present Situation: Chapter 328, F.S., sets forth title provisions regarding vessels (privately owned U.S. flag boats & ships domiciled in Florida). Currently, there is no provision in ch. 328, F.S., that provides for a “notice of transfer” to be submitted to the Department for a vessel within set period of time after sale.

Effect of Proposed Changes: This bill creates s. 328.25, to require the seller of a vessel to provide a “notice of transfer” to the Department of Highway Safety and Motor Vehicles within thirty days after sale or transfer of the vessel. The notice of transfer must include:

- The Florida certificate of title number.
- The name and address of each seller.
- The name and address of each purchaser.
- A general description of the vessel, including its make, length, and type of propulsion.
- The hull identification number.
- The vessel registration number.
- The price at which the vessel was sold.

Section 5. – Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department of Highway Safety and Motor Vehicles expects that the revenue impact from assessing the \$2.00 wrecker lien fee is expected to be “minimal”.

2. Expenditures:

The Department of Highway Safety and Motor Vehicles expects that implementation of wrecker liens will require a non-recurring start-up cost of \$27,000.00. Future costs are expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Wrecker liens will be filed through local tax collectors, who will receive a \$2.50 fee for each lien filed.

2. Expenditures:

Implementation of this bill will require training of tax collectors and their employees, the cost of which cannot be determined at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

Comments provided by the Department of Highway Safety and Motor Vehicles:

The Department of Highway Safety and Motor Vehicles may adopt rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to implement proposed s. 713.78(3), Florida Statutes.

C. OTHER COMMENTS:

Comments provided by the Department of Highway Safety and Motor Vehicles:

The required notification process will pose an educational issue with motor vehicle consumers as how to notify the Department when a casual sale occurs. The Department is also concerned that numerous motor vehicle records may be duplicated in the notification process and that possible

liability may result for incorrect or incomplete records. In addition, the Department may be placed in a position of reconciling disputes between vehicle owners and wrecker operators.

In regards to the \$2 lien, language clarifying that the Department is to retain \$1 within the Highway Safety Operating Trust Fund is necessary to defray program costs.

The effective date of this bill should be moved to October 1, 2001, in order to allow adequate time to create forms and procedures and incorporate programming of the motor vehicle database.

The department recommends an amendment at page 7, line 8, to provide that monies received will be "deposited in the Highway Safety Operating Trust Fund", rather than simply "retained by the Department".

Comments by the Committee on Judicial Oversight:

It is possible that the requirement to provide a "notice of transfer" to the department will be widely ignored, in light of the fact that the only penalty for failure to provide such form is the risk that the purchaser of the motor vehicle, mobile home, or vessel will not transfer title to the purchaser's name and will incur some calamity whereby the motor vehicle, mobile home, or vessel is wrecked or abandoned and then sold for parts, after which a wrecker lien is imposed.

It is unclear why the normal title transfer process, if accomplished within thirty days of sale, should not substitute for the requirement of providing a notice of transfer.

As written, a person who disputes the administrative determination by DHSMV that the person's objection to a wrecker operator's lien is not well founded, must file an administrative proceeding in which the department and the person would appear, but perhaps the wrecker operator would not. The DHSMV being headquartered in Tallahassee, the venue provisions of ch. 120, F.S., would perhaps require any such hearing to be conducted in Tallahassee.

It is possible that many persons would learn of a wrecker operator's lien against the person when the person files for an annual registration of their motor vehicle. There is no provision in this bill for paying disputed amounts into a registry or trust fund, or for discharge of a wrecker operator lien where a wrecker operator is no longer in business.

It is unclear why there is no time limit on the enforcement of wrecker operator liens.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 27, 2001, the Committee on Judicial Oversight adopted a "strike everything after the enacting clause" amendment, which amendment:

- Eliminates the requirement for the seller of a motor vehicle or mobile home to prepare and file a notice of transfer form.
- Provides a procedure for a person against whom a wrecker operator's lien has been filed to obtain a release of the lien by posting the amount in dispute with the clerk of the court.
- Provides a procedure for a person who does not object to a wrecker operator's lien, but cannot find the wrecker operator in order to obtain a release of the lien, to pay the amount of the lien to the clerk of the court and obtain a release.

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- Provides that a wrecker operator's lien expires after five years.
- Provides that the entire \$2 fee payable to the Department of Highway Safety and Motor Vehicles is payable to the Florida Motor Vehicle Theft Prevention Trust Fund.
- Eliminates the requirement for the seller of a vessel to prepare and file a notice of transfer form.

The bill was then reported favorably as amended.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

Lynne Overton, J.D.