

STORAGE NAME: h0757a.tr.doc
DATE: April 4, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION
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 YEAS 12 NAYS 0
- (3) SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

Wrecker operators are routinely hired by law enforcement agencies to tow or store vehicles and vessels. The agencies hire operators from a rotation list, and those operators that are named on the list must respond, as a condition of placement on the list, when their turn comes. Under current law, wrecker operators who have been instructed by any law enforcement agency to transport or store vehicles, vessels, or mobile homes, have a lien on such vehicles or vessels for a reasonable towing fee or for a reasonable storage fee.

Under this bill, 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, may file a notice of wrecker operator's lien with the Department of Highway Safety and Motor Vehicles (DHSMV). If a wrecker operator files notice with DHSMV, a person against whom a wrecker operator's lien has been imposed may not receive a license plate or registration decal on any motor vehicle 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 DHSMV, 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 may 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. DHSMV will incur a non-recurring cost of \$27,000 implementing the requirements of this bill.

On March 27, 2001, the Committee on Judicial Oversight adopted a "strike everything after the enacting clause" amendment which rewrote the bill. The amendment is traveling with the bill. See part VI. Amendments or Committee Substitute Changes, below for a more detailed description of the amendment.

On April 4, 2001, the Committee on Transportation adopted two amendments to the "strike everything after the enacting clause" amendment traveling with the bill. These amendments are traveling with the bill. See part VI below for a more detailed description.

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:

Wrecker operators are routinely hired by law enforcement agencies to tow or store vehicles and vessels. The agencies hire operators from a rotation list, and those operators that are named on the list must respond, as a condition of placement on the list, when their turn comes. Under current law, wrecker operators who have been instructed by any law enforcement agency to transport or store vehicles, vessels, or mobile homes, have a lien on such vehicles, vessels, or mobile homes for a reasonable towing fee or for a reasonable storage fee.

In cases where a stored vehicle, vessel, or mobile home is unclaimed, or a wrecker operator has incurred reasonable expenses in towing or storing a vehicle, vessel, or mobile home, and the expenses charged to the owner remain unpaid, the wrecker operator may be entitled to sell the vehicle, vessel, or mobile home at public auction upon meeting certain requirements.

If a wrecker operator sells a vehicle, vessel, or mobile home at public auction for the purposes of being dismantled, destroyed, or changed in such a way that the certificate of title no longer accurately describes it, the operator must apply to the county tax collector for a certificate of destruction. The certificate of destruction then accompanies the vehicle, vessel, or mobile home after the sale in lieu of the original certificate of title. In addition, it authorizes the dismantling, destruction, or change of the vehicle, vessel, or mobile home, and it is re-assignable.

According to bill proponents, many wrecker operators do not apply for certificates of destruction prior to the sale of dismantled, destroyed, or changed vehicles, contrary to the requirements of the law.

In addition, the law does not currently require any "notice of transfer" to be submitted to DHSMV upon the sale of a motor vehicle, vessel, or mobile home.

The law currently requires tax collectors with on-line information capability to refuse to issue vehicle registration where an owner has refused to surrender a suspended or revoked driver's license. The law also requires the tax collector to check lists maintained by DHSMV that contain the names of persons who have three or more outstanding citations for failure to pay a toll and the names of

persons who have three or more outstanding parking violations. Should the name of an applicant for a license plate or an annual registration sticker appear on either list, the tax collector must refuse to issue the license plate or revalidation sticker until the name has been removed or the applicant presents a receipt showing that the outstanding fines have been paid. Tax collectors and clerks of the court are each entitled to receive monthly, to cover costs for implementing and administering the collection of fines through this procedure, 10 percent of the civil penalties and fines recovered from persons whose names appear on the lists.

In contrast, the names of persons against whom wrecker operators hold liens are not placed on similar lists maintained by DHSMV, and these persons are not refused issuance of license plates or revalidation stickers.

C. EFFECT OF PROPOSED CHANGES:

The bill requires the seller of a vehicle, vessel, or motor home to notify the Department of Highway Safety and Motor Vehicles (DHSMV) within 30 days after transferring a Florida certificate of title in connection with the transfer of ownership. Notification must be made on a form provided by DHSMV that includes:

- 1) The Florida certificate of title number;
- 2) The name and address of each seller;
- 3) The name and address of each purchaser;
- 4) A general description of the vehicle or mobile home, including its color, make, model, body style, and year, or in the case of a vessel, a general description of the vessel, including its make, length, and type of propulsion;
- 5) The vehicle identification number (VIN), or in the case of a vessel, the hull identification number;
- 6) If for the transfer of a vessel, the vessel registration number; and
- 7) The price at which the vehicle, vessel, or mobile home was sold.

In addition, the bill adds new subsection (13) to s. 713.78, F.S., which permits a wrecker operator to give written notice to DHSMV when claiming a wrecker operator's lien for recovery, towing, or storage of a vehicle, vessel, or mobile home at the instruction of any law enforcement agency. If a certificate of destruction has been issued for the vehicle, vessel, or mobile home, such notice requires DHSMV to place the name of the registered owner of it on the list of persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s. 320.03(8), F.S. If the vehicle, vessel, or mobile home is owned jointly by more than one person, DHSMV must place the name of each registered owner on the list. Notice must be submitted on forms supplied by the DHSMV including specified information.

The new subsection applies only to the annual renewal of a motor vehicle registration in the registered owner's birth month, 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 includes the annual renewals. The new subsection also does not affect the issuance of the title to a motor vehicle.

The bill limits the amount of the wrecker operator's lien for which DHSMV will prevent issuance of a license plate or revalidation sticker to the amount of the charges for recovery, towing, and storage of the vehicle, vessel, or mobile home for seven days. Such charges may not exceed maximum rates imposed by counties and municipalities. The bill does not limit the amount of a wrecker operator's lien or prevent the operator from seeking civil remedies for enforcement of the entire amount of the lien, but limits only that portion of the lien for which DHSMV will prevent issuance of a license plate or revalidation.

In addition, the bill provides conditions under which a registered owner may dispute a wrecker operator's lien in writing on DHSMV forms. The owner may do so successfully if he or she:

- 1) Presents a notarized bill of sale proving that the vehicle, vessel, or mobile home was sold in a private or casual sale prior to recovery, towing, or storage; or
- 2) Proves that the certificate of title was sold to a licensed dealer prior to recovery, towing, or storage; or
- 3) Submits notice as required in this bill to DHSMV prior to recovery, towing, or storage.

If the owner successfully disputes the lien, the bill provides that DHSMV must immediately remove the registered owner's name from the list of persons who may not be issued a license plate or revalidation sticker. In the case of joint ownership, each registered owner must dispute the lien to be removed from the list.

However, where a wrecker operator presents to DHSMV a certified copy of a court judgment ordering the lien, DHSMV will place the registered owner's name on the list notwithstanding any dispute. Upon presentation of proof of a judgment, the amount of the lien that can be charged as a condition of removal from the list may be increased up to \$500 to offset reasonable court costs and attorney's fees.

In the event that a registered owner discharges an amount of the lien sufficient to remove his or her name from the list, the bill requires the wrecker operator to issue a certificate of discharge on DHSMV forms to each registered owner attesting that the portion of the lien has been discharged. Upon presentation of the certificate, DHSMV must immediately remove the registered owner's name from the list. However, issuance of this kind of certificate of discharge does not discharge the entire lien if it is in an amount greater than that sufficient to have the registered owner's name removed from the list.

When a wrecker operator files a notice of wrecker operator's lien, DHSMV shall charge a fee of \$2. Half of this fee must be deposited into the Florida Motor Vehicle Theft Prevention Trust Fund, while DHSMV retains the other half to defray operating costs created by implementation of the bill. In addition, a tax collector processing a notice of wrecker operator's lien shall collect \$2.50.

The bill authorizes DHSMV to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement s. 713.78(13), F.S., which it creates.

Under current law, tax collectors and clerks of court are entitled to receive 10 percent of the civil penalties and fines recovered from persons whose names appear on the list. The bill excludes wrecker operator's liens from the class of civil penalties and fines from which local tax collectors and clerks of court receive this percentage.

The bill takes effect July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 – Creates s. 319.227, F.S., requiring the seller of a motor vehicle to notify DHSMV of transfer of the certificate of title in connection with a transfer of ownership, and providing specific contents for the notification form.

Section 2 – Amends s. 320.03(8), F.S., to cross-reference the list referred to in Section 3 below, prohibiting issuance of license plates and revalidation stickers to persons subject to wrecker

operator's liens. The section also amends s. 320.03(8) to exclude wrecker operator's liens from the meaning of the term "civil penalties and fines."

Section 3 – Creates s. 713.78(13), F.S., requiring DHSMV, upon notice, and under specified circumstances, to place registered owners of vehicles, vessels, and mobile homes on a list of persons subject to wrecker operator's liens, and providing the contents of the notice form; limiting the amount of the wrecker operator's lien for which DHSMV will prevent issuance of license plates and revalidation stickers; providing conditions under which registered owners may dispute a wrecker operator's lien; providing rights and responsibilities upon discharge by the registered owner of the lien amount for which DHSMV prevents issuance of license plates and revalidation stickers; requiring a notice filing fee and providing for distribution of the proceeds; limiting application of the section to certain kinds of vehicle registration; and granting rulemaking authority.

Section 4 – Creates s. 328.25, F.S., requiring the seller of vessel to notify DHSMV of transfer of the certificate of title in connection with a transfer of ownership, and providing specific contents for the notification form.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

DHSMV expects that implementation of wrecker liens will require a non-recurring start-up cost of \$27,000. 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.

III. 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.

IV. 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 (DHSMV) 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. DHSMV 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, DHSMV may be placed in a position of reconciling disputes between vehicle owners and wrecker operators.

Regarding the \$2 wrecker's lien filing fee, language clarifying that the DHSMV 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.

DHSMV 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".

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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

- 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;
- 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; and
- 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.

On April 4, 2001, the Committee on Transportation adopted two amendments to the "strike everything after the enacting clause" amendment which:

Amendment 1: Provides that wrecker operators who tow vehicles, vessels, or mobile homes at the request of mobile home park owners, in addition to law enforcement agencies, and which vehicle, vessel, or mobile home, is sold for salvage, may file a notice of wrecker operator's lien with DHSMV for the purpose of having the registered owner placed on the list of persons to be denied issuance of a license plate or revalidation sticker.

Amendment 2: Provides that a notice of wrecker operator lien must contain either the name of the person requesting that the vehicle, vessel, or mobile home be recovered, towed, or stored, or the law enforcement agency making the request. The "strike everything" amendment required both the name of the person and the law enforcement agency be included in the notice.

The bill was reported favorably with the two amendments to the "strike everything" amendment traveling with the bill.

VI. SIGNATURES:

COMMITTEE ON TRANSPORTATION:

Prepared by:

Staff Director:

Nathan L. Bond, J.D.

Lynne Overton, J.D.

AS REVISED BY THE COMMITTEE ON TRANSPORTATION:

Prepared by:

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