

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

Reduce government?

The bill creates a new advisory council within DOACS, requires DOACS to register wrecker companies, and requires DOACS to provide for the education and certification of wrecker operators.

Lower taxes?

The bill requires DOACS to charge a \$425 registration fee to wrecker companies.

Expand individual freedom?

The bill requires most wrecker companies to register to continue in business, requires most wrecker operators to undergo training and continuing education to continue in employment, and requires ultimate equitable owners and executive managers of most wrecker companies to be fingerprinted.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Highway Patrol (FHP) is authorized to operate a wrecker operator system using qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles from crash scenes, and for the removal and storage of abandoned vehicles. All wrecker operators are eligible for use in the system provided their equipment meets recognized safety qualifications and mechanical standards set by the FHP for the size of vehicle the equipment is designed to handle.

FHP can set maximum rates for towing and storage of vehicles removed at its request, if the rates have not already been set by a county or municipality. A wrecker operator may pursue an appeal by writ of certiorari from the circuit court if its participation in the system is denied, suspended, or revoked.

Wrecker operators are prohibited from monitoring police radios for communications between patrol field units and the dispatcher to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene to initiate contact with the owner of the wrecked or disabled vehicle. This illegal monitoring is punishable by a civil fine of up to \$500. If the operator initiates contact before arrival of the dispatched operator, solicits towing, and tows the vehicle, or if the disabled vehicle owner or operator initiates contact, but the wrecker operator fails to disclose that he or she was not dispatched and fails to disclose all rates in writing for towing and storage, the drive-by wrecker operator commits a second-degree misdemeanor. A wrecker operator who falsely identifies him or herself as part of the system commits a first-degree misdemeanor. The law does not prohibit any person from calling a wrecker operator directly for services, even if that operator is not authorized to participate in the system.

Local governments are also authorized to operate a similar wrecker operator dispatch system.

In addition, current law provides regulations governing the operation of storage facilities containing towed vehicles held at the request of investigating law enforcement agencies, and provides for liens against towed and stored vehicles when the owners fail to pay towing and storage costs.

Effect of Proposed Changes

The bill defines and differentiates wrecker companies and wrecker operators to clarify the distinction between those who own towing companies and those who drive tow trucks and renames the wrecker operator system as the wrecker allocation system. In addition, the bill provides for registration of wrecker companies and training certification of wrecker operators.

Wrecker Operator Advisory Council

The bill creates a Wrecker Operator Advisory Council (Council) within the Department of Agriculture and Consumer Services (DOACS). The Council consists of 13 members including 6 members appointed by the Commissioner of Agriculture, the Executive Director of the Professional Wrecker Operators of Florida, 3 persons who have been ultimate equitable owners of a wrecker company for at least 5 years, 1 wrecker operator of at least 5 years service, and 2 lay persons. DOACS is required to keep and store all records of the council and to provide administrative support and staff. The Council is tasked with aiding DOACS in administering the new programs and with approving certification programs developed by DOACS.

Registration of Wrecker Companies

In addition, DOACS must require the registration of certain wrecker companies and prohibit the operation of unregistered companies. Persons regularly engaged in the business of transporting mobile homes, and motor vehicle repair shops deriving 80 percent of their business from repairs are not required to register. Annual registration is a pre-requisite for local occupational licensing. The annual registration fee is \$425. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted, and must bear the cost of fingerprinting. State fingerprint processing will cost the registrant \$23 for each person processed, and an additional fee for federal processing will be charged. DOACS will issue a certificate with a number to the registrant. The certificate must be displayed in a conspicuous place in the company's place of business. Any advertisement must bear the registration number. For the purposes of the bill, the term "advertisement" means a printed or graphic statement made in a newspaper or other publication or contained in any notice, handbill, or sign, including signage on a vehicle, flyer, catalog, or letter. In addition, registered wrecker companies are required to certify to DOACS that they carry the additional commercial motor vehicle liability insurance as currently required under s. 627.7415, F.S.

Annual renewals are subject to a \$25 late fee. Unless local licensing requirements are met and maintained, and the company can present proof of the additional liability insurance that must be carried for a commercial vehicle, a wrecker company may not renew registration.

DOACS may deny or refuse registration renewal if:

- the wrecker company does not meet or adhere to registration requirements;
- the owners or executive managers have been convicted of a felony within the last 10 years;
- the owners or executive managers have been convicted in the last 10 years of any crime involving repossession, repair, MV theft, car jacking, chop shops, parts & accessories, airbags, overcharging for repairs or parts, or towing or storage;
- the company fails to pay fines or penalties imposed under the new law;
- the company has an action pending in any jurisdiction for violation of the new law; or
- the company has a judgment against it for violation of the new law.

A wrecker company is also required to maintain records of its wrecker services for at least 12 months at the principal place of business. It must also maintain records on each of its wrecker operators sufficient

to demonstrate that the operator has successfully completed an approved wrecker operator continuing education course and is certified to perform wrecker services. These records must be maintained at the principal place of business for as long as the operator is employed by the wrecker company and for at least six months after. Organizations approved to conduct wrecker operator certification courses or continuing education courses are also required to maintain records for at least five years on persons who complete the courses. DOACS is authorized to enter the place of business for the purpose of examining the records.

Wrecker Operator Certification

In addition to wrecker company registration, the bill requires certification of wrecker operators. DOACS must establish a certification program including certification courses, schools and exams, and provide for specialized certification for specialized wrecker services. In addition, DOACS must require the courses to issue appropriate certificates and cards acknowledging completion of certification requirements. DOACS is authorized to adopt rules providing for issuance of certification to operators from different states who have met substantially similar certification requirements. Certification programs created by DOACS, and those of other jurisdictions taken in lieu of Florida certification programs, must be approved by the Wrecker Operator Advisory Council.

Wrecker operators must:

- own or be employed by a wrecker company before they may provide wrecker services;
- complete a 6-month probationary period;
- be endorsed as having completed specialty certification to provide specialized wrecker services; and
- participate in continuing education programs.

The bill requires DOACS, in cooperation with the Wrecker Operator Advisory Council, to establish a continuing education program for the recertification of wrecker operators. The Council must prescribe the minimum curricula and proper examination for each continuing education course, each or which must be at least eight hours in length. The Council must approve each organization, and the continuing education course it proposes to offer, before the course may be offered for recertifying wrecker operators.

DOACS is authorized to inspect the records of wrecker companies to verify that employees meet all certification requirements. Each wrecker company has a duty to maintain and produce records.

Prohibited Acts

Wrecker companies, wrecker operators, or other employees or agents of the company are prohibited from:

- Charging rates in excess of those set by local ordinance;
- Violating the laws governing the FHP wrecker allocation system;
- Violating the laws governing the local wrecker allocation system;
- Violating the laws governing liens for towing or storing vehicles and vessels;
- Violating the laws governing towing, removing, or storing vehicles and vessels;
- Refusing to allow a law enforcement officer to inspect a towing and storage facility;
- Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company;
- Allowing an operator to provide specialized services without the proper endorsement; or
- Performing an act prohibited by the new law, or failing to perform an act required by the new law.

Penalties

As administrative penalties, DOACS may:

- Issue a notice of noncompliance;
- Impose an administrative fine of no more than \$5,000;

- Issue cease and desist orders;
- Revoke, suspend or refuse registration;
- Impose a department specified probationary period;
- Seek a civil remedy of up to \$5,000 per violation; or
- Seek restitution on behalf of an aggrieved party.

DOACS must notify DHSMV when a registration issued under the provisions of the bill has been suspended or revoked by order of DOACS. The notification must be sent within 10 days after issuance of the order.

The following acts are punishable as crimes:

- Operation of an unregistered wrecker company – third-degree felony; or
- Performance of wrecker services without being employed by, or without being the ultimate equitable owner of a registered wrecker company – third-degree felony.

All fees, penalties, and other monies collected pursuant to this new law are deposited into the DOACS' General Inspection Trust Fund and may only be used to implement the new law.

License Taxes, License Plates and Registration

The bill allows a license plate to be placed on the front of a vehicle other than a wrecker, heavy truck, or truck tractor, if a loading device may damage the plate, otherwise, these vehicles must display plates on the rear. In addition, the bill allows heavy trucks bearing government license plates to display plates on the front.

The bill provides that only one wrecker license plate must be placed on the front of a wrecker regardless of the weight of the vehicle. A wrecker may not be registered under license tax and registration requirements unless the owner of the vehicle is a wrecker company registered with DOACS pursuant to this new law, however, these provisions do not apply to wreckers that are registered under the International Registration Plan.

Other Issues

Recovery agents (repossession agents) are exempted from the requirements of this new law. In addition, local governments may impose regulations on wrecker operators and wrecker companies that are more restrictive than this new law, and may still levy occupational license taxes. However, no county or municipality may issue or renew an occupational or business license to a wrecker company unless that company is registered with DOACS. DOACS may enter into a cooperative agreement with any county or municipality that provides for the referral, investigation, and prosecution of consumer complaints alleging violations of the provisions of this bill. DOACS may also delegate enforcement to any county or municipality entering into a cooperative agreement.

Local and FHP wrecker allocation systems may use only registered companies. In addition, the bill provides emergency and public safety circumstances when law enforcement may dispatch a wrecker company out of the normal rotation in the wrecker allocation system.

The bill provides immunity from liability for wrecker companies, wrecker operators, employees and agents of wrecker companies, and emergency response personnel from property damages or claims of damage for removal of vehicles or vehicle cargo from blocking the roadway when there is an imminent public safety hazard.

The bill requires a wrecker company must accept at least two of the following three forms of payment:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check, showing upon its face the name and address of the vehicle/vessel owner or authorized representative; or

- Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

Reasonable attorney's fees, in addition to damages and costs, shall be awarded to a prevailing party in a suit prosecuting a wrecker operator's lien. Under current law, a court is permitted to award damages and costs. The bill makes such an award mandatory and requires the award of reasonable attorney's fees.

The bill prohibits property owners from soliciting a rebate, or other consideration from wrecker operators for allowing them to tow vehicles from their property. The bill also provides that failure to comply with notice requirements in bad faith prior to towing precludes imposition of towing or storage charges.

The bill also provides for a lien for storage of mobile homes on-site by mobile home transport companies.

The bill removes all references to mobile homes from wrecker operator's lien provisions and establishes a new section regulating liens for recovering, towing, or storing mobile homes. The section provides for the placement of liens on mobile homes that have been legally recovered, removed, or stored by a mobile home transport company. Mobile home transport companies are required to give notice to registered owners and lien holders after taking possession. Mobile home owners and any other lien holder may, within 10 days of learning that a mobile home has been removed, file a complaint to determine if the property was wrongfully taken. The bill provides owners of recovered mobile homes the ability to collect all personal property not affixed to the mobile home when it was obtained by the transport company. Mobile homes that remain unclaimed or for which recovery, towing, storage, or lot rental fees remain unpaid, may be sold at public auction after suitable notice. If the mobile home is to be sold for dismantling or destruction, the transport company must obtain a certificate of destruction from the county tax collector. The bill authorizes DHSMV to adopt rules to administer the new section.

Existing requirements regarding parking or storing vehicles on real property are extended to vessels.

The bill provides for an appropriation from the General Inspection Trust Fund of \$687,000 for the initial implementation of the new regulatory program, and creates nine FTE positions in DOACS for this purpose.

C. SECTION DIRECTORY:

Section 1. Amends s. 120.80, F.S., to conform that section to the new titles and definitions created in the bill.

Section 2. Creates s. 205.1975, F.S., prohibiting issuance of local occupational licenses to unregistered wrecker companies.

Section 3. Amends s. 316.530, F.S., to delete the term "tow truck."

Section 4. Reenacts s. 316.550, F.S., to incorporate the amendments made to s. 320.01, F.S.

Section 5. Amends s. 316.605, F.S., providing for the placement of license plates on vehicles with mechanical loading devices and government-owned heavy trucks.

Section 6. Amends s. 320.01, F.S., to amend the definition of "wrecker."

Section 7. Amends s. 320.03, F.S., to replace "wrecker operator" with "wrecker company."

Section 8. Amends s. 320.0706, F.S., requiring license plates to be displayed on the rear of wreckers.

Section 9. Reenacts s. 320.08, F.S., to incorporate amendments made to s. 320.01, F.S.

Section 10. Amends s. 320.0821, F.S., providing that a wrecker shall display only one license plate regardless of its weight, and that it must be displayed on the front of the wrecker.

Section 11. Amends s. 320.0821, F.S., prohibiting DHSMV from renewing a license plate for a wrecker unless the company owning the wrecker is registered with DOACS.

Section 12. Amends s. 320.13, F.S., to delete the term "tow truck."

Section 13. Amends s. 321.051, F.S., to rename the wrecker operator system as the wrecker allocation system and to provide requirements relating to wrecker company registration, and dispatching wrecker companies out of rotation.

Section 14. Amends s. 323.001, F.S., to implement the new wrecker-related terminology and registration requirements.

Section 15. Amends s. 323.002, F.S., to rename the county and municipal wrecker operator system as the county and municipal wrecker allocation system and to provide requirements relating to wrecker company registration, and dispatching wrecker companies out of rotation.

Section 16. Creates ch. 508, F.S., related to Wrecker Services, and consisting of sections 508.01, 508.02, 508.03, 508.04, 508.05, 506.06, 508.061, 508.07, 508.08, 508.09, 508.10, 508.11, 508.12, 508.13, 508.14, 508.15, 508.16, 508.17, 508.18, 508.19, and 508.20, F.S., and provides for definitions, a wrecker operator advisory council, rule-making authority, registration requirements, renewal of registrations, denial of registrations, forms of payment wrecker companies must accept, operator certifications, specialized services, certification cards, inspection of employment records, renewal of certifications, continuing education, prohibited acts, administrative penalties, criminal penalties, fees, disposition of payments, recovery agent exemptions, preservation of ordinances, and records maintenance requirements of wrecker companies.

Section 17. Amends s. 713.78, F.S., to provide for dispute of a wrecker operator's lien if DHSMV records indicate that the vehicle, vessel, or mobile home was sold before issuance of a certificate of destruction.

Section 18. Amends s. 713.78, F.S., to reflect the changes in terminology and definitions created in the new wrecker law, to require an award of attorneys fees for the prevailing party, and to authorize certain public officials and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability if the debris poses an imminent public safety hazard.

Section 19. Creates s. 713.785, F.S., providing for the placement of liens on mobile homes that have been legally recovered, removed, or stored by a mobile home transport company.

Section 20. Amends s. 319.30, F.S., to include a cross reference in the definition of "certificate of destruction" to include those certificates issued pursuant to the newly created s. 713.785, F.S.

Section 21. Amends s. 713.69, F.S., prohibiting removal from any mobile home park, any property that has a lien placed against it.

Section 22. Amends s. 715.07, F.S., to implement new wrecker-related terminology and registration requirements, and to provide new regulations relating to towing vehicles or vessels from private property.

Section 23. Repeals subsection (15) of s. 1.01, F.S., effective January 1, 2005.

Section 24. Provides for an appropriation of \$687,000 from the General Inspection Trust Fund and for the creation of nine FTE positions in DOACS.

Section 25. Provides that the act shall take effect July 1, 2004, except where otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

See FISCAL COMMENTS section, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

Unknown.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrecker companies will be required to pay an annual registration fee of \$425 and comply with the new certification requirements. It is unknown at this time how much the certification and continuing education requirements will cost industry members.

According to DOACS, concerning the regulation of wrecker companies, this bill will offer greater consumer protection to Florida citizens by requiring wrecker operators to be regulated and to undergo and maintain educational training as it relates to the provision of wrecker services.

D. FISCAL COMMENTS:

When this regulatory program was proposed during the 2003 Legislative Session, the Department of Agriculture and Consumer Services estimated that it would require 9 additional FTE to carry out the provisions of the bill. The registration fee provided in the bill is set at \$425. This amount was set last year, and was designed to generate the revenue necessary to cover the estimated costs based on the assumptions made at that time. However, the department has recently indicated that it will actually require 10 new FTE to implement the provisions of the bill, and will incur additional costs made on new assumptions. The additional FTE and workload costs will require the expenditure of an estimated \$702,882 in the first year, \$671,788 in the second year, and \$687,121 in the third year. To meet these costs, the department recommends setting the registration fee at \$500 to generate sufficient revenue (\$700,000 annually). The bill appropriates \$687,000 from the General Inspection Trust Fund for startup costs. However, recurring costs will not be met by the registration fee of \$425 currently provided in the bill, as that fee is estimated to generate only \$595,000 annually.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOACS to promulgate rules necessary to implement its provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 15, 2004, the Committee on Transportation adopted two amendments. The amendments:

- Provide immunity from liability for wrecker companies, wrecker operators, employees and agents of wrecker companies, and emergency response personnel from property damages or claims of damage for removal of vehicles or vehicle cargo from blocking the roadway when there is an imminent public safety hazard; (The amendment originally provided the same immunity to the Department of Transportation, but was amended to remove any reference to the department. The net effect of the amendment as amended was to preserve that existing bill language); and
- Amend the amount appropriated to DOACS from the General Inspection Trust Fund from \$595,000 to \$687,000.

The committee then reported the bill favorably as amended with a committee substitute.