

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.)

Prepared By: Judiciary Committee

BILL: SB 276

SPONSOR: Senator Crist

SUBJECT: Wrecker Services

DATE: March 14, 2005

REVISED: 03/16/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/3 amendments</u>
2.	<u>Siebert</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
4.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/1 amendment</u>
5.	<u></u>	<u></u>	<u>CA</u>	<u></u>
6.	<u></u>	<u></u>	<u>GA</u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

This bill creates chapter 508, F.S., to establish within the Department of Agriculture and Consumer Services (DACS) a state-wide wrecker company registration and wrecker operator certification system. The bill also restricts counties and municipalities from issuing or renewing an occupational license unless the wrecker company is registered with DACS and restricts participation in the Florida Highway Patrol (FHP) or local government wrecker allocation system to those wrecker companies registered with DACS.

This bill substantially amends the following sections of the Florida Statutes: 120.80, 316.530, 316.605, 319.30, 320.01, 320.03, 320.0706, 320.0821, 320.13, 321.051, 323.001, 323.002, 713.69, 713.78, and 715.07. This bill creates the following sections of the Florida Statutes: 205.1975, 508.01, 508.02, 508.03, 508.04, 508.05, 508.06, 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, 508.20, and 713.785. This bill reenacts the following sections of the Florida Statutes: 316.550(4) and 320.08(5)(d) and (e). This bill repeals section 1.01(15), Florida Statutes.

II. Present Situation:

Florida Statutes contain numerous references to wrecker operations. Specific sections affected by this bill are detailed below.

Section 1.01(15), F.S., defines wrecker operator as “any person or firm regularly engaged for hire in the business of towing or removing motor vehicles.”

Section 120.80(8)(b), F.S., provides an exception to the Administrative Procedure Act for administrative hearings held by the Division of the Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles (DHSMV) in order to deny, suspend, or remove a wrecker operator from participating in the wrecker allocation system. The section excludes these hearings from the requirement to be conducted by an administrative law judge, as required with most other administrative hearings under chapter 120, F.S., but may be held by a hearing officer appointed by the director of the FHP.

Chapter 205, F.S., authorizes counties and municipalities to issue local occupational licenses and levy occupational license taxes for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.

Section 316.530, F.S., provides that when a wrecker or tow truck is required to remove a disabled motor vehicle from a highway and the combined weights of the wrecker and towed vehicle exceeds maximum weights allowed by law, no penalty may be assessed for the excess weight while transporting that vehicle to a repair shop or other appropriate facility. However, this exception does not apply to weight limits for bridges and culverts.

Section 316.550(4)(a) and (b), F.S., authorizes the Florida Department of Transportation (FDOT) to issue blanket permits authorizing a wrecker to tow vehicles where the combination of the wrecker and the disabled vehicle exceeds the maximum weights allowed by law. The FDOT must supply the wrecker who receives such a permit a map showing the routes on which the wrecker may safely tow such vehicles.

Section 316.605(1), F.S., provides vehicles in this state are required to display license plates on the rear of the vehicle.

Wrecker Registration Requirements

Section 320.01(40), F.S., defines a wrecker as any motor vehicle used to tow, carry, or otherwise transport motor vehicles and equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

Section 320.03(8), F.S., provides a license plate or revalidation sticker may not be issued to any person who has a lien against his or her vehicle for non-payment of towing or storage costs when such vehicle was towed and stored upon the order of a law enforcement officer.

Section 320.0706, F.S., provides a commercial truck weighing 26,001 pounds or more must display a license plate on both the front and rear of the truck; however, a truck tractor is only required to display the license plate on the front of the vehicle.

Section 320.08(5)(d) and (e), F.S., provides registration fees for wreckers. A wrecker that is used to tow any unclaimed vessel, a disabled, abandoned, stolen-recovered, or impounded motor vehicle or trailer, or a replacement motor vehicle for a disabled vehicle, pays a flat registration

fee of \$30. A wrecker used to tow any motor vehicle whether or not such motor vehicle is a disabled motor vehicle, a replacement motor vehicle, a vessel, or any other cargo pays a registration fee as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: \$87 flat.
2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: \$131 flat.
3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: \$186 flat.
4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: \$240 flat.
5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: \$300 flat.
6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: \$572 flat.
7. Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: \$678 flat.
8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: \$800 flat.
9. Gross vehicle weight of 72,000 pounds or more: \$979 flat.

Section 320.0821, F.S., provides DHSMV must issue a wrecker license plate to the owner of any motor vehicle used to tow, carry, or otherwise transport motor vehicles and equipped for that purpose with a boom, winch, carrier, or other similar equipment, except a motor vehicle registered under the International Registration Plan, upon application and payment of the appropriate license tax and fees in accordance with s. 320.08(5)(d) or (e), F.S. A license plate issued under this section must have the word “Wrecker” imprinted on the bottom of the plate in place of the county name.

Section 320.13(1)(a), F.S., provides any licensed motor vehicle dealer and any licensed mobile home dealer may, upon payment of the license tax imposed by s. 320.08(12), F.S., secure one or more dealer license plates. Such plates are valid for use on motor vehicles or mobile homes owned by the dealer to whom such plates are issued while the motor vehicles are in inventory and for sale, or while being operated in connection with such dealer’s business. Dealer license plates may not be used on a for-hire vehicle or on any tow truck or wrecker unless the tow truck or wrecker is being demonstrated for sale.

FHP Wrecker Allocation System

Section 321.051, F.S., authorizes the FHP to establish, within areas designated by the patrol, a system utilizing qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles or for removal and storage of abandoned vehicles. The FHP establishes eligibility standards based on safety and mechanical qualifications for wrecker operators. The FHP may also limit the number of operators participating in the system and may establish maximum rates for contracted towing and storage services.

The section defines an “authorized wrecker operator” as any wrecker operator who has been designated by FHP as part of the wrecker operator system, and an “unauthorized wrecker operator” as any wrecker operator who has not been designated by FHP as part of the wrecker operator system. The section further provides any owner of a motor vehicle may contract with any wrecker operator for wrecker services, regardless of whether the operator is an authorized member of the rotation system.

Law Enforcement Hold on Vehicles

Section 323.001, F.S., provides an investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for a period not to exceed 5 days, excluding holidays and weekends, unless extended in writing. The investigating agency must notify the wrecker operator in writing within 5 days whether the hold is to be continued. If no notification follows this period of time, the wrecker operator may release the vehicle to the designated person pursuant to s. 713.78, F.S.

The section provides if the hold continues beyond 5 days, then the investigating agency may have the vehicle removed to a designated impound lot. The vehicle may not be released by the investigating agency to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the wrecker operator is presented to the investigating agency.

If the investigating agency chooses to have the vehicle remain at the wrecker operator's storage facility beyond 5 days, then the investigating agency will be responsible for payment of the storage charges incurred by the wrecker operator for the requested extended period. The owner or lienholder will be responsible for payment of accrued towing and storage charges for up to the first 5 days.

The section further provides the towing and storage rates for the owner or lienholder of the held vehicle may not exceed the rates for the investigating agency. If there is a judicial finding of no probable cause for having continued the immobilization or impoundment, the investigating agency ordering the hold must pay the accrued charges for any towing and storage.

A vehicle may be held when the following conditions are present:

1. The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act;
2. The officer has probable cause to believe the vehicle should be seized and forfeited under chapters 370 or 372, F.S.;
3. The officer has probable cause to believe the vehicle was used as the means of committing a crime;
4. The officer has probable cause to believe the vehicle is itself evidence that tends to show a crime has been committed or the vehicle contains evidence, which cannot readily be removed, which tends to show a crime has been committed;
5. The officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;
6. The vehicle is impounded or immobilized pursuant to s. 316.193, F.S., or s. 322.34, F.S. (driving under the influence); or
7. The officer is complying with a court order.

Finally, the section provides a wrecker operator's storage facility must comply with a hold placed by a law enforcement officer, including instructions for inside or outside storage. A wrecker operator's storage facility may not release a motor vehicle subject to a hold to any

person except as directed by the law enforcement agency placing the hold. When a vehicle owner is found guilty of, or pleads nolo contendere to, the offense that resulted in a hold being placed on his or her vehicle, regardless of the adjudication of guilt, the owner must pay the accrued towing and storage charges assessed against the vehicle.

Local Wrecker Allocation Systems

Section 323.002, F.S., defines an “authorized wrecker operator” as any wrecker operator who has been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. An “unauthorized wrecker operator” is defined as any wrecker operator who has not been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.

The section defines a “wrecker operator system” as a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker operator system described in s. 321.051(2), F.S., under which a county or municipality contracts with one or more wrecker operators for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. A wrecker operator system includes using a method for apportioning the towing assignments among the eligible wrecker operators through the creation of geographic zones, a rotation schedule, or a combination of these methods.

Section 323.002, F.S., further provides it is unlawful for an unauthorized wrecker operator or its employees or agents to monitor a police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene of such vehicle. Any person who violates this provision is guilty of a noncriminal violation, punishable by a \$500 fine.

Further, it is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle. Any person who violates this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment of up to 60 days and a fine not to exceed \$500.

When an unauthorized wrecker operator drives by the scene of a wrecked or disabled vehicle and the owner or operator initiates contact by signaling the wrecker operator to stop and provide towing services, the unauthorized wrecker operator must disclose to the owner or operator of the vehicle that he or she is not the authorized wrecker operator who has been designated as part of the wrecker operator system and must disclose, in writing, what charges for towing and storage will apply before the vehicle is connected to the towing apparatus. Any person who violates this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment up to 60 days and a fine not to exceed \$500.

At the scene of a wrecked or disabled vehicle, it is unlawful for a wrecker operator to falsely identify himself or herself as being part of the wrecker operator system. Any person who violates

this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment of up to 1 year and a fine not to exceed \$1,000.

The section does not prohibit the owner or operator of a vehicle involved in an accident or otherwise disabled from contacting any wrecker operator for the provision of towing services, whether the wrecker operator is an authorized wrecker operator or not.

Liens for Recovering Towing and Storage Fees

Section 713.78, F.S., provides when a wrecker or tow service properly tows a vehicle they have a lien against the vehicle for payment of reasonable towing and storage fees. The owner of the vehicle may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker service tows and stores a motor vehicle, the service must send notice to the registered owner and all lienholders by certified mail within seven business days after the date of storage of the vehicle. The section further provides a person regularly engaged in towing or storing vehicles is not liable for damages connected with the towing and storage of a vehicle if such towing and storage were done with reasonable care.

The section also limits the liability of a wrecker when towing or storing a vehicle. The section provides a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, if the wrecker uses reasonable care. The wrecker is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic. The section provides a wrecker has used reasonable care if: the wrecker surrounds the storage facility with a chain-link or solid fence at least 6 feet in height; the storage facility is illuminated enough to reveal persons and vehicles at a distance of 150 feet; and the wrecker employs a night watchman, security dog, or security cameras.

The section further provides any law enforcement agency requesting a motor vehicle be removed from an accident scene, street, or highway must conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. The wrecker operator may not be held liable for the loss of personal property which was not identified on the inventory record prepared by the law enforcement agency.

Section 713.78(13), F.S., provides upon receipt by DHSMV of written notice from a wrecker operator who claims a lien for recovery, towing, or storage of an abandoned vehicle, vessel, or mobile home upon instructions from any law enforcement agency, for which a certificate of destruction has been issued, DHSMV must place the name of the registered owner of that vehicle, vessel, or mobile home on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle. If the vehicle, vessel, or mobile home is owned jointly by more than one person, the name of each registered owner must be placed on the list.

The section further provides the amount of the wrecker operator's lien for which the DHSMV will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle, vessel, or mobile home for seven days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality.

The registered owner of a vehicle, vessel, or mobile home may dispute a wrecker operator's lien, by notifying DHSMV of the dispute in writing, if at least one of the following applies:

1. The registered owner presents a notarized bill of sale proving the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.
2. The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

Section 713.69, F.S., makes it unlawful to remove property which has had a lien placed upon it under the provisions of s. 713.68, F.S., from any hotel, apartment house, roominghouse, lodginghouse, boardinghouse, or tenement house without first making full payment on the lien or receiving written consent from the owner or operator of the establishment.

Towing Vehicles from Private Property

Section 715.07, F.S., provides the owner or lessee of real property may have any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, if certain restrictions are complied with.

Any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county of 500,000 population or more, and within 15 miles of the point of removal in any county of less than 500,000 population. That site must be open from 8:00 a.m. to 6:00 p.m., and when closed, the site must have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle, the operator must return to the site within 1 hour. If no towing business providing such service is located within the area, any towed or removed vehicle must be stored at a site within 20 miles of the point of removal in any county of 500,000 population or more, and within 30 miles of the point of removal in any county of less than 500,000 population.

The person or firm towing or removing the vehicle must, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff of such towing or removal, the storage site, the time the vehicle was towed or removed, and the make, model, color, and license plate number of the vehicle and must obtain the name of the person at that department to whom such information was reported and note that name on the trip record. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment up to 1 year and a fine not to exceed \$1,000.

If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle must be disconnected from the wrecker, and that person must be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service.

The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited.

Except for property which is obviously a part of a single-family residence, and except for instances when notice is personally given to the owner of the vehicle, any property owner, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:

1. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.
2. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.
3. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessee, or person in control of the property has a written contract with the towing company.
4. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles.
5. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.
6. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

A business owner or lessee may authorize the removal of a vehicle by a towing company when the vehicle is parked in such a manner that restricts the normal operation of business; and if a vehicle parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle removed by a towing company upon signing an order that the vehicle be removed without a posted tow-away zone sign.

Any person or firm that tows or removes vehicles must file with the local law enforcement agency a complete copy of the current rates for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment up to 1 year and a fine not to exceed \$1,000.

Any person or firm towing or removing any vehicles from private property without the consent of the owner must have the name, address, and telephone number of the company performing

such service clearly printed in contrasting colors on the driver and passenger sides of the wrecker. Any person violating these provisions is guilty of a felony of the third degree, punishable by up to 5 years in jail, a fine of \$5,000, and enhanced penalties for habitual felony offenders.

The section provides the wrecker may enter the vehicle for the purpose of removing the vehicle with reasonable care. Such person or firm is liable for any damage to the vehicle if such entry is not in accordance with the standard of reasonable care.

The requirements in this section are minimum standards and do not preclude the enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles are towed from private property. This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such or to property owned by any governmental entity.

The section provides when a person improperly causes a vehicle to be removed, such person is liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle; attorneys' fees; and court costs.

III. Effect of Proposed Changes:

This bill creates chapter 508, F.S., to establish within the Department of Agriculture and Consumer Services (DACS) a state-wide wrecker company registration and wrecker operator certification system. The bill also restricts counties and municipalities from issuing or renewing an occupational license unless the wrecker company is registered with DACS and restricts participation in the Florida Highway Patrol (FHP) or local government wrecker allocation system to those wrecker companies registered with DACS. The provisions of the bill are discussed in detail below.

Section 1 – Technical Change

Section 120.80, F.S., is amended to conform existing law to the provisions of the bill. The term “wrecker operator” is changed to “wrecker company” and “wrecker rotation system” is revised to be “wrecker allocation system.”

Section 2 – Wrecker Company Occupational Licenses

Section 205.1975, F.S., is created to prohibit counties and local municipalities from issuing or renewing an occupational license for the operation of a wrecker company unless the wrecker company provides proof the company is registered as a wrecker by DACS.

Section 3 – Technical Change

Section 316.530, F.S., is amended to conform existing law to the provisions of the bill.

Section 4 – Technical Change

Subsection 316.550(4), F.S., is reenacted to incorporate an amendment made by the act to section 320.01, F.S.

Section 5 – Licensing of Vehicles

Section 316.605, F.S., is amended to permit a wrecker's license plate to be displayed on the front of the vehicle.

Section 6 – Technical Change

Subsection 320.01(40), F.S., is amended clarify the definition of "Wrecker."

Section 7 - Technical Change

Subsection 320.03(8), F.S., is amended to conform existing law to the provisions of the bill.

Section 8 – Licensing of Vehicles

Section 320.0706, F.S., is amended to require a wrecker's license plate to be mounted to the front of the vehicle.

Section 9 – Technical Change

Paragraphs (d) and (e) of subsection 320.08(5), F.S., are reenacted to incorporate an amendment made by the act to s. 320.01, F.S.

Sections 10 and 11– Wrecker License Plates

Subsection 320.0821(1), F.S., is amended and subsection (5) is added to clarify license plate requirements for wreckers. Effective January 1, 2006, the DHMSV may issue license plates to wreckers only if they are registered under chapter 508, F.S. This section does not apply to vehicles registered under the International Registration Plan.

Section 12 - Technical Change

Subsection 320.13(1)(a), F.S., is amended to conform existing law to the provisions of the bill.

Section 13 - FHP Wrecker Allocation System

Section 321.051, F.S., is amended to authorize a law enforcement officer to dispatch a wrecker from the wrecker allocation system if the officer believes a disabled vehicle is a public safety hazard and the wrecker would arrive before a wrecker requested by the vehicle owner. The section is further amended to provide that a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment.

The bill makes a substantive change to a current offense. Presently, s. 321.051(3)(b), F.S., provides that "[i]t is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of the authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle." The offense is a second-degree misdemeanor.

The bill does not change the penalty. However, the bill rewords the offense to read: "A wrecker operator dispatched by an unauthorized wrecker company may not drive by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company, initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services, or tow the vehicle." In current s. 321.051(3)(b), F.S., all three actions specified must occur for the law to be violated; however, the bill replaces the

conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

Section 14 – Wrecker Company Storage Facilities; Vehicle Holds

Section 323.001, F.S., is amended to include updated language and clarify the length of time a vehicle may be held. Definitions for “Business day” and “Wrecker company” are added, and the term “investigating agency” is replaced with “law enforcement agency.”

Section 15 – Local Wrecker Allocation Systems

Section 323.002, F.S., is amended to include updated language. The amended section also authorizes a law enforcement officer to dispatch a wrecker from the local wrecker allocation system if the officer believes a disabled vehicle is a public safety hazard and the wrecker would arrive before a wrecker requested by the vehicle owner. The section is further amended to provide that a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment.

The bill makes a substantive change to a current offense. Presently, s. 323.002(2)(b), F.S., provides that “[i]t is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle.” The offense is a second-degree misdemeanor.

*The bill does not change the penalty. However, the bill rewords the offense to read: “A wrecker operator dispatched by an unauthorized wrecker company may not drive by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company, initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services, **or** tow the vehicle.” In current s. 323.002(2)(b), F.S., all three actions specified must occur for the law to be violated; however, the bill replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.*

Section 16 - Wrecker Certification and Registration with DACS

The bill creates chapter 508, F.S., to provide for the certification and registration of all wrecker companies and wrecker operators.

Registration Required

Section 508.04, F.S., is created to provide a person may not operate a wrecker company unless that person is registered with DACS. A local occupational license may not be issued or renewed to any person or company that is not registered with DACS. The section exempts from wrecker registration requirements in this bill franchised motor vehicle dealers and any vehicle repair shop registered by DACS that derives at least 80 percent of its gross sales from vehicle repairs.

Section 508.05, F.S., is created to require the registration of wrecker companies with DACS and prohibit the operation of unregistered companies. The annual registration fee shall be set by DACS by administrative rule. All registrants, equitable owners, partners, or those with executive

management control must be fingerprinted, and must pay the cost of fingerprinting for initial registration. DACS will issue a certificate with a number to the registrant that must be displayed in a conspicuous place in the company's place of business. Any advertisement must bear the registration number. Annual renewals are subject to a \$25 late fee. A wrecker company may not renew a registration 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.

Section 508.06, F.S., is created to provide that DACS may deny or refuse registration renewal if:

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

Section 508.061, F.S., is created to specify acceptable forms of payment for wrecker company services.

Wrecker Operator Advisory Council

Section 508.02, F.S., creates the Wrecker Operator Advisory Council (council) within DACS to advise DACS on implementation of this chapter. The council consists of seven members, including 6 members appointed by the Commissioner of Agriculture and Consumer Services, three of whom must be persons who have been ultimate equitable owners of a wrecker company for at least five years, one wrecker operator of at least five years service, and two lay persons. The Executive Director of the Professional Wrecker Operators of Florida is also a voting member of the council. DACS is required to keep and store all records of the council and to provide administrative support and staff.

Wrecker Operator Education

The bill provides in s. 508.10, F.S., that a wrecker operator must become certified as a wrecker operator within six months after employment as a wrecker operator. The bill provides an exemption for vehicle repair shops and for certain religious organizations.

The bill creates s. 508.07, F.S., to provide that the council must establish a certification program for wrecker operators, and approve certification courses, schools, and exams. A wrecker operator must receive at least 16 hours of training in a certification program for certification.

Additionally, s. 508.08, F.S., is created to provide, each approved certification course must offer specialized certification for specialized wrecker services. Section 508.09, F.S., is created to provide that each organization conducting an approved wrecker operator certification course must issue a certification card to each wrecker operator who completes the certification course and passes the certification examination. Each certification card expires five years after the date of issuance.

Continuing Wrecker Education (CWE)

The bill creates s. 508.11, F.S., to authorize DACS, in consultation with the council, to establish Continuing Wrecker Education (CWE) requirements of up to eight hours for the renewal of a wrecker operator's certification.

Prohibited Acts

Section 508.12, F.S., prohibits a person from engaging in the following acts:

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

Penalties

Sections 508.13, 508.14, and 508.15, F.S., are created to provide administrative, civil, and criminal penalties. DACS may impose any of these civil penalties:

1. Issue a notice of noncompliance;
2. Impose an administrative fine of no more than \$5,000;
3. Issue cease and desist orders;
4. Revoke, suspend, or refuse registration;
5. Impose a department specified probationary period;
6. Seek a civil remedy of up to \$5,000 per violation; or
7. Seek restitution on behalf of an aggrieved party.

The following acts are punishable as third-degree felonies:

1. Operation of an unregistered wrecker company; or
2. Performance of wrecker services without being employed by, or without being the ultimate equitable owner of a registered wrecker compan.

Fees Payable to DACS

Sections 508.16 and 508.17, F.S., are created to provide a \$495 fee for wrecker company registration and renewal. All fees, penalties, and other monies collected pursuant to this bill are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

Recovery Agents

Section 508.18, F.S., is created to exempt recovery agents performing repossessions from the requirements of the chapter.

Effect of Act on Local Ordinances

Section 508.19, F.S., is created to provide local governments may impose regulations on wrecker operators and wrecker companies which are more restrictive than those provided in this bill, 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 DACS. Further, DACS is authorized to delegate enforcement of this act to any county or municipality.

Records

Section 508.20, F.S., is created to require wrecker companies to maintain records of its wrecker services and records sufficient to demonstrate successful completion of required educational courses for each operator. Additionally, each organization providing wrecker education courses is directed to maintain records on each person completing one of the courses.

Sections 17 and 18 - Liens for Recovering Towing and Storage Fees

The bill amends s. 713.78, F.S., to provide that a registered owner may dispute a wrecker operator's lien, if DHSMV's records were marked sold prior to the issuance of a certificate of destruction. The section is further amended to provide the lien dispute resolution process in subsection (13) does not apply to a leased vehicle registered in the name of the lessor.

The bill amends s. 713.78, F.S., effective January 1, 2006, updating the language to conform the section to the provisions of chapter 508, F.S. Additionally, the revisions provide that reasonable attorney fees may be awarded to the prevailing party in complaints concerning the wrongful taking of property. Further, the bill provides that employees or authorized agents of a wrecker company are not liable for civil damages when removing a vehicle or vehicle cargo that is an imminent public safety hazard from a public road if requested by a law enforcement officer, deputy sheriff, or firefighter.

Section 19 – Liens for Recovering, Towing, or Storing Mobile Homes

The bill creates s. 713.785, F.S., to provide for the placement of liens on mobile homes that have been legally recovered, removed, or stored for any amount of time by a mobile home transport company. These provisions are similar to the provisions in s. 713.18, F.S., authorizing liens of vehicles and vessels.

Mobile home transport companies are required to give notice by certified mail, return receipt requested, to registered owners and lien holders within 7 days after taking possession. The bill also permits owners and lienholders to file an action against the mobile home transport company for a determination of whether the mobile home was wrongfully taken. During the proceeding, the mobile home can be released to the owner or lienholder upon posting adequate security with the court. The court may award damages and costs to the prevailing parties in such actions.

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. The certificate of title of a

mobile home sold under the provisions of the bill will be free and clear of liens unless a court specifies otherwise. 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.

Mobile home transport companies, landlords, and subsequent purchasers are not responsible to the tenant for loss or damage to the mobile home or personal property if reasonable care is used in storing the mobile home. However, mobile home transport companies in possession of a mobile home must permit the owner or agent of the owner to inspect the home and remove personal property, unless there is a lien on the personal property.

The bill provides the following acts by a mobile home transport company constitute a first-degree misdemeanor:

- Failure to provide notice to the owner or lienholders by certified mail that the mobile home transport company has taken possession of the mobile home and that the mobile home will be sold to satisfy a lien;
- Failure to notify the owner or lienholders of a mobile home that it will be sold at least 15 days before the sale;
- Failure to use reasonable care in storing a mobile home;
- Failure to apply for a certificate of destruction for mobile homes that will be destroyed; and
- Failure to allow the owner or owner's agent to inspect or remove personal property from the mobile home.

The bill provides for placing the names of owners of mobile homes who have had a recovery, towing, or storage lien placed against them on a list of persons who may not be issued a mobile home revalidation sticker. An owner may have their name removed from the list by discharging the lien through payment or posting a bond equal to the lien amount (when challenging a lien).

Section 20 – Technical Change

Section 319.30(1)(a), F.S., is amended to incorporate a cross-reference.

Section 21 – Removal of Property under Lien

Section 713.69, F.S., is revised to make it unlawful to remove from any mobile home park any property which has had a lien placed against it under the provisions of ss. 713.77 or 713.785, F.S. The violation is a third-degree felony.

Section 22 – Vehicles and Vessels Parked on Real Property without Permission

The bill conforms language in s. 715.07, F.S., to reflect the provisions of chapter 508, F.S., and to place vessels under the provisions of this section. Additionally, the section is amended to prohibit property owners from soliciting rebates, money, or other valuable consideration from wrecker companies for the privilege of removing vehicles from his or her premises.

Section 715.07, F.S., currently provides that the owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in

the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, under any of the circumstances specified in s. 715.07, F.S.

One of the circumstances provided is that the towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person is subject to strict compliance with certain specified conditions and restrictions provided in s. 715.07, F.S.

The bill provides that a violation of any the following conditions and requirements (the violation of which is not currently penalized in s. 715.07, F.S.) is a third degree felony:

- Any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county of 500,000 population or more, and within 15 miles of the point of removal in any county of less than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle, the operator shall return to the site within 1 hour or she or he will be in violation of this section.

If no towing business providing such service is located within the area of towing limitations (as specified in the statute), the following limitations apply: any towed or removed vehicle must be stored at a site within 20 miles of the point of removal in any county of 500,000 population or more, and within 30 miles of the point of removal in any county of less than 500,000 population.

- If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service (as provided in the statute), for which a receipt shall be given, unless that person refuses to remove the vehicle which is otherwise unlawfully parked.
- When a vehicle has been towed or removed pursuant to s. 715.07, F.S., it must be released to its owner or custodian within one hour after requested. Any vehicle owner, custodian, or agent shall have the right to inspect the vehicle before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle owner, custodian, or agent as a condition of release of the vehicle to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

Section 23 – Technical Change

Section 1.01(15), F.S., defining “wrecker operator” is repealed.

Section 24 – Appropriation

The bill appropriates \$693,000 from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services and authorizes 10 additional FTEs, for the purpose of implementing the act during FY 2005-2006.

Section 25 - Effective Date

The bill provides an effective date of July 1, 2005, unless otherwise specified in the bill.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 323.001(2), F.S., as provided in the bill and in current law, authorizes a law enforcement agency to place a hold on a vehicle at a wrecker company’s storage facility preventing the release of the vehicle to the owner for up to five days. No provision of the bill or existing law requires a law enforcement agency to have probable cause to impose a hold on a vehicle for five days or less. However, s. 323.001(3) and (5), F.S., as provided in the bill, states a law enforcement agency can extend the hold for more than five days if it has probable cause to do so. As such, the bill appears to permit a law enforcement agency to impose a hold on a vehicle for less than five days without having probable cause to do so.

Section 13 of the bill substantially rewords s. 321.051, F.S. This reworded section continues to allow the Division of Highway Patrol to limit the number of wrecker companies participating in a wrecker allocation system and also allows the system to be limited to “reputable wrecker” companies. The statute, however, does not define the term “reputable wrecker company” or otherwise establish criteria by which a wrecker company may be excluded or removed from the wrecker allocation system. According to *Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004):

statutes granting power to the executive branch “must clearly announce adequate standards to guide ... in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive]

is precluded from acting through whim, showing favoritism, or exercising unbridled discretion.”¹

Statutes that do not provide adequate standards to the executive branch may be in violation of the non-delegation doctrine of s. 3, Art. II, State Const.² Accordingly, both s. 321.051, F.S., as it exists in current law and in the bill may be unconstitutional.

See “Related Issues” section for comments of the American Automobile Association relevant to legal issues.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides all wrecker companies and persons engaged in towing activities must be certified and registered with the Department of Agriculture and Consumer Services (DACS) in order to conduct business in this state. The bill provides the fee for such registration will be \$495. The fee a prospective wrecker operator will have to pay for the certification course and the required 8 hours of continuing education (once every five years) is unknown. Wrecker companies will also be required to pay for finger printing and a background check.

C. Government Sector Impact:

According to the Department of Agriculture and Consumer Services (DACS), this bill will have an average annual cost to DACS of approximately \$708,603 to fund the necessary staff to implement this program over the next three fiscal years. However, this impact will be partially offset by registration fees if the estimated 1,400 wrecker operators in the state pay an annual registration fee of \$495, the maximum allowed by the bill. DACS calculated annual revenues of \$693,000 based on the \$495 registration fee, resulting in an average net negative impact of approximately \$15,603 per year to cover the anticipated expenses.³

The bill appropriates \$693,000 from the General Inspection Trust Fund to DACS to fund the program.

¹ Quoting *Askew v. Cross Key Waterways*, 372 So. 2d 913, 925 (Fla.1978).

² *Bush v. Schiavo*, 885 So. 2d 321, 332 (Fla. 2004).

³ A fiscal impact analysis by the Independent Towing and Recovery Association is provided in the “Related Issues” section of this analysis.

VI. Technical Deficiencies:

The bill provides that the applicant must pay the Florida Department of Law Enforcement (FDLE) a fingerprint processing fee of \$23 for state processing, and an additional fee for federal processing, for each applicant's name submitted. FDLE staff states that fees need to be collected by an "oversight agency." FDLE has requested that the bill be amended so that "FDLE will invoice [DACS] for the checks." FDLE explains that this "is how it is written in other statutory references to fingerprinting of applicants." FDLE knows of only one exception to this method, which pertains to daycare facilities; however, regarding this exception, the Legislature "allocated FDLE positions to handle that specific workload at the time the bill was passed."

FDLE staff also indicates that federal law requires "that a governmental entity receive the fingerprint check results from the FBI and provide the end user with a 'red light' 'green light' decision."

On page 22, lines 9-17, an offense is described as follows:

(b) An unauthorized wrecker company, its wrecker operators, or its other employees or agents may not monitor a police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of dispatching its wrecker operator to drive by the scene of the vehicle *in a manner described in paragraph (b) or paragraph (c)*. Any person who violates this paragraph commits a noncriminal violation, punishable as provided in s. 775.083, F.S.

While the paragraph (c) referenced in this offense does pertain to driving, the paragraph (b) reference is to the offense itself, which is contained in paragraph (b), and is, therefore, self-referential. It appears that the appropriate references are to paragraph (c) and (d), not to paragraph (b) and (c).

VII. Related Issues:

On page 33, lines 10-11, the bill establishes that the existence of "A judgment entered against him or her in an action brought by the department under this chapter" is grounds for denial, revocation, or non-renewal of wrecker company registration. DACS being an administrative agency is more likely to have an administrative order than a judgment against a wrecker company. As such, the Legislature may wish to amend the bill to be similar to other licensing statutes by replacing page 33, lines 10-11 with: "has violated any provision of this chapter or any rule or order made under this chapter."

Affected parties' comments:

The Professional Wrecker Operators of Florida, Inc., supports the bill. The Florida Manufactured Housing Association and DHSMV support those sections of the bill that impact their clients or responsibilities. DACS supports the bill as long as there is a dedicated funding source to cover the agency's expenditures to develop the specified rules and to enforce the program provisions adopted by the Wrecker Operator Advisory Council.

The Florida Association of Counties and Florida League of Cities have reviewed the bill's sections that impact their clients and have expressed no concerns.

AAA Auto Club South and the Florida Independent Towing and Recovery Association of Florida say they oppose the bill. AAA expressed concerns over the cost of the bill to the entire wrecker industry, including what it referred to as the "mom and pop" wrecker companies and operators. AAA estimates that the cost could be in excess of \$2.2 million to the industry, including the costs of background checks, fingerprinting, educational classes, and lost worker time. AAA also submits that the bill may raise constitutional issues. The bill provides, in part, that the Executive Director of the Professional Wrecker Operators of Florida is a voting member of the council. A representative for AAA contended that this provision may violate the prohibition against special laws or general laws of local application pertaining to a grant of privilege to a private corporation. The representative also contended that the bill's requirements do not reach to all wrecker companies, and therefore, may constitute an equal protection violation.⁴

A representative of the Florida Independent Towing and Recovery Association of Florida expressed concerns about the number of exemptions from the registration and certification requirements, and the fact that the executive director of the Professional Wrecker Operators of Florida, Inc., would serve on the Council. He also described the \$495 fee as "excessive" and questioned the need for the regulations. The Association submitted the following fiscal estimate, based on the number of 1440 wrecker operators presented in the fiscal analysis to SB 276⁵:

⁴ Staff was unable to locate a case that conclusively shows whether the provision is constitutional.

⁵ The Association indicated that they think this is a "conservative" estimate and that they believe the costs of this bill will be passed on to the consumer. The Association also indicated that AAA concurs with this estimate.

1400 Tow Businesses	
Annual Registration Fee: \$495/Company	\$693,000
Wrecker Operator Training: \$150/driver (est. 4 per co.)	\$840,000
Fingerprint Fees: \$23 x 4 drivers/company	\$128,800
Background Checks: \$55 x 4 drivers/company	\$308,000
Lost Time While Training: 4 x 116 x \$10/hour	\$896,000
Meals, Motel, Mileage: \$50 per driver	\$280,000
Total:	\$3,145,800

Cost Per Company	
Annual Registration	\$ 495
Training Fee ⁶	\$ 600
Fingerprint Fee	\$ 92
Background Check	\$ 220
Lost time	\$ 640
Training per diem	\$ 200
Cost per Company	\$2,247

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

⁶ Estimates of training fee, fingerprint fee, background check, lost time, and training per diem are based on 4 drivers per company. The analysis also states that the “Enforced Federal Hours of Service requirement would require 3 drivers per truck to maintain continuous 24/7 service as required by law enforcement.”

VIII. Summary of Amendments:

Barcode 472048 by Transportation:

Clarifies the information contained on a license plate relating to the word "Florida," the registration, and the alphanumeric designation, must remain visible and legible.

Barcode 924056 by Transportation:

Clarifies the requirements for the settlement of unpaid lot rent stemming from the sale of unclaimed mobile homes.

Barcode 324154 by Transportation:

Deletes the prohibition against removing from any mobile home park, any property which has had a lien placed against it under the provisions of ss. 713.77 or 713.785, F.S. (WITH TITLE AMENDMENT)

Barcode 671064 by Judiciary:

Deletes language authorizing the executive director of the Professional Wrecker Operators of Florida to serve as an *ex officio* voting member of the Wrecker Operator Advisory Council. Instead, the amendment provides that an officer of a towing industry organization must be appointed to the Wrecker Operator Advisory Council.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
