

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 341 CS Wrecker Services
SPONSOR(S): Robaina and others
TIED BILLS: none **IDEN./SIM. BILLS:** SB 276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>14 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Agriculture Committee</u>	<u>10 Y, 0 N</u>	<u>Reese</u>	<u>Reese</u>
3) <u>Criminal Justice Committee</u>	<u>8 Y, 0 N</u>	<u>Bond</u>	<u>Kramer</u>
4) <u>Agriculture & Environment Appropriations Committee</u>	<u>11 Y, 0 N, w/CS</u>	<u>Davis</u>	<u>Dixon</u>
5) <u>State Infrastructure Council</u>	<u>9 Y, 0 N</u>	<u>Pugh</u>	<u>Havlicak</u>

SUMMARY ANALYSIS

An estimated 1,200 to 1,500 companies operate wrecker businesses, and more than 7,000 trucks are registered as wreckers with the state Department of Highway Safety and Motor Vehicles (DHSMV).

This bill creates state regulation of wrecker operators. The bill: requires annual registration of wrecker companies with the state Department of Agriculture and Consumer Services (DACS); requires certification and continuing education of tow-truck operators; creates a seven-member Wrecker Operator Advisory Council to approve curricula and course providers; directs DACS, in consultation with the council, to issue rules implementing the new requirements; provides for prohibited acts and penalties; establishes an annual registration fee of \$515 for a wrecker company; specifies that unregistered wrecker companies may not be on the wrecker allocation lists used by law enforcement officers; and exempts from the regulatory provisions businesses which derive at least 80 percent of gross sales from repairs to motor vehicles, licensed automobile dealers, and businesses that regularly tow mobile homes.

The bill also specifies that tow trucks shall be required to have only one tag, to be placed on the front of the vehicles; clarifies that vessels parked without permission on real property also may be towed and held for lien; and creates a section of law on liens for towed, recovered, and stored mobile homes. This bill does not alter the authority of local governments to set maximum rates for towing. This bill requires that wrecker operators accept at least two of these forms of payment: cash (or cash equivalent), personal checks, or credit cards.

This bill creates a number of misdemeanor and felony offenses, primarily offenses that would be committed by wrecker operators. See "Infractions and Criminal Offenses Created By This Bill" starting on page 8.

DACS estimates expenditures of \$731,040 in the first year of implementation, and estimates that the \$515 fee will generate \$721,000 in recurring revenue. The bill also authorizes 10 additional FTEs to DACS for the purposes of implementing the act, and appropriates \$693,000 from the General Inspection Trust Fund to fund implementation. If the estimates are accurate, DACS will have to fund the apparent revenue shortfall from other agency resources.

The Criminal Justice Estimating Conference estimates that this bill will have an insignificant prison bed impact.

Most of the provisions of the bill are effective July 1, 2005, but some provisions become effective January 1, 2006.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 341 w/CS authorizes the creation of the Wrecker Operator Advisory Council within DACS to assist the agency with the technical aspects of regulating the towing industry. The Council also is charged with approving curricula for certification and continuing education programs, and to determine if out-of-state wrecker certification courses are substantially equivalent to Florida courses. Also, DACS is given 10 FTEs and additional rulemaking authority to implement the bill's provisions.

Ensure lower taxes: HB 341 w/CS creates a \$515 annual registration fee for most wrecker companies in the state of Florida.

Safeguard individual liberty: HB 341 w/CS requires most wrecker companies to register to continue in business; requires most wrecker operators to undergo training and continuing education to be certified and thus continue in employment; and requires owners and executive managers of most wrecker companies to be fingerprinted and undergo criminal background checks.

Promote personal responsibility: This bill creates criminal offenses for wrongful conduct.

B. EFFECT OF PROPOSED CHANGES:

Operational regulation of the wrecker industry

Present Situation

Currently, the primary business regulations on the wrecker industry are proper registration of vehicles, as described in chapter 320, F.S., and liability insurance coverage in s. 324.021 and s. 627.7415, F.S. In addition, many local governments require wrecker companies to obtain occupational licenses, pursuant to chapter 205, F.S.

Over the years, concerns have increased over so-called "gypsy wreckers" operating without liability insurance, whose vehicles are improperly registered and ill-equipped to tow vehicles, and who prey on stranded motorists, tourists, and motorists who illegally park their vehicles.

Effect of Proposed Changes

HB 341 w/CS creates chapter 508, F.S. – Wrecker Services, which is section 16 of the bill. It creates a comprehensive structure for the registration of wrecker companies and the certification and continuing education of wrecker operators, the persons who drive the tow trucks, and establishes penalties. These regulatory responsibilities are assigned to DACS, which would be assisted by a new seven-member Wrecker Operator Advisory Council.

Under the bill, with some exceptions, all wrecker companies must be registered in Florida. Annual registration is a prerequisite for obtaining a local occupational license and for participating in the wrecker allocation call programs.

The bill exempts from these requirements: persons regularly engaged in the business of transporting mobile homes; motor vehicle repair shops deriving 80 percent of their business from repairs; franchised motor vehicle dealers; recovery or repossession agents; and any person performing wrecker services on behalf of a religious organization that holds a current exemption from federal taxation, or that is not required to apply for recognition of its exemption under the Internal Revenue Code.

Role of the Wrecker Operator Advisory Council

The bill creates a Wrecker Operator Advisory Council (Council) within DACS. The Council consists of 7 members who must be Florida residents: 6 appointed by the Commissioner of Agriculture and the seventh being the Executive Director of the Professional Wrecker Operators of Florida as an ex-officio but voting member. Three of the Commissioner's appointees must have been ultimate equitable owners of a wrecker company for at least 5 years; one must be a wrecker operator with at least five years of experience; and two are lay persons. Of the initial appointees, two wrecker company owners and one lay person would serve 2-year terms and the rest 4-year terms; all subsequent appointees would serve 4-year terms. By the year 2011, the industry appointees also must meet the registration or certification requirements. The Council would select its chair and vice chair, and all members would serve without compensation except for travel reimbursement and per diem pursuant to s. 112.061, F.S.

The bill provides the Council with significant authority. The Council will:

- Approve the certification courses for wrecker operators, prescribe the curricula, and approve each organization proposing to offer the courses.
- Approve the instruction, training, and examination for specialized wrecker services before they can be endorsed for a wrecker certification.
- Approve certification training in other states for the purposes of substitution, and determine whether such training is substantially equivalent to Florida's approved wrecker-operator courses.
- Review the rules promulgated by DACS to implement chapter 508, F.S., and advise the agency on wrecker industry standards, practices and other matters requiring technical expertise.

DACS's role

DACS has the responsibility to manage and enforce the wrecker company registration and wrecker operator certification programs. The agency has both general and specific rulemaking authority to implement the provisions of chapter 508, F.S. DACS will maintain records, issue the certification cards and registration approvals or denials, select the certification training organizations, notify DHSMV based on the Council's approval, and inspect the records of wrecker companies. It is required to keep and store all records of the Council and to provide administrative support and staff.

Registration Process and Requirements

The bill provides for an annual registration fee of \$515 per company. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted and must bear the cost of fingerprinting. General employees are not required to be fingerprinted. Applicants must pay the Florida Department of Law Enforcement a state fingerprint processing fee, and an additional fee for federal processing will be charged. DACS 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, and any company 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 DACS 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 commercial vehicle liability insurance, a wrecker company may not renew its registration.

DACS 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, motor vehicle theft, car jacking, chop shops, parts and accessories records, airbags, overcharging for repairs or parts, or towing or storage requirements;
- 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 required to maintain records of its wrecker services for at least 12 months at the principal place of business. It also must 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. DACS is authorized to enter the place of business for the purpose of examining the records.

Training and Certification Process

In addition to wrecker company registration, the bill requires certification of wrecker operators. DACS must establish a certification program including certification courses, schools and exams, and provide for specialized certification for specialized wrecker services. DACS also must require the courses to issue appropriate certificates and cards acknowledging completion of certification requirements. DACS 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 DACS, and those of other jurisdictions taken in lieu of Florida certification programs, must be approved by the Wrecker Operator Advisory Council.

In order to obtain certification, HB 341 w/CS requires that all wrecker operators must:

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

Prohibited acts and penalties

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.

HB 341 w/CS also creates a number of administrative and criminal penalties related to chapter 508, F.S., requirements. The criminal penalties are more fully described below. Among the administrative penalties, DACS 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.

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

Under the bill, operation of an unregistered wrecker company and performance of wrecker services without being employed by a registered wrecker company are third-degree felonies.

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

Wrecker Allocation System

Present Situation

The Florida Highway Patrol (FHP) is authorized in s. 321.051, F.S., 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, pursuant to s. 323.002, F.S.

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 existing ss. 321.051 and 323.002, F.S., are rewritten in HB 341 w/CS, but the primary changes are made to reflect the wrecker registration and certification requirements imposed in the new chapter 508, F.S.

The bill defines and differentiates between wrecker companies and wrecker operators to clarify the distinction between those who own towing companies and those who drive tow trucks. It also renames the "wrecker operator system" as the "wrecker allocation system."

The key change is that only registered wrecker companies and certified operators would be able to participate in the wrecker allocation system. The law still allows the owner or operator of a disabled vehicle to hire an unauthorized wrecker; however, the law enforcement officer on the scene may, in the interest of public safety, dispatch an authorized wrecker operator if the officer believes it will arrive before the wrecker company requested by the motorist.

Liens assessed on towed and stored vehicles

Present Situation

Section 713.78, F.S., currently provides that 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 lien holders by certified mail within 7 business days after the date of storage of the vehicle. The section further provides that 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.

This section also limits the liability of a wrecker operator when towing or storing a vehicle. The section provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, providing the wrecker uses reasonable care. The wrecker operator 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 operator 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 operator employs a night watchman, security dog, or security cameras.

In addition, current law requires any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway to 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 that 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 7 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:

- 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.
- 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.

Effect of Proposed Changes

HB 341 w/CS 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 that the lien dispute resolution process in current law does not apply to a leased vehicle registered in the name of the lessor. 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.

Mobile Homes

Present Situation

Mobile homes and manufactured housing are generally covered by the same laws as other vehicles in terms of the chapter 713, F.S. Cognizant of potential changes in the lien and storage laws for vessels and vehicles and how the changes might negatively impact the owners of mobile homes and other manufactured housing, plus the fact that companies that move mobile homes are not the same as the wrecker companies, the industry began drafting legislation tailored to its needs.

Effect of Proposed Changes

HB 341 w/CS 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 lien holders 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 lien holder upon posting of 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 that the following acts by a mobile home transport company constitute a misdemeanor:

- Failure to provide notice to the owner or lien holders 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 lien holders 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 to be destroyed; and
- Failure to allow the owner or owner's agent to inspect or remove personal property from the mobile home.

HB 341 w/CS 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 his or her name removed from the list by discharging the lien through payment or posting a bond equal to the lien amount.

Other issues in HB 341 w/CS

- Wrecker companies must accept at least two of the following three forms of payment: cash, cashier's check, money order, traveler's check; a valid personal check showing the name and address of the vehicle or vessel owner or operator; or a valid credit card.
- The bill allows a license plate to be placed on the front of a wrecker, or of a heavy truck or truck tractor if a rear-end loading device could damage the plate if placed on the rear bumper. In addition, the bill allows heavy trucks bearing government license plates to display plates on the front.
- A wrecker may not be registered and licensed as such with DHSMV unless the owner of the vehicle is a wrecker company registered with DACS pursuant to the new chapter 508, F.S. This provision does not apply to wreckers that are registered under the International Registration Plan.
- 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. DACS 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. DACS may also delegate enforcement to any county or municipality entering into a cooperative agreement.
- The bill provides immunity from liability for wrecker companies, wrecker operators, employees and agents of wrecker companies, law enforcement officers and other 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 harmonizes the various definitions of "wrecker" and "wrecker operator" throughout Florida Statutes.

Infractions and Criminal Offenses Created By This Bill

This bill creates the following offenses:

Infraction¹

Listening to a police radio with the intent to dispatch a wrecker outside of a wrecker allocation system (a rotation list). See new ss. 321.051(3)(a) and 323.002(2)(b), F.S.

Second Degree Misdemeanor²

If not dispatched pursuant to the rotation list, driving by a wrecked or disabled vehicle and initiating contact with the owner with the intent to solicit towing business. See new ss. 321.051(3)(b) and 323.002(2)(d), F.S.

If not dispatched pursuant to the rotation list, failing to disclose to the owner of the vehicle that the operator was not dispatched according to the list, or failing to disclose the price in writing prior to providing the towing service. See new ss. 321.051(3)(c) and 323.002(2)(d), F.S.

First Degree Misdemeanor³

If not dispatched pursuant to the rotation list, falsely claiming to have been dispatched pursuant to the list. See new ss. 321.051(3)(d) and 323.002(2)(e), F.S.

Failure of a mobile home transport company to: mail a notice of lien within 7 days, or failure of such notice to comply with legal requirements; follow statutory notice and sale requirements; properly apply for a certificate of destruction, where such certificate is required; allow the owner of a mobile home to inventory and remove personal belongings. See new s. 713.785(10), F.S.

Third Degree Felony (unranked in Criminal Punishment Code)⁴

Operating a wrecker company without having registered with the Department of Agriculture and Consumer Services. See new s. 508.15(1), F.S.

Performing wrecker services without being an employee or owner of a registered wrecker company. See new s. 508.15(2), F.S.

Towing a vehicle or vessel to a storage facility more than 10 miles from point of towing (15 miles in a county of less than 500,000, and increased to 20 and 30 miles respectively if no wrecker company is located within the smaller radius). See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to be continuously open between 8:00 a.m. and 6:00 p.m. on a regular business day. See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to release a towed vehicle or vessel from storage within 1 hour of the owner's request. See new s. 715.07(6)(b), F.S.

Failure to release a vehicle or vessel about to be towed when the owner shows up, offers to pay half the standard towing fee, and agrees to immediately move the vehicle or vessel. See new s. 715.07(6)(b), F.S.

A wrecker company or operator offering a property owner a rebate or other consideration for the privilege of towing from the property; or a property owner soliciting a rebate or other consideration from

¹ An infraction is punishable by a fine of no more than \$500. See s. 775.083, F.S.

² A second degree misdemeanor is punishable by confinement in the county jail for up to 60 days and/or a fine of up to \$500. See ss. 775.082 and 775.083, F.S.

³ A first degree misdemeanor is punishable by confinement in the county jail for up to 1 year and/or a fine of up to \$1000. See ss. 775.082 and 775.083, F.S.

⁴ A third degree felony is punishable by confinement in state prison for up to 5 years and/or a fine of up to \$5,000. An unranked third degree felony is a Level 1 offense in the Criminal Punishment Code. The Criminal Punishment Code sets minimum sentences for felony offenses based on a point system. Unless the offender has a prior criminal record, committing one Level 1 offense of the type created by this bill will yield a minimum of "any nonstate prison sanction", meaning that there is no minimum term of incarceration. See ss. 775.082 and 775.083, F.S.

a wrecker operator or operator for the privilege of towing from the property. See new s. 715.07(6)(b), F.S.

Refusal of a wrecker operator to allow the owner of towed vehicle or vessel to inspect the vehicle or vessel prior to accepting its return. A wrecker operator conditioning return of a vehicle or vessel on the owner of a vehicle or vessel signing a liability waiver. Failure of a wrecker operator to give the owner of a vehicle or vessel a signed receipt showing the name of the company. See new s. 715.07(6)(b), F.S.

C. SECTION DIRECTORY:

Section 1: Effective January 1, 2006, amends s. 120.80, F.S., to reflect changes in definitions created elsewhere in the bill.

Section 2: Effective January 1, 2006, creates s. 205.1975, F.S., prohibiting counties and municipalities from issuing 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 front-end placement of license plates on vehicles with mechanical loading devices and on government-owned heavy trucks.

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

Section 7: Effective January 1, 2006, 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 front end 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, regardless of its weight, shall display only one license plate and that it must be displayed on the front of the wrecker.

Section 11: Effective January 1, 2006, 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 the state, pursuant to chapter 508, F.S.

Section 12: Amends s. 320.13, F.S., to delete the term "tow truck" and add a cross-reference.

Section 13: Effective January 1, 2006, amends s. 321.051, F.S., to rename the wrecker operator system as the wrecker allocation system and add definitions. Requires that only wrecker companies registered under chapter 508, F.S., may be part of the allocation system; specifies under what circumstances law enforcement officers may dispatch wrecker companies out of rotation or override the selection of a wrecker company by the owner/operator of the disabled vehicle needing a tow.

Section 14: Effective January 1, 2006, amends s. 323.001, F.S., to reflect terminology and registration changes implemented elsewhere in the bill.

Section 15: Effective January 1, 2006, 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 reflect terminology and registration changes implemented elsewhere in the bill; specifies that only wrecker companies registered pursuant to chapter 508, F.S., may be included in the allocation system.

Section 16: Creates ch. 508, F.S., related to Wrecker Services. Creates ss. 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.; provides for definitions; creates a wrecker operator advisory council, assigned to the state Department of Agriculture and Consumer Services (DACS); provides DACS with rule-making authority; specifies registration requirements, renewal of registrations, denial of registrations, forms of payment wrecker companies must accept, operator certifications, certification cards, process, and continuing education; provides for DACS's inspection of employment records, specifies 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. Specifies that the provisions of s. 713.78(13), F.S., do not apply to any vehicle registered in the name of a lessor.

Section 18: Effective January 1, 2006, amends s. 713.78, F.S., to reflect the changes in terminology and definitions created pursuant to the new chapter 508, F.S.; requires an award of damages, costs, and reasonable attorney's fees for the prevailing party in a lien case; authorizes law enforcement officers, firefighters, emergency medical services providers, and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability, and without the consent of the owner or operator, if the vehicle or cargo poses an imminent public safety hazard; specifies that amendments to this section do not affect the validity of liens established under this section of law prior to January 1, 2006.

Section 19: Effective January 1, 2006, 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; authorizes the DHSMV to adopt rules to implement this new section of law.

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: Effective January 1, 2006, amends s. 715.07, F.S., related to towing vehicles from real property. Clarifies that this section will address towing vehicles and vessels parked on real property without permission; updates to include new wrecker-related terminology and registration requirements; prohibits property owners from soliciting rebates from a wrecker company or operator from using his or her services; corrects cross-references.

Section 22: Effective January 1, 2006, repeals subsection (15) of s. 1.01, F.S., the definition of "wrecker operator."

Section 23: Provides for an appropriation of \$693,000 from the General Inspection Trust Fund to DACS and 10 additional FTE positions for the agency to implement the provisions of this act.

Section 24: Provides that the act shall take effect July 1, 2005, except where otherwise specified.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DACS

	FY 05-06	FY 06-07	FY 07-08
Recurring GITF	721,000	721,000	721,000

Registration fee revenues are to be deposited in the General Inspection Trust Fund.

DHSMV

The agency reported no anticipated revenue increases from HB 341 w/CS.

Florida Department of Law Enforcement (FDLE)

	FY 05-06	FY 06-07	FY 07-08
<u>Recurring</u>			
Anticipated 20% of 1,200 (240 backgrounds*\$15)		3,600	3,600
<u>Nonrecurring</u>			
Anticipated first year (1,200 backgrounds*\$15)	18,000		

Please see the fiscal comments for further information provided by FDLE.⁵

2. Expenditures:

DACS

	FY 05-06	FY 06-07	FY 07-08
<u>Nonrecurring GITF</u>			
Op. Capital Outlay	18,600		
Expenses	8,000		
AGMIC	<u>23,000</u>		
	49,600		
<u>Recurring GITF</u>			
Positions (10)	440,713	449,527	458,518
Expenses	139,964	142,054	143,144
AGMIC	6,200	6,200	6,200
Non-operating costs	<u>94,563</u>	<u>94,563</u>	<u>94,563</u>
	681,440	692,344	702,425
	<u>731,040</u>	<u>692,344</u>	<u>702,425</u>

DHSMV

The agency reported no expenditures anticipated from HB 341 w/CS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. It is unknown at this time how much revenue local governments derive from occupational license fees from wrecker companies. If some wrecker companies decide not to register with the state, or delay registration for a year or two, then they would not be able to obtain an occupational license from their city or county of operation.

2. Expenditures:

⁵ FDLE bill analysis of HB 341 CS, revenue/expenditures and comments updated as of April 13, 2005.

Indeterminate. Some local governments may enter into cooperative agreements with DACS to help enforce the wrecker regulations, but the cost of such responsibilities is unknown at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrecker companies will be required to pay an annual registration fee of \$515 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 one industry representative, voluntary wrecker education courses currently cost from \$75 to \$130. The AAA, however, said the classes can cost as much \$495. The wrecker industry also will incur the costs of fingerprinting and background checks to meet the new registration requirements.

The general public also is likely to be financially impacted because some wrecker companies may increase towing fees and other charges to cover the new costs of regulation. In any event, the financial cost to consumers is indeterminate at this time, as are the benefits of increased safety and the improved sense of trust and security consumers may experience from having access to better educated and better regulated wrecker operators.

HB 341 w/CS also may promote an increase in the number of companies offering wrecker education courses with competitive tuition prices, since certification and continuing education will be a requirement for all tow truck operators working for registered wrecker companies.

D. FISCAL COMMENTS:

DACS's analysis⁶ indicates that in the first full fiscal year of 2006-2007, the registration fees could generate \$721,000, based on an estimated 1,400 wrecker companies paying the \$515 registration fee. No accurate numbers exist of how many wrecker companies operate in Florida, however. The Professional Wrecker Operators of Florida, Inc., estimates there are between 1,200 and 1,500 wrecker companies. That means the registration fee could generate anywhere from \$618,000 to \$772,500 annually.

If estimates are accurate, revenues will fall short of expenditures in FY 2005-06 by \$10,040. However, the actual shortfall would be \$38,040 since the appropriation contained in the bill is \$693,000. DACS will have to fund any apparent revenue shortfall out of other agency resources should these estimates prove accurate. Furthermore, the net loss could be greater in coming years if fewer than the estimated 1,400 wrecker companies in Florida decide to register with DACS. As it stands, however, revenues are projected to exceed expenditures in future years.

On a different issue, FDLE's analysis indicates, "while the impact of this bill does not necessitate additional FTE, this bill in combination with additional background screening bills could rise to the level requiring additional staffing" for that agency.

Furthermore, s. 943.053(3)(b), F.S., specifies... "The fee per record for criminal history information provided pursuant to this subsection is \$23 per name submitted, except that the fee for vendors of the Department of Children and Family Services, the Department of Juvenile Justice, and the Department of Elderly Affairs shall be \$8 for each name submitted; the fee for a state criminal history provided for application processing as required by law to be performed by the Department of Agriculture and Consumer Services shall be \$15 for each name submitted; and the fee for requests under the National Child Protection Act shall be \$18 for each volunteer name submitted..." Wreckers now fall in the \$15 fee category.

In the new s. 713.785(5), F.S., of the bill, it provides for the clerk of court to receive a 5% fee for taking into the court registry the net proceeds of a sale of a mobile home (after deducting the lien for towing

⁶ The DACS fiscal analysis, including the revenue and expenditure section, has been modified by House Appropriations staff to account for amendment(s) adopted in committee, April 11, 2005.

and storage fees, costs of sale, and liens). It is unclear why the clerk would be entitled to this high of a fee. In general, clerks of court are only entitled to 3% of the first \$500, and 1.5% of the amount above \$500 (rounded up to the next \$100), of any monies accepted into the court registry. See s. 28.24(10), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 341 w/CS because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 16 of HB 341 w/CS gives DACS specific and general rulemaking authority to implement the new wrecker regulatory provisions.

Staff of the Joint Administrative Procedures Committee (JAPC) and the House Governmental Operations Committee reviewed the rulemaking provisions in Section 16 of the bill, at the Transportation Committee staff's request. The provisions conferring rulemaking authority are sufficient for DACS to carry out its responsibilities.

JAPC staff expressed concern that several provisions of the bill provide that the Council, rather than DACS, will make certain decisions that appear to constitute final agency action for purposes of chapter 120, F.S. Staff cited several examples where the Council is directed to perform a significant task: approve certification courses, prescribe the minimum curricula, approve each organization offering the curricula and its courses, and approve out-of-state curricula.

"The council is described in the bill as an advisory body, the purpose of which is to advise and assist DACS," wrote JAPC staff. "Since the duties of the council are advisory only, it would be less confusing if the provisions noted above were clarified to provide that it is DACS, with the advice of or in consultation with the Council, which will make the decisions."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its February 22, 2005, meeting, the House Transportation Committee adopted without objection two technical amendments.

The first amendment corrected a drafting error that occurred in the new mobile-home lien provisions in s. 713.785, F.S. The phrase "judgment for unpaid lot rental amount" had been inadvertently omitted.

The second amendment deleted a proposed reference to "mobile home parks" and several cross-reference changes in s. 713.69, F.S., later determined to be unnecessary with the creation of a section of law specifically related to mobile home liens.

The committee then voted 14-0 to report the bill favorably with a committee substitute.

On April 11, 2005, the House Agriculture and Environment Appropriations Committee adopted two amendments before reporting the bill favorably.

- Amendment 1 removed the specification that the state fingerprint processing fee is \$23.
- Amendment 2 increased the annual registration and renewal fees for wrecker companies from \$495 to \$515.