

Bill No. CS for CS for SB 492

Barcode 100640

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

**Senate Amendment**

On page 3, line 4, through  
page 9, line 28, delete those lines

and insert:

Section 3. Subsections (2), (4), (5), (6), (7), (10),  
(11), and (13) of section 713.78, Florida Statutes, are  
amended to read:

713.78 Liens for recovering, towing, or storing  
vehicles and vessels.--

(2) Whenever a person regularly engaged in the  
business of transporting vehicles or vessels by wrecker, tow  
truck, or car carrier recovers, removes, or stores a vehicle  
or, vessel, ~~or mobile home~~ upon instructions from:

(a) The owner thereof; ~~or~~

(b) The owner or lessor, or a person authorized by the  
owner or lessor, of property on which such vehicle or vessel  
is wrongfully parked, and the ~~such~~ removal is done in  
compliance with s. 715.07; or

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1 (c) Any law enforcement agency; ~~or~~

2 ~~(d) A mobile home park owner as defined in s. 723.003~~  
3 ~~who has a current writ of possession for a mobile home lot~~  
4 ~~pursuant to s. 723.061,~~

5  
6 she or he shall have a lien on the ~~such~~ vehicle or vessel for  
7 a reasonable towing fee and for a reasonable storage fee;  
8 except that no storage fee shall be charged if the ~~such~~  
9 vehicle is stored for less than 6 hours.

10 (4)(a) Any person regularly engaged in the business of  
11 recovering, towing, or storing vehicles or vessels who comes  
12 into possession of a vehicle or vessel pursuant to subsection  
13 (2), and who claims a lien for recovery, towing, or storage  
14 services, shall give notice to the registered owner, the  
15 insurance company insuring the vehicle notwithstanding the  
16 provisions of s. 627.736, and to all persons claiming a lien  
17 thereon, as disclosed by the records in the Department of  
18 Highway Safety and Motor Vehicles or of a corresponding agency  
19 in any other state.

20 (b) Whenever any law enforcement agency authorizes the  
21 removal of a vehicle or vessel or whenever any towing service,  
22 garage, repair shop, or automotive service, storage, or  
23 parking place notifies the law enforcement agency of  
24 possession of a vehicle or vessel pursuant to s.  
25 715.07(2)(a)2., the applicable law enforcement agency shall  
26 contact the Department of Highway Safety and Motor Vehicles,  
27 or the appropriate agency of the state of registration, if  
28 known, within 24 hours through the medium of electronic  
29 communications, giving the full description of the vehicle or  
30 vessel. Upon receipt of the full description of the vehicle or  
31 vessel, the department shall search its files to determine the

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1 owner's name, the insurance company insuring the vehicle or  
2 vessel, and whether any person has filed a lien upon the  
3 vehicle or vessel as provided in s. 319.27(2) and (3) and  
4 notify the applicable law enforcement agency within 72 hours.  
5 The person in charge of the towing service, garage, repair  
6 shop, or automotive service, storage, or parking place shall  
7 obtain such information from the applicable law enforcement  
8 agency within 5 days after ~~from~~ the date of storage and shall  
9 give notice pursuant to paragraph (a). The department may  
10 release the insurance company information to the requestor  
11 notwithstanding the provisions of s. 627.736.

12 (c) Notice by certified mail, return receipt  
13 requested, shall be sent within 7 business days after the date  
14 of storage of the vehicle or vessel to the registered owner,  
15 the insurance company insuring the vehicle notwithstanding the  
16 provisions of s. 627.736, and all persons of record claiming a  
17 lien against the vehicle or vessel. It shall state the fact  
18 of possession of the vehicle or vessel, that a lien as  
19 provided in subsection (2) is claimed, that charges have  
20 accrued and the amount thereof, that the lien is subject to  
21 enforcement pursuant to law, and that the owner or lienholder,  
22 if any, has the right to a hearing as set forth in subsection  
23 (5), and that any vehicle or vessel which remains unclaimed,  
24 or for which the charges for recovery, towing, or storage  
25 services remain unpaid, may be sold free of all prior liens  
26 after 35 days if the vehicle or vessel is more than 3 years of  
27 age or after 50 days if the vehicle or vessel is 3 years of  
28 age or less.

29 (d) If attempts to locate the name and address of the  
30 owner or lienholder prove unsuccessful, the towing-storage  
31 operator shall, after 7 working days, excluding Saturday and

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1 Sunday, of the initial tow or storage, notify the public  
 2 agency of jurisdiction in writing by certified mail or  
 3 acknowledged hand delivery that the towing-storage company has  
 4 been unable to locate the name and address of the owner or  
 5 lienholder and a physical search of the vehicle or vessel has  
 6 disclosed no ownership information and a good faith effort has  
 7 been made. For purposes of this paragraph and subsection (9),  
 8 "good faith effort" means that the following checks have been  
 9 performed by the company to establish prior state of  
 10 registration and for title:

11           1. Check of vehicle or vessel for any type of tag, tag  
 12 record, temporary tag, or regular tag.

13           2. Check of law enforcement report for tag number or  
 14 other information identifying the vehicle or vessel, if the  
 15 vehicle or vessel was towed at the request of a law  
 16 enforcement officer.

17           3. Check of trip sheet or tow ticket of tow truck  
 18 operator to see if a tag was on vehicle or vessel at beginning  
 19 of tow, if private tow.

20           4. If there is no address of the owner on the impound  
 21 report, check of law enforcement report to see if an  
 22 out-of-state address is indicated from driver license  
 23 information.

24           5. Check of vehicle or vessel for inspection sticker  
 25 or other stickers and decals that may indicate a state of  
 26 possible registration.

27           6. Check of the interior of the vehicle or vessel for  
 28 any papers that may be in the glove box, trunk, or other areas  
 29 for a state of registration.

30           7. Check of vehicle for vehicle identification number.

31           8. Check of vessel for vessel registration number.

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1           9. Check of vessel hull for a hull identification  
2 number which should be carved, burned, stamped, embossed, or  
3 otherwise permanently affixed to the outboard side of the  
4 transom or, if there is no transom, to the outmost seaboard  
5 side at the end of the hull that bears the rudder or other  
6 steering mechanism.

7           (5)(a) The owner of a vehicle or vessel removed  
8 pursuant to the provisions of subsection (2), or any person  
9 claiming a lien, other than the towing-storage operator,  
10 within 10 days after the time she or he has knowledge of the  
11 location of the vehicle or vessel, may file a complaint in the  
12 county court of the county in which the vehicle or vessel is  
13 stored or in which the owner resides to determine if her or  
14 his property was wrongfully taken or withheld from her or him.

15           (b) Upon filing of a complaint, an owner or lienholder  
16 may have her or his vehicle or vessel released upon posting  
17 with the court a cash or surety bond or other adequate  
18 security equal to the amount of the charges for towing or  
19 storage and lot rental amount to ensure the payment of such  
20 charges in the event she or he does not prevail. Upon the  
21 posting of the bond and the payment of the applicable fee set  
22 forth in s. 28.24, the clerk of the court shall issue a  
23 certificate notifying the lienor of the posting of the bond  
24 and directing the lienor to release the vehicle or vessel. At  
25 the time of such release, after reasonable inspection, she or  
26 he shall give a receipt to the towing-storage company reciting  
27 any claims she or he has for loss or damage to the vehicle or  
28 vessel or the contents thereof.

29           (c) Upon determining the respective rights of the  
30 parties, the court may award damages, attorney's fees, and  
31 costs in favor of the prevailing party. In any event, the

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1 final order shall provide for immediate payment in full of  
2 recovery, towing, and storage fees by the vehicle or vessel  
3 owner or lienholder; or the agency ordering the tow; or the  
4 owner, lessee, or agent thereof of the property from which the  
5 vehicle or vessel was removed.

6 (6) Any vehicle or vessel which is stored pursuant to  
7 subsection (2) and which remains unclaimed, or for which  
8 reasonable charges for recovery, towing, or storing remain  
9 unpaid ~~or for which a lot rental amount is due and owing to~~  
10 ~~the mobile home park owner, as evidenced by a judgment for~~  
11 ~~unpaid rent~~, and any contents not released pursuant to  
12 subsection (10), may be sold by the owner or operator of the  
13 storage space for such towing or storage charge ~~or unpaid lot~~  
14 ~~rental amount~~ after 35 days from the time the vehicle or  
15 vessel is stored therein if the vehicle or vessel is more than  
16 3 years of age or after 50 days following the time the vehicle  
17 or vessel is stored therein if the vehicle or vessel is 3  
18 years of age or less. The sale shall be at public auction for  
19 cash. If the date of the sale was not included in the notice  
20 required in subsection (4), notice of the sale shall be given  
21 to the person in whose name the vehicle or vessel, ~~or mobile~~  
22 ~~home~~ is registered, ~~to the mobile home park owner~~, and to all  
23 persons claiming a lien on the vehicle or vessel as shown on  
24 the records of the Department of Highway Safety and Motor  
25 Vehicles or of the corresponding agency in any other state.  
26 Notice shall be sent by certified mail, return receipt  
27 requested, to the owner of the vehicle or vessel and the  
28 person having the recorded lien on the vehicle or vessel at  
29 the address shown on the records of the registering agency and  
30 shall be mailed not less than 15 days before the date of the  
31 sale. After diligent search and inquiry, if the name and

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1 address of the registered owner or the owner of the recorded  
2 lien cannot be ascertained, the requirements of notice by mail  
3 may be dispensed with. In addition to the notice by mail,  
4 public notice of the time and place of sale shall be made by  
5 publishing a notice thereof one time, at least 10 days prior  
6 to the date of the sale, in a newspaper of general circulation  
7 in the county in which the sale is to be held. The proceeds  
8 of the sale, after payment of reasonable towing and storage  
9 charges, and costs of the sale, ~~and the unpaid lot rental~~  
10 ~~amount,~~ in that order of priority, shall be deposited with the  
11 clerk of the circuit court for the county if the owner is  
12 absent, and the clerk shall hold such proceeds subject to the  
13 claim of the person legally entitled thereto. The clerk shall  
14 be entitled to receive 5 percent of such proceeds for the care  
15 and disbursement thereof. The certificate of title issued  
16 under this law shall be discharged of all liens unless  
17 otherwise provided by court order.

18 (7)(a) A wrecker operator recovering, towing, or  
19 storing vehicles or vessels is not liable for damages  
20 connected with such services, theft of such vehicles or  
21 vessels, or theft of personal property contained in such  
22 vehicles or vessels, provided that such services have been  
23 performed with reasonable care and provided, further, that, in  
24 the case of removal of a vehicle or vessel upon the request of  
25 a person purporting, and reasonably appearing, to be the owner  
26 or lessee, or a person authorized by the owner or lessee, of  
27 the property from which such vehicle or vessel is removed,  
28 such removal has been done in compliance with s. 715.07.  
29 Further, a wrecker operator is not liable for damage to a  
30 vehicle, vessel, or cargo that obstructs the normal movement  
31 of traffic or creates a hazard to traffic and is removed in

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1 compliance with the request of a law enforcement officer.  
2 ~~connected with such services when complying with the lawful~~  
3 ~~directions of a law enforcement officer to remove a vehicle~~  
4 ~~stopped, standing, or parked upon a street or highway in such~~  
5 ~~a position as to obstruct the normal movement of traffic or in~~  
6 ~~such a condition as to create a hazard to other traffic upon~~  
7 ~~the street or highway.~~

8 (b) For the purposes of this subsection, a wrecker  
9 operator is presumed to use reasonable care to prevent the  
10 theft of a vehicle or vessel or of any personal property  
11 contained in such vehicle stored in the wrecker operator's  
12 storage facility if all of the following apply:

13 1. The wrecker operator surrounds the storage facility  
14 with a chain-link or solid-wall type fence at least 6 feet in  
15 height;

16 2. The wrecker operator has illuminated the storage  
17 facility with lighting of sufficient intensity to reveal  
18 persons and vehicles at a distance of at least 150 feet during  
19 nighttime; and

20 3. The wrecker operator uses one or more of the  
21 following security methods to discourage theft of vehicles or  
22 vessels or of any personal property contained in such vehicles  
23 or vessels stored in the wrecker operator's storage facility:

24 a. A night dispatcher or watchman remains on duty at  
25 the storage facility from sunset to sunrise;

26 b. A security dog remains at the storage facility from  
27 sunset to sunrise;

28 c. Security cameras or other similar surveillance  
29 devices monitor the storage facility; or

30 d. A security guard service examines the storage  
31 facility at least once each hour from sunset to sunrise.



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1           (c) Any law enforcement agency requesting that a motor  
2 vehicle be removed from an accident scene, street, or highway  
3 must conduct an inventory and prepare a written record of all  
4 personal property found in the vehicle before the vehicle is  
5 removed by a wrecker operator. However, if the owner or driver  
6 of the motor vehicle is present and accompanies the vehicle,  
7 no inventory by law enforcement is required. A wrecker  
8 operator is not liable for the loss of personal property  
9 alleged to be contained in such a vehicle when such personal  
10 property was not identified on the inventory record prepared  
11 by the law enforcement agency requesting the removal of the  
12 vehicle.

13           (10) Persons who provide services pursuant to this  
14 section shall permit vehicle or vessel owners or their agents,  
15 which agency is evidenced by an original a writing  
16 acknowledged by the owner before a notary public or other  
17 person empowered by law to administer oaths, to inspect the  
18 towed vehicle or vessel and shall release to the owner or  
19 agent the vehicle, vessel, or all personal property not  
20 affixed to the vehicle or vessel which was in the vehicle or  
21 vessel at the time the vehicle or vessel came into the custody  
22 of the person providing such services.

23           (11)(a) Any person regularly engaged in the business  
24 of recovering, towing, or storing vehicles or vessels who  
25 comes into possession of a vehicle or vessel pursuant to  
26 subsection (2) and who has complied with the provisions of  
27 subsections (3) and (6), when such vehicle or vessel is to be  
28 sold for purposes of being dismantled, destroyed, or changed  
29 in such manner that it is not the motor vehicle or, vessel, ~~or~~  
30 ~~mobile home~~ described in the certificate of title, shall apply  
31 to the county tax collector for a certificate of destruction.

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1 A certificate of destruction, which authorizes the dismantling  
2 or destruction of the vehicle or vessel described therein,  
3 shall be reassignable a maximum of two times before  
4 dismantling or destruction of the vehicle shall be required,  
5 and shall accompany the vehicle or vessel for which it is  
6 issued, when such vehicle or vessel is sold for such purposes,  
7 in lieu of a certificate of title. The application for a  
8 certificate of destruction must include an affidavit from the  
9 applicant that it has complied with all applicable  
10 requirements of this section and, if the vehicle or vessel is  
11 not registered in this state, by a statement from a law  
12 enforcement officer that the vehicle or vessel is not reported  
13 stolen, and shall be accompanied by such documentation as may  
14 be required by the department.

15 (b) The Department of Highway Safety and Motor  
16 Vehicles shall charge a fee of \$3 for each certificate of  
17 destruction. A service charge of \$4.25 shall be collected and  
18 retained by the tax collector who processes the application.

19 (c) The Department of Highway Safety and Motor  
20 Vehicles may adopt such rules as it deems necessary or proper  
21 for the administration of this subsection.

22 (13)(a) Upon receipt by the Department of Highway  
23 Safety and Motor Vehicles of written notice from a wrecker  
24 operator who claims a wrecker operator's lien under paragraph  
25 (2)(c) or paragraph (2)(d) for recovery, towing, or storage of  
26 an abandoned vehicle or, vessel ~~or mobile home~~ upon  
27 instructions from any law enforcement agency, for which a  
28 certificate of destruction has been issued under subsection  
29 (11), the department shall place the name of the registered  
30 owner of that vehicle or, vessel, ~~or mobile home~~ on the list  
31 of those persons who may not be issued a license plate or

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1 revalidation sticker for any motor vehicle under s. 320.03(8).

2 If the vehicle or, vessel, ~~or mobile home~~ is owned jointly by  
3 more than one person, the name of each registered owner shall  
4 be placed on the list. The notice of wrecker operator's lien  
5 shall be submitted on forms provided by the department, which  
6 must include:

7           1. The name, address, and telephone number of the  
8 wrecker operator.

9           2. The name of the registered owner of the vehicle or  
10 vessel, ~~or mobile home~~ and the address to which the wrecker  
11 operator provided notice of the lien to the registered owner  
12 under subsection (4).

13           3. A general description of the vehicle or, vessel, ~~or~~  
14 ~~mobile home~~, including its color, make, model, body style, and  
15 year.

16           4. The vehicle identification number (VIN);  
17 registration license plate number, state, and year; validation  
18 decal number, state, and year; ~~mobile home sticker number,~~  
19 ~~state, and year;~~ vessel registration number; hull  
20 identification number; or other identification number, as  
21 applicable.

22           5. The name of the person or the corresponding law  
23 enforcement agency that requested that the vehicle or, vessel,  
24 ~~or mobile home~~ be recovered, towed, or stored.

25           6. The amount of the wrecker operator's lien, not to  
26 exceed the amount allowed by paragraph (b).

27           (b) For purposes of this subsection only, the amount  
28 of the wrecker operator's lien for which the department will  
29 prevent issuance of a license plate or revalidation sticker  
30 may not exceed the amount of the charges for recovery, towing,  
31 and storage of the vehicle or, vessel, ~~or mobile home~~ for 7

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1 days. These charges may not exceed the maximum rates imposed  
2 by the ordinances of the respective county or municipality  
3 under ss. 125.0103(1)(c) and 166.043(1)(c). This paragraph  
4 does not limit the amount of a wrecker operator's lien claimed  
5 under subsection (2) or prevent a wrecker operator from  
6 seeking civil remedies for enforcement of the entire amount of  
7 the lien, but limits only that portion of the lien for which  
8 the department will prevent issuance of a license plate or  
9 revalidation sticker.

10 (c)1. The registered owner of a vehicle or, vessel, ~~or~~  
11 ~~mobile home~~ may dispute a wrecker operator's lien, by  
12 notifying the department of the dispute in writing on forms  
13 provided by the department, if at least one of the following  
14 applies:

15 a. The registered owner presents a notarized bill of  
16 sale proving that the vehicle or, vessel, ~~or mobile home~~ was  
17 sold in a private or casual sale before the vehicle or  
18 vessel, ~~or mobile home~~ was recovered, towed, or stored.

19 b. The registered owner presents proof that the  
20 Florida certificate of title of the vehicle or, vessel, ~~or~~  
21 ~~mobile home~~ was sold to a licensed dealer as defined in s.  
22 319.001 before the vehicle or, vessel, ~~or mobile home~~ was  
23 recovered, towed, or stored.

24  
25 If the registered owner's dispute of a wrecker operator's lien  
26 complies with one of these criteria, the department shall  
27 immediately remove the registered owner's name from the list  
28 of those persons who may not be issued a license plate or  
29 revalidation sticker for any motor vehicle under s. 320.03(8),  
30 thereby allowing issuance of a license plate or revalidation  
31 sticker. If the vehicle or, vessel, ~~or mobile home~~ is owned

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1 jointly by more than one person, each registered owner must  
2 dispute the wrecker operator's lien in order to be removed  
3 from the list. However, the department shall deny any dispute  
4 and maintain the registered owner's name on the list of those  
5 persons who may not be issued a license plate or revalidation  
6 sticker for any motor vehicle under s. 320.03(8) if the  
7 wrecker operator has provided the department with a certified  
8 copy of the judgment of a court which orders the registered  
9 owner to pay the wrecker operator's lien claimed under this  
10 section. In such a case, the amount of the wrecker operator's  
11 lien allowed by paragraph (b) may be increased to include no  
12 more than \$500 of the reasonable costs and attorney's fees  
13 incurred in obtaining the judgment. The department's action  
14 under this subparagraph is ministerial in nature, shall not be  
15 considered final agency action, and is appealable only to the  
16 county court for the county in which the vehicle or vessel  
17 ~~or mobile home~~ was ordered removed.

18           2. A person against whom a wrecker operator's lien has  
19 been imposed may alternatively obtain a discharge of the lien  
20 by filing a complaint, challenging the validity of the lien or  
21 the amount thereof, in the county court of the county in which  
22 the vehicle or vessel, ~~or mobile home~~ was ordered removed.  
23 Upon filing of the complaint, the person may have her or his  
24 name removed from the list of those persons who may not be  
25 issued a license plate or revalidation sticker for any motor  
26 vehicle under s. 320.03(8), thereby allowing issuance of a  
27 license plate or revalidation sticker, upon posting with the  
28 court a cash or surety bond or other adequate security equal  
29 to the amount of the wrecker operator's lien to ensure the  
30 payment of such lien in the event she or he does not prevail.  
31 Upon the posting of the bond and the payment of the applicable

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1 fee set forth in s. 28.24, the clerk of the court shall issue  
2 a certificate notifying the department of the posting of the  
3 bond and directing the department to release the wrecker  
4 operator's lien. Upon determining the respective rights of the  
5 parties, the court may award damages and costs in favor of the  
6 prevailing party.

7           3. If a person against whom a wrecker operator's lien  
8 has been imposed does not object to the lien, but cannot  
9 discharge the lien by payment because the wrecker operator has  
10 moved or gone out of business, the person may have her or his  
11 name removed from the list of those persons who may not be  
12 issued a license plate or revalidation sticker for any motor  
13 vehicle under s. 320.03(8), thereby allowing issuance of a  
14 license plate or revalidation sticker, upon posting with the  
15 clerk of court in the county in which the vehicle or, vessel,  
16 ~~or mobile home~~ was ordered removed, a cash or surety bond or  
17 other adequate security equal to the amount of the wrecker  
18 operator's lien. Upon the posting of the bond and the payment  
19 of the application fee set forth in s. 28.24, the clerk of the  
20 court shall issue a certificate notifying the department of  
21 the posting of the bond and directing the department to  
22 release the wrecker operator's lien. The department shall mail  
23 to the wrecker operator, at the address upon the lien form,  
24 notice that the wrecker operator must claim the security  
25 within 60 days, or the security will be released back to the  
26 person who posted it. At the conclusion of the 60 days, the  
27 department shall direct the clerk as to which party is  
28 entitled to payment of the security, less applicable clerk's  
29 fees.

30           4. A wrecker operator's lien expires 5 years after  
31 filing.

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1           (d) Upon discharge of the amount of the wrecker  
 2 operator's lien allowed by paragraph (b), the wrecker operator  
 3 must issue a certificate of discharged wrecker operator's lien  
 4 on forms provided by the department to each registered owner  
 5 of the vehicle or, vessel, ~~or mobile home~~ attesting that the  
 6 amount of the wrecker operator's lien allowed by paragraph (b)  
 7 has been discharged. Upon presentation of the certificate of  
 8 discharged wrecker operator's lien by the registered owner,  
 9 the department shall immediately remove the registered owner's  
 10 name from the list of those persons who may not be issued a  
 11 license plate or revalidation sticker for any motor vehicle  
 12 under s. 320.03(8), thereby allowing issuance of a license  
 13 plate or revalidation sticker. Issuance of a certificate of  
 14 discharged wrecker operator's lien under this paragraph does  
 15 not discharge the entire amount of the wrecker operator's lien  
 16 claimed under subsection (2), but only certifies to the  
 17 department that the amount of the wrecker operator's lien  
 18 allowed by paragraph (b), for which the department will  
 19 prevent issuance of a license plate or revalidation sticker,  
 20 has been discharged.

21           (e) When a wrecker operator files a notice of wrecker  
 22 operator's lien under this subsection, the department shall  
 23 charge the wrecker operator a fee of \$2, which shall be  
 24 deposited into the General Revenue Fund established under s.  
 25 860.158. A service charge of \$2.50 shall be collected and  
 26 retained by the tax collector who processes a notice of  
 27 wrecker operator's lien.

28           (f) This subsection applies only to the annual renewal  
 29 in the registered owner's birth month of a motor vehicle  
 30 registration and does not apply to the transfer of a  
 31 registration of a motor vehicle sold by a motor vehicle dealer

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1 licensed under chapter 320, except for the transfer of  
2 registrations which is inclusive of the annual renewals. This  
3 subsection does not affect the issuance of the title to a  
4 motor vehicle, notwithstanding s. 319.23(7)(b).

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

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