

# 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.)

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Prepared By: Criminal Justice Committee

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BILL: CS/CS/SB 492

SPONSOR: Criminal Justice Committee, Judiciary Committee, and Senators Bennett and Crist

SUBJECT: Wrecker Operators

DATE: March 30, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u><b>Fav/1 amendment</b></u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u><b>Fav/CS</b></u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u><b>Fav/CS</b></u>
4.	_____	_____	<u>RC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Committee Substitute for Committee Substitute for Senate Bill 492 makes a number of changes to the law regulating the towing or removal of vehicles, vessels, and mobile homes. Specifically, the CS does the following:

- Clarifies the rates that may be charged by a wrecker operator on vehicles held at the request of law enforcement;
- Allows vessels and mobile homes to be towed, stored, and secured by liens in substantially the same manner as automobiles;
- Preserves a mobile home park owner's claim for unpaid lot rental;
- Limits a wrecker operator's liability for damages for removing vehicles, vessels, and cargo obstructing a roadway;
- Clarifies a wrecker operator's responsibility to release a vehicle or vessel for half-price before it is removed from the premises in which it is unlawfully parked;
- Prohibits the payment or acceptance of consideration for the privilege of towing vehicles from a particular location; and
- Creates criminal penalties for wrecker operator conduct that is already prohibited under existing law.

This CS substantially amends ss. 319.30, 323.001, 713.78, and 715.07, F.S., and creates s. 713.785, F.S.

## II. Present Situation:

### **Towing and Storage Rates for Law Enforcement Holds**

Under s. 323.001, F.S., a law enforcement agency may direct a wrecker operator to store or “hold” a vehicle that a law enforcement officer has probable cause to believe was used in a crime, contains evidence of a crime, was involved in a serious accident, or may be subject to forfeiture. In some cases the owner of the vehicle is responsible for the storage charges. In other cases, the law enforcement agency is responsible for the storage charges. In any event, s. 323.001(2)(c), F.S., states: “The towing and storage rates for the owner or lienholder of the held vehicle shall not exceed the rates for the investigating agency.” According to Ray Cregl, a chair of the Professional Wrecker Operators of Florida, the Metro Dade Police Department uses the language of s. 323.001(2)(c), F.S., to justify paying lower rates for towing and storage than rates charged to vehicle owners.

### **Liens on Towed and Stored Vehicles, Vessels, and Mobile Homes**

The catch line to s. 713.78, F.S., states: “Liens for recovering, towing, or storing vehicles and vessels.” That section, however, treats vehicles, vessels, and mobile homes differently in some instances in terms of a wrecker operator’s ability to impose a lien and obligation to notify those with an interest in the vehicle, vessel, or mobile home.

Under s. 713.78(4)(a), F.S., a wrecker operator generally has a lien in the amount of the towing and storage charges on vehicles, vessels, and mobile homes towed by the wrecker operator. Under s. 713.78(2)(a), F.S., a wrecker operator will have a lien on an unlawfully parked automobile removed from private property. No provision exists, however, authorizing a wrecker operator to have a lien against an unlawfully parked vessel removed from private property.

If the vehicle, vessel, or mobile home is towed without the consent of the owner, the wrecker operator must attempt to give notice of the lien to the owner, insurer, and all other lienors.<sup>1</sup> If a vehicle is towed at the request of law enforcement, law enforcement is responsible for providing the wrecker operator with information on the owner, insurer, and other lienors.<sup>2</sup> Law enforcement, however, has no obligation to provide wrecker operators with information on persons with an interest in a vessel or mobile home. Vehicles and vessels that are unclaimed within 35 or 50 days, depending upon the age of the vehicle or vessel, may be sold at auction.<sup>3</sup>

Section 713.78(5)-(12), F.S., establishes procedures for the sale or disposal of vehicles and vessels in some cases. Not all of these procedures, however, are applicable to mobile homes.

### **Determinations of Lawful Towing and Storage**

Section 713.78(5), F.S., authorizes a person to file a complaint within 10 days after receipt of information on the location of a removed vehicle or vessel to determine whether the vehicle or vessel was lawfully towed and stored. In such proceedings, a court may award damages and costs in favor of a prevailing party.<sup>4</sup> The section does not state that the prevailing party may be awarded attorney’s fees.

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<sup>1</sup> Section 713.78(4)(a), F.S.

<sup>2</sup> Section 713.78(4)(b), F.S.

<sup>3</sup> Section 713.78(6), F.S.

<sup>4</sup> Section 713.78(5)(c), F.S.

**Wrecker Operator Liability for Damage to Vehicles Blocking Roadway**

Section 713.78(7)(a), F.S., provides that a wrecker operator is not liable for damage connected with the removal of a vehicle that is an obstruction or hazard to traffic and is removed at the direction of law enforcement. The limitation on liability, however, does not appear to extend to damage to a vessel or cargo.

**Delegation of Authority of Vehicle to Agent of Owner**

Under s. 713.78(10), F.S., an owner of a vehicle or vessel may delegate his or her authority to an agent to inspect a towed vehicle or vessel and to take possession of personal property in the vehicle or vessel. The agent's authority must be demonstrated by a notarized writing. Section 713.78(10), F.S., however, does not state whether the notarized writing must be an original or may be a copy.

Section 713.78(4)(a), F.S., provides that when a wrecker operator properly tows a vehicle or vessel the wrecker operator has a lien against the vehicle or vessel for payment of reasonable towing and storage fees. The owner of the vehicle or vessel may not be charged storage fees if the vehicle has been stored for less than 6 hours.<sup>5</sup> When a wrecker service tows and stores a motor vehicle or vessel the service must send notice to the registered owner and all lienholders by certified mail within 7 business days after the date of storage of the vehicle or vessel.<sup>6</sup> Owners or lienholders may file a complaint in county court to determine if the property was wrongfully towed or stored.<sup>7</sup> Upon determining the respective rights of the parties, the court may award damages and costs to the prevailing party.<sup>8</sup>

**Removal of Unlawfully Parked Vehicles from Private Property**

Section 715.07, F.S., authorizes a private property owner or lessee to have unlawfully parked vehicles towed at the expense of the vehicle owner if adequate warning signs are posted on the property. The section, however, does not address the removal of unlawfully parked vessels.

Section 715.07, F.S., also creates several regulations on the conduct of wrecker operators for which no penalties exist. These regulations:

- Require towed vehicles to be stored within 10, 15, 20, or 30 miles of the location from which a vehicle is removed depending upon the size of the population of the county from which the vehicle was found;<sup>9</sup>
- Require the release of a vehicle before it is towed or removed upon payment of a fee of not more than one-half of the posted towing rate;<sup>10</sup>
- Prohibit a wrecker operator from paying the owner or operator of the property from which a vehicle is towed money or other consideration for the privilege of towing vehicles;<sup>11</sup>

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<sup>5</sup> Section 713.78(2), F.S.

<sup>6</sup> Section 713.78(4)(c), F.S.

<sup>7</sup> Section 713.78(5), F.S.

<sup>8</sup> Section 713.78(5)(c), F.S.

<sup>9</sup> Section 715.07(2)(a)1., F.S.

<sup>10</sup> Section 715.07(2)(a)3., F.S.

<sup>11</sup> Section 715.07(2)(a)4., F.S.

- Require a wrecker operator to release a vehicle within one hour of a request;<sup>12</sup>
- Require a wrecker operator to allow the inspection of a vehicle prior to its release;<sup>13</sup>
- Prohibit a wrecker operator from requiring a person redeeming a vehicle to release the wrecker operator from liability for damages;<sup>14</sup> and
- Require a wrecker operator to provide a detailed receipt to a person redeeming a vehicle.<sup>15</sup>

Lastly, wrecker operators are liable for damages to vehicles caused by entering a vehicle without reasonable care.<sup>16</sup>

### III. Effect of Proposed Changes:

Committee Substitute for Committee Substitute for Senate Bill 492 makes a number of changes to the law regulating the towing or removal of vehicles, vessels, and mobile homes. Specifically, the CS does the following:

- Clarifies the rates that may be charged by a wrecker operator on vehicles held at the request of law enforcement;
- Allows vessels and mobile homes to be towed, stored, and secured by liens in substantially the same manner as automobiles;
- Preserves a mobile home park owner's claim for unpaid lot rental;
- Limits a wrecker operator's liability for damages for removing vehicles, vessels, and cargo obstructing a roadway;
- Clarifies a wrecker operator's responsibility to release a vehicle or vessel for half-price before it is removed from the premises in which it is unlawfully parked;
- Prohibits the payment or acceptance of consideration for the privilege of towing vehicles from a particular location; and
- Creates criminal penalties for wrecker operator conduct that is already prohibited under existing law.

The specific changes made by the CS are detailed below.

#### **Wrecker Operator Income**

The CS amends s. 713.78, F.S., to:

- Provide that the towing and storage rates for a vehicle held pursuant to a request by an investigating agency shall not exceed the contract or county rates instead of the rates for the investigating agency. As a result, law enforcement agencies and vehicle owners will be charged the same towing and storage rates on held vehicles regardless of who is responsible for payment.

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<sup>12</sup> Section 715.07(2)(a)9., F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 715.07(2)(a)8., F.S.

- Clarify that a wrecker operator has a lien on a vessel that has been towed with the permission of the owner of the property on which the vessel was unlawfully parked.
- Authorize a court to award attorney's fees to the prevailing party in a proceeding to determine whether a vehicle, vessel, or mobile home was lawfully towed, removed, or stored.
- Delete a current provision in law that provides that a wrecker operator that receives, removes, or restores a mobile home, upon instruction from a mobile home park owner who has a writ of possession for a mobile home lot, has a lien on the mobile home for towing and storage.

The CS amends s. 715.07, F.S., to prohibit the payment or receipt of consideration for the privilege of towing vehicles from a particular location.

The CS creates s. 713.785, F.S., which authorizes mobile home transport companies to tow or remove and store mobile homes with or without the consent of the owner of the mobile home. The mobile home transport company has a lien on the mobile home for the amount of towing or removal and storage charges. The section provides procedures for the sale and disposal of mobile homes that have not been redeemed by the owner through payment of towing and storage charges. These procedures are substantially the same as the procedures for the sale or disposal of vehicles under existing s. 713.78, F.S. Mobile homes may be sold after 35 days regardless of the age of the mobile home.<sup>17</sup> Existing law, however, provides that vehicles older than three years may be sold after 35 days and vehicles three years old or less may be sold after 50 days.

#### **Wrecker Operator Liability for Damages**

The CS also amends s. 713.78, F.S., to provide that a wrecker operator is not liable for damage to a vehicle, vessel, or cargo that obstructs the normal movement of traffic or creates a hazard to traffic and is removed in compliance with the request of a law enforcement officer.

#### **Authority of Vehicle or Vessel Owner Agent**

The CS also amends s. 713.78, F.S., to provide that an agent of an owner of a vehicle or vessel must have authority evidenced by an original writing as opposed to a copy in order to inspect a towed vehicle or vessel or obtain personal property from the vehicle or vessel. An agent may obtain possession of a vehicle or vessel from a wrecker operator.

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<sup>17</sup> However, in addition to other things that a mobile home transport company that comes into possession of a mobile home and claims a lien for recovery, towing or storage services, is required to provide in a notice to the registered owner and all persons claiming a lien on the mobile home, the company must include in the notice that any mobile home which remains unclaimed, or for which charges remain unpaid, may be sold free of all prior liens after 35 days of the eviction proceeding that resulted in the issuance of the writ of possession, provided that any lienholder entitled to notice has received that notice and has failed to pay storage charges, take possession of the home, or take legal action to foreclose its interest prior to issuance of the writ.

**Non-consent Towing from Private Property**

The CS also amends s. 715.07, F.S., to provide that any property owner that posts signs warning that unauthorized vehicles may be towed at the owner's expense may have vehicles and vessels towed from his or her property. If, however, the property is a business with 20 or fewer spaces, the word "vessels" must appear in warning signs in order for vessels to be towed.

**Criminal Penalties**

Lastly, the CS also amends s. 715.07, F.S., to impose criminal penalties on certain conduct of a wrecker operator which is already prohibited by law and expands these prohibitions to vessels. As such, the following acts of a wrecker operator are now a third-degree felony:

- Towing a vehicle or vessel pursuant to a non-consent tow too far from the location from which it was removed;
- Storing a vehicle or vessel towed pursuant to a non-consent tow at a location that is not open for redemption of vehicles on certain days and time periods;
- Failing to prominently post a phone number at which the operator of a vehicle storage facility can be contacted at all times;
- Failing to return to a vehicle storage facility within one hour of a telephone request to redeem a vehicle or vessel;
- Failing to release a vehicle or vessel on request before it is towed from a location at which it is not lawfully parked and after payment of no more than one-half the posted rate for towing;
- Paying a property owner for the privilege of towing vehicles or vessels from his or her property;
- Failing to timely release a vehicle or vessel within one hour of a request;
- Failing to allow a vehicle or vessel to be inspected before a person accepts its return;
- Requiring a person to release a wrecker operator from liability for damages in order for a vehicle or vessel to be released; and
- Failing to provide a detailed receipt to a person paying for towing or storage charges.

**Technical and Conforming Changes**

The CS makes numerous technical and conforming changes to existing law.

**Effective Date**

The CS takes effect July 1, 2005, except for a section relating to the towing or removal, storage, and sale or disposal of mobile homes, which takes effect on January 1, 2006.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Wrecker operators will have less liability for damages to vehicles, vessels, and cargo and will have clear authority to impose liens on unlawfully parked vessels removed from private property. Wrecker operators may also charge greater towing and storage fees to law enforcement for vehicles held at the direction of law enforcement. The CS provides that rates for towing and storage of held vehicles will not exceed the county or contract rates instead of the rates for the investigating agency.

C. Government Sector Impact:

Law enforcement may have to pay more for the cost of towing and storing vehicles held at the direction of law enforcement. The CS provides that rates for towing and storage of held vehicles will not exceed the county or contract rates instead of the rates for the investigating agency.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact, if any, of the CS. Staff anticipates that the CS will have a minimal impact or not have any impact on prison beds, because the third degree felony offenses in the CS are unranked, and therefore, default to a level 1 offense severity level. As such, the lowest permissible sentence will probably be a non-prison sanction, unless the offender has a significant number of additional offenses and/or prior offenses. However, the sentencing court does have the discretion to impose a prison sentence of up to and including 5 years in state prison, which is the maximum statutory penalty under s. 775.082, F.S., for a third degree felony.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The CS creates s. 713.785, F.S., which regulates the towing, removal, sale, or disposal of mobile homes. The provisions of this new section are inconsistent to some degree and redundant in some cases with the provisions of existing s. 713.78, F.S. As such, the Legislature may wish to amend s. 713.78, F.S., to remove all references to mobile homes.

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The CS provides that s. 713.785, F.S., takes effect on January 1, 2006. However, Section 1 of the CS amends s. 319.30, F.S., effective July 1, 2005, to include a cross-reference to s. 713.785, F.S. The Legislature may wish to also provide that Section 1 of the CS takes effect on January 1, 2006, the same date as the effective date of the cross-referenced section.

A traveling amendment to the underlying bill, which was incorporated into the CS, removed a requirement that the word “vessels” appear in signs warning that unlawfully parked vehicles and vessels may be towed at the owner’s expense. The CS, however, in s. 715.07(2)(a)5.f., F.S., still requires the word “vessels” to appear in tow warning signs of a business with 20 or fewer parking spaces. For consistency, the Legislature may wish to amend s. 715.07(2)(a)5.f., F.S., to delete the words “or vessels.”

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

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## **VIII. Summary of Amendments:**

None.

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