

# 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: Judiciary Committee

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BILL: CS/SB 492

SPONSOR: Judiciary Committee and Senators Bennett and Crist

SUBJECT: Wrecker Operators

DATE: March 11, 2005

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

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

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## I. Summary:

This committee substitute makes a number of changes to the law regulating the towing or removal of vehicles, vessels, and mobile homes. Specifically the committee substitute:

- 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 committee substitute substantially amends the following sections of the Florida Statutes: 319.30, 323.001, 713.78, and 715.07. This committee substitute also creates section 713.785, Florida Statutes.

## 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 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 home 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 was 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

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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.

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.

### **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>

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

<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.

- 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>
- 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:

This committee substitute makes a number of changes to the law regulating the towing or removal of vehicles, vessels, and mobile homes. Specifically the committee substitute:

- 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 committee substitute are detailed below.

#### Wrecker Operator Income

This committee substitute provides 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

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

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

<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.

will be charged the same towing and storage rates on held vehicles regardless of who is responsible for payment.

The committee substitute clarifies 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.

The committee substitute authorizes 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.

The committee substitute prohibits the payment or receipt of consideration for the privilege of towing vehicles from a particular location.

The committee substitute authorizes mobile home transport companies to tow or remove and store mobile home with or without the consent of the owner of the mobile home. The committee substitute also provides that the mobile home transport company has a lien on the mobile home for the amount of towing or removal and storage charges. Further, the committee substitute 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. The committee substitute provides that mobile homes may be sold after 35 days regardless of the age of the mobile home. 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 committee substitute provides 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 committee substitute provides 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. The committee substitute also permits an agent to obtain possession of a vehicle or vessel from a wrecker operator.

### **Non-consent Towing from Private Property**

The committee substitute provides 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 committee substitute imposes 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.
- Failing to provide a detailed receipt to a person paying for towing or storage charges.

### **Technical and Conforming Changes**

The committee substitute makes numerous technical and conforming changes to existing law.

### **Effective Date**

The committee substitute 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 committee substitute 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 committee substitute 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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The provisions of this committee substitute creating s. 713.785, F.S., regulate the towing or removal or 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.

The committee substitute provides that s. 713.785, F.S., which is created by the committee substitute, takes effect on January 1, 2006. Section 1 of the committee substitute, however, 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 committee substitute takes effect on January 1, 2006, the same date as the effective date of the cross-referenced section.

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A traveling amendment to the underlying bill, which was incorporated into the committee substitute, 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 committee substitute, 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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