

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Transportation Committee

BILL: SB 492

SPONSOR: Senator Bennett

SUBJECT: Wrecker Operators

DATE: February 16, 2005 REVISED: 2/22/05

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

## Please see last section for Summary of Amendments

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

### I. Summary:

This bill limits storage fees for vehicles being held by wrecker operators at the request of investigating agencies and revises towing, recovery, and storage provisions for vehicles to include vessels. The bill also provides county courts may award attorney's fees in judgments for prevailing parties in actions concerning property wrongfully taken or withheld. Language establishing liability for damages incurred while entering a vehicle or vessel is removed.

This bill substantially amends sections 323.001, 713.78 and 715.07 of the Florida Statutes.

### II. Present Situation:

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

The section provides if the hold continues beyond 5 days, then the investigating agency may have the vehicle removed to a designated impound lot. The vehicle may not be released by the

investigating agency to the owner or lienholder of the vehicle until proof of payment of the towing and storage charges incurred by the wrecker operator is presented to the investigating agency.

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

The section further provides the towing and storage rates for the owner or lienholder of the held vehicle may not exceed the rates for the investigating agency.

Section 713.78, F.S., provides when a wrecker or tow service properly tows a vehicle or vessel the service has 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 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. Owners or lienholders may file a complaint in county court to determine if the property was wrongfully taken or withheld. Upon determining the respective rights of the parties, the court may award damages and costs to the prevailing party.

The section further provides a person regularly engaged in towing or storing vehicles is not liable for damages connected with the towing and storage of a vehicle if such towing and storage were done with reasonable care. The section provides 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 is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic. The section provides a wrecker has used reasonable care if: the wrecker surrounds the storage facility with a chain-link or solid fence at least 6 feet in height; the storage facility is illuminated enough to reveal persons and vehicles at a distance of 150 feet; and the wrecker employs a night watchman, security dog, or security cameras.

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

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

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

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

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

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

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

1. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.
2. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.
3. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessee, or person in control of the property has a written contract with the towing company.
4. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level

- and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles.
5. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.
  6. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating “Reserved Parking for Customers Only Unauthorized Vehicles Will be Towed Away At the Owner's Expense” in not less than 4-inch high, light-reflective letters on a contrasting background.

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

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

Any person or firm towing or removing any vehicles from private property without the consent of the owner must have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the wrecker. Any person violating these provisions is guilty of a felony of the third degree, punishable by up to 5 years in jail, a fine of \$5,000, and enhanced penalties for habitual felony offenders.

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

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

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

### **III. Effect of Proposed Changes:**

#### **Section 1 – Wrecker operator storage facilities; vehicle holds**

Section 323.01, F.S., is amended to limit the towing and storage rates for vehicles held by a wrecker operator to contract or county rates.

**Section 2 – Liens for recovering, towing, or storing vehicles and vessels**

Section 713.78, F.S., is amended to include language clarifying the Department of Highway Safety and Motor Vehicles' requirement to assist in identifying the name and address of the owner, insurer, or lienholder of a towed vessel or vehicle. The bill provides the county courts may award attorney's fees to the prevailing parties when property is wrongfully taken or withheld and clarifies wrecker operators are not liable for damage to vehicles, vessels, or cargo presenting a hazard when directed by law enforcement personnel to remove the hazard from streets and highways.

**Section 3 – Vehicles or vessels parked on private property; towing**

Section 715.07, F.S., is amended to include vessels. The bill clarifies language establishing the maximum distance from the point of vehicle removal that a vehicle or vessel may be stored is measured as a radius. Language establishing the liability for damages caused by any person or firm entering a vehicle or vessel for the purpose of removing the vehicle or vessel is removed. The bill provides penalties for violations of provisions of the section.

**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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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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:**

Barcode # 741344 by Transportation:

Removes the requirement that the words “or vessels” be included in signage indicating that unauthorized vehicles will be towed at owner’s expense.

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