

By Senator Bennett

21-194A-05

A bill to be entitled

An act relating to wrecker operators; amending s. 323.001, F.S.; limiting certain towing and storage rates; amending s. 713.78, F.S.; conforming provisions related to recovering, towing, or storing vessels; providing for attorney's fees; amending s. 715.07, F.S.; conforming provisions related to towing vessels parked on private property; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 323.001, Florida Statutes, is republished, and paragraph (c) of subsection (2) of that section is amended, to read:

323.001 Wrecker operator storage facilities; vehicle holds.--

(1) 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.

(2) The investigating agency must notify the wrecker operator in writing within 5 days, excluding holidays and weekends, 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.

(c) The towing and storage rates for the owner or lienholder of the held vehicle shall not exceed the contract or county rates ~~for the investigating agency.~~

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

3 713.78 Liens for recovering, towing, or storing
4 vehicles and vessels.--

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

9 (a) The owner thereof; or

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

14 (c) Any law enforcement agency; or

15 (d) A mobile home park owner as defined in s. 723.003
16 who has a current writ of possession for a mobile home lot
17 pursuant to s. 723.061,

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19 she or he shall have a lien on such vehicle or vessel for a
20 reasonable towing fee and for a reasonable storage fee; except
21 that no storage fee shall be charged if such vehicle is stored
22 for less than 6 hours.

23 (4)(a) Any person regularly engaged in the business of
24 recovering, towing, or storing vehicles or vessels who comes
25 into possession of a vehicle or vessel pursuant to subsection
26 (2), and who claims a lien for recovery, towing, or storage
27 services, shall give notice to the registered owner, the
28 insurance company insuring the vehicle notwithstanding the
29 provisions of s. 627.736, and to all persons claiming a lien
30 thereon, as disclosed by the records in the Department of
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1 Highway Safety and Motor Vehicles or of a corresponding agency
2 in any other state.

3 (b) Whenever any law enforcement agency authorizes the
4 removal of a vehicle or vessel or whenever any towing service,
5 garage, repair shop, or automotive service, storage, or
6 parking place notifies the law enforcement agency of
7 possession of a vehicle or vessel pursuant to s.
8 715.07(2)(a)2., the applicable law enforcement agency shall
9 contact the Department of Highway Safety and Motor Vehicles,
10 or the appropriate agency of the state of registration, if
11 known, within 24 hours through the medium of electronic
12 communications, giving the full description of the vehicle or
13 vessel. Upon receipt of the full description of the vehicle or
14 vessel, the department shall search its files to determine the
15 owner's name, the insurance company insuring the vehicle or
16 vessel, and whether any person has filed a lien upon the
17 vehicle or vessel as provided in s. 319.27(2) and (3) and
18 notify the applicable law enforcement agency within 72 hours.
19 The person in charge of the towing service, garage, repair
20 shop, or automotive service, storage, or parking place shall
21 obtain such information from the applicable law enforcement
22 agency within 5 days from the date of storage and shall give
23 notice pursuant to paragraph (a). The department may release
24 the insurance company information to the requestor
25 notwithstanding the provisions of s. 627.736.

26 (c) Notice by certified mail, return receipt
27 requested, shall be sent within 7 business days after the date
28 of storage of the vehicle or vessel to the registered owner,
29 the insurance company insuring the vehicle notwithstanding the
30 provisions of s. 627.736, and all persons of record claiming a
31 lien against the vehicle or vessel. It shall state the fact

1 | of possession of the vehicle or vessel, that a lien as
2 | provided in subsection (2) is claimed, that charges have
3 | accrued and the amount thereof, that the lien is subject to
4 | enforcement pursuant to law, and that the owner or lienholder,
5 | if any, has the right to a hearing as set forth in subsection
6 | (5), and that any vehicle or vessel which remains unclaimed,
7 | or for which the charges for recovery, towing, or storage
8 | services remain unpaid, may be sold free of all prior liens
9 | after 35 days if the vehicle or vessel is more than 3 years of
10 | age or after 50 days if the vehicle or vessel is 3 years of
11 | age or less.

12 | (d) If attempts to locate the name and address of the
13 | owner or lienholder prove unsuccessful, the towing-storage
14 | operator shall, after 7 working days, excluding Saturday and
15 | Sunday, of the initial tow or storage, notify the public
16 | agency of jurisdiction in writing by certified mail or
17 | acknowledged hand delivery that the towing-storage company has
18 | been unable to locate the name and address of the owner or
19 | lienholder and a physical search of the vehicle or vessel has
20 | disclosed no ownership information and a good faith effort has
21 | been made. For purposes of this paragraph and subsection (9),
22 | "good faith effort" means that the following checks have been
23 | performed by the company to establish prior state of
24 | registration and for title:

25 | 1. Check of vehicle or vessel for any type of tag, tag
26 | record, temporary tag, or regular tag.

27 | 2. Check of law enforcement report for tag number or
28 | other information identifying the vehicle or vessel, if the
29 | vehicle or vessel was towed at the request of a law
30 | enforcement officer.
31 |

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

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

8 5. Check of vehicle or vessel for inspection sticker
9 or other stickers and decals that may indicate a state of
10 possible registration.

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

14 7. Check of vehicle for vehicle identification number.

15 8. Check of vessel for vessel registration number.

16 9. Check of vessel hull for a hull identification
17 number which should be carved, burned, stamped, embossed, or
18 otherwise permanently affixed to the outboard side of the
19 transom or, if there is no transom, to the outmost seaboard
20 side at the end of the hull that bears the rudder or other
21 steering mechanism.

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

30 (b) Upon filing of a complaint, an owner or lienholder
31 may have her or his vehicle or vessel released upon posting

1 with the court a cash or surety bond or other adequate
2 security equal to the amount of the charges for towing or
3 storage and lot rental amount to ensure the payment of such
4 charges in the event she or he does not prevail. Upon the
5 posting of the bond and the payment of the applicable fee set
6 forth in s. 28.24, the clerk of the court shall issue a
7 certificate notifying the lienor of the posting of the bond
8 and directing the lienor to release the vehicle or vessel. At
9 the time of such release, after reasonable inspection, she or
10 he shall give a receipt to the towing-storage company reciting
11 any claims she or he has for loss or damage to the vehicle or
12 vessel or the contents thereof.

13 (c) Upon determining the respective rights of the
14 parties, the court may award damages, attorney's fees, and
15 costs in favor of the prevailing party. In any event, the
16 final order shall provide for immediate payment in full of
17 recovery, towing, and storage fees by the vehicle or vessel
18 owner or lienholder; or the agency ordering the tow; or the
19 owner, lessee, or agent thereof of the property from which the
20 vehicle or vessel was removed.

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

1 Further, a wrecker operator is not liable for damage to
2 vehicles, vessels, or cargo which is connected with such
3 services when complying with the lawful directions of a law
4 enforcement officer to remove a vehicle stopped, standing, or
5 parked upon a street or highway in such a position as to
6 obstruct the normal movement of traffic or in such a condition
7 as to create a hazard to other traffic upon the street or
8 highway.

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

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

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

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

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

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

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

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

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

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

25 Section 3. Section 715.07, Florida Statutes, is
26 amended to read:

27 715.07 Vehicles or vessels parked on private property;
28 towing.--

29 (1) As used in this section, the term "vehicle" means
30 any mobile item which normally uses wheels, whether motorized
31 or not.

1 (2) The owner or lessee of real property, or any
2 person authorized by the owner or lessee, which person may be
3 the designated representative of the condominium association
4 if the real property is a condominium, may cause any vehicle
5 or vessel parked on such property without her or his
6 permission to be removed by a person regularly engaged in the
7 business of towing vehicles or vessels, without liability for
8 the costs of removal, transportation, or storage or damages
9 caused by such removal, transportation, or storage, under any
10 of the following circumstances:

11 (a) The towing or removal of any vehicle or vessel
12 from private property without the consent of the registered
13 owner or other legally authorized person in control of that
14 vehicle or vessel is subject to strict compliance with the
15 following conditions and restrictions:

16 1.a. Any towed or removed vehicle or vessel must be
17 stored at a site within a 10-mile radius ~~10 miles~~ of the point
18 of removal in any county of 500,000 population or more, and
19 within a 15-mile radius ~~15 miles~~ of the point of removal in
20 any county of less than 500,000 population. That site must be
21 open for the purpose of redemption of vehicles on any day that
22 the person or firm towing such vehicle or vessel is open for
23 towing purposes, from 8:00 a.m. to 6:00 p.m., and, when
24 closed, shall have prominently posted a sign indicating a
25 telephone number where the operator of the site can be reached
26 at all times. Upon receipt of a telephoned request to open
27 the site to redeem a vehicle or vessel, the operator shall
28 return to the site within 1 hour or she or he will be in
29 violation of this section.

30 b. If no towing business providing such service is
31 located within the area of towing limitations set forth in

1 sub-subparagraph a., the following limitations apply: any
2 towed or removed vehicle or vessel must be stored at a site
3 within a 20-mile radius ~~20 miles~~ of the point of removal in
4 any county of 500,000 population or more, and within a 30-mile
5 radius ~~30 miles~~ of the point of removal in any county of less
6 than 500,000 population.

7 2. The person or firm towing or removing the vehicle
8 or vessel shall, within 30 minutes after ~~of~~ completion of such
9 towing or removal, notify the municipal police department or,
10 in an unincorporated area, the sheriff, of such towing or
11 removal, the storage site, the time the vehicle or vessel was
12 towed or removed, and the make, model, color, and license
13 plate number of the vehicle or description and registration
14 number of the vessel and shall obtain the name of the person
15 at that department to whom such information was reported and
16 note that name on the trip record.

17 3. If the registered owner or other legally authorized
18 person in control of the vehicle or vessel arrives at the
19 scene prior to ~~removal or~~ towing of the vehicle or loading or
20 connecting to the vessel, the vehicle or vessel shall be
21 disconnected from the towing or removal apparatus, and that
22 person shall be allowed to remove the vehicle or vessel from
23 the property without interference upon the payment of a
24 reasonable service fee of not more than one-half of the posted
25 rate for such towing service as provided in subparagraph 6.,
26 for which a receipt shall be given, unless that person refuses
27 to remove the vehicle or vessel that ~~which~~ is otherwise
28 unlawfully parked.

29 4. The rebate or payment of money or any other
30 valuable consideration from the individual or firm towing or
31 removing vehicles or vessels to the owners ~~or operators~~ of the

1 premises from which the vehicles or vessels are towed or
2 removed, for the privilege of removing or towing those
3 vehicles or vessels, is prohibited.

4 5. Except for property appurtenant to and obviously a
5 part of a single-family residence, and except for instances
6 when notice is personally given to the owner or other legally
7 authorized person in control of the vehicle or vessel that the
8 area in which that vehicle or vessel is parked is reserved or
9 otherwise unavailable for unauthorized vehicles or vessels and
10 that the vehicle or vessel is subject to being removed at the
11 owner's or operator's expense, any property owner or lessee,
12 or person authorized by the property owner or lessee, prior to
13 towing or removing any vehicle or vessel from private property
14 without the consent of the owner or other legally authorized
15 person in control of that vehicle or vessel, must post a
16 notice meeting the following requirements:

17 a. The notice must be prominently placed at each
18 driveway access or curb cut allowing vehicular access to the
19 property, within 5 feet from the public right-of-way line. If
20 there are no curbs or access barriers, the signs must be
21 posted not less than one sign for each 25 feet of lot
22 frontage.

23 b. The notice must clearly indicate, in not less than
24 2-inch high, light-reflective letters on a contrasting
25 background, that unauthorized vehicles or vessels will be
26 towed away at the owner's expense. The words "tow-away zone"
27 must be included on the sign in not less than 4-inch high
28 letters.

29 c. The notice must also provide the name and current
30 telephone number of the person or firm towing or removing the
31 vehicles or vessels, ~~if the property owner, lessee, or person~~

1 ~~in control of the property has a written contract with the~~
2 ~~towing company.~~

3 d. The sign structure containing the required notices
4 must be permanently installed with the words "tow-away zone"
5 not less than 3 feet and not more than 6 feet above ground
6 level and must be continuously maintained on the property for
7 not less than 24 hours prior to the towing or removal of any
8 vehicles or vessels.

9 e. The local government may require permitting and
10 inspection of these signs prior to any towing or removal of
11 vehicles or vessels being authorized.

12 f. A business with 20 or fewer parking spaces
13 satisfies the notice requirements of this subparagraph by
14 prominently displaying a sign stating "Reserved Parking for
15 Customers Only Unauthorized Vehicles or Vessels Will be Towed
16 Away At the Owner's Expense" in not less than 4-inch high,
17 light-reflective letters on a contrasting background.

18 g. A property owner towing or removing vessels from
19 real property must post notice, consistent with the
20 requirements in sub-subparagraphs a.-f., which apply to
21 vehicles, that unauthorized vehicles or vessels will be towed
22 away at the owner's expense.

23
24 A business owner or lessee may authorize the removal of a
25 vehicle or vessel by a towing company when the vehicle or
26 vessel is parked in such a manner that restricts the normal
27 operation of business; and if a vehicle or vessel parked on a
28 public right-of-way obstructs access to a private driveway the
29 owner, lessee, or agent may have the vehicle or vessel removed
30 by a towing company upon signing an order that the vehicle or
31 vessel be removed without a posted tow-away zone sign.

1 6. Any person or firm that tows or removes vehicles or
2 vessels and proposes to require an owner, operator, or person
3 in control of a vehicle or vessel to pay the costs of towing
4 and storage prior to redemption of the vehicle or vessel must
5 file and keep on record with the local law enforcement agency
6 a complete copy of the current rates to be charged for such
7 services and post at the storage site an identical rate
8 schedule and any written contracts with property owners,
9 lessees, or persons in control of property which authorize
10 such person or firm to remove vehicles or vessels as provided
11 in this section.

12 7. Any person or firm towing or removing any vehicles
13 or vessels from private property without the consent of the
14 owner or other legally authorized person in control of the
15 vehicles or vessels shall, on any trucks, wreckers as defined
16 in s. 713.78(1)(c), or other vehicles used in the towing or
17 removal, have the name, address, and telephone number of the
18 company performing such service clearly printed in contrasting
19 colors on the driver and passenger sides of the vehicle. The
20 name shall be in at least 3-inch permanently affixed letters,
21 and the address and telephone number shall be in at least
22 1-inch permanently affixed letters.

23 8. Vehicle entry for the purpose of removing the
24 vehicle or vessel shall be allowed with reasonable care on the
25 part of the person or firm towing the vehicle or vessel. ~~Such~~
26 ~~person or firm shall be liable for any damage occasioned to~~
27 ~~the vehicle if such entry is not in accordance with the~~
28 ~~standard of reasonable care.~~

29 9. When a vehicle or vessel has been towed or removed
30 pursuant to this section, it must be released to its owner or
31 custodian within one hour after requested. Any vehicle or

1 vessel owner, ~~custodian~~, or agent shall have the right to
2 inspect the vehicle or vessel before accepting its return, and
3 no release or waiver of any kind which would release the
4 person or firm towing the vehicle or vessel from liability for
5 damages noted by the owner or other legally authorized person
6 at the time of the redemption may be required from any vehicle
7 or vessel owner, custodian, or agent as a condition of release
8 of the vehicle or vessel to its owner. A detailed, signed
9 receipt showing the legal name of the company or person towing
10 or removing the vehicle or vessel must be given to the person
11 paying towing or storage charges at the time of payment,
12 whether requested or not.

13 (b) These requirements are ~~shall be the~~ minimum
14 standards and do ~~shall~~ not preclude enactment of additional
15 regulations by any municipality or county including the right
16 to regulate rates when vehicles or vessels are towed from
17 private property.

18 (3) This section does not apply to law enforcement,
19 firefighting, rescue squad, ambulance, or other emergency
20 vehicles or vessels that ~~which~~ are marked as such or to
21 property owned by any governmental entity.

22 (4) When a person improperly causes a vehicle or
23 vessel to be removed, such person shall be liable to the owner
24 or lessee of the vehicle or vessel for the cost of removal,
25 transportation, and storage; any damages resulting from the
26 removal, transportation, or storage of the vehicle or vessel;
27 attorney's attorneys' fees; and court costs.

28 (5)(a) Any person who violates ~~the provisions of~~
29 subparagraph (2)(a)2. or subparagraph (2)(a)6. commits is
30 ~~guilty of~~ a misdemeanor of the first degree, punishable as
31 provided in s. 775.082 or s. 775.083.

