

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility: HB 571 w/CS prohibits persons from soliciting cash rebates or other valuable consideration from wrecker companies or their employees for the privilege of towing vehicles or vessels from their property. It also adds felony penalties for persons who violate provisions of s. 715.07 (1)(a), F.S., which prohibit the offer and request of rebates, towing a vehicle or vessel to a storage area beyond the mileage limits, failing to release a towed vehicle or vessel within the required time after the owner or operator has paid the towing fee, and failing to disconnect a vehicle or vessel from the towing apparatus when the owner/operator arrives at the scene prior to the removal.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Statutes regulate various aspects of the wrecker industry for consumer protection. For example, chapter 323, F.S., regulates wrecker operator storage facilities, where towed vehicles are held until their owners or operators retrieve them or until law enforcement agencies decide whether to impound them. Section 323.001(2)(c), F.S., provides that the towing and storage rates for the owner or lien holder of a held vehicle may not exceed those charged to investigating agencies.

Part II of chapter 713, F.S., establishes state requirements on liens imposed on vehicles or vessels towed by wrecker operators. Section 713.78, F.S., includes specifics on how wrecker companies should notify the owners of towed or stored vehicles and vessels; the process for challenging liens in court; and how wrecker companies should protect the vehicles and vessels in storage.

Chapter 715, F.S., addresses several issues related to towing, storing and releasing private property. Section 715.07, F.S., allows the owner or lessee of real property to have any vehicle parked on such property without permission removed by a wrecker company, 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. This section of law also requires that any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county of at least 500,000 population, 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 at least 500,000 population, and within 30 miles of the point of removal in any county of less than 500,000.

If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to its removal or towing, 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 towing rate.

The wrecker company or operator towing or removing the vehicle must:

- Within 30 minutes of completion the tow 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 vehicle's make, model, color, and license plate number.
- Obtain the name of the person at the law enforcement agency to whom such information was reported and note that name on the trip record.

- Have on file with the local law enforcement agency a list of the rates it charges for towing and storage.

Any violation of these provisions is a first-degree misdemeanor, 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 vehicle 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 third-degree felony, punishable by up to 5 years in jail, a fine of \$5,000, and enhanced penalties for habitual felony offenders.

Finally, no wrecker company, tow truck operator, or employee of such a company may give a rebate or payment of money or any other valuable consideration to the owner of the premises from which the vehicles are being removed.

Effect of Proposed Changes

HB 571 w/CS makes a number of changes to three sections of law addressing wrecker operators. These changes seemed designed primarily to clarify uncertainties in the existing laws that may be confusing to consumers, wrecker operators, and law enforcement agencies.

It amends s. 323.01, F.S., to limit the towing and storage rates for vehicles held by a wrecker operator to contract or county rates and deletes references to rates charged to investigating, or law enforcement agencies. According to Department of Highway and Motor Vehicle staff, the Florida Highway Patrol (FHP) currently caps the fees that wrecker operators on the wrecker rotation call list may charge, and on occasion wrecker operators complain that the cap is too low. The agency in these cases typically refers the wrecker operators to county officials, who are asked to raise the county rate; apparently some of the county rates are higher now than the FHP rate.

A number of changes are made to s. 713.78, F.S.:

- The bill clarifies that the towing-storage operator has to make a good-faith effort to locate the “name and address” of the owner or lien holder of the vehicle or vessel in question – not those actual persons as could be construed from the statute’s current wording.
- The bill authorizes county courts to award attorney’s fees to the prevailing party when property is wrongfully taken or withheld.
- The bill clarifies that wrecker operators are not liable for damage to vehicles, vessels, or cargo when directed by law enforcement personnel to remove them from obstructing traffic or creating a traffic hazard.
- Before a wrecker company or operator allows an agent for a vehicle or vessel owner to inspect or remove property from a towed vehicle or vessel, the agent must present the original written copy of the notarized document proving he or she actually is representing the owner.
- The bill adds the word “vessel” in several places within the statute where it was inadvertently omitted, to clarify that the entire section applies to towed and stored vessels, and not only vehicles.

The bill also amends s. 715.07, F.S., to clarify the wording relating to maximum storage distance and to add the word “vessels” where it was inadvertently omitted. It also:

- Prohibits the owners of property, or their employees, from soliciting rebates or other forms of consideration from wrecker operators for the privilege of towing vehicles or vessels from the property. This joins the existing prohibition against tow truck operators offering a rebate, and thus closes the loop.

- Requires property owners to post a notice that unauthorized vehicles or vessels will be towed, at the expense of the vehicle or vessel owners.
- Adds third-degree felony penalties for violations of: the distance requirements for storage facilities, requirement of tow-truck operator to disconnect a vehicle or vessel from the towing apparatus; offering or accepting a rebate; and time requirements to release a towed vehicle or vessel once fees have been paid.

This bill has an effective date of July 1, 2005.

Criminal Offenses Created By This Bill

This bill creates the following third degree felonies (unranked in Criminal Punishment Code)¹ by amendment to s. 715.07(5)(b), F.S.:

Towing a vehicle or vessel to a storage facility more than 10 miles from point of towing (15 miles in a county of less than 500,000).

Failure of a wrecker company to release a towed vehicle or vessel from storage within 1 hour of the owner's request. See new 715.07(6)(b).

Failure to release a vehicle or vessel about to be towed when the owner shows up, offers to pay half the standard towing fee, and agrees to immediately move the vehicle or vessel. See new 715.07(6)(b).

A wrecker company or operator offering a property owner a rebate or other consideration for the privilege of towing from the property; or a property owner soliciting a rebate or other consideration from a wrecker operator or operator for the privilege of towing from the property. See new 715.07(6)(b).

Refusal of a wrecker operator to allow the owner of towed vehicle or vessel to inspect the vehicle or vessel prior to accepting its return. A wrecker operator conditioning return of a vehicle or vessel on the owner of a vehicle or vessel signing a liability waiver. Failure of a wrecker operator to give the owner of a vehicle or vessel a signed receipt showing the name of the company. See new 715.07(6)(b).

C. SECTION DIRECTORY:

Section 1: Amends s. 323.001, F.S., to clarify towing and storage rates.

Section 2: Amends s. 713.78, F.S., to add "vessels" where omitted. Clarifies owner/operator identification responsibilities of wrecker operators. Allows county courts to award attorney's fees to prevailing parties in lien suits. Clarifies wrecker liability when removing vehicles, vessels, and cargo at the request of law enforcement. Requires proof that an agent is representing the owner of a vehicle or vessel.

Section 3: Amends s. 715.07, F.S., to add "vessels" where omitted. Clarifies storage location requirements. Prohibits property owners or their employees from soliciting rebates from tow-truck operators or wrecker companies. Requires towing notices. Establishes penalties.

Section 4: Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

¹ A third degree felony is punishable by confinement in state prison for up to 5 years and/or a fine of up to \$5,000. An unranked third degree felony is a Level 1 offense in the Criminal Punishment Code. The Criminal Punishment Code sets minimum sentences for felony offenses based on a point system. Unless the offender has a prior criminal record, committing one Level 1 offense of the type created by this bill will yield a minimum of "any nonstate prison sanction", meaning that there is no minimum term of incarceration.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The change to s. 323.001, F.S., where the towing and storage rates will be based on the county or contract rate rather than what the Florida Highway Patrol or other investigating agency has established under its wrecker allocation plan, could mean more revenue for the wrecker industry, and thus higher costs to consumers.

The ability for county courts to award attorney's fees to the prevailing party in lien lawsuits impacts both wrecker companies and consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This mandates provision is not applicable to HB 571 w/CS because the legislation does not require counties or municipalities to expend local funds or to raise local funds, nor does it reduce their state revenue-sharing.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None requested or needed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 8, 2005, meeting, the House Transportation Committee adopted without objection one amendment to HB 571 that reinstated existing law inadvertently struck when the bill was drafted. The reinstated language

specifies that wrecker operators are liable for damages to towed vehicles if they do not exercise the standard of "reasonable care" when entering those vehicles. The committee then voted 15-0 to report the bill as favorable with committee substitute.