



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill creates additional responsibilities for the Department of Highway Safety and Motor Vehicles, and local tax collectors.

Promote personal responsibility -- This bill provides for increased criminal penalties for wrongful conduct.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Law Enforcement Hold**

Section 323.001, F.S., provides that a law enforcement agency may place a 5 day hold on a vehicle in the possession of a wrecker operator. The primary purpose of the hold is for forensic investigation of the vehicle. The hold may be extended in certain circumstances. The owner of the vehicle is financially responsible for the cost of the towing and storage. Section 323.001(2)(c), F.S., provides that the towing and storage rates charged to the owner (or lienholder) of the vehicle may not exceed those rates customarily charged to the investigating agency. This bill amends the maximum rate that can be charged to an owner (or lienholder) to the "contract or county rates," referring to the county towing and storage fees that may be set by ordinance.

##### **Vessels**

Section 713.78, F.S., provides that a wrecker operator has a lien against a vehicle for the towing and storage charges owed regarding that vehicle, where the vehicle was towed because it was illegally parked, or illegally abandoned on a public road. A vessel is defined by s. 327.02(37), F.S., as a boat, watercraft, barge, or air boat, or any other craft used as a means of transport on water. Current law does not provide for a wrecker operator's lien against a vessel. This bill amends s. 713.78, F.S., to add that the lien may be assessed against a towed vessel in the same manner.

Section 715.07, F.S., provides authority for a landowner to have a wrongfully parked vehicle towed off the landowner's property, without the permission of the vehicle owner. This bill amends s. 715.07, F.S., to expand this authority to the towing or removal of a vessel.

##### **Challenge to a Wrecker Operator Lien**

This bill amends s. 713.78(6)(c), F.S., to add that, if the owner of a vehicle or vessel contests a wrecker operator's lien, the prevailing party is entitled to an award of attorney's fees against the nonprevailing party.

##### **Liability**

Section 713.78(7)(a), F.S., provides that a wrecker operator is not liable for damage connected to wrecker services when complying with the lawful directions of a law enforcement officer to remove a vehicle obstructing the normal movement of traffic or that creates a traffic hazard. This bill amends s. 713.78(7)(a), F.S., to expand the exemption from liability to cover vessels and cargo in addition to vehicles. Also, the requirement that there be a lawful direction from a law enforcement officer is reduced to a requirement that there simply be a "request" from a law enforcement officer.

##### **Mobile Home Liens**

Section 713.78, F.S., creates a lien in favor of a wrecker operator against the owner of a vehicle that was towed because it was wrongfully parked or was abandoned on a roadway. This bill creates s. 713.785 to create a similar lien in favor of a mobile home transport company that moves or stores a mobile home at the direction of the owner of the mobile home, a law enforcement agency, or a mobile home park owner after the park owner has received a writ of possession (the conclusion of an eviction action).

To receive the lien, the transport company must give notice by certified mail to the owner and all lienholders within 7 days after placing the mobile home in storage. Within 10 days of receipt of the notice, an affected person may file suit claiming the mobile home was wrongfully taken or withheld by the transport company. In that suit, if the owner or lienholder posts a bond for the amount claimed by the transport company, the transport company must release the mobile home.

If a mobile home has remained in storage for 35 days, the transport company may sell the mobile home. Notice of the sale must be sent by certified mail to the owner and any lienholder, and must be published at least 10 days prior to the sale. The proceeds of the sale are paid by the mobile home transport company in the following order: reasonable towing and storage charges, costs of the sale, and unpaid lot rent. Remaining proceeds are to be deposited with the clerk of court, who is entitled to 5% of the deposit as a fee. The clerk holds the deposited monies awaiting court order. This bill does not provide, but ch. 679, F.S., does require, that lienholders be paid first in the order of their priority, and the remaining proceeds, if any, be paid to the owner.

This bill provides that a mobile home transport company, and a mobile home park owner, are not liable for loss or damage to the contents provided they used reasonable care in securing the mobile home.

A mobile home transport company must apply for a certificate of destruction if the mobile home is to be sold for the purpose of being dismantled, destroyed, or changed so that it is not the mobile home described in the certificate of title. The fee is \$7.25 (\$3 to DHSMV, and \$4.25 to the local tax collector).

If a certificate of destruction has been issued, the mobile home transport company may apply to the DHSMV for a lien against registered owner. The term "lien" is a misnomer, there is no lien against property created by this section. Instead, the lien is against the right of the owner to obtain a registration certificate for another mobile home. The bill specifies the requirements for the application for a lien. The lien amount may not exceed the reasonable moving charge plus 7 days storage fee (limited to the amount provided by local ordinance, if such an ordinance exists). The owner may challenge the lien and have it discharged if the owner shows that the mobile home was sold prior to it being moved. If the mobile home transport company has to go to court to disprove a claim that the mobile home was sold prior to being moved, the lien amount may be increased by up to \$500 to cover the company's costs and attorney's fees.

A mobile home owner subject to a lien may file suit to challenge the lien, and may immediately receive the right to register a mobile home upon posting of the amount in dispute. If a person subject to a lien tries to pay off the lien, but the mobile home transport company cannot be located, the person may post the amount of the lien with the clerk of the court, in which case he or she will be discharged of the lien and may register a mobile home.

A mobile home transport company lien expires 5 years after it was filed. A mobile home transport company lien may be discharged by payment, and the transport company is required to notify DHSMV of the discharge.

The cost to file a mobile home transport company lien is \$4.50 (\$2 to General Revenue, and \$2.50 to the local tax collector).

A mobile home transport company must allow the mobile home owner, or his or her agent, the right to inspect the mobile home and to remove all personal belongings not subject to a landlord's lien.

This bill creates the following first degree misdemeanors<sup>1</sup> related to mobile home transport company liens:

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<sup>1</sup> A third degree felony is punishable by confinement in county jail for up to 1 year and/or a fine of up to \$1,000.

- Improper notice to the owner or lienholder of the taking of the mobile home.
- Failure to follow sales procedure (notice of sale and disposition of proceeds).
- Failure to apply for a certificate of destruction.
- Failure to allow the owner to inspect the mobile home and retrieve contents.

### **Vehicles or Vessels Parked on Private Property**

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:

- Notify the municipal police department or, in an unincorporated area, the sheriff of the 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. Notification must be within 30 minutes of the towing.
- 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.

It is a third degree felony for any person or firm towing or removing any vehicles from private property without the consent of the vehicle owner to not 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.

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.

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 felonies.

This bill creates the following third degree felonies (unranked in Criminal Punishment Code)<sup>2</sup>, related to towing of vehicles and vessels, 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, increased to 20 and 30 miles respectively if no company has a facility in the 10/15 mile range).
- 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.
- Paying or accepting money or other consideration for the privilege of towing from a particular location.
- Failure of a wrecker company to release a towed vehicle or vessel from storage within 1 hour of the owner's request.
- 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).

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

#### C. SECTION DIRECTORY:

Section 1 amends s. 319.30, F.S., adding a cross-reference to the definition of a certificate of destruction.

Section 2 amends s. 323.001, F.S., regarding law enforcement hold of a vehicle in storage.

Section 3 amends s. 713.78, F.S., to add a lien against a towed vessel to the provisions providing for a lien against a towed vehicle, and to remove the lien against a mobile home.

Section 4 creates s. 713.785, F.S., to create a lien for recovery, towing or storing a mobile home.

Section 5 amends s. 715.07, F.S., to add provisions regarding towing vessels on private property to a section on towing vehicles parked on private property; and adding offenses to the section.

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<sup>2</sup> 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.

Section 6 provides an effective date of July 1, 2005.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Indeterminate and likely minimal. See Fiscal Comments.

#### 2. Expenditures:

Indeterminate and likely minimal. See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Indeterminate and likely minimal. See Fiscal Comments.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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, may affect rates charged to the public.

The charges for filing of a mobile home transport company lien are fairly small.

### D. FISCAL COMMENTS:

The provisions for the lien in favor of a mobile home transport company were added by amendment, and thus no fiscal impact is available from the affected agency or local governments. It is not anticipated that there will be many liens filed.

The Criminal Justice Estimating Conference, in looking at similar new felony offenses related to wrecker operators in another bill, found that these provisions may create an insignificant prison bed impact.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### 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.

On March 23, 2005, the Criminal Justice Committee adopted an amendment removing everything after the enacting clause. The amendment:

- Adds the provisions creating a mobile home transport company lien.
- Removes the offense of solicitation of a rebate from a wrecker company.
- Adopts minor grammatical changes to conform the bill to the Senate counterpart.

The bill was then reported favorably with a committee substitute.