

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 571 w/CS Wrecker Operators
SPONSOR(S): Galvano; Planas
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Transportation Committee</u>	<u>15 Y, 0 N, w/CS</u>	<u>Pugh</u>	<u>Miller</u>
2) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N, w/CS</u>	<u>Bond</u>	<u>Kramer</u>
3) <u>State Infrastructure Council</u>	<u></u>	<u>Pugh</u>	<u>Havlicak</u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Florida law provides procedures for wrecker operators to follow when they tow vehicles, vessels, or mobile homes from private property and store them until they can be picked up by their owners or operators, or, in the case of criminal investigations, released to the appropriate law enforcement agency.

HB 571 w/CS seeks to clarify some of these procedures, make consistent the statutes' wording, and extend penalties for violations of certain requirements. Significant changes made by HB 571 w/CS include:

- Creating a new section of law addressing the towing of, storage of, and assessment of liens on mobile homes. One of the key provisions is that a person with an unpaid lien filed by a mobile home transport company can not register his or her subsequent mobile home with the Florida Department of Highway Safety and Motor Vehicles (DHSMV) until the lien is paid.
- Clarifying that the existing ss. 713.78 and 715.07, F.S., apply to towed and stored vessels.
- Changing the limit on towing and storage fees to that set by local ordinance.
- Creating third-degree felonies for violations of certain offenses related to wrecker operators.
- Providing that county courts may award attorney's fees in judgments for prevailing parties in actions concerning property wrongfully taken or withheld.

HB 571 w/CS does not raise any apparent constitutional or legal issues. It may have a minimal fiscal impact on state and local governments.

All but one of the sections of HB 571 w/CS would take effect July 1, 2005. The new section on mobile home recovery, towing, storage, and liens would take effect January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – HB 571 w/CS creates additional responsibilities for the Department of Highway Safety and Motor Vehicles, and local tax collectors, and additional rulemaking related to mobile home liens.

Promote personal responsibility – HB 571 w/CS provides for increased criminal penalties for wrongful conduct.

B. EFFECT OF PROPOSED CHANGES:

Storage Rates/Legal Fees

Current Situation

Section 323.001, F.S., provides that a law enforcement agency may place a five-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 lien holder) of the vehicle may not exceed those rates customarily charged to the investigating agency.

Effect of Proposed Changes

HB 571 w/CS amends the maximum rate that can be charged to an owner (or lien holder) to the “contract or county rates,” referring to the county towing and storage fees that may be set by ordinance. These fees may be higher than what is charged to law enforcement or investigating agencies.

The bill also amends s. 713.78(5)(c), F.S., to add that if the owner of a vehicle or vessel contests a wrecker operator’s lien in county court, the prevailing party is entitled to an award of attorney’s fees against the nonprevailing party.

Applicability to Vessels Clarified

Current Situation

Section 713.78 (2), F.S., generally provides that a wrecker operator can place a lien against a vehicle, vessel, or mobile home for towing and storage charges owed. But because the word “vessel” is not consistently applied in the entire section of law, confusion has arisen about under what circumstances vessels may be towed and stored.

Meanwhile, s. 715.07, F.S., provides authority for a landowner to have a wrongfully parked vehicle towed off a landowner’s property, without the permission of the vehicle owner, but makes no mention of vessels.

Effect of Proposed Changes

This bill amends s. 713.78, F.S., to add the word “vessels” where appropriate, and amends s. 715.07, F.S., to expand that authority to the towing or removal of a vessel parked on private property without permission.

Liability of Wrecker Operators

Current Situation

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 or vessel obstructing the normal movement of traffic or that creates a traffic hazard.

Effect of Proposed Changes

This bill amends s. 713.78(7)(a), F.S., to expand the exemption from liability to cover cargo in addition to vehicles or vessels. 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

Current Situation

Currently, s. 713.78(2)(d), F.S., references allowing a wrecker operator to file a lien against the owner of a mobile home that has been removed at the request of a mobile home park owner. Other references to "mobile home" are scattered throughout the section, but not consistently. Over the years, there has been some confusion about the legal interpretation of this section as it relates to towing and storage of mobile homes, and the lien assessment process.

In addition, advocates for the mobile home transport industry and mobile home park industries say the towing, storing, and lien provisions as they relate to mobile homes generally occur under entirely different circumstances (such as failure to pay monthly lot rents) than those related to the towing of vehicles and vessels. Because of that, these industries have sought for several years legislation to create a section of law unique to mobile home towing, storage, and liens.

Effect of Proposed Changes

Effective January 1, 2006, HB 571 w/CS creates s. 713.785, F.S., to authorize a lien process 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 lien holders 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 lien holder 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 lien holder, 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 lien holders be paid first in the order of their priority, and the remaining proceeds, if any, be paid to the owner.

HB 571 w/CS 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. The 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.

HB 571 w/CS also creates the following first degree misdemeanors¹ related to mobile home transport company liens:

- Improper notice to the owner or lien holder 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.

Procedures for Wrecker Operators Towing Vehicles or Vessels Parked on Private Property

Current Situation

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.

¹ A first degree misdemeanor is punishable by confinement in county jail for up to 1 year and/or a fine of up to \$1,000.

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

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.

Effect of Proposed Changes

HB 571 w/CS 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:

- Rewords to add clarity the existing prohibition against wrecker companies or employees from accepting rebates, cash, or other valuable consideration for the privilege of towing vehicles from private property.
- Requires property owners to post a notice that unauthorized vehicles or vessels will be towed, at the expense of the vehicle or vessel owners.
- Creates the following third degree felonies (unranked in Criminal Punishment Code)², related to towing of vehicles and vessels by wrecker operators:
 - Towing a vehicle or vessel to a storage facility farther away than allowed in law;
 - Failing 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;
 - Failing to release a towed vehicle or vessel from storage within 1 hour of the owner’s request; and
 - Refusing to allow the owner of towed vehicle or vessel to inspect the vehicle or vessel prior to accepting its return; and
 - Conditioning return of a vehicle or vessel on the owner signing a liability waiver;
 - Failing to give to give the owner of a vehicle or vessel a signed receipt showing the name of the company.

Most of the bill’s provisions would become effective July 1, 2005, except that the new s. 713.785, F.S., related to mobile home towing, storage and liens, would take effect January 1, 2006.

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 “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

² 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.

the request of law enforcement. Requires proof that an agent is representing the owner of a vehicle or vessel. Deletes reference to liens placed against mobile homes.

Section 4: Effective January 1, 2006, creates s. 713.785, F.S., authorizing liens for recovery, towing or storing a mobile home. Establishes process for collecting lien through sale of mobile home. Provides for DHSMV responsibilities and authorizes rulemaking.

Section 5: Amends s. 715.07, F.S., to add "vessels" where omitted. Clarifies storage location requirements. Requires towing notices. Establishes penalties

Section 6: Provides that except where otherwise provided, this bill shall take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate and likely minimal. See "D. Fiscal Comments" below.

2. Expenditures:

Indeterminate and likely minimal. See "D. Fiscal Comments" below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate and likely minimal. See "D. Fiscal Comments" below.

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 mean higher rates charged to the public.

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

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

D. FISCAL COMMENTS:

The impact of the provisions for liens filed by mobile home transport companies may impact DHSMV and local governments, but the extent of the impact is indeterminate at this time.

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:

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:

DHSMV is given explicit rulemaking authority implement the provisions of the new s. 713.785, F.S., that are under its purview.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Some references to "mobile homes" remain in s. 713.78, F.S. Perhaps to eliminate possible future confusion about whether that section, or the new s. 713.785, F.S., is the controlling section of law on mobile home towing, storing and liens, those references should be deleted by amendment.

Also, no definition of "vessel" exists in chapter 715, F.S. although "vehicle" is defined. The sponsor may want to consider referencing in s. 715.07, F.S., the definition of vessel in s. 713.78, F.S., which is:

(b) "Vessel" means every description of watercraft, barge, and air boat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(8).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Transportation Committee

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.

Criminal Justice Committee

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 as favorable with a committee substitute.