

1 A bill to be entitled
 2 An act relating to wrecker operators; amending s. 323.001,
 3 F.S.; revising certain towing and storage rate
 4 limitations; amending s. 713.78, F.S.; revising provisions
 5 relating to liens for recovering, towing, or storing
 6 vehicles and vessels; providing for award of attorney's
 7 fees; amending s. 715.07, F.S.; revising provisions
 8 relating to towing or removing vehicles parked on private
 9 property; providing for application to removal of vessels;
 10 revising storage requirements; revising provisions
 11 requiring notification of the municipal police department
 12 or sheriff; revising provisions for arrival of registered
 13 owner of the vehicle or vessel or other legally authorized
 14 person at the scene prior to towing; revising provisions
 15 prohibiting rebate or payment by person or firm towing or
 16 removing vehicles or vessels to the premises owner for the
 17 privilege of removing or towing a vehicle or vessel;
 18 prohibiting solicitation by the owner of the premises of
 19 such rebate or payment; revising requirements for posting
 20 notice of removal; removing a limitation of liability for
 21 entry into vehicle or vessel; exempting certain vessels;
 22 revising liability provisions; providing penalties for
 23 specified violations; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Subsection (1) of section 323.001, Florida
 28 Statutes, is republished, and paragraph (c) of subsection (2) of

29 | said section is amended, to read:

30 | 323.001 Wrecker operator storage facilities; vehicle
31 | holds.--

32 | (1) An investigating agency may place a hold on a motor
33 | vehicle stored within a wrecker operator's storage facility for
34 | a period not to exceed 5 days, excluding holidays and weekends,
35 | unless extended in writing.

36 | (2) The investigating agency must notify the wrecker
37 | operator in writing within 5 days, excluding holidays and
38 | weekends, whether the hold is to be continued. If no
39 | notification follows this period of time, the wrecker operator
40 | may release the vehicle to the designated person pursuant to s.
41 | 713.78.

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

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

47 | 713.78 Liens for recovering, towing, or storing vehicles
48 | and vessels.--

49 | (2) Whenever a person regularly engaged in the business of
50 | transporting vehicles or vessels by wrecker, tow truck, or car
51 | carrier recovers, removes, or stores a vehicle, vessel, or
52 | mobile home upon instructions from:

53 | (a) The owner thereof; ~~or~~

54 | (b) The owner or lessor, or a person authorized by the
55 | owner or lessor, of property on which such vehicle or vessel is
56 | wrongfully parked, and such removal is done in compliance with

57 s. 715.07; ~~ex~~

58 (c) Any law enforcement agency; or

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

62
 63 she or he shall have a lien on such vehicle or vessel for a
 64 reasonable towing fee and for a reasonable storage fee; except
 65 that no storage fee shall be charged if such vehicle is stored
 66 for less than 6 hours.

67 (4)(a) Any person regularly engaged in the business of
 68 recovering, towing, or storing vehicles or vessels who comes
 69 into possession of a vehicle or vessel pursuant to subsection
 70 (2), and who claims a lien for recovery, towing, or storage
 71 services, shall give notice to the registered owner, the
 72 insurance company insuring the vehicle notwithstanding the
 73 provisions of s. 627.736, and to all persons claiming a lien
 74 thereon, as disclosed by the records in the Department of
 75 Highway Safety and Motor Vehicles or of a corresponding agency
 76 in any other state.

77 (b) Whenever any law enforcement agency authorizes the
 78 removal of a vehicle or vessel or whenever any towing service,
 79 garage, repair shop, or automotive service, storage, or parking
 80 place notifies the law enforcement agency of possession of a
 81 vehicle or vessel pursuant to s. 715.07(2)(a)2., the applicable
 82 law enforcement agency shall contact the Department of Highway
 83 Safety and Motor Vehicles, or the appropriate agency of the
 84 state of registration, if known, within 24 hours through the

85 medium of electronic communications, giving the full description
 86 of the vehicle or vessel. Upon receipt of the full description
 87 of the vehicle or vessel, the department shall search its files
 88 to determine the owner's name, the insurance company insuring
 89 the vehicle or vessel, and whether any person has filed a lien
 90 upon the vehicle or vessel as provided in s. 319.27(2) and (3)
 91 and notify the applicable law enforcement agency within 72
 92 hours. The person in charge of the towing service, garage,
 93 repair shop, or automotive service, storage, or parking place
 94 shall obtain such information from the applicable law
 95 enforcement agency within 5 days from the date of storage and
 96 shall give notice pursuant to paragraph (a). The department may
 97 release the insurance company information to the requestor
 98 notwithstanding the provisions of s. 627.736.

99 (c) Notice by certified mail, return receipt requested,
 100 shall be sent within 7 business days after the date of storage
 101 of the vehicle or vessel to the registered owner, the insurance
 102 company insuring the vehicle notwithstanding the provisions of
 103 s. 627.736, and all persons of record claiming a lien against
 104 the vehicle or vessel. It shall state the fact of possession of
 105 the vehicle or vessel, that a lien as provided in subsection (2)
 106 is claimed, that charges have accrued and the amount thereof,
 107 that the lien is subject to enforcement pursuant to law, and
 108 that the owner or lienholder, if any, has the right to a hearing
 109 as set forth in subsection (5), and that any vehicle or vessel
 110 which remains unclaimed, or for which the charges for recovery,
 111 towing, or storage services remain unpaid, may be sold free of
 112 all prior liens after 35 days if the vehicle or vessel is more

113 than 3 years of age or after 50 days if the vehicle or vessel is
 114 3 years of age or less.

115 (d) If attempts to locate the name and address of the
 116 owner or lienholder prove unsuccessful, the towing-storage
 117 operator shall, after 7 working days, excluding Saturday and
 118 Sunday, of the initial tow or storage, notify the public agency
 119 of jurisdiction in writing by certified mail or acknowledged
 120 hand delivery that the towing-storage company has been unable to
 121 locate the name and address of the owner or lienholder and a
 122 physical search of the vehicle or vessel has disclosed no
 123 ownership information and a good faith effort has been made. For
 124 purposes of this paragraph and subsection (9), "good faith
 125 effort" means that the following checks have been performed by
 126 the company to establish prior state of registration and for
 127 title:

128 1. Check of vehicle or vessel for any type of tag, tag
 129 record, temporary tag, or regular tag.

130 2. Check of law enforcement report for tag number or other
 131 information identifying the vehicle or vessel, if the vehicle or
 132 vessel was towed at the request of a law enforcement officer.

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

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

139 5. Check of vehicle or vessel for inspection sticker or
 140 other stickers and decals that may indicate a state of possible

141 registration.

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

145 7. Check of vehicle for vehicle identification number.

146 8. Check of vessel for vessel registration number.

147 9. Check of vessel hull for a hull identification number
 148 which should be carved, burned, stamped, embossed, or otherwise
 149 permanently affixed to the outboard side of the transom or, if
 150 there is no transom, to the outmost seaboard side at the end of
 151 the hull that bears the rudder or other steering mechanism.

152 (5)(a) The owner of a vehicle or vessel removed pursuant
 153 to the provisions of subsection (2), or any person claiming a
 154 lien, other than the towing-storage operator, within 10 days
 155 after the time she or he has knowledge of the location of the
 156 vehicle or vessel, may file a complaint in the county court of
 157 the county in which the vehicle or vessel is stored or in which
 158 the owner resides to determine if her or his property was
 159 wrongfully taken or withheld from her or him.

160 (b) Upon filing of a complaint, an owner or lienholder may
 161 have her or his vehicle or vessel released upon posting with the
 162 court a cash or surety bond or other adequate security equal to
 163 the amount of the charges for towing or storage and lot rental
 164 amount to ensure the payment of such charges in the event she or
 165 he does not prevail. Upon the posting of the bond and the
 166 payment of the applicable fee set forth in s. 28.24, the clerk
 167 of the court shall issue a certificate notifying the lienor of
 168 the posting of the bond and directing the lienor to release the

169 vehicle or vessel. At the time of such release, after reasonable
 170 inspection, she or he shall give a receipt to the towing-storage
 171 company reciting any claims she or he has for loss or damage to
 172 the vehicle or vessel or the contents thereof.

173 (c) Upon determining the respective rights of the parties,
 174 the court may award damages, attorney's fees, and costs in favor
 175 of the prevailing party. In any event, the final order shall
 176 provide for immediate payment in full of recovery, towing, and
 177 storage fees by the vehicle or vessel owner or lienholder; or
 178 the agency ordering the tow; or the owner, lessee, or agent
 179 thereof of the property from which the vehicle or vessel was
 180 removed.

181 (7)(a) A wrecker operator recovering, towing, or storing
 182 vehicles or vessels is not liable for damages connected with
 183 such services, theft of such vehicles or vessels, or theft of
 184 personal property contained in such vehicles or vessels,
 185 provided that such services have been performed with reasonable
 186 care and provided, further, that, in the case of removal of a
 187 vehicle or vessel upon the request of a person purporting, and
 188 reasonably appearing, to be the owner or lessee, or a person
 189 authorized by the owner or lessee, of the property from which
 190 such vehicle or vessel is removed, such removal has been done in
 191 compliance with s. 715.07. Further, a wrecker operator is not
 192 liable for damage to vehicles, vessels, or cargo which is
 193 connected with such services when complying with the lawful
 194 directions of a law enforcement officer to remove a vehicle or
 195 vessel stopped, standing, or parked upon a street or highway in
 196 such a position as to obstruct the normal movement of traffic or

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197 | in such a condition as to create a hazard to other traffic upon
198 | the street or highway.

199 | (b) For the purposes of this subsection, a wrecker
200 | operator is presumed to use reasonable care to prevent the theft
201 | of a vehicle or vessel or of any personal property contained in
202 | such vehicle stored in the wrecker operator's storage facility
203 | if all of the following apply:

204 | 1. The wrecker operator surrounds the storage facility
205 | with a chain-link or solid-wall type fence at least 6 feet in
206 | height;

207 | 2. The wrecker operator has illuminated the storage
208 | facility with lighting of sufficient intensity to reveal persons
209 | and vehicles at a distance of at least 150 feet during
210 | nighttime; and

211 | 3. The wrecker operator uses one or more of the following
212 | security methods to discourage theft of vehicles or vessels or
213 | of any personal property contained in such vehicles or vessels
214 | stored in the wrecker operator's storage facility:

215 | a. A night dispatcher or watchman remains on duty at the
216 | storage facility from sunset to sunrise;

217 | b. A security dog remains at the storage facility from
218 | sunset to sunrise;

219 | c. Security cameras or other similar surveillance devices
220 | monitor the storage facility; or

221 | d. A security guard service examines the storage facility
222 | at least once each hour from sunset to sunrise.

223 | (c) Any law enforcement agency requesting that a motor
224 | vehicle be removed from an accident scene, street, or highway

225 must conduct an inventory and prepare a written record of all
 226 personal property found in the vehicle before the vehicle is
 227 removed by a wrecker operator. However, if the owner or driver
 228 of the motor vehicle is present and accompanies the vehicle, no
 229 inventory by law enforcement is required. A wrecker operator is
 230 not liable for the loss of personal property alleged to be
 231 contained in such a vehicle when such personal property was not
 232 identified on the inventory record prepared by the law
 233 enforcement agency requesting the removal of the vehicle.

234 (10) Persons who provide services pursuant to this section
 235 shall permit vehicle or vessel owners or their agents, which
 236 agency is evidenced by an original written copy ~~a writing~~
 237 acknowledged by the owner before a notary public or other person
 238 empowered by law to administer oaths, to inspect the towed
 239 vehicle or vessel and shall release to the owner or agent the
 240 vehicle or vessel or all personal property not affixed to the
 241 vehicle or vessel which was in the vehicle or vessel at the time
 242 the vehicle or vessel came into the custody of the person
 243 providing such services.

244 Section 3. Section 715.07, Florida Statutes, is amended to
 245 read:

246 715.07 Vehicles or vessels parked on private property;
 247 towing.--

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

251 (2) The owner or lessee of real property, or any person
 252 authorized by the owner or lessee, which person may be the

253 designated representative of the condominium association if the
 254 real property is a condominium, may cause any vehicle or vessel
 255 parked on such property without her or his permission to be
 256 removed by a person regularly engaged in the business of towing
 257 vehicles or vessels, without liability for the costs of removal,
 258 transportation, or storage or damages caused by such removal,
 259 transportation, or storage, under any of the following
 260 circumstances:

261 (a) The towing or removal of any vehicle or vessel from
 262 private property without the consent of the registered owner or
 263 other legally authorized person in control of that vehicle or
 264 vessel is subject to strict compliance with the following
 265 conditions and restrictions:

266 1.a. Any towed or removed vehicle or vessel must be stored
 267 at a site within a 10-mile radius ~~10-miles~~ of the point of
 268 removal in any county of 500,000 population or more, and within
 269 a 15-mile radius ~~15-miles~~ of the point of removal in any county
 270 of less than 500,000 population. That site must be open for the
 271 purpose of redemption of vehicles or vessels on any day that the
 272 person or firm towing such vehicle or vessel is open for towing
 273 purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall
 274 have prominently posted a sign indicating a telephone number
 275 where the operator of the site can be reached at all times. Upon
 276 receipt of a telephoned request to open the site to redeem a
 277 vehicle or vessel, the operator shall return to the site within
 278 1 hour or she or he will be in violation of this section.

279 b. If no towing business providing such service is located
 280 within the area of towing limitations set forth in sub-

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281 subparagraph a., the following limitations apply: any towed or
282 removed vehicle or vessel must be stored at a site within a 20-
283 mile radius ~~20 miles~~ of the point of removal in any county of
284 500,000 population or more, and within a 30-mile radius ~~30 miles~~
285 of the point of removal in any county of less than 500,000
286 population.

287 2. The person or firm towing or removing the vehicle or
288 vessel shall, within 30 minutes after ~~of~~ completion of such
289 towing or removal, notify the municipal police department or, in
290 an unincorporated area, the sheriff of such towing or removal,
291 the storage site, the time the vehicle or vessel was towed or
292 removed, and the make, model, color, and license plate number of
293 the vehicle or description and registration number of the vessel
294 and shall obtain the name of the person at that department to
295 whom such information was reported and note that name on the
296 trip record.

297 3. If the registered owner or other legally authorized
298 person in control of the vehicle or vessel arrives at the scene
299 prior to ~~removal or~~ towing of the vehicle or vessel loaded or
300 connected for towing, the vehicle or vessel shall be
301 disconnected from the towing or removal apparatus, and that
302 person shall be allowed to remove the vehicle or vessel from the
303 property without interference upon the payment of a reasonable
304 service fee of not more than one-half of the posted rate for
305 such towing service as provided in subparagraph 6., for which a
306 receipt shall be given, unless that person refuses to remove the
307 vehicle or vessel that ~~which~~ is otherwise unlawfully parked.

308 4. No person or firm towing or removing vehicles or

309 vessels, or employee or agent of any such person or firm, may
 310 give a ~~The~~ rebate or payment of money or any other valuable
 311 ~~consideration from the individual or firm towing or removing~~
 312 ~~vehicles~~ to the owner ~~owners or operators~~ of the premises from
 313 which a vehicle or vessel is ~~the vehicles are~~ towed or removed,
 314 for the privilege of removing or towing the vehicle or vessel
 315 ~~those vehicles, is prohibited. A property owner may not solicit~~
 316 a person or firm towing or removing vehicles or vessels, or an
 317 employee or agent of any such person or firm, to give him or her
 318 a rebate or the payment of money or other valuable consideration
 319 for the privilege of removing or towing a vehicle or vessel from
 320 the owner's premises.

321 5. Except for property appurtenant to and obviously a part
 322 of a single-family residence, and except for instances when
 323 notice is personally given to the owner or other legally
 324 authorized person in control of the vehicle or vessel that the
 325 area in which that vehicle or vessel is parked is reserved or
 326 otherwise unavailable for unauthorized vehicles or vessels and
 327 that the vehicle or vessel is subject to being removed at the
 328 owner's or operator's expense, any property owner or lessee, or
 329 person authorized by the property owner or lessee, prior to
 330 towing or removing any vehicle or vessel from private property
 331 without the consent of the owner or other legally authorized
 332 person in control of that vehicle or vessel, must post a notice
 333 meeting the following requirements:

334 a. The notice must be prominently placed at each driveway
 335 access or curb cut allowing vehicular access to the property,
 336 within 5 feet from the public right-of-way line. If there are no

337 curbs or access barriers, the signs must be posted not less than
 338 one sign for each 25 feet of lot frontage.

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

344 c. The notice must also provide the name and current
 345 telephone number of the person or firm towing or removing the
 346 vehicles or vessels, ~~if the property owner, lessee, or person in~~
 347 ~~control of the property has a written contract with the towing~~
 348 ~~company.~~

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

354 e. The local government may require permitting and
 355 inspection of these signs prior to any towing or removal of
 356 vehicles or vessels being authorized.

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

363 g. A property owner towing or removing vessels from real
 364 property must post notice, consistent with the requirements in

365 sub-subparagraphs a.-f., which apply to vehicles, that
 366 unauthorized vehicles or vessels will be towed away at the
 367 owner's expense.

368
 369 A business owner or lessee may authorize the removal of a
 370 vehicle or vessel by a towing company when the vehicle or vessel
 371 is parked in such a manner that restricts the normal operation
 372 of business; and, if a vehicle or vessel parked on a public
 373 right-of-way obstructs access to a private driveway, the owner,
 374 lessee, or agent may have the vehicle or vessel removed by a
 375 towing company upon signing an order that the vehicle or vessel
 376 be removed without a posted tow-away zone sign.

377 6. Any person or firm that tows or removes vehicles or
 378 vessels and proposes to require an owner, operator, or person in
 379 control of a vehicle or vessel to pay the costs of towing and
 380 storage prior to redemption of the vehicle or vessel must file
 381 and keep on record with the local law enforcement agency a
 382 complete copy of the current rates to be charged for such
 383 services and post at the storage site an identical rate schedule
 384 and any written contracts with property owners, lessees, or
 385 persons in control of property which authorize such person or
 386 firm to remove vehicles or vessels as provided in this section.

387 7. Any person or firm towing or removing any vehicles or
 388 vessels from private property without the consent of the owner
 389 or other legally authorized person in control of the vehicles or
 390 vessels shall, on any trucks, wreckers as defined in s.
 391 713.78(1)(c), or other vehicles used in the towing or removal,
 392 have the name, address, and telephone number of the company

393 performing such service clearly printed in contrasting colors on
 394 the driver and passenger sides of the vehicle. The name shall be
 395 in at least 3-inch permanently affixed letters, and the address
 396 and telephone number shall be in at least 1-inch permanently
 397 affixed letters.

398 8. Vehicle entry for the purpose of removing the vehicle
 399 or vessel shall be allowed with reasonable care on the part of
 400 the person or firm towing the vehicle or vessel. ~~Such person or~~
 401 ~~firm shall be liable for any damage occasioned to the vehicle if~~
 402 ~~such entry is not in accordance with the standard of reasonable~~
 403 ~~care.~~

404 9. When a vehicle or vessel has been towed or removed
 405 pursuant to this section, it must be released to its owner or
 406 custodian within one hour after requested. Any vehicle or vessel
 407 owner, ~~custodian,~~ or agent shall have the right to inspect the
 408 vehicle or vessel before accepting its return, and no release or
 409 waiver of any kind which would release the person or firm towing
 410 the vehicle or vessel from liability for damages noted by the
 411 owner or other legally authorized person at the time of the
 412 redemption may be required from any vehicle or vessel owner,
 413 custodian, or agent as a condition of release of the vehicle or
 414 vessel to its owner. A detailed, signed receipt showing the
 415 legal name of the company or person towing or removing the
 416 vehicle or vessel must be given to the person paying towing or
 417 storage charges at the time of payment, whether requested or
 418 not.

419 (b) The ~~These~~ requirements of this subsection are ~~shall be~~
 420 ~~the~~ minimum standards and do ~~shall~~ not preclude enactment of

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421 additional regulations by any municipality or county including
 422 the right to regulate rates when vehicles or vessels are towed
 423 from private property.

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

428 (4) When a person improperly causes a vehicle or vessel to
 429 be removed, such person shall be liable to the owner or lessee
 430 of the vehicle or vessel for the cost of removal,
 431 transportation, and storage; any damages resulting from the
 432 removal, transportation, or storage of the vehicle or vessel;
 433 attorney's ~~attorneys'~~ fees; and court costs.

434 (5)(a) Any person who violates ~~the provisions of~~
 435 subparagraph (2)(a)2. or subparagraph (2)(a)6. commits is guilty
 436 ~~of~~ a misdemeanor of the first degree, punishable as provided in
 437 s. 775.082 or s. 775.083.

438 (b) Any person who violates sub-subparagraph (2)(a)1.a.,
 439 subparagraph (2)(a)3., subparagraph (2)(a)4., ~~the provisions of~~
 440 subparagraph (2)(a)7., or subparagraph (2)(a)9. commits is
 441 ~~guilty of~~ a felony of the third degree, punishable as provided
 442 in s. 775.082, s. 775.083, or s. 775.084.

443 Section 4. This act shall take effect July 1, 2005.