

CHAMBER ACTION

1 The Transportation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

HB571

2005
CS

24 notice of removal; exempting certain vessels; revising
25 liability provisions; providing penalties for specified
26 violations; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Subsection (1) of section 323.001, Florida
31 Statutes, is republished, and paragraph (c) of subsection (2) of
32 said section is amended, to read:

33 323.001 Wrecker operator storage facilities; vehicle
34 holds.--

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

39 (2) The investigating agency must notify the wrecker
40 operator in writing within 5 days, excluding holidays and
41 weekends, whether the hold is to be continued. If no
42 notification follows this period of time, the wrecker operator
43 may release the vehicle to the designated person pursuant to s.
44 713.78.

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

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

50 713.78 Liens for recovering, towing, or storing vehicles
51 and vessels.--

HB571

2005
CS

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

56 (a) The owner thereof; ~~or~~

57 (b) The owner or lessor, or a person authorized by the
 58 owner or lessor, of property on which such vehicle or vessel is
 59 wrongfully parked, and such removal is done in compliance with
 60 s. 715.07; ~~or~~

61 (c) Any law enforcement agency; or

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

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

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

HB571

2005
CS

80 (b) Whenever any law enforcement agency authorizes the
81 removal of a vehicle or vessel or whenever any towing service,
82 garage, repair shop, or automotive service, storage, or parking
83 place notifies the law enforcement agency of possession of a
84 vehicle or vessel pursuant to s. 715.07(2)(a)2., the applicable
85 law enforcement agency shall contact the Department of Highway
86 Safety and Motor Vehicles, or the appropriate agency of the
87 state of registration, if known, within 24 hours through the
88 medium of electronic communications, giving the full description
89 of the vehicle or vessel. Upon receipt of the full description
90 of the vehicle or vessel, the department shall search its files
91 to determine the owner's name, the insurance company insuring
92 the vehicle or vessel, and whether any person has filed a lien
93 upon the vehicle or vessel as provided in s. 319.27(2) and (3)
94 and notify the applicable law enforcement agency within 72
95 hours. The person in charge of the towing service, garage,
96 repair shop, or automotive service, storage, or parking place
97 shall obtain such information from the applicable law
98 enforcement agency within 5 days from the date of storage and
99 shall give notice pursuant to paragraph (a). The department may
100 release the insurance company information to the requestor
101 notwithstanding the provisions of s. 627.736.

102 (c) Notice by certified mail, return receipt requested,
103 shall be sent within 7 business days after the date of storage
104 of the vehicle or vessel to the registered owner, the insurance
105 company insuring the vehicle notwithstanding the provisions of
106 s. 627.736, and all persons of record claiming a lien against
107 the vehicle or vessel. It shall state the fact of possession of

Page 4 of 17

HB571

2005
CS

108 | the vehicle or vessel, that a lien as provided in subsection (2)
 109 | is claimed, that charges have accrued and the amount thereof,
 110 | that the lien is subject to enforcement pursuant to law, and
 111 | that the owner or lienholder, if any, has the right to a hearing
 112 | as set forth in subsection (5), and that any vehicle or vessel
 113 | which remains unclaimed, or for which the charges for recovery,
 114 | towing, or storage services remain unpaid, may be sold free of
 115 | all prior liens after 35 days if the vehicle or vessel is more
 116 | than 3 years of age or after 50 days if the vehicle or vessel is
 117 | 3 years of age or less.

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

- 131 | 1. Check of vehicle or vessel for any type of tag, tag
 132 | record, temporary tag, or regular tag.
- 133 | 2. Check of law enforcement report for tag number or other
 134 | information identifying the vehicle or vessel, if the vehicle or
 135 | vessel was towed at the request of a law enforcement officer.

HB571

2005
CS

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

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

142 5. Check of vehicle or vessel for inspection sticker or
143 other stickers and decals that may indicate a state of possible
144 registration.

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

148 7. Check of vehicle for vehicle identification number.

149 8. Check of vessel for vessel registration number.

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

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

HB 571

2005
CS

163 (b) Upon filing of a complaint, an owner or lienholder may
 164 have her or his vehicle or vessel released upon posting with the
 165 court a cash or surety bond or other adequate security equal to
 166 the amount of the charges for towing or storage and lot rental
 167 amount to ensure the payment of such charges in the event she or
 168 he does not prevail. Upon the posting of the bond and the
 169 payment of the applicable fee set forth in s. 28.24, the clerk
 170 of the court shall issue a certificate notifying the lienor of
 171 the posting of the bond and directing the lienor to release the
 172 vehicle or vessel. At the time of such release, after reasonable
 173 inspection, she or he shall give a receipt to the towing-storage
 174 company reciting any claims she or he has for loss or damage to
 175 the vehicle or vessel or the contents thereof.

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

184 (7)(a) A wrecker operator recovering, towing, or storing
 185 vehicles or vessels is not liable for damages connected with
 186 such services, theft of such vehicles or vessels, or theft of
 187 personal property contained in such vehicles or vessels,
 188 provided that such services have been performed with reasonable
 189 care and provided, further, that, in the case of removal of a
 190 vehicle or vessel upon the request of a person purporting, and

HB571

2005
CS

191 reasonably appearing, to be the owner or lessee, or a person
 192 authorized by the owner or lessee, of the property from which
 193 such vehicle or vessel is removed, such removal has been done in
 194 compliance with s. 715.07. Further, a wrecker operator is not
 195 liable for damage to vehicles, vessels, or cargo which is
 196 connected with such services when complying with the lawful
 197 directions of a law enforcement officer to remove a vehicle or
 198 vessel stopped, standing, or parked upon a street or highway in
 199 such a position as to obstruct the normal movement of traffic or
 200 in such a condition as to create a hazard to other traffic upon
 201 the street or highway.

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

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

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

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

HB571

2005
CS

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

220 b. A security dog remains at the storage facility from
221 sunset to sunrise;

222 c. Security cameras or other similar surveillance devices
223 monitor the storage facility; or

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

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

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

HB571

2005
CS

245 | the vehicle or vessel came into the custody of the person
246 | providing such services.

247 | Section 3. Section 715.07, Florida Statutes, is amended to
248 | read:

249 | 715.07 Vehicles or vessels parked on private property;
250 | towing.--

251 | (1) As used in this section, the term "vehicle" means any
252 | mobile item which normally uses wheels, whether motorized or
253 | not.

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

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

269 | 1.a. Any towed or removed vehicle or vessel must be stored
270 | at a site within a 10-mile radius ~~10 miles~~ of the point of
271 | removal in any county of 500,000 population or more, and within
272 | a 15-mile radius ~~15 miles~~ of the point of removal in any county

HB 571

2005
CS

273 of less than 500,000 population. That site must be open for the
 274 purpose of redemption of vehicles or vessels on any day that the
 275 person or firm towing such vehicle or vessel is open for towing
 276 purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall
 277 have prominently posted a sign indicating a telephone number
 278 where the operator of the site can be reached at all times. Upon
 279 receipt of a telephoned request to open the site to redeem a
 280 vehicle or vessel, the operator shall return to the site within
 281 1 hour or she or he will be in violation of this section.

282 b. If no towing business providing such service is located
 283 within the area of towing limitations set forth in sub-
 284 subparagraph a., the following limitations apply: any towed or
 285 removed vehicle or vessel must be stored at a site within a 20-
 286 mile radius ~~20 miles~~ of the point of removal in any county of
 287 500,000 population or more, and within a 30-mile radius ~~30 miles~~
 288 of the point of removal in any county of less than 500,000
 289 population.

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

HB571

2005
CS

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

311 4. No person or firm towing or removing vehicles or
 312 vessels, or employee or agent of any such person or firm, may
 313 give a ~~The~~ rebate or payment of money or any other valuable
 314 consideration ~~from the individual or firm towing or removing~~
 315 ~~vehicles~~ to the owner ~~owners or operators~~ of the premises from
 316 which a vehicle or vessel is ~~the vehicles are~~ towed or removed,
 317 for the privilege of removing or towing the vehicle or vessel
 318 ~~those vehicles, is prohibited.~~ A property owner may not solicit
 319 a person or firm towing or removing vehicles or vessels, or an
 320 employee or agent of any such person or firm, to give him or her
 321 a rebate or the payment of money or other valuable consideration
 322 for the privilege of removing or towing a vehicle or vessel from
 323 the owner's premises.

324 5. Except for property appurtenant to and obviously a part
 325 of a single-family residence, and except for instances when
 326 notice is personally given to the owner or other legally
 327 authorized person in control of the vehicle or vessel that the

HB571

2005
CS

328 | area in which that vehicle or vessel is parked is reserved or
 329 | otherwise unavailable for unauthorized vehicles or vessels and
 330 | that the vehicle or vessel is subject to being removed at the
 331 | owner's or operator's expense, any property owner or lessee, or
 332 | person authorized by the property owner or lessee, prior to
 333 | towing or removing any vehicle or vessel from private property
 334 | without the consent of the owner or other legally authorized
 335 | person in control of that vehicle or vessel, must post a notice
 336 | meeting the following requirements:

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

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

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

352 | d. The sign structure containing the required notices must
 353 | be permanently installed with the words "tow-away zone" not less
 354 | than 3 feet and not more than 6 feet above ground level and must

HB571

2005
CS

355 | be continuously maintained on the property for not less than 24
356 | hours prior to the towing or removal of any vehicles or vessels.

357 | e. The local government may require permitting and
358 | inspection of these signs prior to any towing or removal of
359 | vehicles or vessels being authorized.

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

366 | g. A property owner towing or removing vessels from real
367 | property must post notice, consistent with the requirements in
368 | sub-subparagraphs a.-f., which apply to vehicles, that
369 | unauthorized vehicles or vessels will be towed away at the
370 | owner's expense.

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

380 | 6. Any person or firm that tows or removes vehicles or
381 | vessels and proposes to require an owner, operator, or person in
382 | control of a vehicle or vessel to pay the costs of towing and

HB 571

2005
CS

383 storage prior to redemption of the vehicle or vessel must file
384 and keep on record with the local law enforcement agency a
385 complete copy of the current rates to be charged for such
386 services and post at the storage site an identical rate schedule
387 and any written contracts with property owners, lessees, or
388 persons in control of property which authorize such person or
389 firm to remove vehicles or vessels as provided in this section.

390 7. Any person or firm towing or removing any vehicles or
391 vessels from private property without the consent of the owner
392 or other legally authorized person in control of the vehicles or
393 vessels shall, on any trucks, wreckers as defined in s.
394 713.78(1)(c), or other vehicles used in the towing or removal,
395 have the name, address, and telephone number of the company
396 performing such service clearly printed in contrasting colors on
397 the driver and passenger sides of the vehicle. The name shall be
398 in at least 3-inch permanently affixed letters, and the address
399 and telephone number shall be in at least 1-inch permanently
400 affixed letters.

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

407 9. When a vehicle or vessel has been towed or removed
408 pursuant to this section, it must be released to its owner or
409 custodian within one hour after requested. Any vehicle or vessel
410 owner, ~~custodian,~~ or agent shall have the right to inspect the

HB571

2005
CS

411 | vehicle or vessel before accepting its return, and no release or
 412 | waiver of any kind which would release the person or firm towing
 413 | the vehicle or vessel from liability for damages noted by the
 414 | owner or other legally authorized person at the time of the
 415 | redemption may be required from any vehicle or vessel owner,
 416 | custodian, or agent as a condition of release of the vehicle or
 417 | vessel to its owner. A detailed, signed receipt showing the
 418 | legal name of the company or person towing or removing the
 419 | vehicle or vessel must be given to the person paying towing or
 420 | storage charges at the time of payment, whether requested or
 421 | not.

422 | (b) The ~~These~~ requirements of this subsection are ~~shall be~~
 423 | ~~the~~ minimum standards and do ~~shall~~ not preclude enactment of
 424 | additional regulations by any municipality or county including
 425 | the right to regulate rates when vehicles or vessels are towed
 426 | from private property.

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

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

437 | (5)(a) Any person who violates ~~the provisions of~~
 438 | subparagraph (2)(a)2. or subparagraph (2)(a)6. commits ~~is guilty~~

HB571

2005
CS

439 ~~of~~ a misdemeanor of the first degree, punishable as provided in
440 s. 775.082 or s. 775.083.

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

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