

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 1218

INTRODUCER: Judiciary Committee and Senators Bennett and Crist

SUBJECT: Recovery Liens for Vehicles and Vessels

DATE: March 17, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/2 amendments</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to send notices of liens to persons with an interest in a vehicle or vessel that is in the possession of a wrecker operator. The bill also requires the Division of Florida Highway Patrol of the DHSMV to adjust its rates for its wrecker operator system annually based on the Consumer Price Index. Under the bill, these adjusted rates serve as the wrecker operator rates in counties and municipalities that are not governed by a wrecker-rate ordinance.

This bill substantially amends the following sections of the Florida Statutes: 125.0103, 166.043, 321.051, and 713.78.

II. Present Situation:

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Under s. 713.78(2), F.S., a wrecker operator has “a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee.” The owner of the vehicle or vessel, however, may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker operator tows and stores a vehicle or vessel, the wrecker operator must send notice to the registered owner, the insurance company insuring the vehicle, and all lienholders, as disclosed by state agency records.¹ The wrecker operator must send notice by certified mail, return receipt requested, within seven business days after the date of storage of the vehicle.² The notice must state that:

¹ Section 713.78(4)(a), F.S.

² Section 713.78(4)(c), F.S.

- the wrecker operator has taken possession of the vehicle or vessel;
- a lien is claimed by the towing-storage operator;
- the amount of the towing and storage charges accrued;
- the lien claimed is enforceable by law;
- the owner or other lienholder is entitled to a hearing to determine whether her or his property was wrongfully taken from her or him; and
- a vehicle or vessel which remains unclaimed, or for which recovery, towing, or storage charges remain unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than three years old, or after 50 days if the vehicle or vessel is three years of age or less.

If unable to locate the name and address of the owner or lienholder, the wrecker operator must notify the local public agency by certified mail indicating the lack of ownership information.³

Vehicles or vessels remaining unclaimed may be sold by public auction by the wrecker operator for towing and storage charges.⁴ For vehicles or vessels more than three years old, the sale may take place no sooner than 35 days from the time the vehicle or vessel was stored. For vehicles or vessels three years old or less, the sale may not take place sooner than 50 days from the time of storage. If the date of the sale was not included in the initial notification to the owner and any lienholder, notice must be given by certified mail, return receipt requested, to the owner and any lienholder with the information no later than 15 days before the sale. Additionally, the sale must be advertised once in a general circulation newspaper, at least 10 days before the sale. Proceeds of the sale, less the towing and storage costs, and the cost of the sale, are deposited with the clerk of the circuit court if the owner is absent.

Towing Rates

Counties and municipalities are authorized by ss. 125.0103 and 166.043, F.S., to establish towing and storage rates. The Division of Highway Patrol of the Department of Highway Safety and Motor Vehicles (division) uses a wrecker operator system to allocate towing requests to wrecker operators to remove wrecked, disabled, and abandoned vehicles from roadways. As provided in s. 321.051, F.S., the division is authorized to set maximum towing and storage rates where rates are not set by a county or municipality. These towing and storage charges are paid by vehicle owners.

III. Effect of Proposed Changes:

This bill requires the Department of Highway Safety and Motor Vehicles (DHSMV) to send notices of liens to persons with an interest in a vehicle or vessel that is in the possession of a wrecker operator. The DHSMV will locate these individuals based on information supplied in an application from a wrecker operator. Existing law requires wrecker operators to send out these notices by certified mail, return receipt requested. The DHSMV is authorized to charge wrecker operators \$4 per application, plus the service fees in s. 320.04, F.S. The service charges in

³ Section 713.78(4)(d), F.S.

⁴ Section 713.78(6), F.S.

s. 320.04, F.S., however, apply to the issuance of license plates, mobile home stickers, or validation stickers. As such, the service charges in s. 320.04, F.S., appear to be inapplicable to the applications described in the bill. Accordingly, the Legislature may wish to revise the bill to establish the application fee without a reference to s. 320.04, F.S.

The bill also requires specific information to be included in the public notice published in a newspaper of the sale of a vehicle or vessel that will be sold for liens. That information must include: the vehicle or vessel identification number or hull number; a description of the vehicle or vessel; and the name of the owner, if known. Existing law does not require any specific information to be included in the notice.

Lastly, the bill requires the Division of Florida Highway Patrol of the DHSMV to adjust its rates for its wrecker operator system annually based on the Consumer Price Index. Under the bill, these adjusted rates serve as the wrecker operator rates in counties and municipalities that are not governed by a wrecker-rate ordinance.

The bill takes effect on July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The DHSMV is authorized to charge wrecker operators \$4 plus the service fees in s. 320.04, F.S., to send notices to persons with an interest in a vehicle or vessel. The service charges in s. 320.04, F.S., however, apply to the issuance of license plates, mobile home stickers, or validation stickers. As such, the service charges in s. 320.04, F.S., appear to be inapplicable to the applications described in the bill. Accordingly, the Legislature may wish to revise the bill to establish the application fee without a reference to s. 320.04, F.S.

B. Private Sector Impact:

The duty to mail notices is imposed by the bill on the DHSMV and removed from wrecker operators. Wrecker operators have to pay an application fee of \$4 plus a service

charge to the DHSMV for mailing the notices. The costs that wreckers currently have to pay for mailing notices by certified mail, return receipt requested may be less than the application fee to DHSMV.⁵

The bill requires specific information to be printed in public notices in newspapers advertising the sale of vehicles to be sold for liens. No particular information is required under current law. If more information must be placed in the notices than is provided under current practices, costs for publishing the notices will increase.

The bill provides that towing rates in counties and municipalities not governed by a wrecker-rate ordinance are the rates established by the wrecker operator system of the Division of Highway Patrol. It is unknown whether these rates are higher or lower than rates currently charged to consumers.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles (DHSMV) will incur costs to process applications to send notices of liens. The DHSMV will also incur costs to mail the notices.

VI. Technical Deficiencies:

The DHSMV is authorized to charge wrecker operators \$4 plus the service fees in s. 320.04, F.S., to send notices to persons with an interest in a vehicle or vessel. The service charges in s. 320.04, F.S., however, apply to the issuance of license plates, mobile home stickers, or validation stickers. As such, the service charges in s. 320.04, F.S., appear to be inapplicable to the applications described in the bill. Accordingly, the Legislature may wish to revise the bill to establish the application fee without a reference to s. 320.04, F.S.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

⁵ The cost of sending a letter by certified mail, return receipt requested by mail, is \$4.64.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
