

By the Committee on Judiciary; and Senators Bennett and Crist

590-1903-06

1                                   A bill to be entitled  
2           An act relating to recovering, towing, or  
3           storing vehicles and vessels; amending ss.  
4           125.0103 and 166.043, F.S.; prescribing the  
5           rates for towing and storage in counties and  
6           municipalities that have not established rates;  
7           amending s. 321.051, F.S.; requiring the rates  
8           for the wrecker operator system of the Florida  
9           Highway Patrol to be established and adjusted  
10          annually based on the Consumer Price Index;  
11          amending s. 713.78, F.S.; revising certain  
12          requirements that notice be provided by mail to  
13          the owner, insurance company, and persons  
14          claiming a lien against the vehicle or vessel;  
15          providing duties of the Department of Highway  
16          Safety and Motor Vehicles and of towing-storage  
17          operators; revising certain public notice  
18          requirements related to the sale of unclaimed  
19          vehicles or vessels; providing for rulemaking  
20          by the department; providing an effective date.  
21  
22 Be It Enacted by the Legislature of the State of Florida:  
23  
24           Section 1. Paragraph (c) of subsection (1) of section  
25 125.0103, Florida Statutes, is amended to read:  
26           125.0103 Ordinances and rules imposing price controls;  
27 findings required; procedures.--  
28           (1)  
29           (c) Counties must establish maximum rates which may be  
30 charged on the towing of vehicles from or immobilization of  
31 vehicles on private property, removal and storage of wrecked

1 or disabled vehicles from an accident scene or for the removal  
2 and storage of vehicles, in the event the owner or operator is  
3 incapacitated, unavailable, leaves the procurement of wrecker  
4 service to the law enforcement officer at the scene, or  
5 otherwise does not consent to the removal of the vehicle.  
6 However, if a municipality chooses to enact an ordinance  
7 establishing the maximum fees for the towing or immobilization  
8 of vehicles as described in paragraph (b), the county's  
9 ordinance shall not apply within such municipality. Except as  
10 provided by a municipality, the rates for a county shall be  
11 the rates established for the wrecker operator system of the  
12 Division of Florida Highway Patrol of the Department of  
13 Highway Safety and Motor Vehicles under s. 321.051.

14 Section 2. Paragraph (c) of subsection (1) of section  
15 166.043, Florida Statutes, is amended to read:

16 166.043 Ordinances and rules imposing price controls;  
17 findings required; procedures.--

18 (1)

19 (c) Counties must establish maximum rates which may be  
20 charged on the towing of vehicles from or immobilization of  
21 vehicles on private property, removal and storage of wrecked  
22 or disabled vehicles from an accident scene or for the removal  
23 and storage of vehicles, in the event the owner or operator is  
24 incapacitated, unavailable, leaves the procurement of wrecker  
25 service to the law enforcement officer at the scene, or  
26 otherwise does not consent to the removal of the vehicle.  
27 However, if a municipality chooses to enact an ordinance  
28 establishing the maximum fees for the towing or immobilization  
29 of vehicles as described in paragraph (b), the county's  
30 ordinance established under s. 125.0103 shall not apply within  
31 such municipality. In a county or municipality that has not

1 established rates, the rates shall be the rates established  
2 for the wrecker operator system of the Division of Florida  
3 Highway Patrol of the Department of Highway Safety and Motor  
4 Vehicles under s. 321.051.

5 Section 3. Subsection (2) of section 321.051, Florida  
6 Statutes, is amended to read:

7 321.051 Florida Highway Patrol wrecker operator  
8 system; penalties for operation outside of system.--

9 (2) The Division of Florida Highway Patrol of the  
10 Department of Highway Safety and Motor Vehicles is authorized  
11 to establish within areas designated by the patrol a wrecker  
12 operator system using qualified, reputable wrecker operators  
13 for removal and storage of wrecked or disabled vehicles from a  
14 crash scene or for removal and storage of abandoned vehicles,  
15 in the event the owner or operator is incapacitated or  
16 unavailable or leaves the procurement of wrecker service to  
17 the officer at the scene. All reputable wrecker operators  
18 shall be eligible for use in the system provided their  
19 equipment and drivers meet recognized safety qualifications  
20 and mechanical standards set by rules of the Division of  
21 Florida Highway Patrol for the size of vehicle it is designed  
22 to handle. The division is authorized to limit the number of  
23 wrecker operators participating in the wrecker operator  
24 system, which authority shall not affect wrecker operators  
25 currently participating in the system established by this  
26 section. The division must ~~is authorized to~~ establish maximum  
27 rates for the towing and storage of vehicles removed at the  
28 division's request, where such rates have not been set by a  
29 county or municipality pursuant to s. 125.0103 or s. 166.043.  
30 These rates must be adjusted annually based on the Consumer  
31 Price Index. Such rates shall not be considered rules for the

1 | purpose of chapter 120; however, the department shall  
2 | establish by rule a procedure for setting such rates. Any  
3 | provision in chapter 120 to the contrary notwithstanding, a  
4 | final order of the department denying, suspending, or revoking  
5 | a wrecker operator's participation in the system shall be  
6 | reviewable in the manner and within the time provided by the  
7 | Florida Rules of Appellate Procedure only by a writ of  
8 | certiorari issued by the circuit court in the county wherein  
9 | such wrecker operator resides.

10 |         Section 4. Subsections (1), (4), and (6) and paragraph  
11 | (g) of subsection (13) of section 713.78, Florida Statutes,  
12 | are amended to read:

13 |         713.78 Liens for recovering, towing, or storing  
14 | vehicles and vessels.--

15 |         (1) For the purposes of this section, the term:

16 |         (a) "Department" means the Department of Highway  
17 | Safety and Motor Vehicles.

18 |         (b)(a) "Vehicle" means any mobile item, whether  
19 | motorized or not, which is mounted on wheels.

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

24 |         (d)(c) "Wrecker" means any truck or other vehicle  
25 | which is used to tow, carry, or otherwise transport motor  
26 | vehicles or vessels upon the streets and highways of this  
27 | state and which is equipped for that purpose with a boom,  
28 | winch, car carrier, or other similar equipment.

29 |         (4)(a) Any person regularly engaged in the business of  
30 | recovering, towing, or storing vehicles or vessels who comes  
31 | into possession of a vehicle or vessel pursuant to subsection

1 (2), and who claims a lien for recovery, towing, or storage  
2 services, shall give notice to the registered owner, the  
3 insurance company insuring the vehicle notwithstanding the  
4 provisions of s. 627.736, and to all persons claiming a lien  
5 thereon, by submitting an application for notifications to the  
6 department on a form prescribed by the department within 7  
7 business days after the date of storage of the vehicle or  
8 vessel as disclosed by the records in the Department of  
9 Highway Safety and Motor Vehicles or of a corresponding agency  
10 in any other state.

11 (b) Whenever any law enforcement agency authorizes the  
12 removal of a vehicle or vessel or whenever any towing service,  
13 garage, repair shop, or automotive service, storage, or  
14 parking place notifies the law enforcement agency of  
15 possession of a vehicle or vessel pursuant to s.  
16 715.07(2)(a)2., the applicable law enforcement agency shall  
17 contact the Department of Highway Safety and Motor Vehicles,  
18 or the appropriate agency of the state of registration, if  
19 known, within 24 hours through the medium of electronic  
20 communications, giving the full description of the vehicle or  
21 vessel. Upon receipt of the full description of the vehicle or  
22 vessel, the department shall search its files to determine the  
23 owner's name, the insurance company insuring the vehicle or  
24 vessel, and whether any person has filed a lien upon the  
25 vehicle or vessel as provided in s. 319.27(2) and (3) and  
26 notify the applicable law enforcement agency within 72 hours.  
27 The person in charge of the towing service, garage, repair  
28 shop, or automotive service, storage, or parking place shall  
29 obtain such information from the applicable law enforcement  
30 agency within 5 days after the date of storage and shall give  
31 notice pursuant to paragraph (a). ~~The department may release~~

1 ~~the insurance company information to the requestor~~  
2 ~~notwithstanding the provisions of s. 627.736.~~

3       (c) Upon receipt of a valid and complete application  
4 for notifications, the required notification fee in the amount  
5 of \$4, and service fees as indicated in s. 320.04, the  
6 department shall notify ~~Notice by certified mail, return~~  
7 ~~receipt requested, shall be sent within 7 business days after~~  
8 ~~the date of storage of the vehicle or vessel to the registered~~  
9 owner, the insurance company insuring the vehicle  
10 notwithstanding the provisions of s. 627.736, and all persons  
11 of record claiming a lien against the vehicle or vessel. The  
12 notification must indicate the company or individual who has  
13 ~~It shall state the fact of possession of the vehicle or~~  
14 vessel, that a lien as provided in subsection (2) is claimed,  
15 that charges have accrued and the amount thereof, that the  
16 lien is subject to enforcement pursuant to law, and that the  
17 owner or lienholder, if any, has the right to a hearing as set  
18 forth in subsection (5), and that any vehicle or vessel which  
19 remains unclaimed, or for which the charges for recovery,  
20 towing, or storage services remain unpaid, may be sold free of  
21 all prior liens after 35 days if the vehicle or vessel is more  
22 than 3 years of age or after 50 days if the vehicle or vessel  
23 is 3 years of age or less.

24       (d) If attempts to locate the name and address of the  
25 owner or lienholder prove unsuccessful, the department shall  
26 notify the towing-storage operator that the department shall,  
27 ~~after 7 working days, excluding Saturday and Sunday, of the~~  
28 ~~initial tow or storage, notify the public agency of~~  
29 ~~jurisdiction in writing by certified mail or acknowledged hand~~  
30 ~~delivery that the towing storage company has been unable to~~  
31 locate the name and address of the owner or lienholder and a

1 | physical search of the vehicle or vessel has disclosed no  
2 | ownership information and a good faith effort has been made.  
3 | For purposes of this paragraph and subsection (9), "good faith  
4 | effort" means that the following checks have been performed by  
5 | the towing-storage operator and the results have been reported  
6 | to the department ~~company~~ to establish prior state of  
7 | registration and for title:  
8 |       1. Check of vehicle or vessel for any type of tag, tag  
9 | record, temporary tag, or regular tag.  
10 |       2. Check of law enforcement report for tag number or  
11 | other information identifying the vehicle or vessel, if the  
12 | vehicle or vessel was towed at the request of a law  
13 | enforcement officer.  
14 |       3. Check of trip sheet or tow ticket of tow truck  
15 | operator to see if a tag was on vehicle or vessel at beginning  
16 | of tow, if private tow.  
17 |       4. If there is no address of the owner on the impound  
18 | report, check of law enforcement report to see if an  
19 | out-of-state address is indicated from driver license  
20 | information.  
21 |       5. Check of vehicle or vessel for inspection sticker  
22 | or other stickers and decals that may indicate a state of  
23 | possible registration.  
24 |       6. Check of the interior of the vehicle or vessel for  
25 | any papers that may be in the glove box, trunk, or other areas  
26 | for a state of registration.  
27 |       7. Check of vehicle for vehicle identification number.  
28 |       8. Check of vessel for vessel registration number.  
29 |       9. Check of vessel hull for a hull identification  
30 | number which should be carved, burned, stamped, embossed, or  
31 | otherwise permanently affixed to the outboard side of the

1 | transom or, if there is no transom, to the outmost seaboard  
2 | side at the end of the hull that bears the rudder or other  
3 | steering mechanism.

4 |         (6) Any vehicle or vessel which is stored pursuant to  
5 | subsection (2) and which remains unclaimed, or for which  
6 | reasonable charges for recovery, towing, or storing remain  
7 | unpaid, and any contents not released pursuant to subsection  
8 | (10), may be sold by the owner or operator of the storage  
9 | space for such towing or storage charge after 35 days from the  
10 | time the vehicle or vessel is stored therein if the vehicle or  
11 | vessel is more than 3 years of age or after 50 days following  
12 | the time the vehicle or vessel is stored therein if the  
13 | vehicle or vessel is 3 years of age or less. The sale shall be  
14 | at public auction for cash. ~~If the date of the sale was not~~  
15 | ~~included in the notice required in subsection (4), notice of~~  
16 | ~~the sale shall be given to the person in whose name the~~  
17 | ~~vehicle or vessel is registered and to all persons claiming a~~  
18 | ~~lien on the vehicle or vessel as shown on the records of the~~  
19 | ~~Department of Highway Safety and Motor Vehicles or of the~~  
20 | ~~corresponding agency in any other state. Notice shall be sent~~  
21 | ~~by certified mail, return receipt requested, to the owner of~~  
22 | ~~the vehicle or vessel and the person having the recorded lien~~  
23 | ~~on the vehicle or vessel at the address shown on the records~~  
24 | ~~of the registering agency and shall be mailed not less than 15~~  
25 | ~~days before the date of the sale. After diligent search and~~  
26 | ~~inquiry, if the name and address of the registered owner or~~  
27 | ~~the owner of the recorded lien cannot be ascertained, the~~  
28 | ~~requirements of notice by mail may be dispensed with. In~~  
29 | addition to the notice by mail, public notice of the time and  
30 | place of sale shall be made by publishing a notice thereof one  
31 | time, at least 10 days prior to the date of the sale, in a



1 newspaper of general circulation in the county in which the  
2 sale is to be held. Such public notice must include the  
3 vehicle or vessel identification number or hull number; a  
4 description of the vehicle or vessel, including make, model,  
5 and year of manufacture; and, if known, the name of the  
6 registered owner of the vehicle or vessel. The proceeds of  
7 the sale, after payment of reasonable towing and storage  
8 charges, and costs of the sale, in that order of priority,  
9 shall be deposited with the clerk of the circuit court for the  
10 county if the owner is absent, and the clerk shall hold such  
11 proceeds subject to the claim of the person legally entitled  
12 thereto. The clerk shall be entitled to receive 5 percent of  
13 such proceeds for the care and disbursement thereof. The  
14 certificate of title issued under this law shall be discharged  
15 of all liens unless otherwise provided by court order.

16 (13)

17 (g) The Department of Highway Safety and Motor  
18 Vehicles may adopt rules pursuant to ss. 120.536(1) and 120.54  
19 to implement this section ~~subsection~~.

20 Section 5. This act shall take effect July 1, 2006.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1218

The committee substitute makes the following substantial changes to the underlying bill:

- Requires the Department of Highway Safety and Motor Vehicles (DHSMV), rather than wrecker operators, to send notices of liens;
- Authorizes the DHSMV to charge wrecker operators an application fee for sending notices;
- Requires the Division of Highway Patrol to adjust rates annually for its wrecker operator system in accordance with the Consumer Price Index;
- Provides that the wrecker rates in counties and municipalities not governed by a wrecker-rate ordinance are the rates for the wrecker operator system of the Division of Highway Patrol;
- Requires specific information to be contained in public notices advertising the sale of vehicles and vessels to be sold to satisfy liens; and
- Removes amendments traveling with the bill.