

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill reduces the regulatory requirements imposed on a business that tows, recovers, or stores vehicles or vessels.

B. EFFECT OF PROPOSED CHANGES:

Section 713.78, F.S., provides when a company properly tows a vehicle or vessel, the company has a lien against the vehicle or vessel for payment of reasonable recovery, towing and storage fees.¹ Within 7 business days, the company must determine the name and address of the registered owner, all lien holders, and the vehicle or vessel's insurer, by searching records held by the Department of Highway Safety and Motor Vehicles (DHSMV) or corresponding agency in other states.² Also within those 7 business days, the company must send a notice by certified mail, return receipt requested, to the owner, lien holders, and insurance company, notice that includes:³

- A statement that the company has taken possession of the vehicle or vessel;
- That a lien is claimed;
- The amount of the towing and storage charges accrued;
- That the lien claimed is enforceable by law;
- That the owner or other lienholder is entitled to a hearing to determine whether her or his vehicle or vessel was wrongfully taken from her or him; and
- That 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 3 years old, or after 50 days if the vehicle or vessel is 3 years of age or less.

If unable to locate the name and address of the owner or lienholder, the company must notify the local public agency by certified mail indicating the lack of ownership information.⁴

Vehicles or vessels remaining unclaimed may be sold at public auction. 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.⁵ For vehicles or vessels three years old or less, the sale may not take place sooner than 50 days from the time of storage.⁶ 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.⁷

¹ The owner of the vehicle or vessel may not be charged storage fees if the vehicle has been stored for less than 6 hours. Section 713.78(2), F.S.

² Section 713.78(4)(a), F.S.

³ Section 713.78(4)(c), F.S.

⁴ Section 713.78(4)(d), F.S.

⁵ Section 713.78(6), F.S.

⁶ *Id.*

⁷ *Id.*

The United States Post Office describes certified mail service, and return receipt service, as follows:

With Certified Mail™ you can be sure your article arrived at its destination with access to online delivery information. When you use Certified Mail, you receive a receipt stamped with the date of mailing. A unique article number allows you to verify delivery online. As an additional security feature, the recipient's signature is obtained at the time of delivery and a record is maintained by the Post Office™. For an additional fee, you can request a copy of the signature record before or after delivery with Return Receipt.⁸

Choose Return Receipt when you want proof of delivery (information about the recipient's signature and actual delivery address). A return receipt may be purchased before or after the mailing. A mailer purchasing return receipt service at the time of mailing may choose to receive the return receipt by mail or e-mail. Mailers that receive the return receipt in the mail receive a green postcard with the recipient's actual signature. Mailers that receive the return receipt via e-mail receive a proof of delivery letter arriving as a PDF attachment that includes an image of the recipient's signature.⁹

Currently, certified mail service alone is \$2.40, and return receipt service is an additional \$1.85.

Effect of Bill

This bill removes the requirement that notices regarding the lien for recovery, towing and storage of a vehicle or vessel be sent using only certified mail service. This bill eliminates the requirement to use return receipt service.

This bill requires the company sending notice to retain the proof of mailing, and must provide the proof of mailing to any person involved in the lien.

In the event an unclaimed vehicle or vessel is sold at public auction to recover towing and storage charges, the bill also provides for towing-storage operators to be paid for "other applicable charges." Neither current law nor the bill define what the term "other applicable charges" includes.

C. SECTION DIRECTORY:

Section 1 amends s. 713.78, F.S., to eliminate the requirement to use return receipt requested service when mailing notices regarding a lien against a vehicle or vessel for recovery, towing or storage.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁸ <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm>

⁹ <http://www.usps.com/send/waystosendmail/extraservices/returnreceiptservice.htm>

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce the cost to send a notice required by s. 713.78, F.S., by \$1.85.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires a company that provides recovery, towing or storage services for vehicles or vessels to retain the proof of mailing and provide it to any person involved in the action upon request. As written, it requires the company to provide the original document. Also, it is unclear the length of time the proof of mailing must be maintained. The retention of these records could perhaps be tied to a statute of limitations, for example the general statute of limitations located in s. 95.11(3), F.S., or 4 years.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a