

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill increases the duties imposed on the Department of Highway Safety and Motor Vehicles.

B. EFFECT OF PROPOSED CHANGES:

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:

- 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 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.⁴ For vehicles or vessels three years old or less, the sale may not take place sooner than 50 days from the time of storage.⁵ 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.⁶

¹ Section 713.78(4)(a), F.S.

² Section 713.78(4)(c), F.S.

³ Section 713.78(4)(d), F.S.

⁴ Section 713.78(6), F.S.

⁵ *Id.*

⁶ *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.⁷

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.⁸

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

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.

Effect of Bill

This bill deletes the requirement for the towing-storage operator to provide notice, transferring the duty to 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 notify these persons based on information supplied in an application from a wrecker operator. The DHSMV is authorized to charge wrecker operators \$4 per application, plus the service fees in s. 320.04, F.S.⁹

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.

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.

⁷ <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm>

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

⁹ See Drafting Issues and Other Comments regarding the reference to s. 320.04, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown. See Fiscal Comments.

2. Expenditures:

Unknown. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The duty to mail notices is imposed by the bill on the Department of Highway Safety and Motor Vehicles 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 more than the application fee to the Department of Highway Safety and Motor Vehicles.

D. FISCAL COMMENTS:

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

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.

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:

This bill increases the rule making authority of the Department of Highway Safety Motor Vehicles.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Highway Safety and Motor Vehicles 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.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Civil Justice Committee adopted one amendment to the bill. The amendment changed the following:

- 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;
- 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;
- Increases the rulemaking authority of the Department of Highway Safety and Motor Vehicles; and
- 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.

The bill was then reported favorably with a committee substitute.