

CHAMBER ACTION

1 The Civil Justice 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 liens for recovering, towing, or
7 storing vehicles and vessels; amending ss. 125.0103 and
8 166.043, F.S.; applying certain vehicle towing and storage
9 rates established by the Division of Florida Highway
10 Patrol within certain counties; amending s. 321.051, F.S.;
11 requiring the division to set certain maximum towing and
12 storage rates for certain vehicles in certain areas of the
13 state; requiring annual rate adjustments based on the
14 Consumer Price Index; amending s. 713.78, F.S.; providing
15 a definition; revising certain procedures for notification
16 of a lien for recovery of certain towing and storage
17 costs; removing authority of the Department of Highway
18 Safety and Motor Vehicles to release certain insurance
19 company information; establishing fees; revising certain
20 contents of lien notification; revising requirements for
21 locating and notifying certain persons of the impending
22 public sale of certain vehicles or vessels; revising
23 certain public notice of the impending sale of an

HB 907

2006
CS

24 unclaimed vehicle or vessel; revising rulemaking
25 authority; providing an effective date.
26

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

29 Section 1. Paragraph (c) of subsection (1) of section
30 125.0103, Florida Statutes, is amended to read:

31 125.0103 Ordinances and rules imposing price controls;
32 findings required; procedures.--

33 (1)

34 (c)1. Counties must establish maximum rates ~~that which~~ may
35 be charged on the towing of vehicles from or immobilization of
36 vehicles on private property, removal and storage of wrecked or
37 disabled vehicles from an accident scene or for the removal and
38 storage of vehicles, in the event the owner or operator is
39 incapacitated, unavailable, leaves the procurement of wrecker
40 service to the law enforcement officer at the scene, or
41 otherwise does not consent to the removal of the vehicle.
42 However, if a municipality chooses to enact an ordinance
43 establishing the maximum fees for the towing or immobilization
44 of vehicles as described in paragraph (b), the county's
45 ordinance shall not apply within such municipality.

46 2. Beginning July 1, 2007, and notwithstanding any other
47 provision of law, in any county that has not adopted an
48 ordinance establishing the maximum rates that may be charged for
49 the towing and storage of vehicles as required by this section
50 and s. 166.043, the rates shall be equal to the rates
51 established by the Division of Florida Highway Patrol under s.

HB 907

2006
CS

52 321.051 and adjusted annually to reflect the Consumer Price
53 Index. No county may adopt an ordinance establishing a rate that
54 is less than the rate established by the Division of Florida
55 Highway Patrol, which also shall be adjusted annually to reflect
56 the Consumer Price Index.

57 Section 2. Paragraph (c) of subsection (1) of section
58 166.043, Florida Statutes, is amended to read:

59 166.043 Ordinances and rules imposing price controls;
60 findings required; procedures.--

61 (1)

62 (c)1. Counties must establish maximum rates that ~~which~~ may
63 be charged on the towing of vehicles from or immobilization of
64 vehicles on private property, removal and storage of wrecked or
65 disabled vehicles from an accident scene or for the removal and
66 storage of vehicles, in the event the owner or operator is
67 incapacitated, unavailable, leaves the procurement of wrecker
68 service to the law enforcement officer at the scene, or
69 otherwise does not consent to the removal of the vehicle.
70 However, if a municipality chooses to enact an ordinance
71 establishing the maximum fees for the towing or immobilization
72 of vehicles as described in paragraph (b), the county's
73 ordinance established under s. 125.0103 shall not apply within
74 such municipality.

75 2. Beginning July 1, 2007, and notwithstanding any other
76 provision of law, in any county that has not adopted an
77 ordinance establishing the maximum rates that may be charged for
78 the towing and storage of vehicles as required by s. 125.0103
79 and this section, the rates shall be equal to the rates

HB 907

2006
CS

80 | established by the Division of Florida Highway Patrol under s.
 81 | 321.051 and adjusted annually based on the Consumer Price Index.
 82 | No county may adopt an ordinance establishing a rate that is
 83 | less than the rate established by the Division of Florida
 84 | Highway Patrol, which also shall be adjusted annually based on
 85 | the Consumer Price Index.

86 | Section 3. Subsection (2) of section 321.051, Florida
 87 | Statutes, is amended to read:

88 | 321.051 Florida Highway Patrol wrecker operator system;
 89 | penalties for operation outside of system.--

90 | (2) The Division of Florida Highway Patrol of the
 91 | Department of Highway Safety and Motor Vehicles is authorized to
 92 | establish within areas designated by the patrol a wrecker
 93 | operator system using qualified, reputable wrecker operators for
 94 | removal and storage of wrecked or disabled vehicles from a crash
 95 | scene or for removal and storage of abandoned vehicles, in the
 96 | event the owner or operator is incapacitated or unavailable or
 97 | leaves the procurement of wrecker service to the officer at the
 98 | scene. All reputable wrecker operators shall be eligible for use
 99 | in the system provided their equipment and drivers meet
 100 | recognized safety qualifications and mechanical standards set by
 101 | rules of the Division of Florida Highway Patrol for the size of
 102 | vehicle it is designed to handle. The division is authorized to
 103 | limit the number of wrecker operators participating in the
 104 | wrecker operator system, which authority shall not affect
 105 | wrecker operators currently participating in the system
 106 | established by this section. The division must ~~is authorized to~~
 107 | establish maximum rates for the towing and storage of vehicles

HB 907

2006
CS

108 removed at the division's request, where such rates have not
 109 been set by a county or municipality pursuant to s. 125.0103 or
 110 s. 166.043. The rates must be adjusted annually based on the
 111 Consumer Price Index. Such rates shall not be considered rules
 112 for the purpose of chapter 120; however, the department shall
 113 establish by rule a procedure for setting such rates. Any
 114 provision in chapter 120 to the contrary notwithstanding, a
 115 final order of the department denying, suspending, or revoking a
 116 wrecker operator's participation in the system shall be
 117 reviewable in the manner and within the time provided by the
 118 Florida Rules of Appellate Procedure only by a writ of
 119 certiorari issued by the circuit court in the county wherein
 120 such wrecker operator resides.

121 Section 4. Paragraph (d) is added to subsection (1) of
 122 section 713.78, Florida Statutes, and subsections (4) and (6),
 123 paragraphs (b) and (c) of subsection (11), paragraph (d) of
 124 subsection (12), and paragraphs (a) and (g) of subsection (13)
 125 of that section are amended, to read:

126 713.78 Liens for recovering, towing, or storing vehicles
 127 and vessels.--

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

129 (d) "Department" means the Department of Highway Safety
 130 and Motor Vehicles.

131 (4) (a) Any person regularly engaged in the business of
 132 recovering, towing, or storing vehicles or vessels who comes
 133 into possession of a vehicle or vessel pursuant to subsection
 134 (2), and who claims a lien for recovery, towing, or storage
 135 services, shall give notice to the registered owner, the

HB 907

2006
CS

136 insurance company insuring the vehicle notwithstanding the
137 provisions of s. 627.736, and to all persons claiming a lien
138 thereon, by submitting an application for notifications to the
139 department on a form prescribed by the department within 7
140 business days after the date of storage of the vehicle or vessel
141 ~~as disclosed by the records in the Department of Highway Safety~~
142 ~~and Motor Vehicles or of a corresponding agency in any other~~
143 ~~state.~~

144 (b) Whenever any law enforcement agency authorizes the
145 removal of a vehicle or vessel or whenever any towing service,
146 garage, repair shop, or automotive service, storage, or parking
147 place notifies the law enforcement agency of possession of a
148 vehicle or vessel pursuant to s. 715.07(2)(a)2., the applicable
149 law enforcement agency shall contact the department ~~of Highway~~
150 ~~Safety and Motor Vehicles~~, or the appropriate agency of the
151 state of registration, if known, within 24 hours through the
152 medium of electronic communications, giving the full description
153 of the vehicle or vessel. Upon receipt of the full description
154 of the vehicle or vessel, the department shall search its files
155 to determine the owner's name, the insurance company insuring
156 the vehicle or vessel, and whether any person has filed a lien
157 upon the vehicle or vessel as provided in s. 319.27(2) and (3)
158 and notify the applicable law enforcement agency within 72
159 hours. The person in charge of the towing service, garage,
160 repair shop, or automotive service, storage, or parking place
161 shall obtain such information from the applicable law
162 enforcement agency within 5 days after the date of storage and
163 shall give notice pursuant to paragraph (a). ~~The department may~~

Page 6 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0907-01-c1

HB 907

2006
CS

164 ~~release the insurance company information to the requestor~~
165 ~~notwithstanding the provisions of s. 627.736.~~

166 (c) Upon receipt of a valid and complete application for
167 notifications, the required notification fee of \$4, and service
168 fees as indicated in s. 320.04, the department shall notify
169 ~~Notice by certified mail, return receipt requested, shall be~~
170 ~~sent within 7 business days after the date of storage of the~~
171 ~~vehicle or vessel to the registered owner, the insurance company~~
172 ~~insuring the vehicle notwithstanding the provisions of s.~~
173 ~~627.736, and all persons of record claiming a lien against the~~
174 ~~vehicle or vessel. The notification ~~It shall state the fact of~~~~
175 ~~indicate the company or individual who has possession of the~~
176 ~~vehicle or vessel, that a lien as provided in subsection (2) is~~
177 ~~claimed, that charges have accrued and the amount thereof, that~~
178 ~~the lien is subject to enforcement pursuant to law, and that the~~
179 ~~owner or lienholder, if any, has the right to a hearing as set~~
180 ~~forth in subsection (5), and that any vehicle or vessel which~~
181 ~~remains unclaimed, or for which the charges for recovery,~~
182 ~~towing, or storage services remain unpaid, may be sold free of~~
183 ~~all prior liens after 35 days if the vehicle or vessel is more~~
184 ~~than 3 years of age or after 50 days if the vehicle or vessel is~~
185 ~~3 years of age or less.~~

186 (d) If the department is unable ~~attempts~~ to locate the
187 name and address of the owner or lienholder ~~prove unsuccessful,~~
188 the department shall notify the towing-storage operator. Upon
189 receipt of such notification from the department, the towing-
190 storage operator shall conduct a good faith effort through,
191 ~~after 7 working days, excluding Saturday and Sunday, of the~~

Page 7 of 12

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0907-01-c1

HB 907

2006
CS

192 ~~initial tow or storage, notify the public agency of jurisdiction~~
 193 ~~in writing by certified mail or acknowledged hand delivery that~~
 194 ~~the towing storage company has been unable to locate the name~~
 195 ~~and address of the owner or lienholder and a physical search of~~
 196 the vehicle or vessel to attempt to determine ~~has disclosed no~~
 197 ownership information ~~and a good faith effort has been made.~~ If
 198 the physical search reveals a potential owner, lienor, or
 199 insurance company, the towing-storage operator shall furnish
 200 notice of the sale to the owner, lienor, or insurance company by
 201 certified mail.

202 (e) For purposes of this subsection ~~paragraph~~ and
 203 subsection (9), "good faith effort" means that the following
 204 checks have been performed by the company to establish prior
 205 state of registration and for title:

206 1. Check of vehicle or vessel for any type of tag, tag
 207 record, temporary tag, or regular tag.

208 2. Check of law enforcement report for tag number or other
 209 information identifying the vehicle or vessel, if the vehicle or
 210 vessel was towed at the request of a law enforcement officer.

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

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

217 5. Check of vehicle or vessel for inspection sticker or
 218 other stickers and decals that may indicate a state of possible
 219 registration.

HB 907

2006
CS

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

223 7. Check of vehicle for vehicle identification number.

224 8. Check of vessel for vessel registration number.

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

230 (6) Any vehicle or vessel which is stored pursuant to
231 subsection (2) and which remains unclaimed, or for which
232 reasonable charges for recovery, towing, or storing remain
233 unpaid, and any contents not released pursuant to subsection
234 (10), may be sold by the owner or operator of the storage space
235 for such towing or storage charge after 35 days from the time
236 the vehicle or vessel is stored therein if the vehicle or vessel
237 is more than 3 years of age or after 50 days following the time
238 the vehicle or vessel is stored therein if the vehicle or vessel
239 is 3 years of age or less. The sale shall be at public auction
240 for cash. ~~If the date of the sale was not included in the notice~~
241 ~~required in subsection (4), notice of the sale shall be given to~~
242 ~~the person in whose name the vehicle or vessel is registered and~~
243 ~~to all persons claiming a lien on the vehicle or vessel as shown~~
244 ~~on the records of the Department of Highway Safety and Motor~~
245 ~~Vehicles or of the corresponding agency in any other state.~~
246 ~~Notice shall be sent by certified mail, return receipt~~
247 ~~requested, to the owner of the vehicle or vessel and the person~~

HB 907

2006
CS

248 ~~having the recorded lien on the vehicle or vessel at the address~~
249 ~~shown on the records of the registering agency and shall be~~
250 ~~mailed not less than 15 days before the date of the sale. After~~
251 ~~diligent search and inquiry, if the name and address of the~~
252 ~~registered owner or the owner of the recorded lien cannot be~~
253 ~~ascertained, the requirements of notice by mail may be dispensed~~
254 ~~with.~~ In addition to the notice by mail, public notice of the
255 time and place of sale shall be made by publishing a notice
256 thereof one time, at least 10 days prior to the date of the
257 sale, in a newspaper of general circulation in the county in
258 which the sale is to be held. The public notice shall include
259 the vehicle or vessel identification or hull number, a
260 description of the vehicle or vessel, including make, model, and
261 year of manufacture, and, if known, the name of the registered
262 owner of the vehicle or vessel. The proceeds of the sale, after
263 payment of reasonable towing and storage charges, and costs of
264 the sale, in that order of priority, shall be deposited with the
265 clerk of the circuit court for the county if the owner is
266 absent, and the clerk shall hold such proceeds subject to the
267 claim of the person legally entitled thereto. The clerk shall be
268 entitled to receive 5 percent of such proceeds for the care and
269 disbursement thereof. The certificate of title issued under this
270 law shall be discharged of all liens unless otherwise provided
271 by court order.

272 (11)

273 (b) The department ~~of Highway Safety and Motor Vehicles~~
274 shall charge a fee of \$3 for each certificate of destruction. A

HB 907

2006
CS

275 service charge of \$4.25 shall be collected and retained by the
276 tax collector who processes the application.

277 ~~(c) The Department of Highway Safety and Motor Vehicles~~
278 ~~may adopt such rules as it deems necessary or proper for the~~
279 ~~administration of this subsection.~~

280 (12)

281 (d) Employees of the department ~~of Highway Safety and~~
282 ~~Motor Vehicles~~ and law enforcement officers are authorized to
283 inspect the records of any person regularly engaged in the
284 business of recovering, towing, or storing vehicles or vessels
285 or transporting vehicles or vessels by wrecker, tow truck, or
286 car carrier, to ensure compliance with the requirements of this
287 section. Any person who fails to maintain records, or fails to
288 produce records when required in a reasonable manner and at a
289 reasonable time, commits a misdemeanor of the first degree,
290 punishable as provided in s. 775.082 or s. 775.083.

291 (13) (a) Upon receipt by the department ~~of Highway Safety~~
292 ~~and Motor Vehicles~~ of written notice from a wrecker operator who
293 claims a wrecker operator's lien under paragraph (2) (c) or
294 paragraph (2) (d) for recovery, towing, or storage of an
295 abandoned vehicle or vessel upon instructions from any law
296 enforcement agency, for which a certificate of destruction has
297 been issued under subsection (11), the department shall place
298 the name of the registered owner of that vehicle or vessel on
299 the list of those persons who may not be issued a license plate
300 or revalidation sticker for any motor vehicle under s.
301 320.03(8). If the vehicle or vessel is owned jointly by more
302 than one person, the name of each registered owner shall be

Page 11 of 12

HB 907

2006
CS

303 placed on the list. The notice of wrecker operator's lien shall
 304 be submitted on forms provided by the department, which must
 305 include:

306 1. The name, address, and telephone number of the wrecker
 307 operator.

308 2. The name of the registered owner of the vehicle or
 309 vessel and the address to which the wrecker operator provided
 310 notice of the lien to the registered owner under subsection (4).

311 3. A general description of the vehicle or vessel,
 312 including its color, make, model, body style, and year.

313 4. The vehicle identification number (VIN); registration
 314 license plate number, state, and year; validation decal number,
 315 state, and year; vessel registration number; hull identification
 316 number; or other identification number, as applicable.

317 5. The name of the person or the corresponding law
 318 enforcement agency that requested that the vehicle or vessel be
 319 recovered, towed, or stored.

320 6. The amount of the wrecker operator's lien, not to
 321 exceed the amount allowed by paragraph (b).

322 (g) The department ~~of Highway Safety and Motor Vehicles~~
 323 may adopt rules pursuant to ss. 120.536(1) and 120.54 to
 324 implement this section ~~subsection~~.

325 Section 5. This act shall take effect July 1, 2006.