

By Senator Diaz de la Portilla

32-216A-07

See HB 61

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 reviewed

10 biennially to ensure that the rates are

11 equitable; amending s. 713.78, F.S.; revising

12 provisions governing liens for recovering,

13 towing, or storing vehicles and vessels;

14 revising requirements for notice to be provided

15 by mail to the vehicle or vessel owner,

16 insurance company, and lienholders; requiring

17 that proof of mailing be provided to certain

18 persons; revising provisions for sale of the

19 vehicle or vessel; authorizing an

20 administrative charge; providing an effective

21 date.

23 Be It Enacted by the Legislature of the State of Florida:

24

25 Section 1. Paragraph (c) of subsection (1) of section

26 125.0103, Florida Statutes, is amended to read:

27 125.0103 Ordinances and rules imposing price controls;

28 findings required; procedures.--

29 (1)

30 (c) Counties must establish maximum rates which may be

31 charged on the towing of vehicles from or immobilization of

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

16 | Section 2. Paragraph (c) of subsection (1) of section
17 | 166.043, Florida Statutes, is amended to read:

18 | 166.043 Ordinances and rules imposing price controls;
19 | findings required; procedures.--

20 | (1)

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

1 ordinance established under s. 125.0103 shall not apply within
2 such municipality. Unless provided by the county, in a
3 municipality that has not established rates, the rates shall
4 be the rates established for the wrecker operator system of
5 the Division of Florida Highway Patrol of the Department of
6 Highway Safety and Motor Vehicles under s. 321.051.

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

9 321.051 Florida Highway Patrol wrecker operator
10 system; penalties for operation outside of system.--

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

1 These rates must be reviewed biennially in June for the
2 purpose of ensuring that the rates are equitable. Such rates
3 shall not be considered rules for the purpose of chapter 120;
4 however, the department shall establish by rule a procedure
5 for setting such rates. Any provision in chapter 120 to the
6 contrary notwithstanding, a final order of the department
7 denying, suspending, or revoking a wrecker operator's
8 participation in the system shall be reviewable in the manner
9 and within the time provided by the Florida Rules of Appellate
10 Procedure only by a writ of certiorari issued by the circuit
11 court in the county wherein such wrecker operator resides.

12 Section 4. Subsection (2) of section 713.78, Florida
13 Statutes, reads, and subsections (4) and (6) of that section
14 are amended to read:

15 713.78 Liens for recovering, towing, or storing
16 vehicles and vessels.--

17 (2) Whenever a person regularly engaged in the
18 business of transporting vehicles or vessels by wrecker, tow
19 truck, or car carrier recovers, removes, or stores a vehicle
20 or vessel upon instructions from:

21 (a) The owner thereof;

22 (b) The owner or lessor, or a person authorized by the
23 owner or lessor, of property on which such vehicle or vessel
24 is wrongfully parked, and the removal is done in compliance
25 with s. 715.07; or

26 (c) Any law enforcement agency,

27
28 she or he shall have a lien on the vehicle or vessel for a
29 reasonable towing fee and for a reasonable storage fee; except
30 that no storage fee shall be charged if the vehicle is stored
31 for less than 6 hours.

1 (4)(a) Any person regularly engaged in the business of
2 recovering, towing, or storing vehicles or vessels who comes
3 into possession of a vehicle or vessel pursuant to subsection
4 (2), and who claims a lien for recovery, towing, or storage
5 services, shall give notice to the registered owner, to the
6 insurance company insuring the vehicle notwithstanding the
7 provisions of s. 627.736, and to all persons claiming a lien
8 thereon, 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) Notice by certified mail, ~~return receipt~~
4 ~~requested~~, shall be sent within 7 business days after the date
5 of storage of the vehicle or vessel to the registered owner,
6 the insurance company insuring the vehicle notwithstanding the
7 provisions of s. 627.736, and all persons of record claiming a
8 lien against the vehicle or vessel. Proof of mailing must be
9 provided upon request to any person involved in an action. The
10 notice must ~~it shall~~ state the fact of possession of the
11 vehicle or vessel, that a lien as provided in subsection (2)
12 is claimed, that charges have accrued and the amount thereof,
13 that the lien is subject to enforcement pursuant to law, ~~and~~
14 that the owner or lienholder, if any, has the right to a
15 hearing as set forth in subsection (5), and that any vehicle
16 or vessel ~~that which~~ that remains unclaimed, or for which the
17 charges for recovery, towing, or storage services remain
18 unpaid, may be sold free of all prior liens after 35 days if
19 the vehicle or vessel is more than 3 years of age or after 50
20 days if the vehicle or vessel is 3 years of age or less.

21 (d) If attempts to locate the name and address of the
22 owner or lienholder prove unsuccessful, the towing-storage
23 operator shall, after 7 working days, excluding Saturday and
24 Sunday, following ~~of~~ the initial tow or storage, notify the
25 public agency of jurisdiction in writing by certified mail or
26 acknowledged hand delivery that the towing-storage company has
27 been unable to locate the name and address of the owner or
28 lienholder and a physical search of the vehicle or vessel has
29 disclosed no ownership information and a good faith effort has
30 been made. Proof of mailing must be provided upon request to
31 any person involved in an action. For purposes of this

1 paragraph and subsection (9), "good faith effort" means that
2 the following checks have been performed by the company to
3 establish prior state of registration and for title:

4 1. Check of vehicle or vessel for any type of tag, tag
5 record, temporary tag, or regular tag.

6 2. Check of law enforcement report for tag number or
7 other information identifying the vehicle or vessel, if the
8 vehicle or vessel was towed at the request of a law
9 enforcement officer.

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

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

17 5. Check of vehicle or vessel for inspection sticker
18 or other stickers and decals that may indicate a state of
19 possible registration.

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

23 7. Check of vehicle for vehicle identification number.

24 8. Check of vessel for vessel registration number.

25 9. Check of vessel hull for a hull identification
26 number which should be carved, burned, stamped, embossed, or
27 otherwise permanently affixed to the outboard side of the
28 transom or, if there is no transom, to the outmost seaboard
29 side at the end of the hull that bears the rudder or other
30 steering mechanism.
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1 (6) Any vehicle or vessel ~~that which~~ is stored
2 pursuant to subsection (2) and ~~that which~~ remains unclaimed,
3 or for which reasonable charges for the recovery, towing, or
4 storage services ~~storing~~ remain unpaid, and any contents not
5 released pursuant to subsection (10)~~7~~ may be sold by the owner
6 or operator of the storage space for such recovery, towing, or
7 storage charges and the charge for administrative costs
8 authorized under this subsection ~~charge~~ after 35 days
9 following from the time the vehicle or vessel is stored
10 therein if the vehicle or vessel is more than 3 years of age
11 or after 50 days following the time the vehicle or vessel is
12 stored therein if the vehicle or vessel is 3 years of age or
13 less. The sale shall be at public auction for cash. A charge
14 for administrative costs is authorized under this subsection
15 if it is based on the applicable administrative charge imposed
16 by ordinance or, if an administrative charge is not imposed by
17 ordinance, if the charge for administrative costs is not more
18 than the lesser of \$100 or 30 percent of the unpaid recovery,
19 towing, and storage charges. If the date of the sale was not
20 included in the notice required in subsection (4), notice of
21 the sale shall be given to the person in whose name the
22 vehicle or vessel is registered and to all persons claiming a
23 lien on the vehicle or vessel as shown on the records of the
24 Department of Highway Safety and Motor Vehicles or of the
25 corresponding agency in any other state. Notice shall be sent
26 by certified mail, ~~return receipt requested,~~ to the owner of
27 the vehicle or vessel and the person having the recorded lien
28 on the vehicle or vessel at the address shown on the records
29 of the registering agency and shall be mailed not less than 15
30 days before the date of the sale. Proof of mailing must be
31 provided upon request to any person involved in an action.

1 After diligent search and inquiry, if the name and address of
2 the registered owner or the owner of the recorded lien cannot
3 be ascertained, the requirements of notice by mail may be
4 dispensed with. In addition to the notice by mail, public
5 notice of the time and place of sale shall be made by
6 publishing a notice thereof one time, at least 10 days prior
7 to the date of the sale, in a newspaper of general circulation
8 in the county in which the sale is to be held. The proceeds of
9 the sale, after payment of reasonable recovery, towing, and
10 storage charges, and costs of the sale, in that order of
11 priority, shall be deposited with the clerk of the circuit
12 court for the county if the owner is absent, and the clerk
13 shall hold such proceeds subject to the claim of the person
14 legally entitled thereto. The clerk shall be entitled to
15 receive 5 percent of such proceeds for the care and
16 disbursement thereof. The certificate of title issued under
17 this law shall be discharged of all liens unless otherwise
18 provided by court order.

19 Section 5. This act shall take effect July 1, 2007.
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