

A bill to be entitled

An act relating to recovering, towing, or storing vehicles and vessels; amending ss. 125.0103 and 166.043, F.S.; prescribing the rates for towing and storage in counties and municipalities that have not established rates; amending s. 321.051, F.S.; requiring the rates for the wrecker operator system of the Florida Highway Patrol to be established and reviewed biennially to ensure that the rates are equitable; amending s. 713.78, F.S.; revising provisions governing liens for recovering, towing, or storing vehicles and vessels; revising requirements for notice to be provided by mail to the vehicle or vessel owner, insurance company, and lienholders; requiring proof of mailing be provided to certain persons; revising provisions for sale of the vehicle or vessel; authorizing an administrative charge; providing an effective date.

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

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

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

(1)

(c) Counties must establish maximum rates which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and

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29 storage of vehicles, in the event the owner or operator is
30 incapacitated, unavailable, leaves the procurement of wrecker
31 service to the law enforcement officer at the scene, or
32 otherwise does not consent to the removal of the vehicle.
33 However, if a municipality chooses to enact an ordinance
34 establishing the maximum fees for the towing or immobilization
35 of vehicles as described in paragraph (b), the county's
36 ordinance shall not apply within such municipality. Except as
37 provided by a municipality, the rates for a county that has not
38 established rates shall be the rates established for the wrecker
39 operator system of the Division of Florida Highway Patrol of the
40 Department of Highway Safety and Motor Vehicles under s.
41 321.051.

42 Section 2. Paragraph (c) of subsection (1) of section
43 166.043, Florida Statutes, is amended to read:

44 166.043 Ordinances and rules imposing price controls;
45 findings required; procedures.--

46 (1)

47 (c) Counties must establish maximum rates which may be
48 charged on the towing of vehicles from or immobilization of
49 vehicles on private property, removal and storage of wrecked or
50 disabled vehicles from an accident scene or for the removal and
51 storage of vehicles, in the event the owner or operator is
52 incapacitated, unavailable, leaves the procurement of wrecker
53 service to the law enforcement officer at the scene, or
54 otherwise does not consent to the removal of the vehicle.
55 However, if a municipality chooses to enact an ordinance
56 establishing the maximum fees for the towing or immobilization

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57 of vehicles as described in paragraph (b), the county's
 58 ordinance established under s. 125.0103 shall not apply within
 59 such municipality. Unless provided by the county, in a
 60 municipality that has not established rates, the rates shall be
 61 the rates established for the wrecker operator system of the
 62 Division of Florida Highway Patrol of the Department of Highway
 63 Safety and Motor Vehicles under s. 321.051.

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

66 321.051 Florida Highway Patrol wrecker operator system;
 67 penalties for operation outside of system.--

68 (2) The Division of Florida Highway Patrol of the
 69 Department of Highway Safety and Motor Vehicles is authorized to
 70 establish within areas designated by the patrol a wrecker
 71 operator system using qualified, reputable wrecker operators for
 72 removal and storage of wrecked or disabled vehicles from a crash
 73 scene or for removal and storage of abandoned vehicles, in the
 74 event the owner or operator is incapacitated or unavailable or
 75 leaves the procurement of wrecker service to the officer at the
 76 scene. All reputable wrecker operators shall be eligible for use
 77 in the system provided their equipment and drivers meet
 78 recognized safety qualifications and mechanical standards set by
 79 rules of the Division of Florida Highway Patrol for the size of
 80 vehicle it is designed to handle. The division is authorized to
 81 limit the number of wrecker operators participating in the
 82 wrecker operator system, which authority shall not affect
 83 wrecker operators currently participating in the system
 84 established by this section. The division shall ~~is authorized to~~

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85 establish maximum rates for the towing and storage of vehicles
 86 removed at the division's request, where such rates have not
 87 been set by a county or municipality pursuant to s. 125.0103 or
 88 s. 166.043. These rates must be reviewed biennially in June for
 89 the purpose of ensuring that the rates are equitable. Such rates
 90 shall not be considered rules for the purpose of chapter 120;
 91 however, the department shall establish by rule a procedure for
 92 setting such rates. Any provision in chapter 120 to the
 93 contrary notwithstanding, a final order of the department
 94 denying, suspending, or revoking a wrecker operator's
 95 participation in the system shall be reviewable in the manner
 96 and within the time provided by the Florida Rules of Appellate
 97 Procedure only by a writ of certiorari issued by the circuit
 98 court in the county wherein such wrecker operator resides.

99 Section 4. Subsection (2) of section 713.78, Florida
 100 Statutes, reads, and subsections (4) and (6) of that section are
 101 amended to read:

102 713.78 Liens for recovering, towing, or storing vehicles
 103 and vessels.--

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

108 (a) The owner thereof;

109 (b) The owner or lessor, or a person authorized by the
 110 owner or lessor, of property on which such vehicle or vessel is
 111 wrongfully parked, and the removal is done in compliance with s.
 112 715.07; or

113 (c) Any law enforcement agency,
 114
 115 she or he shall have a lien on the vehicle or vessel for a
 116 reasonable towing fee and for a reasonable storage fee; except
 117 that no storage fee shall be charged if the vehicle is stored
 118 for less than 6 hours.

119 (4) (a) Any person regularly engaged in the business of
 120 recovering, towing, or storing vehicles or vessels who comes
 121 into possession of a vehicle or vessel pursuant to subsection
 122 (2), and who claims a lien for recovery, towing, or storage
 123 services, shall give notice to the registered owner, to the
 124 insurance company insuring the vehicle notwithstanding the
 125 provisions of s. 627.736, and to all persons claiming a lien
 126 thereon, as disclosed by the records in the Department of
 127 Highway Safety and Motor Vehicles or of a corresponding agency
 128 in any other state.

129 (b) Whenever any law enforcement agency authorizes the
 130 removal of a vehicle or vessel or whenever any towing service,
 131 garage, repair shop, or automotive service, storage, or parking
 132 place notifies the law enforcement agency of possession of a
 133 vehicle or vessel pursuant to s. 715.07(2)(a)2., the applicable
 134 law enforcement agency shall contact the Department of Highway
 135 Safety and Motor Vehicles, or the appropriate agency of the
 136 state of registration, if known, within 24 hours through the
 137 medium of electronic communications, giving the full description
 138 of the vehicle or vessel. Upon receipt of the full description
 139 of the vehicle or vessel, the department shall search its files
 140 to determine the owner's name, the insurance company insuring

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141 the vehicle or vessel, and whether any person has filed a lien
142 upon the vehicle or vessel as provided in s. 319.27(2) and (3)
143 and notify the applicable law enforcement agency within 72
144 hours. The person in charge of the towing service, garage,
145 repair shop, or automotive service, storage, or parking place
146 shall obtain such information from the applicable law
147 enforcement agency within 5 days after the date of storage and
148 shall give notice pursuant to paragraph (a). The department may
149 release the insurance company information to the requestor
150 notwithstanding the provisions of s. 627.736.

151 (c) Notice by certified mail, ~~return receipt requested,~~
152 shall be sent within 7 business days after the date of storage
153 of the vehicle or vessel to the registered owner, the insurance
154 company insuring the vehicle notwithstanding the provisions of
155 s. 627.736, and all persons of record claiming a lien against
156 the vehicle or vessel. Proof of mailing must be provided upon
157 request to any person involved in an action. The notice must ~~it~~
158 ~~shall~~ state the fact of possession of the vehicle or vessel,
159 that a lien as provided in subsection (2) is claimed, that
160 charges have accrued and the amount thereof, that the lien is
161 subject to enforcement pursuant to law, ~~and~~ that the owner or
162 lienholder, if any, has the right to a hearing as set forth in
163 subsection (5), and that any vehicle or vessel that ~~which~~
164 remains unclaimed, or for which the charges for recovery,
165 towing, or storage services remain unpaid, may be sold free of
166 all prior liens after 35 days if the vehicle or vessel is more
167 than 3 years of age or after 50 days if the vehicle or vessel is
168 3 years of age or less.

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169 (d) If attempts to locate the name and address of the
170 owner or lienholder prove unsuccessful, the towing-storage
171 operator shall, after 7 working days, excluding Saturday and
172 Sunday, following ~~of~~ the initial tow or storage, notify the
173 public agency of jurisdiction in writing by certified mail or
174 acknowledged hand delivery that the towing-storage company has
175 been unable to locate the name and address of the owner or
176 lienholder and a physical search of the vehicle or vessel has
177 disclosed no ownership information and a good faith effort has
178 been made. Proof of mailing must be provided upon request to any
179 person involved in an action. For purposes of this paragraph and
180 subsection (9), "good faith effort" means that the following
181 checks have been performed by the company to establish prior
182 state of registration and for title:

183 1. Check of vehicle or vessel for any type of tag, tag
184 record, temporary tag, or regular tag.

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

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

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

194 5. Check of vehicle or vessel for inspection sticker or
195 other stickers and decals that may indicate a state of possible
196 registration.

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

200 7. Check of vehicle for vehicle identification number.

201 8. Check of vessel for vessel registration number.

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

207 (6) Any vehicle or vessel that ~~which~~ is stored pursuant to
 208 subsection (2) and that ~~which~~ remains unclaimed, or for which
 209 reasonable charges for the recovery, towing, or storage services
 210 ~~storing~~ remain unpaid, and any contents not released pursuant to
 211 subsection (10), may be sold by the owner or operator of the
 212 storage space for such recovery, towing, or storage charges and
 213 the charge for administrative costs authorized under this
 214 subsection ~~charge~~ after 35 days following ~~from~~ the time the
 215 vehicle or vessel is stored therein if the vehicle or vessel is
 216 more than 3 years of age or after 50 days following the time the
 217 vehicle or vessel is stored therein if the vehicle or vessel is
 218 3 years of age or less. The sale shall be at public auction for
 219 cash. A charge for administrative costs is authorized under this
 220 subsection if it is based on the applicable administrative
 221 charge imposed by ordinance or, if an administrative charge is
 222 not imposed by ordinance, if the charge for administrative costs
 223 is not more than the lesser of \$100 or 30 percent of the unpaid
 224 recovery, towing, and storage charges. If the date of the sale

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225 was not included in the notice required in subsection (4),
226 notice of the sale shall be given to the person in whose name
227 the vehicle or vessel is registered and to all persons claiming
228 a lien on the vehicle or vessel as shown on the records of the
229 Department of Highway Safety and Motor Vehicles or of the
230 corresponding agency in any other state. Notice shall be sent by
231 certified mail, ~~return receipt requested,~~ to the owner of the
232 vehicle or vessel and the person having the recorded lien on the
233 vehicle or vessel at the address shown on the records of the
234 registering agency and shall be mailed not less than 15 days
235 before the date of the sale. Proof of mailing must be provided
236 upon request to any person involved in an action. After diligent
237 search and inquiry, if the name and address of the registered
238 owner or the owner of the recorded lien cannot be ascertained,
239 the requirements of notice by mail may be dispensed with. In
240 addition to the notice by mail, public notice of the time and
241 place of sale shall be made by publishing a notice thereof one
242 time, at least 10 days prior to the date of the sale, in a
243 newspaper of general circulation in the county in which the sale
244 is to be held. The proceeds of the sale, after payment of
245 reasonable recovery, towing, and storage charges, and costs of
246 the sale, in that order of priority, shall be deposited with the
247 clerk of the circuit court for the county if the owner is
248 absent, and the clerk shall hold such proceeds subject to the
249 claim of the person legally entitled thereto. The clerk shall be
250 entitled to receive 5 percent of such proceeds for the care and
251 disbursement thereof. The certificate of title issued under this
252 law shall be discharged of all liens unless otherwise provided

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253 | by court order.

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