

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1195 Wrecker Services
SPONSOR(S): Reagan and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environment & Natural Resources Council	_____	Reese / Smith	Dixon / Hamby
2) Policy & Budget Council	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

An estimated 1,400 wrecker operators will be subject to the regulation proposed by this bill, and more than 7,000 trucks are registered as wreckers with the state Department of Highway Safety and Motor Vehicles (DHSMV).

This bill creates state regulation of wrecker operators. The bill: requires annual registration of wrecker companies with the state Department of Agriculture and Consumer Services (DACS); requires certification and continuing education of tow-truck operators; creates a seven-member Wrecker Operator Advisory Council to approve curricula and course providers; directs DACS, in consultation with the council, to issue rules implementing the new requirements; provides for prohibited acts and penalties; establishes an annual registration fee of \$495 for a wrecker company; specifies that unregistered wrecker companies may not be on the wrecker allocation lists used by law enforcement officers; and exempts from the regulatory provisions businesses which derive at least 80 percent of gross sales from repairs to motor vehicles and licensed automobile dealers.

The bill also specifies that tow trucks shall be required to have only one tag, to be placed on the front of the vehicles, and clarifies that vessels parked without permission on real property also may be towed and held for lien. This bill does not alter the authority of local governments to set maximum rates for towing. This bill requires that wrecker operators accept at least two of these forms of payment: cash (or cash equivalent), personal checks, or credit cards.

This bill creates a number of misdemeanor and felony offenses, primarily offenses that would be committed by wrecker operators. See "Infractions and Criminal Offenses Created By This Bill" starting on page 9.

This bill authorizes nine additional FTEs to DACS and appropriates \$693,000 from the General Inspection Trust Fund for the purposes of implementing this act. Additionally, the DHSMV reports it will need an additional \$70,000 of non-recurring General Revenue to program software pursuant to the bill.

The effective date of the bill is July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: HB 1195 authorizes the creation of the Wrecker Operator Advisory Council within DACS to assist the agency with the technical aspects of regulating the towing industry. The Council also is charged with approving curricula for certification and continuing education programs, and determining if out-of-state wrecker certification courses are substantially equivalent to Florida courses. Also, DACS is given 9 FTEs and additional rulemaking authority to implement the bill's provisions.

Ensure lower taxes: HB 1195 creates a \$495 annual registration fee for most wrecker companies in the state of Florida.

Safeguard individual liberty: To continue operating a wrecker business, the bill requires that most wrecker companies register and that most wrecker operators undergo training and continuing education to be certified and thus continue in employment. Additionally, owners and executive managers of most wrecker companies must be fingerprinted and undergo criminal background checks.

Promote personal responsibility: This bill creates criminal offenses for wrongful conduct.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, the primary business regulations on the wrecker industry are proper registration of vehicles, as described in chapter 320, F.S., and liability insurance coverage in s. 324.021 and s. 627.7415, F.S. In addition, many local governments require wrecker companies to obtain business tax receipts for operation of a business, pursuant to chapter 205, F.S.

The provisions of existing Florida law that relate to wrecker operations are described in the following paragraphs.

Registration Requirements

Section 320.0706, F.S., provides that a commercial truck weighing 26,001 pounds or more must display a license plate on both the front and rear of the truck. However, a truck tractor is required to display the license plate on the front of the vehicle only.

Section 320.08(5)(d) and (e), F.S., provides for registration fees for wreckers. A wrecker used to tow any unclaimed vessel; a disabled, abandoned, stolen-recovered, or impounded motor vehicle or trailer; or a replacement motor vehicle for a disabled vehicle pays a flat registration fee of \$30. A wrecker used to tow any motor vehicle, whether or not such vehicle is a disabled motor vehicle, a replacement motor vehicle, a vessel, or any other cargo, pays a registration fee that varies between \$87 and \$979, based on gross vehicle weight.

FHP Wrecker Allocation System

The Florida Highway Patrol (FHP) is authorized in s. 321.051, F.S., to operate a wrecker operator system using qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles from crash scenes, and for the removal and storage of abandoned vehicles. All wrecker operators are eligible for use in the system provided their equipment meets recognized safety qualifications and mechanical standards set by the FHP for the size of vehicle the equipment is designed to handle.

FHP can set maximum rates for towing and storage of vehicles removed at its request, if the rates have not already been set by a county or municipality. A wrecker operator may pursue an appeal by writ of certiorari from the circuit court if its participation in the system is denied, suspended, or revoked.

Wrecker operators are prohibited from monitoring police radios for communications between patrol field units and the dispatcher to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene to initiate contact with the owner of the wrecked or disabled vehicle. This illegal monitoring is punishable by a civil fine of up to \$500. If the operator initiates contact before arrival of the dispatched operator, solicits towing, and tows the vehicle, or if the disabled vehicle owner or operator initiates contact, but the wrecker operator fails to disclose that he or she was not dispatched and fails to disclose all rates in writing for towing and storage, the drive-by wrecker operator commits a second-degree misdemeanor. A wrecker operator who falsely identifies him or herself as part of the system commits a first-degree misdemeanor. The law does not prohibit any person from calling a wrecker operator directly for services, even if that operator is not authorized to participate in the system.

Local governments are also authorized to operate a similar wrecker operator dispatch system, pursuant to s. 323.002, F.S.

In addition, current law provides regulations governing the operation of storage facilities containing towed vehicles held at the request of investigating law enforcement agencies, and provides for liens against towed and stored vehicles when the owners fail to pay towing and storage costs.

Law Enforcement Hold on Vehicles

Section 323.001, F.S., provides that an investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for a period not to exceed five days, excluding holidays and weekends, unless extended in writing. The investigating agency must notify the wrecker operator in writing within five days as to whether the hold is to be continued. If no notification follows this period of time, the wrecker operator may release the vehicle to the designated person pursuant to s. 713.78, F.S.

The section provides that, if the hold continues beyond five days, the investigating agency may have the vehicle removed to a designated impound lot. The vehicle may not be released by the investigating agency to the owner or lien holder of the vehicle until proof of payment of the towing and storage charges incurred by the wrecker operator is presented to the investigating agency.

If the investigating agency chooses to have the vehicle remain at the wrecker operator's storage facility beyond five days, then the investigating agency is responsible for payment of the storage charges incurred for the requested extended period. The owner or lien holder is responsible for payment of accrued towing and storage charges for up to the first five days.

The section further provides that towing and storage rates for the owner or lien holder of the held vehicle may not exceed the rates for the investigating agency. If there is a judicial finding of no probable cause for having continued the immobilization or impoundment, the investigating agency ordering the hold must pay the accrued charges for any towing and storage. A vehicle may be held when any of the following conditions are present:

- The law enforcement officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act.
- The law enforcement officer has probable cause to believe the vehicle should be seized and forfeited under ch. 370 or 372, F.S.
- The law enforcement officer has probable cause to believe the vehicle was used as the means of committing a crime.
- The law enforcement officer has probable cause to believe the vehicle is itself evidence that tends to show a crime has been committed or the vehicle contains evidence, which cannot readily be removed, which tends to show a crime has been committed.

- The law enforcement officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator.
- The vehicle is impounded or immobilized pursuant to s. 316.193, F.S., or s. 322.34, F.S.,(driving under the influence).
- The law enforcement officer is complying with a court order.

Finally, the section provides a wrecker operator's storage facility must comply with a hold placed by a law enforcement officer, including instructions for inside or outside storage. A wrecker operator's storage facility may not release a motor vehicle subject to a hold to any person, except as directed by the law enforcement agency placing the hold. When a vehicle owner is found guilty of, or pleads nolo contendere to, the offense that resulted in a hold being placed on his or her vehicle, regardless of the adjudication of guilt, the owner must pay the accrued towing and storage charges assessed against the vehicle.

Liens for Recovering Towing and Storage Fees

Section 713.78, F.S., currently provides that when a wrecker or tow service properly tows a vehicle the service has a lien against the vehicle for payment of reasonable towing and storage fees. The owner of the vehicle may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker service tows and stores a motor vehicle the service must send notice to the registered owner and all lien holders by certified mail within 7 business days after the date of storage of the vehicle. The section further provides that a person regularly engaged in towing or storing vehicles is not liable for damages connected with the towing and storage of a vehicle if such towing and storage were done with reasonable care.

The law also limits the liability of a wrecker operator when towing or storing a vehicle. The section provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, providing the wrecker uses reasonable care. The wrecker operator is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic. The section provides a wrecker has used reasonable care if:

- the wrecker operator surrounds the storage facility with a chain-link or solid fence at least 6 feet in height;
- the storage facility is illuminated enough to reveal persons and vehicles at a distance of 150 feet; and
- the wrecker operator employs a night watchman, security dog, or security cameras.

In addition, current law requires any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway to conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. The wrecker operator may not be held liable for the loss of personal property not identified on the inventory record prepared by the law enforcement agency.

Section 713.78 (13), F.S., provides that upon receipt by DHSMV of written notice from a wrecker operator claiming a lien for recovery, towing, or storage of an abandoned vehicle, vessel, or mobile home upon instructions from any law enforcement agency, for which a certificate of destruction has been issued, DHSMV must place the name of the registered owner of that vehicle, vessel, or mobile home on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle. If the vehicle, vessel, or mobile home is owned jointly by more than one person, the name of each registered owner must be placed on the list.

The section further provides the amount of the wrecker operator's lien for which the DHSMV will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle, vessel, or mobile home for 7 days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality.

The registered owner of a vehicle, vessel, or mobile home may dispute a wrecker operator's lien by notifying DHSMV of the dispute in writing, if at least one of the following applies:

- The registered owner presents a notarized bill of sale proving the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.
- The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

Towing Vehicles from Private Property

Section 715.07, F.S., provides that the owner or lessee of real property may have any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, if there is compliance with certain restrictions.

Except for property that is obviously a part of a single-family residence, and except for instances when notice is personally given to the owner of the vehicle, any property owner, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements.

- The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within five feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.
- The notice must clearly indicate, in not less than two-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in letters not less than four-inch high.
- The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessee, or person in control of the property has a written contract with the towing company.
- The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than three feet and not more than six feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of any vehicles.
- The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.
- A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles Will Be Towed Away At the Owner's Expense" in not less than four-inch high, light-reflective letters on a contrasting background.

The section provides that, when a person improperly causes a vehicle to be removed, such person is liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle; attorney's fees; and court costs.

Effect of Proposed Changes

HB 1195 creates chapter 508, F.S. – Wrecker Services, which is section 1 of the bill. It creates a comprehensive structure for the registration of wrecker companies, the certification and continuing education for the persons who drive the tow trucks (wrecker operators), and establishes penalties. These regulatory responsibilities are assigned to DACS, assisted by a new seven-member Wrecker Operator Advisory Council.

The bill provides, with some exceptions, that all wrecker companies must be registered in Florida. Annual registration is a prerequisite for obtaining a local business tax receipt and for participating in the wrecker allocation call programs. Exempt from these requirements are persons regularly engaged in the business of transporting mobile homes; motor vehicle repair shops deriving 80 percent of their business from repairs; franchised motor vehicle dealers; recovery or repossession agents; and any person performing wrecker services on behalf of a religious organization that holds a current exemption from federal taxation, or that is not required to apply for recognition of its exemption under the Internal Revenue Code.

Role of the Wrecker Operator Advisory Council

The bill creates a Wrecker Operator Advisory Council (Council) within DACS. The Council consists of seven members appointed by the Commissioner of Agriculture and who must be Florida residents. Four of the appointees must have been ultimate equitable owners of a wrecker company for at least 5 years, one must be a wrecker operator with at least five years of experience, and two are lay persons. The term of each member is four years and provisions are made to stagger several initial terms to provide continuity of the council. Of the initial appointees, two wrecker company owners and one lay person serve 2-year terms and the rest 4-year terms; all subsequent appointees serve 4-year terms. Members may be reappointed for additional terms, but may not exceed eight years of consecutive service. By the year 2013, the industry appointees also must meet the registration or certification requirements. The Council selects its chair and vice chair, and all members serve without compensation except for travel reimbursement and per diem pursuant to s. 112.061, F.S.

The bill provides the Council with significant authority. The Council:

- Approves the certification courses for wrecker operators, prescribes the curricula, and approves each organization proposing to offer the courses.
- Approves the instruction, training, and examination for specialized wrecker services before they can be endorsed for a wrecker certification.
- Approves certification training in other states for the purposes of substitution, and determines whether such training is substantially equivalent to Florida's approved wrecker-operator courses.
- Reviews the rules promulgated by DACS to implement chapter 508, F.S., and advises the agency on wrecker industry standards, practices and other matters requiring technical expertise.

DACS's role

DACS has the responsibility to manage and enforce the wrecker company registration and wrecker operator certification programs. The agency is given both general and specific rulemaking authority to implement the provisions of chapter 508, F.S. DACS must maintain records, issue the certification cards and registration approvals or denials, select the certification training organizations, notify DHSMV based on the Council's approval, and inspect the records of wrecker companies. It is required to keep and store all records of the Council and to provide administrative support and staff.

Registration Process and Requirements

The bill provides for an annual registration fee of \$495 per company. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted and must bear the cost of fingerprinting. DACS must collect a \$15 fee for state processing of fingerprints, and "an additional fee for national processing for each applicant submitted." DACS issues a certificate with a number to the registrant, and the certificate must be displayed in a conspicuous place in the company's place of business, and any company advertisement must bear the registration number. For the purposes of the bill, the term "advertisement" means a printed or graphic statement made in a newspaper or other publication or contained in any notice, handbill, or sign, including signage on a vehicle, flyer, catalog, or letter.

In addition, registered wrecker companies are required to certify to DACS that they carry the additional commercial motor vehicle liability insurance as currently required under s. 627.7415, F.S.

Annual renewals are subject to a \$25 late fee. Unless local licensing requirements are met and maintained, and the company can present proof of the additional commercial vehicle liability insurance, a wrecker company may not renew its registration.

DACS may deny or refuse registration renewal if:

- the wrecker company does not meet or adhere to registration requirements;
- the owners or executive managers have been convicted of a felony within the last 10 years;
- the owners or executive managers have been convicted in the last 10 years of any crime involving repossession, repair, motor vehicle theft, carjacking, chop shops, parts and accessories records, airbags, overcharging for repairs or parts, or towing or storage requirements;
- the company fails to pay fines or penalties imposed under the new law;
- the company has an action pending in any jurisdiction for violation of the new law; or
- the company has a judgment against it for violation of the new law.

A wrecker company is required to maintain records of its wrecker services for at least 12 months at the principal place of business. It also must maintain records on each of its wrecker operators sufficient to demonstrate that the operator has successfully completed an approved wrecker operator continuing education course and is certified to perform wrecker services. These records must be maintained at the principal place of business for as long as the operator is employed by the wrecker company and for at least six months after. Organizations approved to conduct wrecker operator certification courses or continuing education courses are also required to maintain records for at least five years on persons who complete the courses. DACS is authorized to enter the place of business for the purpose of examining the records.

Training and Certification Process

In addition to wrecker company registration, the bill requires certification of wrecker operators. DACS must establish a certification program including certification courses, schools and exams, and provide for specialized certification for specialized wrecker services. DACS also must require the courses to issue appropriate certificates and cards acknowledging completion of certification requirements. DACS is authorized to adopt rules providing for issuance of certification to operators from different states who have met substantially similar certification requirements. Certification programs created by DACS, and those of other jurisdictions taken in lieu of Florida certification programs, must be approved by the Wrecker Operator Advisory Council.

Prohibited acts and penalties

Wrecker companies, wrecker operators, or other employees or agents of the company are prohibited from:

- Charging rates in excess of those set by local ordinance;
- Violating the laws governing the FHP wrecker allocation system;
- Violating the laws governing the local wrecker allocation system;
- Violating the laws governing liens for towing or storing vehicles and vessels;
- Violating the laws governing towing, removing, or storing vehicles and vessels;
- Refusing to allow a law enforcement officer to inspect a towing and storage facility;
- Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company;
- Allowing an operator to provide specialized services without the proper endorsement; or
- Performing an act prohibited by the new law, or failing to perform an act required by the new law.

The bill also creates a number of administrative and criminal penalties related to chapter 508, F.S.,

requirements. The criminal penalties are more fully described below. Among the administrative penalties, DACS may:

- Issue a notice of noncompliance;
- Impose an administrative fine of no more than \$5,000;
- Issue cease and desist orders;
- Revoke, suspend or refuse registration;
- Impose a DACS' specified probationary period;
- Seek a civil remedy of up to \$5,000 per violation; or
- Seek restitution on behalf of an aggrieved party.

DACS must notify DHSMV when a registration issued under the provisions of the bill has been suspended or revoked by order of DACS. That notification must be sent within 10 days after issuance of the order.

Under the bill, operation of an unregistered wrecker company and performance of wrecker services without being employed by a registered wrecker company are third-degree felonies.

All fees, penalties, and other monies collected pursuant to this new law are deposited into DACS' General Inspection Trust Fund and may only be used to implement the new law.

Wrecker Allocation System

The existing ss. 321.051 and 323.002, F.S., are rewritten in HB 1195, but the primary changes are made to reflect the wrecker registration and certification requirements imposed in the new chapter 508, F.S.

The bill defines and differentiates between wrecker companies and wrecker operators to clarify the distinction between those who own towing companies and those who drive tow trucks. It also renames the "wrecker operator system" as the "wrecker allocation system."

The key change is that only registered wrecker companies and certified operators are able to participate in the wrecker allocation system. The law still allows the owner or operator of a disabled vehicle to hire an unauthorized wrecker; however, the law enforcement officer on the scene may, in the interest of public safety, dispatch an authorized wrecker operator if the officer believes it will arrive before the wrecker company requested by the motorist.

Liens assessed on towed and stored vehicles

HB 1195 amends s. 713.78, F.S., to provide that a registered owner may dispute a wrecker operator's lien if DHSMV's records were marked sold prior to the issuance of a certificate of destruction.

The section is further amended to provide that the lien dispute resolution process in current law does not apply to a leased vehicle registered in the name of the lessor. Additionally, the revisions provide that reasonable attorney fees may be awarded to the prevailing party in complaints concerning the wrongful taking of property. Further, the bill provides that employees or authorized agents of a wrecker company are not liable for civil damages when removing a vehicle or vehicle cargo that is an imminent public safety hazard from a public road if requested by a law enforcement officer, deputy sheriff, or firefighter.

Other issues in HB 1195

- Wrecker companies must accept at least two of the following three forms of payment: cash, cashier's check, money order, traveler's check; a valid personal check showing the name and address of the vehicle or vessel owner or operator; or a valid credit card.
- The bill requires that a wrecker license plate must be placed on the front of a wrecker.
- A wrecker may not be registered and licensed as such with DHSMV unless the owner of the vehicle is a wrecker company registered with DACS pursuant to the new chapter 508, F.S. This

provision does not apply to wreckers that are registered under the International Registration Plan.

- Local governments may impose regulations on wrecker operators and wrecker companies that are more restrictive than this new law, and may still levy business taxes. DACS may enter into a cooperative agreement with any county or municipality that provides for the referral, investigation, and prosecution of consumer complaints alleging violations of the provisions of this bill. DACS may also delegate enforcement to any county or municipality entering into a cooperative agreement.
- The bill provides immunity from liability for wrecker companies, wrecker operators, employees and agents of wrecker companies, law enforcement officers and other emergency response personnel from property damages or claims of damage for removal of vehicles or vehicle cargo from blocking the roadway when there is an imminent public safety hazard.

The bill harmonizes the various definitions of “wrecker” and “wrecker operator” throughout Florida Statutes.

Infractions and Criminal Offenses Created By This Bill

This bill creates the following offenses:

Infraction¹

Listening to a police radio with the intent to dispatch a wrecker outside of a wrecker allocation system (a rotation list). See new ss. 321.051(3)(a) and 323.002(2)(b), F.S.

Second Degree Misdemeanor²

If not dispatched pursuant to the rotation list, driving by a wrecked or disabled vehicle and initiating contact with the owner with the intent to solicit towing business. See new ss. 321.051(3)(b) and 323.002(2)(d), F.S.

If not dispatched pursuant to the rotation list, failing to disclose to the owner of the vehicle that the operator was not dispatched according to the list, or failing to disclose the price in writing prior to providing the towing service. See new ss. 321.051(3)(c) and 323.002(2)(d), F.S.

First Degree Misdemeanor³

If not dispatched pursuant to the rotation list, falsely claiming to have been dispatched pursuant to the list. See new ss. 321.051(3)(d) and 323.002(2)(e), F.S.

Third Degree Felony (unranked in Criminal Punishment Code)⁴

Operating a wrecker company without having registered with DACS. See new s. 508.115(1), F.S.

Performing wrecker services without being an employee or owner of a registered wrecker company. See new s. 508.115(2), F.S.

Towing a vehicle or vessel to a storage facility more than 10 miles from point of towing (15 miles in a county of less than 500,000, and increased to 20 and 30 miles respectively if no wrecker company is located within the smaller radius). See new s. 715.07(6)(b), F.S.

¹ An infraction is punishable by a fine of no more than \$500. See s. 775.083, F.S.

² A second degree misdemeanor is punishable by confinement in the county jail for up to 60 days and/or a fine of up to \$500. See ss. 775.082 and 775.083, F.S.

³ A first degree misdemeanor is punishable by confinement in the county jail for up to 1 year and/or a fine of up to \$1000. See ss. 775.082 and 775.083, F.S.

⁴ A third degree felony is punishable by confinement in state prison for up to 5 years and/or a fine of up to \$5,000. An unranked third degree felony is a Level 1 offense in the Criminal Punishment Code. The Criminal Punishment Code sets minimum sentences for felony offenses based on a point system. Unless the offender has a prior criminal record, committing one Level 1 offense of the type created by this bill will yield a minimum of “any nonstate prison sanction”, meaning that there is no minimum term of incarceration. See ss. 775.082 and 775.083, F.S.

Failure of a wrecker company to be continuously open between 8:00 a.m. and 6:00 p.m. on a regular business day. See new s. 715.07(6)(b), F.S.

Failure of a wrecker company to release a towed vehicle or vessel from storage within 1 hour of the owner's request. See new s. 715.07(6)(b), F.S.

Failure to release a vehicle or vessel about to be towed when the owner shows up, offers to pay half the standard towing fee, and agrees to immediately move the vehicle or vessel. See new s. 715.07(6)(b), F.S.

A wrecker company or operator offering a property owner a rebate or other consideration for the privilege of towing from the property; or a property owner soliciting a rebate or other consideration from a wrecker operator or operator for the privilege of towing from the property. See new s. 715.07(6)(b), F.S.

Refusal of a wrecker operator to allow the owner of towed vehicle or vessel to inspect the vehicle or vessel prior to accepting its return. A wrecker operator conditioning return of a vehicle or vessel on the owner of a vehicle or vessel signing a liability waiver. Failure of a wrecker operator to give the owner of a vehicle or vessel a signed receipt showing the name of the company. See new s. 715.07(6)(b), F.S.

Florida's Sunrise Act

Section 11.62, F.S., provides guiding principles for the establishment of new regulatory programs for professions and occupations. Subsection (3) provides that in determining whether to regulate a profession or occupation, the Legislature shall consider certain factors, including: whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare; whether the practice of the profession or occupation requires specialized skill or training; whether the regulation will have an unreasonable effect on job creation or job retention in the state; and whether the overall cost effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Subsection (4) of s. 11.62, F.S., provides that the proponents of legislation that provides for the regulation of a profession or occupation not already subject to state regulation shall provide, *upon request*, certain information in writing to the state agency that is proposed to have jurisdiction over the regulation and to the legislative committees to which the legislation is referred. Similarly, subsection (5) provides that the agency shall provide the Legislature with information concerning the effect of proposed legislation that provides for new regulation of a profession or occupation, including the resources necessary to implement and enforce the proposed regulation.

C. SECTION DIRECTORY:

Section 1: Creates ch. 508, F.S., related to Wrecker Services. Creates ss. 508.101, 508.102, 508.103, 508.105, 508.106, 508.1061, 508.107, 508.108, 508.109, 508.111, 508.112, 508.113, 508.114, 508.116, 508.117, 508.118, 508.119, and 508.120, F.S.; provides for definitions; creates a wrecker operator advisory council assigned to the state Department of Agriculture and Consumer Services (DACS); provides DACS with rule-making authority; specifies registration requirements, renewal of registrations, denial of registrations, forms of payment wrecker companies must accept, operator certifications, certification cards, process, and continuing education; provides for DACS's inspection of employment records; specifies prohibited acts, administrative penalties, criminal penalties, fees, disposition of payments, recovery agent exemptions, preservation of ordinances, and records maintenance requirements of wrecker companies.

Section 2: Creates s. 508.104, F.S., requiring registration for wrecker companies.

Section 3: Creates s. 508.110, F.S., requiring wrecker operator certification.

Section 4: Creates s. 508.115, F.S., establishing criminal penalties.

Section 5: Effective January 1, 2009, amends s. 120.80, F.S., to reflect changes in definitions created elsewhere in the bill.

Section 6: Effective January 1, 2009, creates s. 205.1977, F.S., prohibiting counties and municipalities from issuing local business tax receipts to unregistered wrecker companies.

Section 7: Amends s. 316.530, F.S., to delete the term "tow truck."

Section 8: Amends s. 320.01, F.S., to amend the definition of "wrecker."

Section 9: Effective January 1, 2009, amends s. 320.03, F.S., to replace "wrecker operator" with "wrecker company."

Section 10: Amends s. 320.0706, F.S., requiring license plates to be displayed on the front end of wreckers.

Section 11: Amends s. 320.0821, F.S., providing that a wrecker, regardless of its weight, shall display only one license plate and that it must be displayed on the front of the wrecker.

Section 12: Effective January 1, 2009, amends s. 320.0821, F.S., prohibiting DHSMV from renewing a license plate for a wrecker unless the company owning the wrecker is registered with the state, pursuant to chapter 508, F.S.

Section 13: Amends s. 320.13, F.S., to delete the term "tow truck" and add a cross-reference.

Section 14: Reenacts s. 316.550, F.S., to incorporate the amendments made to s. 320.01, F.S.

Section 15: Reenacts s. 320.08, F.S., to incorporate amendments made to s. 320.01, F.S.

Section 16: Effective January 1, 2009, amends s. 321.051, F.S., to rename the wrecker operator system as the wrecker allocation system and add definitions. Requires that only wrecker companies registered under chapter 508, F.S., may be part of the allocation system; specifies under what circumstances law enforcement officers may dispatch wrecker companies out of rotation or override the selection of a wrecker company by the owner/operator of the disabled vehicle needing a tow.

Section 17: Effective January 1, 2009, amends s. 323.001, F.S., to reflect terminology and registration changes implemented elsewhere in the bill.

Section 18: Effective January 1, 2009, amends s. 323.002, F.S., to rename the county and municipal wrecker operator system as "the county and municipal wrecker allocation system" and to reflect terminology and registration changes implemented elsewhere in the bill; specifies that only wrecker companies registered pursuant to chapter 508, F.S., may be included in the allocation system.

Section 19: Effective January 1, 2009, amends s. 713.78, F.S., to reflect the changes in terminology and definitions created pursuant to the new chapter 508, F.S.; requires an award of damages, costs, and reasonable attorney's fees for the prevailing party in a lien case; authorizes law enforcement officers, firefighters, emergency medical services providers, and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability, and without the consent of the owner or operator, if the vehicle or cargo poses an imminent public safety hazard; provides for dispute of a wrecker operator's lien if DHSMV records indicate that the vehicle or vessel was sold before issuance of a certificate of destruction.

Section 20: Provides that amendments to s. 713.78, F.S., made by this act do not affect the validity of liens established under s. 713.78, F.S., before January 1, 2009.

Section 21: Effective January 1, 2009, amends s. 715.07, F.S., related to towing vehicles from real property. Clarifies that this section will address towing vehicles and vessels parked on real property

without permission; updates to include new wrecker-related terminology and registration requirements; prohibits property owners from soliciting rebates from a wrecker company or operator from using his or her services; corrects cross-references.

Section 22: Effective January 1, 2009, repeals subsection (15) of s. 1.01, F.S., the definition of "wrecker operator."

Section 23: Provides for an appropriation of \$693,000 from the General Inspection Trust Fund to DACS and 9 additional FTE positions for the agency to implement the provisions of this act.

Section 24: Provides that the act shall take effect July 1, 2008, except where otherwise specified.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:	FY 08-09	FY 09-10	FY 10-11
DACS' General Inspection TF			
Recurring			
Annual Registration Fee*	\$693,000	\$693,000	\$693,000
Background checks**	0	3,900	3,900
Non-recurring			
Background checks**	54,600	0	0
Total Revenue	<u>\$747,600</u>	<u>\$696,900</u>	<u>\$696,900</u>

* The bill sets a maximum annual registration fee of \$495. The estimated annual fee revenue, to be deposited into the General Inspection Trust Fund, is based on an estimated 1,400 wrecker operators that will be subject to registration.

**A Florida and national fingerprint background check will be required of each applicant; this background check costs approximately \$39 and must be collected and paid on behalf of the applicant. Annual applicant background checks are estimated at approximately 1,400 in the first year and 100 annually thereafter for new applicants.

2. Expenditures:	FY 08-09	FY 09-10	FY 10-11
DACS' General Inspection TF			
Recurring			
Salaries – 9 FTE	\$448,412	\$457,381	\$466,529
Expenses	63,608	65,108	65,108
Background checks – 100@\$39	3,900	3,900	3,900
AGMIC	5,580	5,580	5,580
Total Recurring Costs	<u>\$521,500</u>	<u>\$531,969</u>	<u>\$541,117</u>
Non-recurring			
Expenses – 9 FTE	\$ 30,051		
OCO	9,000		
Background checks - 1300@\$39	50,700		
AGMIC	16,245		
Total Non-Recurring Costs	<u>\$105,996</u>		
Total Recurring/Non-Recurring	<u>\$627,496</u>	<u>\$531,969</u>	<u>\$541,117</u>

Non-Operating Costs			
Administrative Overhead	\$ 56,219	\$ 56,219	\$ 56,219
General Revenue Service Charge	50,589	50,589	50,589
Total Non-Operating Costs	<u>\$106,808</u>	<u>\$106,808</u>	<u>\$106,808</u>
Grand Total of Costs (GITF)	<u>\$734,304</u>	<u>\$638,777</u>	<u>\$647,925</u>
DHSMV General Revenue Non-recurring Software Programming	\$ 70,000		

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. The bill requires that local business tax receipts may not be issued without proof of registration with DACS.

2. Expenditures:

Indeterminate. Local governments may enter into cooperative agreements with DACS for enforcement purposes, including handling of consumer complaints. The cost of such responsibilities is unknown at this time. Local governments may also adopt more restrictive requirements, including fees and penalties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrecker companies will be required to pay an annual registration fee of \$495 and comply with the new certification requirements. It is unknown at this time how much the certification and continuing education requirements will cost industry members. The wrecker industry also will incur the costs of fingerprinting and background checks to meet the new registration requirements.

The general public also is likely to be financially impacted because some wrecker companies may increase towing fees and other charges to cover the new costs of regulation. In any event, the financial cost to consumers is indeterminate at this time, as are the benefits of increased safety and the improved sense of trust and security consumers may experience from having access to better educated and better regulated wrecker operators.

HB 1195 also may promote an increase in the number of companies offering wrecker education courses with competitive tuition prices, since certification and continuing education will be a requirement for all tow truck operators working for registered wrecker companies.

D. FISCAL COMMENTS:

HB 1195 authorizes nine new positions in DACS, and appropriates \$693,000 from the General Inspection Trust Fund. If fewer than the estimated 1,400 Florida wrecker companies decide to register with DACS, expenditures could exceed revenues and this program would be operating on a deficit.

The DHSMV anticipates needing \$70,000 of General Revenue to cover programming hours to change the current FRVIS software to issue one wrecker tag instead of two. The bill does not provide any funding for this purpose.

Additionally, HB 1195 creates a number of misdemeanor and third degree felony offenses. Since the bill does not rank these offenses in a specific severity level, they automatically default to level 3, respectively. As new felonies, the Department of Corrections (DOC) cannot provide data from its current offender population to assist in gauging the impact the bill will have on the prison and probation

population. DOC, however, anticipates the impact to be minimal. Final impact is likely to be determined by the Criminal Justice Impact Conference.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

In proposed s. 108.103, F.S., DACS is granted rulemaking authority to administer the chapter, including prescribing specific standards to further define each of the described specialized wrecker services; governing the issuance of certification cards to wrecker operators who meet specified requirements; and setting and adopting a fee schedule.

Included in the rewrite of s. 321.051, F.S., the DHSMV is directed to adopt rules prescribing procedures for setting rates for towing and storage of vehicles removed at the request of the FHP.

C. DRAFTING ISSUES OR OTHER COMMENTS:

2005 Legislation:

A nearly identical bill (CS/SB 276) passed the 2005 Legislature. The legislation; however, was vetoed by Governor Bush. The veto message stated, in part:

“ . . .The bill places excessive regulatory and cost burdens on the entire wrecker industry, a burden that will be particularly difficult for smaller wrecker companies to bear. . . .The Department of Agriculture and Consumer Services will be required to provide regulation and enforcement of over 1,500 wrecker companies across the state. Although the bill authorizes 10 FTE positions and appropriates \$683,000. . .it is not certain that those resources will sufficiently equip the department to carry out its new responsibilities.

. . . .the Sunrise Act(,) establishes criteria that must be met before initiating regulation of an industry group in Florida. Among them is the requirement to show that, left unregulated, current industry activities will endanger or substantially harm the public safety or welfare. While proponents of the bill have shown through newspaper articles and videos that problems do exist as the result of abuses by unscrupulous “gypsy” towers, there is insufficient evidence to meet the threshold of *substantial harm* as required by the Sunrise Act.”⁵

D. STATEMENT OF THE SPONSOR

No Sponsor Statement Submitted

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

⁵ Veto letter for CS/SB 276, June 3, 2005, Governor Jeb Bush.