

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/CS/SB 672

INTRODUCER: Criminal Justice Committee; Commerce Committee; and Senator Crist

SUBJECT: Wrecker Services

DATE: April 16, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Fav/2 amendments
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Fav/4 amendments
3.	<u>Rogers</u>	<u>Cooper</u>	<u>CM</u>	Fav/CS
4.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
5.	_____	_____	<u>GA</u>	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 672 creates the Wrecker Operator Advisory Council and submits an estimated 1,400 wrecker companies to regulation by the Department of Agriculture and Consumer Services (DACS), requiring all of the following:

- An annual registration and fee of \$495.
- Certification and continuing education of tow-truck operators.
- Mandatory acceptance of specific forms of payment.
- Maintenance of certain records.

Numerous acts relating to towing and storage are prohibited, and penalties are established for violations. Businesses engaged in primarily towing vehicles for repair or repossession are exempted from the regulation. The CS appropriates \$693,000 to the DACS from the General Inspection Trust Fund and authorizes nine additional full-time-equivalent (FTE) employees.

This CS substantially amends the following sections of the Florida Statutes: 120.80, 316.530, 320.01, 320.03, 320.0706, 320.0821, 320.13, 321.051, 323.001, 323.002, 713.78, and 715.07.

This CS creates section 205.1977 and chapter 508 (ss. 508.101-508.105, 508.1061, and 508.107-508.120), Florida Statutes.

This CS repeals section 1.01(15), Florida Statutes.

This CS reenacts sections 316.550(4)(a) and (9) and 320.08(5)(d) and (e), Florida Statutes.

II. Present Situation:

Currently, wrecker operators in Florida are not regulated by the state beyond the requirement to register wrecker vehicles with the Department of Highway Safety and Motor Vehicles (DHSMV). At the local level, some governments have adopted ordinances governing wrecker operators and wrecker services. Also, local governments may require wrecker operators to pay a local business tax. Although the Florida Statutes do not provide a regulatory program for wrecker operators, there are several provisions relating to wrecker operations (as discussed below).

Wrecker 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 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 only 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

Section 321.051, F.S., authorizes the Florida Highway Patrol (FHP) to establish, within areas designated by the patrol, a system that uses qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles or for removal and storage of abandoned vehicles. The FHP establishes eligibility standards based on safety and mechanical qualifications for wrecker operators. The FHP may also limit the number of operators participating in the system and may establish maximum rates for contracted towing and storage services.

The section defines an “authorized wrecker operator” as any wrecker operator who has been designated by the FHP as part of the wrecker operator system, and an “unauthorized wrecker operator” as any wrecker operator who has not been designated by the FHP as part of the wrecker operator system. The section further provides that any owner of a motor vehicle may contract with any wrecker operator for wrecker services, regardless of whether the operator is an authorized member of the rotation system.

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 5 days, excluding

holidays and weekends, unless extended in writing. The investigating agency must notify the wrecker operator in writing within 5 days 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 5 days, then 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 5 days, then the investigating agency is responsible for payment of the storage charges incurred by the wrecker operator 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 5 days only.

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 chapters 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 that 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.

Local Wrecker Allocation Systems

Section 323.002, F.S., defines an “authorized wrecker operator” as any wrecker operator who has been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. An “unauthorized wrecker operator” is defined as any wrecker operator who has not been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.

The section defines a “wrecker operator system” as a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the FHP wrecker operator system described in s. 321.051(2), F.S., under which a county or municipality contracts with one or more wrecker operators for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. A wrecker operator system includes the use of a method for apportioning the towing assignments among the eligible wrecker operators through the creation of geographic zones, a rotation schedule, or a combination of these methods.

Section 323.002, F.S., prohibits an unauthorized wrecker operator or its employees or agents from monitoring a police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene of such vehicle. Any person who violates this provision commits a noncriminal violation, punishable by a \$500 fine.¹

Further, an unauthorized wrecker operator is prohibited from driving by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiating contact with the owner or operator of such vehicle by soliciting or offering towing services, and towing such vehicle. Any person who violates this provision commits a second degree misdemeanor, which is punishable by a term of imprisonment of up to 60 days and which may include a fine not to exceed \$500.²

When an unauthorized wrecker operator drives by the scene of a wrecked or disabled vehicle and the owner or operator initiates contact by signaling the wrecker operator to stop and provide towing services, the unauthorized wrecker operator must disclose to the owner or operator of the vehicle that he or she is not the authorized wrecker operator who has been designated as part of the wrecker operator system and must disclose, in writing, what charges for towing and storage will apply before the vehicle is connected to the towing apparatus. Any person who violates this provision commits a second degree misdemeanor, which is punishable by a term of imprisonment up to 60 days and which may include a fine not to exceed \$500.

At the scene of a wrecked or disabled vehicle, it is unlawful for a wrecker operator to falsely identify himself or herself as being part of the wrecker operator system. Any person who violates

¹ Section 775.082, F.S.

² Sections 775.082 and 775.083, F.S.

this provision commits a first degree misdemeanor, which is punishable by a term of imprisonment of up to 1 year and which may include a fine not to exceed \$1,000.³

The section does not prohibit the owner or operator of a vehicle involved in an accident, or otherwise disabled, from contacting any wrecker operator for the provision of towing services, regardless of whether the wrecker operator is an authorized wrecker operator.

Liens for Recovering Towing and Storage Fees

Under s. 713.78(2), F.S., a wrecker operator has “a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee.” The owner of the vehicle or vessel, however, may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker operator tows and stores a vehicle or vessel, the wrecker operator must send notice to the registered owner, the insurance company insuring the vehicle, and all lienholders, as disclosed by state agency records. The wrecker operator must send notice by certified mail, return receipt requested, within seven business days after the date of storage of the vehicle. The notice must state all of the following:

- The wrecker operator has taken possession of the vehicle or vessel.
- A lien is claimed by the towing-storage operator.
- The amount of the towing and storage charges accrued.
- The lien claimed is enforceable by law.
- The owner or other lienholder is entitled to a hearing to determine whether his or her property was wrongfully taken.
- A vehicle or vessel which remains unclaimed, or for which recovery, towing, or storage charges remain unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than 3 years old, or after 50 days if the vehicle or vessel is 3 years of age or less.

If unable to locate the name and address of the owner or lienholder, the wrecker operator must notify the local public agency by certified mail indicating the lack of ownership information.

Vehicles or vessels remaining unclaimed may be sold by public auction by the wrecker operator for towing and storage charges. For vehicles or vessels more than 3 years old, the sale may take place no sooner than 35 days from the time the vehicle or vessel was stored. For vehicles or vessels 3 years old or less, the sale may not take place sooner than 50 days from the time of storage. If the date of the sale was not included in the initial notification to the owner and any lienholder, notice must be given by certified mail, return receipt requested, to the owner and any lienholder with the information no later than 15 days before the sale. Additionally, the sale must be advertised once in a general circulation newspaper, at least 10 days before the sale. Proceeds of the sale, less the towing and storage costs, and the cost of the sale, are deposited with the clerk of the circuit court if the owner is absent.

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 his or her permission removed by a person regularly engaged in

³ *Id.*

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 which 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 not less than four-inch high letters.
- 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.

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 following apply:

- The unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare.
- The practice of the profession or occupation requires specialized skill or training.

- The regulation will have an unreasonable effect on job creation or job retention in the state.
- The public can be protected by other means.
- The overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Section 11.62(4), F.S., requires the proponents of legislation providing for the regulation of a profession or occupation not already subject to state regulation to 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, s. 11.62(5), F.S., requires the agency to 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.

III. Effect of Proposed Changes:

Generally, the CS creates the Wrecker Operator Advisory Council and submits most wrecker companies to regulation by the DACS, requiring all of the following:

- An annual registration and fee not to exceed \$495.
- Certification and continuing education of tow-truck operators.
- Mandatory acceptance of specific forms of payment.
- Maintenance of certain records.

A number of acts are prohibited and penalties are established for violations. Businesses engaged in primarily towing vehicles for repair or repossession are exempted from the regulation. The CS appropriates \$693,000 to the DACS from the General Inspection Trust Fund and authorizes nine additional FTE employees. Numerous technical changes are made to various sections for the purpose of conforming terminology and cross-references. Specific details of newly-created ch. 508, F.S., and a section-by-section analysis follow.

New Chapter 508 -- Wrecker Services

Section 508.101, F.S., is created to provide definitions for ch. 508, F.S.

Wrecker Operator Advisory Council

Section 508.102, F.S., creates the Wrecker Operator Advisory Council (council) within the DACS to advise the DACS on implementation of this chapter. The council consists of seven members, all appointed by the Commissioner of Agriculture, four of whom must be persons who have been ultimate equitable owners of a wrecker company for at least 5 years, one wrecker operator of at least 5 years service, and two lay persons. All council members must be Florida residents. The term of each member is 4 years. However, provisions are made to stagger several initial terms to provide continuity of the council. Council members are not compensated, but may be reimbursed for expenses. The DACS is required to keep and store all records of the council and to provide administrative support and staff.

Section 508.103, F.S., provides the DACS with rulemaking authority to administer ch. 508, F.S.

Registration Requirements

Section 508.105, F.S., is created to require the registration of wrecker companies with the DACS. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted and must pay the cost of fingerprinting for initial registration. The DACS will collect \$15 for state processing and an additional fee for national processing for each application to register a wrecker company. The DACS submits the fingerprint cards to the FDLE for processing and they are forwarded to the FBI for national processing. The DACS will review the screening results. The DACS will issue a certificate with a number to the registrant that must be displayed in a conspicuous place in the company's primary place of business. Any advertisement must bear the registration number. Annual renewals are subject to a \$25 late fee. A wrecker company may not renew a registration unless local licensing requirements are met and maintained and the company can present proof of the additional liability insurance that must be carried for a commercial vehicle. The DACS will notify the Department of Highway Safety and Motor Vehicles if a registration issued under ch. 508, F.S., has been suspended or revoked.

Section 508.106, F.S., is created to provide that the DACS may deny, revoke, or refuse registration renewal if any of the following apply:

- 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, car jacking, chop shops, parts and accessories, airbags, overcharging for repairs or parts, or towing or storage.
- The company fails to pay fines or penalties imposed under this new law.
- The company has an action pending in any jurisdiction for violation of ch. 508, F.S.; or
- The company has a judgment against it for a violation of ch. 508, F.S.

Acceptable Forms of Payment

Section 508.1061, F.S., is created to specify acceptable forms of payment for wrecker company services. A wrecker company must accept at least two of the following types:

- Cash, cashier's check, money order, or traveler's check.
- Valid personal check.
- Valid credit card, including Visa or MasterCard.

Wrecker Operator Certification Program

The CS creates s. 508.107, F.S., to provide that the DACS, in consultation with the council, must establish a certification program for wrecker operators, and approve certification courses, schools, and exams by December 31, 2008. A wrecker operator must receive at least 16 hours of training in a certification program for certification. Additionally, s. 508.108, F.S., is created to provide that each approved certification course must offer specialized certification for specialized wrecker services. Section 508.109, F.S., is created to provide each organization conducting an approved wrecker operator certification course must issue a certification card to each wrecker operator who completes the certification course and passes the certification examination. Each certification card expires 5 years after the date of issuance.

Continuing Wrecker Education (CWE)

The CS creates s. 508.111, F.S., to authorize the DACS, in consultation with the council, to establish Continuing Wrecker Education (CWE) requirements by December 31, 2009, of at least 8 hours for the renewal of a wrecker operator's certification.

Prohibited Acts

Section 508.112, F.S., prohibits a person from engaging in the following acts.

- 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 recovering, towing or storing vehicles and vessels.
- Violating the laws governing towing or removing vehicles and vessels from private property.
- 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.
- Performing an act prohibited by ch. 508, F.S., or failing to perform an act required by this new law.

Administrative and Civil Penalties

Sections 508.113 and 508.114, F.S., are created to provide administrative and civil penalties. DACS may impose any of the following civil penalties:

- 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 department-specified probationary period.
- Seek a civil remedy of up to \$5,000 per violation.
- Seek restitution on behalf of an aggrieved party.

Fees Payable to DACS

Sections 508.116 and 508.117, F.S., are created to assess a fee not to exceed \$495 for wrecker company registration and renewal. All fees, penalties, and other monies collected pursuant to this CS are deposited into the General Inspection Trust Fund and may only be used to implement the new law. The CS requires the DACS to maintain data on the collection of fees from wrecker companies, and to review the fee amounts after the first 2 years of the registration program.

Recovery Agents

Section 508.118, F.S., is created to exempt recovery agents performing repossessions from the requirements of the chapter.

Effect of Act on Local Ordinances

Section 508.119, F.S., is created to authorize local governments to impose regulations on wrecker operators and wrecker companies which are more restrictive than those provided in this CS, and may still levy occupational license taxes. The DACS is authorized to delegate enforcement of this act to any county or municipality.

Records

Section 508.120, F.S., is created to require wrecker companies to maintain records of its wrecker services and records sufficient to demonstrate successful completion of required educational courses for each operator. Additionally, each organization providing wrecker education courses is directed to maintain records on each person completing one of the courses.

Registration Required

Section 508.104, F.S., effective January 1, 2009, prohibits persons from engaging in wrecker services for hire unless the person is registered according to the provisions of this act. A local occupational license may not be issued or renewed to any person or company not registered with DACS. The section exempts from wrecker registration requirements in this CS any vehicle repair shop registered by the DACS that derives at least 80 percent of its gross sales from vehicle repairs.

Wrecker Operator Education

The CS creates s. 508.110, F.S., effective January 1, 2009, to require an individual must become certified as a wrecker operator within 6 months after employment as a wrecker operator. The CS provides an exemption for vehicle repair shops and certain religious organizations.

Criminal Penalties

Section 508.115, F.S., effective January 1, 2009, provides criminal penalties for the following acts, which are punishable as third degree felonies:⁴

- Operation of an unregistered wrecker company.
- Performance of wrecker services without being employed by, or without being the ultimate equitable owner of a registered wrecker company.

Miscellaneous Provisions

Section 120.80, F.S., is amended to conform existing law to the provisions of the CS. The term “wrecker operator” is changed to “wrecker company” and “wrecker rotation system” is revised to be “wrecker allocation system.”

Section 205.1977, F.S., is created to prohibit counties and local municipalities from issuing or renewing a business tax receipt for the operation of a wrecker company unless the wrecker company provides proof of registration as a wrecker by the DACS.

Section 316.530, F.S., is amended to conform existing law to the provisions of the CS. Section 320.01, F.S., is amended to clarify the definition of “Wrecker.” The CS also amends

⁴ A third degree felony is punishable by a term of imprisonment not exceeding 5 years, and which may include a fine not to exceed \$5000. ss. 775.082 and 775.083, F.S.

s. 320.03(8), F.S., to conform existing International Registration Plan law to the provisions of the CS.

Sections 10 through 12 of the CS make revisions to wrecker license plate provisions. Section 320.0706, F.S., is amended to require a wrecker's license plate to be mounted to the front of the vehicle.

Subsection 320.0821(1), F.S., is amended and subsection (5) is added to clarify license plate requirements for wreckers. This section does not apply to vehicles registered under the International Registration Plan.

Sections 13 through 15 make technical changes to conform existing law to the provisions of the CS.

Section 321.051, F.S., is amended to authorize a law enforcement officer to dispatch a wrecker from the wrecker allocation system if the officer believes a disabled vehicle is a public safety hazard and the wrecker would arrive before a wrecker requested by the vehicle owner. The section is further amended to provide a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment.

The CS makes a substantive change to a current offense. Presently, s. 321.051(3)(b), F.S., provides that “[i]t is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of the authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle.” The offense is a second-degree misdemeanor. The CS does not change the penalty. However, the CS rewords the offense to read: “A wrecker operator dispatched by an unauthorized wrecker company may not drive by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company, initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services, or tow the vehicle.” In current s. 321.051(3)(b), F.S., all three actions specified must occur for the law to be violated; however, the CS replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

This CS amends s. 323.001, F.S., to include updated language and clarify the length of time a vehicle may be held. Definitions for “Business day” and “Wrecker company” are added, and the term “investigating agency” is replaced with “law enforcement agency.”

The CS provides that the towing and storage rates for a vehicle held pursuant to a request by an investigating agency shall not exceed the contract or county rates instead of the rates for the investigating agency. As a result, law enforcement agencies and vehicle owners will be charged the same towing and storage rates on held vehicles regardless of who is responsible for payment.

Section 323.002, F.S., is amended to include updated language. The amended section also authorizes a law enforcement officer to dispatch a wrecker from the local wrecker allocation system if the officer believes a disabled vehicle is a public safety hazard and the wrecker would

arrive before a wrecker requested by the vehicle owner. The section is further amended to provide a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment.

The CS makes a substantive change to a current offense. Presently, s. 323.002(2)(b), F.S., provides that “[i]t is unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker operator, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle.” The offense is a second degree misdemeanor. The CS does not change the penalty. However, the CS rewords the offense to read: “A wrecker operator dispatched by an unauthorized wrecker company may not drive by the scene of a wrecked or disabled vehicle before the arrival of the wrecker operator dispatched by the authorized wrecker company, initiate contact with the owner or operator of the vehicle by soliciting or offering wrecker services, or tow the vehicle.” In current s. 323.002(2)(b), F.S., all three actions specified must occur for the law to be violated; however, the CS replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

Section 713.78, F.S., is amended to conform existing law to the provisions of the CS. Additionally, the CS removes the requirement for towing-storage operators to use the ‘return receipt requested’ service provided by postal services when notifying owners, lienholders, and insurers concerning vehicles and vessels for which the towing-storage operator has claimed a lien. The CS allows towing-storage operators to make use of the U.S. Postal Service’s Delivery Confirmation feature which provides proof of mailing at a lower cost than the Return Receipt Requested service. Proof of mailing must be retained and provided to any person involved in actions relating to the vehicle or vessel. The CS also clarifies that liens established under s. 713.78, F.S., prior to July 1, 2009, are not affected by the changes to the section made by this CS.

Section 715.07, F.S., is amended to conform to the provisions of ch. 508, F.S., and provides that a failure to make good faith efforts to adequately identify areas as tow-away zones precludes the imposition of towing or storage fees against a vehicle or vessel.

Section 1.01(15), F.S., defining the term “wrecker operator,” is repealed effective January 1, 2009.

This CS appropriates \$693,000 from the General Inspection Trust Fund to DACS and authorizes nine additional FTE employees for fiscal year 2008-2009.

The CS takes effect July 1, 2008, except as otherwise provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS provides that all wrecker companies and persons engaged in towing activities must be certified and registered with the DACS in order to conduct business in this state. The CS provides that the fee for such registration will not exceed \$495. Prospective wrecker operators will likely have to pay for the certification course and the required 8 hours of continuing education (once every 5 years); however, the cost of the training is currently unknown. Wrecker companies will also be required to pay for fingerprinting and background checks.

C. Government Sector Impact:

According to the Department of Highway Safety and Motor Vehicles, this CS requires reprogramming of the Florida Real-Time Vehicle Information System at a non-recurring cost of \$70,000.

According to the DACS, this CS will have an average annual cost of approximately \$693,000 to fund the necessary staff to implement this program over the next 3 fiscal years. However, this impact will be partially offset by registration fees if the estimated 1,400 wrecker operators in the state pay an annual registration fee of \$495, the maximum allowed by the CS.

The CS creates new third degree felonies for operating a wrecker company in this state without being registered and for performing wrecker services without being an employee or owner of a registered wrecker company. Staff requested that the Criminal Justice Impact Conference (CJIC) place the CS on a future agenda to determine the prison bed impact, if any, of the CS. The CJIC had not met to consider the CS at the time this analysis was completed. Since the CS does not rank these offenses in a specific severity level in the offense severity ranking chart of the Criminal Punishment Code (s. 921.0022, F.S.), they automatically default to Level 1 as provided in s. 921.0023, F.S. As new felonies, the Department of Corrections (DOC) cannot provide data from its current offender population to assist in gauging the impact this CS will have on the prison and probation population. However, the DOC anticipates impact to be minimal. Final impact is likely to be determined by the CJIC.

The CS appropriates \$693,000 from the General Inspection Trust Fund to the DACS to fund the program and authorizes nine additional FTE positions.

VI. Technical Deficiencies:

Lines 2076 to 2079 state: “Failure to make good faith efforts to comply with the notice requirements in subparagraph (2)(a)5. precludes the imposition of any towing or storage charges against the vehicle or vessel.” The statement does not identify what constitutes “good faith efforts.” Also, the towing and storage of a vehicle or vessel parked on real property without permission involves at least three parties: the property owner, the vehicle or vessel owner, and the wrecker operator. The statement only provides that the vehicle or vessel owner is not responsible for the towing and storage costs. It is unclear which party would be liable for the cost of towing and storage under this condition, how the determination of “good faith efforts” is made, and whether the vehicle or vessel may be released to the owner pending the disposition of those costs.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 16, 2008:

The CS amends the definition of “wrecker company” in newly created s. 508.101, F.S., to indicate that the term does not include a person or business entity regularly engaged in the business of transporting mobile homes or any franchised motor vehicle dealer licensed under s. 320.27, F.S., if wrecker services are incidental to the operation of the franchise.

CS by Commerce on April 1, 2008:

The CS revises the composition of the Wrecker Operator Advisory Council by removing the provision for inclusion of the Executive Director of the Professional Wrecker Operators of Florida, Inc. as a voting member. A total of seven members is maintained by including a fourth wrecker company owner, also appointed by the Commissioner of Agriculture.

The CS requires the DACS to collect \$15 for state processing and an additional fee for national processing for each application to register a wrecker company. The DACS submits the fingerprint cards to the FDLE for processing and they are then forwarded to the FBI for national processing. The DACS will review the screening results.

The CS requires the DACS to maintain data on the collection of fees from wrecker companies.

The CS excludes franchise motor vehicle dealers licensed under s. 320.27, F.S., from the definition of wrecker services. It also makes a conforming change to delete language exempting certain franchised motor vehicle dealers from the wrecker registration requirement because they are now excluded from the definition of wrecker services.

B. Amendments:

None.