

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 Transportation Committee

BILL: SB 672

INTRODUCER: Senator Crist

SUBJECT: Wrecker Services

DATE: February 12, 2008 REVISED: 2/20/08

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Fav/2 amendments</u>
2.	<u> </u>	<u> </u>	<u>CA</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>CM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>CJ</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u>GA</u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

Senate Bill 672 creates the Wrecker Operator Advisory Council and submits an estimated 1400 wrecker companies to regulation by the Department of Agriculture and Consumer Services (DACS), requiring:

- an annual registration and fee of \$495;
- certification and continuing education of tow-truck operators;
- mandatory acceptance of specific forms of payment; and
- maintenance of certain records.

A number of acts related 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 bill appropriates \$693,000 to DACS from the General Inspection Trust Fund and authorizes nine additional full-time-equivalent (FTE) employees.

This bill 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 bill creates section 205.1977 and chapter 508, Florida Statutes.

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

This bill 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 local governments have adopted ordinances governing wrecker operators and wrecker services. Also, local governments may require wrecker operators to pay a local business tax. Although 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 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 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 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 five days, excluding holidays and weekends, unless extended in writing. The investigating agency must notify the wrecker operator in writing within five 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 five 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 five 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 five days.

The section further provides 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.

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 is guilty of a noncriminal violation, punishable by a \$500 fine.

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 is guilty of a misdemeanor of the second degree, which is punishable by a term of imprisonment of up to 60 days and which may include a fine not to exceed \$500.

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 is guilty of a misdemeanor of the second degree, 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 this provision is guilty of a misdemeanor of the first degree, which is punishable by a term of imprisonment of up to one year and which may include a fine not to exceed \$1,000.

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 that:

- 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 her or his property was wrongfully taken from her or him; and
- 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 three years old, or after 50 days if the vehicle or vessel is three 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 three 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 three 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 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 certain restrictions are complied with.

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 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.
- Whether the public can be protected by other means.
- Whether 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 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,

s. 11.62(5) 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 bill creates the Wrecker Operator Advisory Council and submits most wrecker companies to regulation by DACS, requiring:

- an annual registration and fee not to exceed \$495;
- certification and continuing education of tow-truck operators;
- mandatory acceptance of specific forms of payment; and
- 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 bill appropriates \$693,000 to 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

Wrecker Operator Advisory Council

Section 508.102, F.S., creates the Wrecker Operator Advisory Council (council) within DACS to advise DACS on implementation of this chapter. The council consists of seven members, including 6 members appointed by the Commissioner of Agriculture and Consumer Services, three of whom must be persons who have been ultimate equitable owners of a wrecker company for at least five years, one wrecker operator of at least five years service, and two lay persons. The Executive Director of the Professional Wrecker Operators of Florida, Inc. is also a voting member of the council. The term of each member is four 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. 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 DACS with rulemaking authority to administer ch. 508, F.S.

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 bill, franchised motor vehicle dealers and any vehicle repair shop registered by DACS that derives at least 80 percent of its gross sales from vehicle repairs.

Section 508.105, F.S., is created to require the registration of wrecker companies with DACS and prohibit the operation of unregistered companies. The annual registration fee shall be set by DACS by administrative rule. All registrants, equitable owners, partners, or those with executive

management control must be fingerprinted, and must pay the cost of fingerprinting for initial registration. DACS will issue a certificate with a number to the registrant that must be displayed in a conspicuous place in the company's 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.

Section 508.106, F.S., is created to provide that DACS may deny or refuse registration renewal if:

1. The wrecker company does not meet or adhere to registration requirements;
2. The owners or executive managers have been convicted of a felony within the last 10 years;
3. 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;
4. The company fails to pay fines or penalties imposed under this new law;
5. The company has an action pending in any jurisdiction for violation of this new law; or
6. The company has a judgment against it for violation of this new law.

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 and MasterCard.

Wrecker Operator Education

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

The bill creates s. 508.107, F.S., to provide the council must establish a certification program for wrecker operators, and approve certification courses, schools, and exams. 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, 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 five years after the date of issuance.

Continuing Wrecker Education (CWE)

The bill creates s. 508.111, F.S., to authorize DACS, in consultation with the council, to establish Continuing Wrecker Education (CWE) requirements of at least eight 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.

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

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.

1. Issue a notice of noncompliance.
2. Impose an administrative fine of no more than \$5,000.
3. Issue cease and desist orders.
4. Revoke, suspend, or refuse registration.
5. Impose a department specified probationary period.
6. Seek a civil remedy of up to \$5,000 per violation.
7. Seek restitution on behalf of an aggrieved party.

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

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

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 bill are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

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 provide local governments may impose regulations on wrecker operators and wrecker companies which are more restrictive than those provided in this bill, and may still levy occupational license taxes. 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.

Section-by-Section Analysis

Sections 1 through 4 of the bill create chapter 508, F.S., to provide for the certification and registration of most wrecker companies and wrecker operators.

Section 5 makes a technical change, amending s.120.80, F.S., to conform existing law to the provisions of the bill. The term “wrecker operator” is changed to “wrecker company” and “wrecker rotation system” is revised to be “wrecker allocation system.”

Section 6 creates s. 205.1977, F.S., to prohibit counties and local municipalities from issuing or renewing an occupational license for the operation of a wrecker company unless the wrecker company provides proof the company is registered as a wrecker by DACS.

Section 7 amends s. 316.530, F.S., to conform existing law to the provisions of the bill.

Section 8 amends s. 320.01, F.S., to clarify the definition of “Wrecker.”

Section 9 amends s. 320.03(8), F.S., to conform existing International Registration Plan law to the provisions of the bill.

Sections 10 through 12 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. Effective January 1, 2009, the DHMSV may issue license plates to wreckers only if they are registered under ch. 508, F.S. 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 bill.

Section 16 amends s. 321.051, F.S., 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 bill makes a substantive change to a current offense. Presently, s. 321.051(3)(b), F.S., provides “[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 bill does not change the penalty. However, the bill 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 bill replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

Section 17 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 bill provides 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 18 amends s. 323.002, F.S., 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 bill 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 bill does not change the penalty. However, the bill 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 bill replaces the conjunctive “and” with the disjunctive “or,” so that the occurrence of any of the three actions specified will constitute a violation.

Section 19 amends s. 713.78, F.S., to conform existing law to the provisions of the bill. Additionally, the bill 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 bill 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.

Section 20 clarifies 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 bill.

Section 21 conforms language in s. 715.07, F.S., to reflect the provisions of ch. 508, F.S., and provides 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 22 repeals s 1.01(15), F.S., defining “wrecker operator”, effective January 1, 2009.

Section 23 appropriates \$693,000 from the General Inspection Trust Fund to DACS and authorizes nine additional FTE employees for fiscal year 2008-2009.

Section 24 establishes an effective date of 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 bill provides all wrecker companies and persons engaged in towing activities must be certified and registered with DACS in order to conduct business in this state. The bill provides 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 five 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 DHSMV, this bill requires reprogramming of the Florida Real-Time Vehicle Information System at a non-recurring cost of \$70,000.

According to DACS, this bill will have an average annual cost to DACS of approximately \$693,000 to fund the necessary staff to implement this program over the next three 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 bill.

The bill 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 registered wrecker company. 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 cannot provide data from its current offender population to assist in gauging the impact this bill will have on the prison and probation population. However, the Department anticipates impact to be minimal. Final impact is likely to be determined by the Criminal Justice Impact Conference (CJIC).

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

VI. Technical Deficiencies:

Lines 2069 through 2072 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 the vehicle or vessel owner is not responsible for the towing and storage costs. It is not clear 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.

A traveling amendment (Barcode 747044) introduces a technical deficiency through its removal of language specifying requirements related to the submission of fingerprints by applicants.

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.)

None.

B. Amendments:

Barcode 641410 by Transportation - The amendment 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.

Barcode 747044 by Transportation – The amendment revises the registration application’s fingerprinting requirements. Rather than an applicant submitting a \$23 fingerprint processing fee to the Florida Department of Law Enforcement (FDLE), the amendment directs DACS to collect a \$15 fee for state processing of fingerprints “and an additional fee for national processing for each applicant submitted.” However, a technical deficiency is introduced by the amendment through its removal of language requiring the submission of fingerprints by applicants seeking registration.