

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1175 Recovery, Towing & Storage of Vehicles & Vessels
SPONSOR(S): Ford and others
TIED BILLS: None IDEN./SIM. BILLS: SB 2266

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Rows include Insurance, Business & Financial Affairs Policy Committee; Civil Justice & Courts Policy Committee; General Government Policy Council; Policy Council.

SUMMARY ANALYSIS

Under current law, when a person is arrested for driving while his or her driver's license or driving privilege is suspended or revoked, the arresting officer must, subject to certain verification requirements, immediately impound or immobilize the driver's vehicle.

This bill retains the requirement that the notice of impoundment or immobilization be sent via certified mail; however, it removes the requirement that the sender request a return receipt from the postal service.

Florida law allows a wrecker or tow truck operator that recovers, removes or stores a vehicle or vessel to impose a lien against the vehicle or vessel for a reasonable towing and storage fee. Whenever any vehicle or vessel is removed by authorization of a law enforcement agency, the applicable agency is required to contact the Department of Highway Safety and Motor Vehicles (DHSMV) giving a full description of the vehicle or vessel and other pertinent information.

This bill assigns responsibility for contacting DSHMV to the law enforcement agency of the jurisdiction in which the vehicle or vessel is stored, permits notification by certified mail without requesting a return receipt, deletes authority for the filing of complaints in counties in which the owner resides, authorizes public sales in place of public auctions and makes technical changes regarding inspection procedures.

Current law allows prevailing parties to be awarded damages, attorney's fees and costs when challenging the taking or withholding of vehicles or vessels. This bill extends the opportunity to recover damages, attorney's fees and costs to prevailing parties in cases contesting the wrongful taking, withholding, or sale of a vehicle or vessel after the actual sale of such property.

The bill is not expected to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Regulations for Driving with Suspended or Revoked License**

###### Current Situation

Upon the arrest of a person for the offense of driving while the person's driver's license or driving privilege is suspended or revoked, the arresting officer must, after determining among other things that the driver is the registered owner or coowner of the vehicle, immediately impound or immobilize the vehicle. Within 7 business days after the date the arresting agency impounds or immobilizes the vehicle, either the arresting agency or the towing service, whichever is in possession of the vehicle, must send notice by certified mail, return receipt requested, to the following individuals: the coregistered owner of the vehicle other than the person arrested, the registered owner, each person of record claiming a lien against the vehicle or having a recorded lien, or a rental or leasing company.<sup>1</sup>

The owner of a vehicle that is impounded or immobilized may, within 10 days after the date the owner has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld. Upon the filing of a complaint, the owner may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner does not prevail. When the vehicle owner does not prevail on a complaint that the vehicle was wrongfully taken or withheld, he or she must pay the accrued charges for the immobilization or impoundment, including any towing and storage charges assessed against the vehicle. When the bond is posted and the proper fee is paid, the clerk of the court must issue a certificate releasing the vehicle. At the time of release, after reasonable inspection, the owner must give a receipt to the towing or storage company indicating any loss or damage to the vehicle or to the contents of the vehicle.<sup>2</sup>

According to the U.S. Postal Service website, certified mail service gives the person or entity mailing the letter a receipt stamped with the date of mailing, a unique bar-code number allowing the mailer to verify delivery online, and assurances that the recipient's signature is obtained at the time of delivery then maintained by the local Post Office.<sup>3</sup> This service costs \$2.70 in addition to the regular 42 cents'

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<sup>1</sup> Sec. 322.34(7)(a)(b)(c)(d), F.S.

<sup>2</sup> Sec. 322.34(7)(f), F.S.

<sup>3</sup> See <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm>. Last accessed March 24, 2009.

postage<sup>4</sup>. Additionally, senders can request a copy of the signature record. This return receipt service provides tangible proof that a letter or package was delivered and that the recipient signed for it. The return receipt can be in the form of a green postcard at an extra cost of \$2.20.<sup>5</sup> The postal service has the ability to electronically track and verify the delivery of certified mail, and it provides this service for a fee should the need arise for verification after a certified mailing has occurred without a concurrent request for a return receipt.

### Effect of Proposed Changes

The bill retains the requirement to notify affected parties by certified mail but removes requiring notification by return receipt requested. In addition, the right to file a complaint challenging the taking or withholding of the vehicle is expanded to include a lienholder and not just the owner.

## **Liens for Recovering, Towing, or Storing Vehicles and Vessels**

### Current Situation

Pursuant to Chapter 713, F.S., a wrecker operator has “a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee.”<sup>6</sup> 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.<sup>7</sup> The wrecker operator must send notice by certified mail, return receipt requested, within seven business days after the date of storage of the vehicle.<sup>8</sup>

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 “public agency of jurisdiction” by certified mail indicating the lack of ownership information.<sup>9</sup> The phrase “public agency of jurisdiction” is generally interpreted to mean a local law enforcement agency, typically a Sheriff’s office, or less-frequently a municipal police department.<sup>10</sup>

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.

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<sup>4</sup> On May 11, 2009, certified mail is rising to \$2.80, and a regular stamp to 44 cents. See <http://www.usps.com/prices/pricechanges.htm>. Last accessed March 25, 2009.

<sup>5</sup> On May 11, 2009, return receipts are rising to \$2.30. An electronic version will be \$1.10. See <http://www.usps.com/prices/pricechanges.htm>. Last accessed March 25, 2009.

<sup>6</sup> Sec. 713.78(2), F.S.

<sup>7</sup> Sec. 713.78(4)(a), F.S.

<sup>8</sup> Sec. 713.78(4)(c), F.S.

<sup>9</sup> Sec. 713.78(4)(d), F.S.

<sup>10</sup> Conversation between Steven Fielder, Department of Highway Safety and Motor Vehicles and staff with the Roads, Bridges and Ports Policy Committee, March 9, 2009.

Section 713.78(5)(a), F.S., provides that an owner or any person holding a lien against the vehicle may file a complaint against the towing or storage operator to determine whether the property is being wrongfully withheld. The complaint may be filed either in the county where the vehicle is stored, or in the county in which the owner resides. Also, for this particular legal challenge, current law permits the court, upon determining the respective rights of the parties, to award damages, attorney's fees, and costs in favor of the prevailing party.

### Effect of Proposed Changes

The bill removes the requirement that a towing or storage service must request a return receipt from the U.S. Postal Service, when sending notices of a lien or pending sale pursuant to s. 713.78, F.S. The bill also provides that any complaints challenging the taking or withholding of the vehicle or vessel by the towing-storage operator may be filed only in the county in which the vehicle is stored.

The bill specifies that when a towing or storage operator takes a vehicle at the request of law enforcement, the responsibility for contacting DHSMV rests with the law enforcement agency "of the jurisdiction in which the vehicle or vessel is stored". This replaces the current phrase "the *applicable* law enforcement agency." A similar change is made regarding storage facilities that are unable to locate, after a good-faith search, the owner of a vehicle. This bill specifies that the storage facility must notify the public agency "of the jurisdiction in which the vehicle or vessel is stored."

In addition, this bill provides that after a vehicle has been sold at public auction, an owner or lienholder may file a complaint against the towing or storage service. Upon "determining the respective rights of the parties," the court may award damages, costs, and attorney's fees.

#### B. SECTION DIRECTORY:

Section 1 amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.

Section 2 amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

Section 3 provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Towing and storage operators may see a reduction in costs due to the removal of the “return receipt requested” requirement in current statute. Lienholders may see an economic benefit from the provisions of the bill that include lienholders as parties to be notified of a tow and as potential parties to a lawsuit regarding wrongful vehicle storage. The availability to recover court costs and attorneys’ fees to prevailing parties in such lawsuits, and in lawsuits following the sale of a wrongfully-taken vehicle may also have a direct economic impact to the parties involved.

D. FISCAL COMMENTS:

To the extent there are some local governments that, as part of their law enforcement operations, tow and store vehicles and vessels, they should realize some, albeit de minimus, savings due to the change in notice requirements of this bill.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.