

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 Community Affairs Committee

BILL: SB 2266

INTRODUCER: Senator Crist

SUBJECT: Vehicles & Vessels/Liens/Recovery, Towing, Storing

DATE: April 9, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	Favorable
2.	<u>Wolfgang</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill modifies and clarifies statutory notification requirements and jurisdictional matters relating to the impounding, recovery, towing and storage of motor vehicles and vessels.

Specifically, the bill:

- eliminates the return receipt requirement for notification letters sent by impounding agencies and towing companies to vehicle and vessel owners, lienholders, and other interested parties;
- expands the ability of lienholders relating to taking possession of impounded vehicles;
- clarifies jurisdictional applicability of law enforcement agencies relating to notification;
- clarifies jurisdictional applicability of county courts to which an aggrieved party may file a complaint; and
- provides for the court to award damages, costs, and attorney’s fees relating to complaints filed because of the wrongful disposal of unclaimed vehicles or vessels.

This bill substantially amends ss. 322.34 and 713.78, F.S.

II. Present Situation:

There are at least two sections of Florida Statutes controlling the process used to notify a vehicle’s owner, coowner, lienholder, and other interested parties of the impoundment of the vehicle and the accrual of recovery, towing, and storing costs.

Under s. 322.34(8), F.S., a law enforcement officer arresting a driver for driving with a suspended or revoked driver’s license must immediately impound or immobilize the vehicle if:

- the arrest is subsequent to a previous arrest for driving with a suspended or revoked license which remains suspended or revoked, and
- the suspension or revocation is due to the failure to maintain required insurance or for habitual traffic offenses, and
- the driver is the registered owner or coowner of the vehicle.¹

Within seven days, the impounding agency or the company towing and storing the vehicle must send notice by certified mail, return receipt requested, to any coregistered owners of the vehicle and to each recorded lienholder.² Provisions are also included to ensure notification of leasing and rental agencies, using courier or certified mail, return receipt requested. The lienholder, lessor, or rental agency, may obtain the vehicle upon the payment of towing and storage fees.³ Otherwise the vehicle remains impounded until the owner presents proof of insurance or proof of sale of the vehicle. If after 35 days, no proof of insurance or sale is provided, a lien is placed against the vehicle under s. 713.78, F.S. A vehicle owner may challenge the impoundment of a vehicle by filing a complaint and, pending determination of the complaint, may have the vehicle released by posting a bond sufficient to cover costs and fees.

Likewise, under s. 713.78(2), F.S., 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.⁴ When a wrecker operator removes a vehicle upon authorization of a law enforcement agency or from private property under the provisions of s. 715.07(2)(a)2., F.S., the wrecker operator must notify the “applicable” law enforcement agency which, in turn, contacts the Department of Highway Safety and Motor Vehicles (DHSMV) within 24 hours for the purpose of identifying the vehicle or vessel’s owner. The wrecker operator must obtain owner information from the law enforcement agency and send notice to the registered owner, insurance company, and all listed lienholders by certified mail, return receipt requested, within seven business days after the date of storage of the vehicle.⁵ The notice must state:

- 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.

¹ Section 322.34(8)(b), F.S.

² Section 322.34(8)(c), F.S.

³ Section 322.34(8)(d), F.S.

⁴ Section 713.78(4)(a), F.S.

⁵ Section 713.78(4)(c), F.S.

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.⁶ Vehicles or vessels remaining unclaimed may be sold by public auction by the wrecker operator for towing and storage charges.⁷ 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.

According to the U.S. Postal Service website, certified mail service provides 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 and subsequently maintained by the local post office. This service costs \$2.70 in addition to the regular 42 cents postage. Additionally, senders can request a copy of the signature record. This return receipt service provides tangible proof a letter or package was delivered and the recipient signed for it. The return receipt can be in the form of a green postcard (at an extra cost of \$2.20), or as a PDF attachment via email or by fax (for \$1.35 extra). The charge is higher if the return receipt service was requested by the sender after mailing the letter.

III. Effect of Proposed Changes:

Sections 322.34 and 713.78, F.S., are amended to delete provisions requiring the arresting agency or the towing company to request a formal return receipt from the postal service when mailing notice of a claim of lien for recovery, towing, or storage services. The requirement to use certified mail remains in effect and proof of delivery would still be available.

Section 1 amends s. 322.34, F.S., to expand provisions related to the filing of complaints challenging the taking or withholding of the vehicle or vessel by the towing or storage company. The bill allows lienholders, as well as owners, to file a complaint.

Section 2 amends s. 713.78, F.S., to clarify that when a towing service takes a vehicle at the request of law enforcement, the law enforcement agency "of the jurisdiction in which the vehicle or vessel is stored" is responsible for contacting DHSMV. This replaces the current phrase "the applicable law enforcement agency." A similar clarification is made regarding storage facilities unable to locate, after a good-faith search, the owner of a vehicle, clarifying that storage facility must notify the public agency "of the jurisdiction in which the vehicle or vessel is stored."

The bill removes a provision giving complainants the ability to file a complaint in the jurisdiction where the owner resides. The bill also provides an owner or lienholder may file a complaint against the towing or storage service after a vehicle has been sold and deletes the

⁶ Section 713.78(4)(d), F.S.

⁷ Section 713.78(6), F.S.

specification that the vehicle or vessel be sold at auction. Upon “determining the respective rights of the parties,” the court may award damages, costs, and attorney’s fees.

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

Other Potential Implications:

Although proof of delivery would remain available to senders of certified mail after the removal of the statutory return receipt requirement, absent a requirement otherwise, wrecker companies are not required to provide proof of delivery to the affected parties outside of a court order.

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:

Currently, ss. 322.34 and 713.78, F.S., require towing companies that tow and store vehicles to send certified letters, return receipt requested, to the vehicle owner, lienholder, insurance company and anyone of interest.

The average vehicle may need to have 2-3 letters sent with some requiring more. The cost to the towing company for postage is \$5.32 per letter (this is \$0.42 for postage, \$2.70 certified mail, and \$2.20 return receipt requested).

With the electronic tracking ability of the postal service, which may be purchased after a certified mailing and only when necessary, the return receipt card is no longer needed in order to verify the mailing and delivery of certified mail. Removing the requirement for the return receipt requested portion could save the business owner \$2.20 per letter. A small towing company could save over \$2,000.00 yearly in postage costs, and larger operations could save even more.

This is a benefit to small business owners with no change in service to the vehicle owner.

C. Government Sector Impact:

As with the impacts to private towing companies shown above, law enforcement agencies would experience cost savings when notifying owners, lienholders, and other interested parties of impounded vehicles.

VI. Technical Deficiencies:

None.

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:

None.