

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 1008

INTRODUCER: Senator Simmons

SUBJECT: Recovering, Towing, or Storing Vehicles or Vessels

DATE: March 16, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Spalla	TR	Pre-meeting
2.	_____	_____	CM	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Current law allows a company that recovers, tows, or stores a vehicle or vessel to have a lien against the vehicle or vessel for the costs of recovery, towing, and storage. If the charges remain unpaid, the company can sell the vehicle or vessel at a public sale. The company is responsible for sending notice of the pending sale to the owner and lienholders. This bill transfers responsibility for sending this notice from the company to the Department of Highway Safety and Motor Vehicles (DHSMV or department). Specifically, the bill requires DHSMV to send notices of liens to persons with an interest in a vehicle or vessel that is in the possession of a wrecker operator.

This bill amends ss. 713.78 and 715.07 of the Florida Statutes.

II. Present Situation:

Liens for Recovering, Towing, or Storing Vehicles and Vessels

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.¹ 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

¹ Section 713.78(4)(a), F.S.

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 within seven business days after the date of storage of the vehicle.² 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 of jurisdiction where the vehicle or vessel is stored by certified mail indicating the lack of ownership information.³

Vehicles or vessels remaining unclaimed may be sold by public auction by the wrecker operator for towing and storage charges.⁴ 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.⁵ 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 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.⁶ If the vehicle to be sold is to be dismantled, destroyed, or altered significantly, a wrecker operator must apply to the county tax collector for a certificate of destruction.⁷ The application for a certificate of destruction must include an affidavit from the applicant that it has complied with all applicable requirements of s. 713.78, F.S., and, if the vehicle or vessel is not registered in Florida, by a statement from a law enforcement officer that the vehicle or vessel is not reported stolen. The application must also be accompanied by any such documentation as may be required by DHSMV.

A certificate of destruction, which authorizes the dismantling or destruction of the vehicle or vessel described therein, may be reassigned no more than twice before dismantling or destruction

² Section 713.78(4)(c), F.S.

³ Section 713.78(4)(d), F.S.

⁴ Section 713.78(6), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 713.78(11), F.S.

of the vehicle shall be required. The certificate of destruction must accompany the vehicle or vessel for which it is issued, when such vehicle or vessel is sold for such purposes, in lieu of a certificate of title.

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 \$2.80 in addition to the regular 44 cents postage.⁸

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 713.78, F.S., to delete the requirement for the towing-storing operator to provide notice, transferring the duty to DHSMV. Specifically, the bill requires DHSMV to send notices of liens to persons with an interest in a vehicle or vessel that is in the possession of a wrecker operator. The DHSMV will locate these individuals based on information supplied in an application from a wrecker operator. Existing law requires wrecker operators to send out these notices by certified mail.

The bill provides that the department must notify the towing-storage operator if the department is unable to locate the name and address of the owner or lienholder. Upon receipt of such notice, the towing-storing operator must make a "good faith effort" to determine ownership information. The towing-storage operator must send notice by certified mail to any potential owner, lienor, or insurance company discovered through the physical search and "good faith effort".

The DHSMV is authorized to charge wrecker operators \$4 per application, plus the service fees in s. 320.04, F.S. The service charges in s. 320.04, F.S., however, apply to the issuance of license plates, mobile home stickers, or validation stickers. As such, the service charges in s. 320.04, F.S., appear to be inapplicable to the applications described in the bill. Accordingly, the Legislature may wish to revise the bill to establish the application fee without a reference to s. 320.04, F.S.

In addition, the bill requires the towing, storage, or recovery operator that provided the services to maintain an invoice with the operator's signature or the signature of an employee attesting to the accuracy of the information on the invoice.

The bill also requires specific information to be included in the public notice published in a newspaper of the sale of a vehicle or vessel that will be sold for liens. That information must include: the vehicle or vessel identification number or hull number; and a description of the vehicle or vessel, including make, model, and year of manufacture. Existing law does not require any specific information to be included in the notice.

Section 2 amends s. 715.07, F.S., to make technical changes and to conform a statutory cross-reference relating to s. 713.78(1), F.S., which will change as a result of the bill.

⁸ <http://www.usps.com/send/waystosendmail/extraservices/certifiedmailservice.htm>. (Last visited March 20, 2011)

Section 3 provides an effective date of October 1, 2011.

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:

The DHSMV is authorized to charge wrecker operators \$4 plus the service fees in s. 320.04, F.S., to send notices to persons with an interest in a vehicle or vessel. The service charges in s. 320.04, F.S., however, apply to the issuance of license plates, mobile home stickers, or validation stickers. As such, the service charges in s. 320.04, F.S., appear to be inapplicable to the applications described in the bill. Accordingly, the Legislature may wish to revise the bill to establish the application fee without a reference to s. 320.04, F.S.

B. Private Sector Impact:

The duty to mail notices is imposed by the bill on the DHSMV and removed from wrecker operators. Wrecker operators have to pay an application fee of \$4 plus a service charge to the DHSMV for mailing the notices.

The bill requires specific information to be printed in public notices in newspapers advertising the sale of vehicles to be sold for liens. No particular information is required under current law. If more information must be placed in the notices than is provided under current practices, costs for publishing the notices may increase.

C. Government Sector Impact:

The DHSMV will incur costs to process applications to send notices of liens. The DHSMV will also incur costs to mail the notices. The average vehicle may need to have 2-3 notices sent with some requiring more.

According to DSHMV, during FY 2009-10, there were 20,698 public tows that permitted a wrecker operator to place a lien on a vehicle or vessel. The DHSMV would receive an application fee of \$4 for each of these tows; however, the new duties to carry out the

notification process will require one additional position, programming costs, and postage costs. Based upon the number of public tows in FY 2009-10, it is projected that just the research and verification of insurance duties will take approximately 5 minutes per vehicle for a total of 1,725 man-hours. This equates to 1 additional FTE at the level of a Highway Safety Specialist. The assumptions stated above do not include private tows and the DHSMV has no way to estimate the number of such tows.⁹

The DHSMV estimates the following fiscal impact:¹⁰

<u>REVENUES:</u>	<u>FY 11-12</u>	<u>FY 12-13</u>	<u>FY 13-14</u>
General Revenue:			
Application Fees	\$ 62,094	\$ 82,792	\$ 82,792
Service Fees	<u>\$ 38,808</u>	<u>\$ 51,745</u>	<u>\$ 51,745</u>
Total General Revenue	<u>\$100,902</u>	<u>\$134,537</u>	<u>\$134,537</u>
Highway Safety Operating TF:			
Service Fees	<u>\$ 38,808</u>	<u>\$ 51,745</u>	<u>\$ 51,745</u>
Total Highway Safety Oper. TF	<u>\$ 38,808</u>	<u>\$ 51,745</u>	<u>\$ 51,745</u>
 Grand Total Revenue	 <u>\$139,710</u>	 <u>\$186,282</u>	 <u>\$186,282</u>

The revenue reflected above is the required application fee of \$4 and the \$5 service fee required by s. 320.04, F.S., based on 20,698 applications. Of the \$5 service fee, \$2.50 is to be deposited into the General Revenue Fund and \$2.50 is to be deposited into the Highway Safety Operating Trust Fund of the DHSMV. The bill does not specify into which fund the \$4 application fee is to be deposited, but this analysis reflects the General Revenue Fund. Since the effective date is October 1, 2011, FY 11-12 revenues represent nine months.

<u>EXPENDITURES:</u>			
Highway Safety Operating TF:			
Salaries	\$ 26,541	\$ 26,541	\$ 26,541
Expenses	18,991	17,939	17,939
Human Resources Services	<u>356</u>	<u>356</u>	<u>356</u>
 Total Expenditures	 <u>\$ 45,888</u>	 <u>\$ 44,836</u>	 <u>\$ 44,836</u>

The above amounts reflect the expenditure allocation for one Highway Safety Specialist based on an estimate of 1,725 man hours to process 20,698 applications and mailing costs of \$8,538 for year one and \$11,384 annually for years two and three. Since the effective date is October 1, 2011, FY 11-12 mailing costs represent nine months.

⁹ Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 1008*, (on file with the Senate Transportation Committee).

¹⁰ *Id.*

VI. Technical Deficiencies:

The DHSMV is authorized to charge wrecker operators \$4 plus the service fees in s. 320.04, F.S., to send notices to persons with an interest in a vehicle or vessel. The service charges in s. 320.04, F.S., however, apply to the issuance of license plates, mobile home stickers, or validation stickers. As such, the service charges in s. 320.04, F.S., appear to be inapplicable to the applications described in the bill. Accordingly, the Legislature may wish to revise the bill to establish the application fee without a reference to s. 320.04, F.S.

The bill is silent as to where the \$4 application fee is to be deposited. The DHSMV recommends an amendment specifying such fee shall be deposited into the Highway Safety Operating Trust Fund.

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.