

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 347 Towing-storage Operator Liens
SPONSOR(S): Transportation & Infrastructure Subcommittee, Rodriguez, A.M.
TIED BILLS: IDEN./SIM. **BILLS:** SB 826 CS/SB 826

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
3) State Affairs Committee			

SUMMARY ANALYSIS

Currently, when a towing-storage operator comes into possession of a vehicle or vessel by legal means, the operator must give notice that they are claiming a lien for recovery of reasonable towing and storage fees. The notice must be sent to the registered owner, the insurance company insuring the vehicle, and to all persons claiming a lien on the vehicle or vessel. The notice must be sent by certified mail within seven business days after the date of storage of the vehicle or vessel. The notice must state that a lien is claimed, that charges have accrued in a certain amount, that the lien is subject to enforcement, and that the owner or lienholder has the right to a hearing. Additionally, the notice must state that any vehicle or vessel which remains unclaimed, or with fees unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than three years of age or after 50 days if the vehicle or vessel is three years of age or less.

The bill requires that notices sent by towing-storage operators be sent via certified mail by a third-party notification service approved by the Department of Highway Safety and Motor Vehicles (DHSMV), rather than by the towing-storage operator. The bill defines "third-party notification service" and requires that a third-party notification service must apply to DHSMV and be approved in order to provide notice. The bill authorizes DHSMV to prescribe the format for a third-party mailing service application and provides that DHSMV may approve a third-party notification service applicant if the applicant provides DHSMV with a performance bond of \$1 million, submits a level 2 internal control and data security audit, and demonstrates its ability to electronically report to DHSMV required information. DHSMV may deny, suspend, or revoke its approval of a third-party notification service if the third-party notification service has committed an act of fraud or misrepresentation related to a notice. The bill requires a third-party notification service to maintain all its records relating to providing notice for five years and allows DHSMV to inspect the records.

The bill has an indeterminate impact on state government and the private sector. See Fiscal Analysis for discussion.

The bill has an effective date of January 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Liens for Towing or Storing Vehicles and Vessels

A person regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier ("towing-storage operator") may recover, remove, or store a vehicle or vessel with permission from one of the following:

- The owner of the vehicle or vessel;
- The owner or lessor of the property on which the vehicle or vessel is wrongfully parked;
- The landlord of the property on which the vehicle or vessel is wrongfully parked; or
- Any law enforcement agency.¹

The towing-storage operator may place a lien on a vehicle or vessel that comes into their possession by legal means. The lien must be for reasonable towing-storage² fees.³ When a towing-storage operator places a lien on a vehicle or vessel, the company must give notice that they are claiming a lien for recovery of reasonable towing-storage fees.⁴ The notice must be sent to the registered owner, the insurance company insuring the vehicle or vessel, and to all persons claiming a lien on the vehicle or vessel.⁵ The notice must be sent by certified mail within seven business days after the date of storage of the vehicle or vessel.⁶ The notice must state that a lien is claimed, that charges have accrued in a certain amount, that the lien is subject to enforcement, and that the owner or lienholder has the right to a hearing.⁷ Additionally, the notice must state that any vehicle or vessel which remains unclaimed, or with fees unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than three years of age or after 50 days if the vehicle or vessel is three years of age or less.⁸

If after seven business days from the initial tow or storage, the name and address of the owner or lienholder cannot be found, the towing-storage operator must notify the public agency of jurisdiction where the vehicle or vessel is stored. The notification must be in writing by certified mail or acknowledged hand delivery that the towing-storage operator has been unable to locate the owner or lienholder and a physical search and record checks of the vehicle or vessel has disclosed no ownership information.⁹

A vehicle or vessel that remains unclaimed or unpaid may be sold by the towing-storage operator for towing and/or storage charges after 35 days from the time the vehicle or vessel is stored if the vehicle or vessel is more than 3 years of age or after 50 days if the vehicle or vessel is 3 years of age or less.¹⁰ Notice of sale must be sent by certified mail to the owner and lienholder of the vehicle or vessel at the address shown on the records and must be mailed not less than 15 days before the date of the sale.¹¹

¹ Section 713.78(2), F.S.

² No storage fee may be charged if the vehicle is stored for less than 6 hours.

³ Section 713.78(2), F.S.

⁴ Section 713.78(4)(a), F.S.

⁵ *Id.*

⁶ Section 713.78(4)(c), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 713.78(4)(d), F.S.

¹⁰ Section 713.78(6), F.S.

¹¹ *Id.*

Fraud and Unscrupulous Practices

Some towing-storage operators exploit existing lien laws to take away vehicle finance and leasing companies' (lenders) security or ownership interest in vehicles upon which liens have been placed.¹² These practices allegedly take two forms: fraudulent delivery of the notice of lien and fraudulent or inflated charges.¹³

In some instances, lenders receive an envelope by certified mail, sign for its receipt, and open it to discover the envelope is empty or contains meaningless documents.¹⁴ However, the service provider may use the signed certified mail receipt as proof the lender received a notice of claim of lien and proceed with the sale of the vehicle when it goes unclaimed.¹⁵ In this situation, a lender is effectively denied the opportunity to satisfy the lien or challenge it in court and may be ultimately forced to abandon its interest in the vehicle because it failed to take action within statutorily prescribed timeframes.¹⁶

In other instances, the service provider gives proper notice of claim of lien to the owner, lender, and other interested parties; however, the costs associated with the services provided may be fraudulent or significantly inflated.¹⁷ In such cases, the cost to satisfy the lien may exceed the amount owed to the lender by the owner and, in some cases, the market value of the vehicle.¹⁸ Lenders receiving notice of lien in these circumstances must decide whether to satisfy the lien and recover the vehicle, post a bond to recover the vehicle and challenge the lien in court, or abandon the vehicle.¹⁹ However, the lender may have limited information about the accuracy of the charges to use in making its decision.²⁰ Such lien fraud allegedly costs consumer and lenders tens of millions of dollars every year and increases the cost of credit for consumers wishing to finance the purchase of a motor vehicle.²¹

Performance Bonds

A performance bond, also known as a surety bond, is a guarantee to the obligee (one to whom an obligation is owed) that the principal will fulfill an obligation. In the event the principal fails to fulfill an obligation, the obligee will recover from the bond.²² The bond guarantees to the obligee that the principal will perform the work as per the terms of the contract. If the principal does not perform, the obligee may put the principal at default and ask the surety to remedy.²³

DHSMV currently utilizes performance bonds in connection with several different programs. For example, Electronic Temporary Registration providers are required to provide a performance bond with DHSMV for \$50,000²⁴ and Electronic Filing System providers are required to provide DHSMV with a performance bond for \$2 million.²⁵

Security Audits

Service Organization Control (SOC) reporting is an auditing procedure that ensures service providers securely manage data to protect the interests of an organization and the privacy of its clients. The SOC auditing procedures, developed by the American Institute of Certified Public Accountants, is becoming

¹² See Letters from Danielle Arlowe, Senior Vice President of State Government Affairs for the American Financial Services Association, Re: House Bill 347 – Notification Requirements for Tow Companies (March 15, 2019) and House Bill 431 – Motor Vehicle Lien Fraud (Feb. 11, 2019) (on file with Transportation & Infrastructure Subcommittee).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Florida Surety Bonds, Inc., *Surety Bonds FAQs*, available at <https://floridasuretybonds.com/faqs/#1488816864165-51cd7012-1b06> (last visited March 20, 2019).

²³ *Id.*

²⁴ Rule 15C-16.004, F.A.C.

²⁵ Rule 15C-16.011, F.A.C.

an industry standard that defines criteria for managing customer data based on five trust principles – security, availability, processing integrity, confidentiality and privacy. An SOC 2 certification is issued by outside auditors who assess the extent to which a vendor complies with one or more of the five trust principles based on the systems and processes in place.²⁶

Proposed Changes

The bill amends s. 713.78, F.S., and requires notice currently sent by towing-storage operators to be sent via certified mail by a third-party notification service approved by DHSMV, rather than by the towing-storage operator. Additionally, the bill prohibits an acknowledged hand delivery as a method of delivering notice.

The bill clarifies that immediately upon the arrival of a vehicle or vessel owner (or agent), lienholder, or insurance company representative, and before the payment of any towing or storage charges, the towing-storage operator must permit these individuals to inspect and retrieve personal property not affixed to the impounded vehicle or vessel upon presentation of all required documentation. Required documentation includes documentation of ownership or recorded claim of lien, (including the vehicle or vessel registration, lease or contract, title certificate, electronic title, or lien sale notice).

The bill specifies what supporting documents are required for a person, including an owner, lienholder, or insurer, to be authorized to take possession of a motor vehicle or vessel held by a towing-storage operator upon the payment for service. These supporting documents include evidence of ownership, a recorded claim of lien, a vehicle or vessel registration, a lease or contract, a title certificate or electronic title, or a lien sale notice.

The bill defines “third-party notification service” as a qualified business entity that, upon a request submitted through a website by a towing-storage operator:

- Accesses DHSMV’s database and the National Motor Vehicle Title Information System to obtain any owner, lienholder, or insurer information necessary for sending a notice required by s. 713.78, F.S.
- Electronically generates, and provides for the printing and mailing of, the notice on behalf of the towing-storage operator.
- Electronically returns tracking information or other proof of mailing and delivery of the notice to the towing-storage operator.
- Electronically reports to DHSMV using an Internet interface the following information, as applicable, related to the notice: vehicle identification number, vessel registration number or vessel hull identification number, license plate number, the name and address of the towing-storage operator, the physical location of the vehicle or vessel, the date of the tow, the amount of towing and storage charges owed when the notice is generated, and the date the notice is mailed and delivered.

The bill requires that a third-party notification service must apply to DHSMV and be approved in order to provide the required notice.

The bill authorizes DHSMV to prescribe the format for a third-party notification service application. DHSMV may approve a third-party notification service applicant as qualified to provide service if the applicant:

- Provides DHSMV with a performance bond in the amount of \$1 million issued by a surety company authorized to do business in the state;

²⁶ Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: HB 347 question (March 19, 2019). See also Online Tech, *What is a Service Organization Control (SOC) 2 Report?*, March 1, 2016, available at <http://resource.onlinetech.com/what-is-a-service-organization-control-soc-2-report/> (last visited March 19, 2019).

- Submits a level 2 internal control and data security audit, or the equivalent, from an independent certified public accountant licensed in the state, which audit must have been conducted within one year before applying to DHSMV; and
- Successfully demonstrates its ability to electronically report to DHSMV the required information related to a towing-storage notice through an electronic data exchange process using an Internet interface.

The bill requires a third-party notification service to annually provide DHSMV with proof it has maintained the performance bond and annually submit to DHSMV an acceptable audit.

The bill authorizes DHSMV to deny, suspend, or revoke approval of a third-party notification service if DHSMV determines that the third-party notification service has committed an act of fraud or misrepresentation related to a notice.

The bill requires a third-party notification service to maintain all its records relating to providing notice for five years and allows DHSMV to inspect and copy the records, which may be in electronic format.

The bill provides that in the event there are no third-party notification services approved by DHSMV, the towing-storage operator may send a notice on its own behalf and must, upon submission of an application for a certificate of title or certificate of destruction, submit proof of compliance with s. 713.78, F.S.

The bill deletes a provision authorizing the award of attorney fees to the prevailing party in a court proceeding determining the respective rights of the parties after the sale of vehicle or vessel by the towing-storage operator.

The bill provides an effective day of January 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

Section 2: Provides an effective date of January 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DHSMV may incur an indeterminate number of FTE hours and associated cost to approve the third-party notification service companies. In addition, the DHSMV may incur an indeterminate number of FTE hours and contracted resources for programming and implementation. Any costs incurred will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce financial losses experienced by motor vehicle and vessel owners as well as lienholders due to fraudulent practices associated with notices of lien and sale.

Towing-storage operators will likely incur additional costs associated with the use of third-party notification services.

The bill eliminates the award of attorney's fees to the prevailing party in a court proceeding determining the respective rights of the parties after the sale of vehicle or vessel by the towing-storage operator.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2019, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Changed the name from third-party mailing service to third-party notification service and provided a definition.
- Deleted a provision authorizing the award of attorney fees to the prevailing party in a court proceeding determining the respective rights of the parties after the sale of vehicle or vessel by the towing-storage operator.
- Clarified which parties can retrieve personal property not affixed to the impounded vehicle or vessel.
- Provided that the towing-storage operator must release the vehicle to an owner, lienholder, or agent who pays the charges.
- Provided that certain information can be electronically reported from third-party notification services to DHSMV.
- Provided that the third-party notification service will provide DHSMV with a \$1 million performance bond and provide proof to DHSMV annually.

- Required the third-party notification service to annually submit an acceptable level 2 internal control and data security audit.
- Required the third-party notification service to demonstrate its ability to electronically report to DHSMV the required information related to a towing-storage notice.
- Required a third-party notification service to maintain all records relating to providing notices for five years rather than three years.
- Provided that a towing-storage operator may send required notice on its own behalf in the event there are no third-party notification services approved by DHSMV.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.