

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 Committee on Judiciary

BILL: CS/SB 826

INTRODUCER: Infrastructure and Security Committee and Judiciary Committee and Senator Rouson

SUBJECT: Towing-storage Operator Liens

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Price</u>	<u>Miller</u>	<u>IS</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 revises the process for notifying a registered owner, insurance company, or lienholder that a vehicle or vessel has been towed or stored and that a lien has been placed on it for those services. The bill also revises the rights a vehicle or vessel owner or other specified party has to inspect, remove personal property from, and recover a vehicle or vessel that has been towed and stored.

Currently, the towing-storage operator is responsible for sending a lien notice by certified mail to the interested parties. The bill prohibits the towing-storage operator from sending the notice and places that responsibility on a neutral entity called a third-party notification service that will send the notice by certified mail. The third-party notification service will receive the notice request through its website from the towing-storage operator, access specified databases to gather the necessary information, and electronically generate, print, and send by certified mail the notice on behalf of the towing company. The service must be approved by the Department of Highway Safety and Motor Vehicles and meet its qualifications.

The bill also requires a storage facility operator to permit an owner, the owner's agent, or a lienholder or insurance company representative to immediately inspect a towed vehicle or vessel and release the personal property in the vehicle or vessel to that person before paying any charges. Also, the bill specifies what evidence of ownership or other documents are required for a person to claim a motor vehicle or vessel in the possession of a towing-storage operator.

The fiscal impact of the bill is indeterminate. See the Fiscal Impact Statement and Related Issues headings for additional information.

The bill takes effect January 1, 2020.

II. Present Situation:

Background

When someone is regularly engaged in the lawful business¹ of recovering, towing, or storing vehicles or vessels, he or she is entitled to have a lien on the vehicle or vessel for a reasonable towing and storage fee, if the vehicle is stored for at least 6 hours.² The person who claims a lien for recovery, towing, or storage services must give notice to the registered owner, the insurance company insuring the vehicle, and to anyone claiming a lien as disclosed in the records of the Department of Highway Safety and Motor Vehicles (DHSMV) or the records of a similar agency in another state where the vehicle is identified through a records check of the National Motor Vehicle Title Information System or a comparable system.³

Some have suggested that unscrupulous towing-storage operators do not comply with the lawful requirements for providing notice to an owner, insurance company, or lienholder. They submit false information or even an empty envelope to prevent the owner, insurance company, or lienholder from being able to recover a vehicle or vessel. Moreover, some have also stated that unscrupulous towing-storage operators do not permit people to inspect or retrieve their personal items from a towed or stored vehicle upon request and do not surrender vehicles and vessels to their rightful owners when towing and storage fees are fully paid.

Notice Requirements

When the Owner, Insurance Company, or Lienholder is Located

The notice must be sent by certified mail⁴ within seven business days after the date of storage to the registered owner, the insurance company insuring the vehicle, and all people of record claiming a lien against the vehicle or vessel. The notice must state that the item is held and include the following:

- A lien is claimed;
- Charges have accrued and the amount of the charges;
- The lien is subject to enforcement pursuant to law;

¹ Section 713.78(2), F.S., states that a person is entitled to have a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee whenever he or she is regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier and recovers, removes, or stores a vehicle or vessel based upon the instructions from: the owner; the owner or lessor, or a person authorized by the owner or lessor, of property on which the vehicle or vessel is wrongfully parked and the removal is done in compliance with s. 715.07; the landlord or a person authorized by the landlord when the vehicle or vessel remained on the premises after the tenancy terminated and the removal is done in compliance with s. 83.806 or s. 715.104, or any law enforcement agency.

² Section 713.78(2), F.S.

³ Section 713.78(4)(a), F.S.

⁴ Certified mail is described as “a special USPS service that provides proof of mailing via a receipt to the sender.” With electronic tracking, a sender is notified when the mail is delivered or that an attempted delivery was made.

<https://www.stamps.com/usps/what-is-certified-mail/>.

- The owner or lienholder, if any, has the right to a hearing as set forth in statute; and
- Any unclaimed vehicle or vessel that remains unclaimed or for which the charges remain unpaid, may be sold free of all prior liens after 35 days if the item is more than three years old or after 50 days if the item is three years old or less.⁵

When the Owner or Lienholder is not Located

If the attempts to locate the name and address of the owner or lienholder are not successful, then the towing-storage operator must, after seven working days from the initial tow and storage, excluding Saturday and Sunday, provide a written notice:

- To the public agency of jurisdiction where the vehicle or vessel is stored;
- Using certified mail or acknowledged hand delivery;
- Stating that the company has not been able to locate the name and address of the owner or lienholder;
- That a physical search of the vehicle or vessel has not disclosed ownership information; and
- A “good faith effort”⁶ has been made, including records checks to the DHSMV database and the National Motor Vehicle Title Information System or a comparable system.⁷

Public Sale, Notice by Certified Mail and Publication in Newspaper

A lawfully stored vehicle or vessel that remains unclaimed or one for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents that are not released pursuant to law,⁸ may be sold by the owner or operator of the storage space for the towing or storage charge after 35 days from the time the vehicle is stored if the vehicle is more than three years old, or after 50 days if the vehicle or vessel is three years old or less. The sale must be a public sale for cash.⁹

If the date of the sale was not included in the notice, then notice of the sale must be given to the person in whose name the vehicle or vessel is registered and to all people claiming a lien on the vehicle or vessel as stated on the DHSMV records or records of a similar agency in another state identified through the National Motor Vehicle Title Information System or an equivalent system. The notice must be sent by certified mail to the owner and the person having a recorded lien at the address shown on the records of the registering agency. The notice may not be mailed less than 15 days before the date of the sale.

If, after a diligent search and inquiry, the name and address of the registered owner or the owner of record lien cannot be determined, then there is no need to follow the requirements of notice by

⁵ Section 713.78(4)(c), F.S.

⁶ Eleven checks or requirements that constitute a “good faith effort” by the company to establish a prior state of registration and title are set forth in s. 713.78(4)(d), F.S. Among those requirements are checking DHSMV and national databases, checking the vehicle for any type of tag or tag record, checking the law enforcement report for tag number or identifying information if law enforcement requested the tow, checking the trip sheet or tow ticket, checking the law enforcement report for an out-of-state address if indicated from the driver license information, checking for an inspection sticker or decal that may indicate a state for possible registration, checking the interior of the vehicle for information regarding a state of registration, and checking for a vehicle identification number.

⁷ Section 713.78(4)(d), F.S.

⁸ See 713.78(1), F.S.

⁹ Section 713.78(6), F.S.

mail. In addition to the notice by mail, a public notice of the time and location of the sale must be published once, at least ten days before the date of the sale, in a newspaper of general circulation in the county where the sale will be held. The proceeds of the sale, after payment of reasonable towing and storage charges and costs of the sale, are then deposited with the clerk of the circuit court for the county if the owner or lienholder is absent and the clerk shall hold the proceeds subject to the claim of the lienholder who is entitled to them.¹⁰

Whoever violates the notice provisions contained in section 713.78(4), F.S. is guilty of a first degree misdemeanor which is punishable by a fine that does not exceed \$1,000¹¹ and imprisonment that does not exceed one year.¹²

Recovery of a Vehicle or Vessel from a Towing-Storage Operator

Section 713.78(10), F.S., provides that towing and storage operators must permit vehicle or vessel owners, lienholders, insurance company representatives, or agents to inspect a towed vehicle or vessel and release to that person all personal property that was not affixed when the vehicle or vessel came into the custody of the towing or storage operator. The authorization of agency must be documented in an original writing acknowledged by the owner before a notary public or someone authorized to administer oaths. This subsection, however, does not provide guidance on how an interested party may take possession of the vehicle or vessel once it has been towed or stored.

Whoever violates the inspection provisions contained in s. 713.78 (10) , F.S., is guilty of a third degree felony which is punishable by a fine that does not exceed \$5,000¹³ and imprisonment that does not exceed five years.¹⁴

III. Effect of Proposed Changes:

Changes Made to the Process for Sending Notices to Interested Parties

The bill changes the current procedure for notifying a registered owner, insurance company, or lienholder that a vehicle or vessel has been towed or stored. By creating an independent third party, as a buffer, to send a notice to the intended recipient by certified mail, the bill reduces the possibility that a towing-storage operator would dishonestly send incomplete or inaccurate information or even an empty envelope as a lien notice to the interested parties.

When the Owner, Insurance Company, or Lienholder is Located

Under the bill, a towing-storage operator will send a notice through a “third-party notification service,” to the registered owner, insurance company, and lienholders by certified mail, within seven business days after storing a vehicle or vessel. The third-party notification service, discussed below, must be approved by DHSMV.

¹⁰ *Id.*

¹¹ Section 775.083(1)(d), F.S.

¹² Section 775.082(4)(a), F.S.

¹³ Section 775.083(1)(c), F.S.

¹⁴ Section 775.082(3)(e), F.S.

When the Owner or Lienholder is not Located

If attempts to locate the name and address of the owner or lienholder are not successful after seven business days¹⁵ of the initial tow or storage, the towing-storage operator, working through a third-party notification service, must send notice by certified mail to the public agency of jurisdiction where the vehicle or vessel is stored and let the agency know: where the vehicle or vessel is stored, that the towing-storage company has not been able to locate the name and address for the owner or lienholder; a physical search of the vehicle or vessel has not provided ownership information and a good faith effort has been made, including records checks of the databases of DHSMV and the National Motor Vehicle Title Information System or an equivalent system.

Third-Party Notification Service

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

- Accesses the DHSMV’s vehicle database and the National Motor Vehicle Title Information System to obtain any owner, lienholder, or insurer information necessary for sending a notice required by this section;
- 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; and
- Electronically reports to DHSMV, through an electronic data exchange process that uses the Internet, necessary information, as applicable, related to the notice.

The information that must be reported to the DHSMV includes:

- The vehicle identification number or vessel hull identification number;
- The 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.

A third-party notification service must apply to DHSMV and be approved in order to provide notice services. The DHSMV will prescribe an application format and approve an applicant if the applicant:

- Provides a performance bond of \$1 million issued by a surety company that is authorized to do business in the state;
- Submits an acceptable level two internal control and data security audit, or its equivalent, from an independent certified public accountant licensed in the state, and the audit must have been conducted within one year before applying to DHSMV; and

¹⁵ The bill provides a window of “7 business days” for attempts to locate the interested parties before notifying the public agency of jurisdiction. Current law provides for 7 working days, excluding Saturday and Sunday.

- Successfully demonstrates an ability to electronically report to the DHSMV the required information related to a lien notice through an electronic data exchange process that uses the Internet.

In order to remain eligible to provide notices, a service must annually provide DHSMV with proof that it has maintained the performance bond and annually submit to DHSMV an acceptable audit conducted within the previous year.

The DHSMV may deny, suspend, or revoke approval of a service if it determines that the service has committed an act of fraud or misrepresentation related to a notice required by this bill. A third-party notification service must maintain all notice-related records for five years and allow the DHSMV to inspect and copy the records upon request. The records may be maintained in an electronic format.

Default Provision If No Third-Party Notification Services Are Approved

If no third-party notification services are approved by DHSMV, the towing-storage operator may send any notice required by this section of statutes on its own behalf. However, if a towing-storage operator submits an application for a certificate of title or certificate of destruction, then it must submit proof to DHSMV that it has complied with the statutory requirements of obtaining title and the certificate of destruction.¹⁶

Recovery of a Vehicle or Vessel from a Towing-Storage Operator

The bill also revises the rights a vehicle or vessel owner or interested party has to inspect and recover a vehicle or vessel that has been towed and stored. Under existing law, a storage facility operator must permit an owner, the owner's agent, a lienholder, or insurance company representative to inspect a towed vehicle or vessel. The bill requires that the towing-storage operator fulfill this duty and immediately release the personal property contained in the vehicle or vessel to that person before the vehicle owner or other party pays any charges. The personal property is defined as the property that is not affixed to the vehicle or vessel and that was in the vehicle or vessel at the time that it came into the custody of the towing-storage operator.

Additionally, 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. Existing law did not specify any particular documentation required to have authority to claim a vehicle or vessel.

The bill takes effect January 1, 2020.

¹⁶ When a vehicle or vessel is going to be sold for purposes of being dismantled, destroyed, or changed such that it is not the one described in the certificate of title, the towing-storage operator must report it to the National Motor Vehicle Title Information System and apply to DHSMV for a certificate of destruction. The certificate authorizes the dismantling or destruction of the vehicle or vessel. The application for a certificate of destruction must include proof of reporting to the National Motor Vehicle Title Information System and an affidavit from the applicant that it has complied with all applicable requirements. Section 713.78(11)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Towing-storage operators will likely incur additional costs to use electronic third-party mailing services. The costs are unknown at this time.

C. Government Sector Impact:

The DHSMV advises the bill does not appear to impact its technology systems.¹⁷ Fulfilling the bills administrative requirements will have an indeterminate negative fiscal impact on DHSMV related to the costs of rule development and application processing, and potential administrative hearing legal expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁷ See the DHSMV SB 826 Agency Bill Analysis at p. 6, (on file in the Senate Infrastructure and Security Committee).

VIII. Statutes Affected:

This bill substantially amends section 713.78 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 18, 2019:**

The committee substitute makes the following changes to the underlying bill:

- The term “electronic third-party mailing service” is replaced with the term “third party notification service” throughout the bill.
- A new provision is added to the bill which gives certain enumerated people the right to immediately inspect a vehicle or vessel and take possession of personal property inside. This subsection also requires a towing-storage operator, upon receiving proper documentation and payment for services and fees, to release the vehicle or vessel to the person who pays the charges.
- Provisions are added detailing what a third party notification service must provide to DHSMV to qualify for approval.
- A default provision is inserted which states that, if no third-party notification services qualify with DHSMV, then the towing-storage operator may send notices but must provide proof of compliance with the section.
- The effective date of the bill is extended from July 1, 2019, to January 1, 2020.

B. Amendments:

None.