

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: SB 826

INTRODUCER: Senator Rouson

SUBJECT: Towing-storage Operator Liens

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			IS	
3.			AP	

I. Summary:

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.

Currently, the towing-storage operator is responsible for sending a 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 an electronic third-party mailing service. The third-party mailing service will receive the notice request through its website from the towing-storage operator, then gather the information necessary for sending the notice by certified mail, assist or prepare the notice, send the notice, and electronically return the tracking information or proof of mailing and delivery to the towing-storage operator.

Electronic third-party mailing services must apply for eligibility with the Department of Highway Safety and Motor Vehicles. The Department may deny, suspend, or revoke approval if the service commits an act of fraud or misrepresentation.

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

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

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.

Notice Requirements

When the Owner, Insurance Company, or Lienholder is Located

The notice must be sent by certified mail⁴ within 7 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;
- 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 3 years old or after 50 days if the item is 3 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 7 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

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/>.

⁵ Section 713.78(4)(c), F.S.

- 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 3 years old, or after 50 days if the vehicle or vessel is 3 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 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 10 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

III. Effect of Proposed Changes:

Changes 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.

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.

¹⁰ *Id.*

Electronic Third-Party Mailing Service

Under the bill, an “electronic third-party mailing service,” rather than the towing-storage operator, will send the notice to interested persons by certified mail, within 7 business days after storing a vehicle or vessel. The electronic third-party mailing service must be approved by DHSMV.

An “electronic third-party mailing service” is defined as a person who, upon a request submitted through its website by a towing-storage operator:

- Obtains the owner, lienholder, or insurer information, as appropriate, for a vehicle or vessel from DHSMV;
- Either prepares or assists the towing-storage operator in preparing a notice as required by the statute through the website;
- Prints and sends the notice to the intended recipient by certified mail; and
- Electronically returns tracking information or other proof of mailing and delivery of the notice to the towing-storage operator.

If attempts to locate the name and address of the owner or lienholder are not successful after 7 business days¹¹ of the initial tow or storage, the towing-storage operator, through an electronic third-party mailing 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 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.

The Role of the Department of Highway Safety and Motor Vehicles

In order for an electronic third-party mailing service to be eligible to provide services under the statute, it must first apply and be approved by DHSMV. The Department will prescribe a format for the applications for eligibility. The Department is required to approve the mailing service if the applicant demonstrates to the Department that it is qualified to provide the services outlined in the bill. If the Department determines that the mailing service has committed an act of fraud or misrepresentation regarding a notice, the Department may deny, suspend, or revoke its approval of the mailing service. The electronic third-party mailing service must maintain all records related to the notice provisions of the statute in an electronic format for 3 years and must allow the Department to inspect its records upon request. The Department is required to adopt rules to administer these provisions.

The bill takes effect July 1, 2019.

¹¹ 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.

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 service. The costs are unknown at this time.

C. Government Sector Impact:

No agency analysis has been supplied at this time. However, the bill could result in a fiscal impact to DHSMV but that amount has not been determined.

VI. Technical Deficiencies:

Perhaps line 146 should be amended to state that an electronic third-party mailing service “attempts” to obtain the owner, lienholder, or insurer information, rather than “obtains” the information because the information will not always be obtained. Section 713.78(4)(d), F.S., provides instructions on what to do when the information is not obtained.

VII. Related Issues:

The bill contemplates that the DHSMV will have procedures in place to approve electronic third-party mailing services on the effective date of the bill, July 1, 2019, and that towing storage operators will begin using those approved service providers on that date. However, a transition

period is likely necessary for the necessary applications and approvals to occur after the effective date of the bill and for towing-storage operators to be notified of the requirements to use the approved electronic third-party mailing services.

VIII. Statutes Affected:

This bill substantially amends section 713.78 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
