

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 701 Wrecker and Towing-Storage Operators

SPONSOR(S): Transportation & Modals Subcommittee, Bell

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	15 Y, 0 N, As CS	Johnson	Hinshelwood
2) Civil Justice Subcommittee	16 Y, 0 N	Mawn	Jones
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

A lien is a claim against property that evidences a debt, obligation, or duty. Under Florida law, towing-storage operators and other parties may claim a lien on motor vehicles or vessels under specified circumstances. Further, the Florida Highway Patrol ("FHP") has the right to include or deny from inclusion persons wishing to participate in FHP's wrecker operator service where such persons are deemed unqualified or lacking in repute.

CS/HB 701:

- Prohibits FHP from taking specified actions against a wrecker operator based solely on a prior felony conviction, unless such conviction was for a forcible felony.
- Defines the term "towing-storage operator" and makes conforming changes.
- Specifies the fees which a towing-storage operator may charge for specified services.
- Requires a towing-storage operator to accept specified electronic payment methods.
- Deletes a provision requiring a law enforcement agency to contact the DHSMV after a vehicle or vessel is removed, towed, or stored in specified situations and the DHSMV's corresponding obligations.
- Modifies timelines pertinent to the sending of a notice of lien by a towing-storage operator.
- Modifies the requirements for an owner or lienholder to have his or her vehicle or vessel released.
- Clarifies when a final order issued by a court determining whether a vehicle or vessel was wrongfully taken or withheld must provide for immediate payment in full of recovery, towing, and storage fees.
- Clarifies when specified liens on a vehicle's or vessel's title certificate must be discharged after the vehicle or vessel's sale.
- Modifies those actions that preclude a towing-storage operator from imposing storage charges.
- Specifies that a rental car agreement is not evidence that the person who rented the vehicle is an agent of the vehicle's owner and that a towing-storage operator may not release a vehicle owned by a rental car company to the vehicle's renter unless the rental car company appoints such renter as its agent.
- Provides that a towing-storage operator must allow specified parties to inspect a towed vehicle or vessel, make such a vehicle or vessel available for inspection under specified conditions, and release to such parties all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel when it came into the towing-storage operator's custody.
- Requires a towing-storage operator to accept both an electronic or a paper title as evidence of a person's interest in a vehicle or vessel.
- Requires a towing-storage operator to maintain specified records for three years.
- Extends provisions authorizing specified parties to obtain, by filing a surety bond with the clerk of the circuit court, a release of a lien on a motor vehicle claimed by a motor vehicle repair shop to vessels and to liens claimed by a towing-storage operator.
- Specifies that a lien on a nonresidential or self-service storage space tenant's or lessee's vehicle or vessel, or a warehouse lien on a vehicle or vessel, must be foreclosed under s. 713.78, F.S.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Wrecker Operator System – Background

Florida Highway Patrol Wrecker Operator System

Florida Law authorizes the Florida Highway Patrol (“FHP”), a division with the Department of Highway Safety and Motor Vehicles (“DHSMV”), to establish a wrecker operator system using qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles from a crash scene or for removal and storage of abandoned vehicles, in the event the owner or operator is incapacitated or unavailable or leaves the procurement of wrecker service to the officer at the scene.¹ All reputable wrecker operators are eligible for use in the system provided their equipment and drivers meet recognized safety qualifications and mechanical standards set by FHP’s rules for the size of vehicle it is designed to handle.² However, FHP may limit the number of wrecker operators participating in the system, which authority does not affect wrecker operators currently participating in the system.³

To regulate wrecker operators participating in the system, FHP has promulgated administrative rules (“Rules”) relating to wrecker qualifications and allocation.⁴ Such Rules, designed to assist state highway users by ensuring that only qualified, reputable wrecker operators and equipment are provided for vehicle removal, require FHP to perform a background check on each driver before approving him or her for participation in the system and specify requirements and procedures for a wrecker operator’s inclusion in, or removal or suspension from, the wrecker rotation list.⁵ Under the Rules, a lack of reputability, meaning that FHP cannot trust the wrecker operator to safeguard the welfare and property of the public, must result in a wrecker operator’s removal from the rotation list.⁶ For the purposes of that Rule, a lack of reputability includes, but is not limited to, the following:

- Conviction of any felony without restoration of the person’s civil rights;
- Conviction of any felony or first-degree misdemeanor directly related to the business of operating a wrecker, regardless of whether civil rights have been restored;⁷ and
- Responding to a call while under the influence of alcohol or any controlled or chemical substance.⁸

A final order denying, suspending, or revoking a wrecker operator's participation in the system is reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county where such wrecker operator resides.⁹

Forcible Felonies

Section 776.08, F.S., defines the term “forcible felony” to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

Wrecker Operator System – Effect of Proposed Changes

¹ S. 321.051, F.S.

² *Id.*

³ *Id.*

⁴ See Ch. 15B-9, F.A.C.

⁵ Rr. 15B-9.006 and 15B-9.008, F.A.C.

⁶ R. 15B-9.007, F.A.C.

⁷ For the purpose of Rule 15B-9007, F.A.C., any offense involving perjury or false statement is considered to be directly related to the business of operating a wrecker.

⁸ R. 15B-9.007, F.A.C.

⁹ S. 321.051(2), F.S.

CS/HB 701 prohibits FHP from excluding a wrecker operator from the system or failing to designate him or her as an authorized wrecker operator¹⁰ based solely on a prior felony conviction, unless such conviction is for a forcible felony.

Wrecker Operator Fees and Charges – Background

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.¹¹ After the establishment of such contracts, the county or municipality must create a “wrecker operator system” to apportion towing assignments between the contracted wrecker services, which apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.¹² Any wrecker operator that is included in the local government’s wrecker operator system is an “authorized wrecker operator” in the jurisdiction, while any wrecker operator not included is an “unauthorized wrecker operator.”¹³

Counties must establish maximum rates for the towing of vehicles or vessels removed from private property; for the removal and storage of wrecked or disabled vehicles or vessels from an accident scene; and for the removal and storage of vehicles or vessels in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the vehicle or vessel’s removal.¹⁴ Municipalities may also adopt maximum rate ordinances, and where a municipality does so, the county ordinance will not apply within the municipality.¹⁵

Licensing and Payment of Towing and Wrecker Companies

Towing and wrecker companies are licensed and regulated by county ordinances enacted in the counties in which they operate.¹⁶ These ordinances may establish license application procedures and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.¹⁷

While a county may prohibit a towing and wrecker company licensed in their jurisdiction from accepting payment only in the form of cash, Florida law does not have a similar requirement. However, eleven states require towing companies to accept some form of electronic payment method.¹⁸ Further, Florida law does not limit the types of fees which a towing and wrecker company may assess to a vehicle’s or vessel’s owner or operator.

¹⁰ Section 321.051(1)(a), F.S., defines the term “authorized wrecker operator” to mean any wrecker operator who has been designated by the Florida Highway Patrol as part of the wrecker operator system.

¹¹ S. 323.002, F.S.

¹² S. 323.002(1)(c), F.S.

¹³ S. 323.002(1)(a)-(b), F.S.

¹⁴ S. 125.0103(1)(c), F.S.

¹⁵ Ss. 125.0103(1)(c) and 166.043(1)(c), F.S. Section 715.07, F.S., relates to the towing and storage of vehicles or vessels illegally parked on *private* property without the consent of the registered owner or other legally authorized person in control of the vehicle.

¹⁶ See, e.g., Hillsborough County, *Towing Companies*, <https://www.hillsboroughcounty.org/businesses/entrepreneur-and-small-business-support/business-licensing/towing-companies> (last visited March 27, 2023); Orange County, *Towing Information*, <http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk> (last visited Mar. 27, 2023).

¹⁷ See, e.g., Miami-Dade County, *Towing License*, https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567 (last visited Mar. 27, 2023).

¹⁸ Van Cleef, Jacob and Murray, Teresa, *Towing Kickbacks: Only One-Third of States Ban Incentives to Property Owners, Law Enforcement* (April 26, 2022), PIRG, <https://pirg.org/resources/towing-kickbacks-only-one-third-states-ban-incentives-property-owners-law-enforcement/> (last visited Mar. 27, 2023).

Wrecker Operator Fees and Charges – Effect of Proposed Changes

CS/HB 701 defines “towing-storage operator” as a person who regularly engages in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier, and makes conforming changes. The bill also:

- Provides that a towing-storage operator may charge only the following fees for, or incidental to, a vehicle’s or vessel’s recovery, removal, or storage:
 - A reasonable hazardous waste fee;
 - A reasonable fee for a service authorized by ordinance of the local government in which the service is performed;
 - A reasonable fee for a service authorized by rule of the DHSMV;
 - A lien release administrative fee as specified in Florida law; and
 - A reasonable administrative fee or charge imposed by a county or municipality upon a vehicle’s or vessel’s owner.
- Requires a towing-storage operator to accept credit cards, debit cards, or other electronic payment methods.

Liens for Recovering, Towing, or Storing Vehicles and Vessels – Background

Liens Generally

A lien is a claim against property that evidences a debt, obligation, or duty.¹⁹ A lien can be created by judgment, equity, agreement, or statute.²⁰ The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.²¹ A statutory lien expires in the manner and method set forth in statute, and a consensual lien expires according to the terms of the parties’ agreement.²²

Towing-Storage Liens

Under s. 713.78, F.S., a towing-storage operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel has a lien on the vehicle or vessel for a reasonable towing fee, an administrative fee or charge imposed by a local government, and a storage fee (for a vehicle or vessel stored for 6 hours or more) if the vehicle or vessel is removed upon instructions from:

- The vehicle’s or vessel’s owner;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor, of property on which the vehicle or vessel is wrongfully parked (if the removal is done in compliance with s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the tenancy terminated and the removal is done in compliance with s. 83.806, F.S. or s. 715.104, F.S.; or
- Any law enforcement agency.²³

Notice of Lien

A towing-storage operator who claims such a lien must give notice of the lien, by certified mail, to the registered owner, the insurance company insuring the vehicle, and all persons claiming a lien on the vehicle or vessel, as disclosed in DHSMV records or as disclosed by the records of any corresponding agency in any other state in which the vehicle or vessel is identified through a records check.²⁴

¹⁹ Fla. Jur. 2d Liens § 37:1

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ S. 713.78, F.S.

²⁴ *Id.*

However, a towing-storage operator must use a DHSMV-approved third-party service²⁵ to transmit the notice of lien (as well as any other notices required under s. 713.78, F.S.).²⁶ If there is no approved third-party service, the towing-storage operator may mail the notice and provide evidence of compliance upon application for a certificate of title or destruction.²⁷

In either case, the notice of lien must be sent by certified mail within seven business days after the date of the vehicle's or vessel's storage.²⁸ Where a towing-storage operator is unsuccessful in locating the name and address of the owner or other lienholder, the operator must, after seven business days after the initial tow or storage, notify the jurisdictional entity where the vehicle or vessel is stored, in writing by certified mail or acknowledged hand delivery, that the operator has been unable to locate the name and address, a physical search of the vehicle or vessel has revealed no ownership information, and a "good faith effort"²⁹ has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System (NMVTIS).³⁰ Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.³¹

Law Enforcement Requirements

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,³² the law enforcement agency where the vehicle or vessel is stored must contact DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.³³ DHSMV, or appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.³⁴ The towing-storage operator must obtain such information from the law enforcement agency within 5 days after the date of storage and provide the required notice.³⁵

Inspection and Release of Personal Property

Towing-storage operators must allow vehicle or vessel owners, lienholders, insurance company representatives, or agents to inspect a towed vehicle or vessel and release to that person the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the towing-storage operator.³⁶ Agency must be

²⁵ Section 713.18(16)(a), F.S., defines the term "third-party service" to mean a qualified business entity that, upon a request submitted through a website by an operator: 1) Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle; 2) Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle or vessel from the DHSMV; 3) Electronically generates the notices required of a towing-storage operator through the website; 4) Prints and sends the notices to each owner, lienholder, and insurer of record by certified mail; 5) Electronically returns tracking information or other proof of mailing and delivery of the notices to the towing-storage operator; and 6) Electronically reports to the DHSMV via an electronic data exchange process certain information related to the towing and storage notice.

²⁶ S. 713.78(16), F.S.

²⁷ *Id.*

²⁸ S. 713.78(4)(a) and (c), F.S.

²⁹ Section 713.78(5)(e), F.S., defines the term to mean that the operator has performed a list of "checks" of items such as searching specified databases and information systems; looking for any type of tag, tag record, temporary or regular tag on the vehicle or vessel; or looking for the vehicle identification number or the vessel registration number.

³⁰ "The National Motor Vehicle Title Information System (NMVTIS) is a system that allows the titling agency to instantly and reliably verify the information on the paper title with the electronic data from the state that issued the title." See AAMVA, *National Motor Vehicle Title Information System (NMVTIS)*, <https://www.aamva.org/technology/systems/vehicle-systems/nmvtis#> (last visited March 17, 2023).

³¹ S. 713.78(9), F.S.

³² Section 715.07(2)(a)2., F.S., provides that within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel.

³³ S. 713.78(4)(b), F.S.

³⁴ *Id.*

³⁵ *Id.*

³⁶ S. 713.78(10), F.S.

evidenced in an original writing acknowledged by the owner before a notary public or someone authorized to administer oaths.³⁷

Civil Remedies

The owner or lienholder of a vehicle or vessel subject to a lien for towing and storage charges may, within ten days after learning of the location of the vehicle or vessel, file a complaint in the county court of the county where the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld.³⁸ The vehicle or vessel must be released if, at any time before sale of the vehicle or vessel, the owner or lienholder posts with the court a cash or surety bond or other adequate security to ensure the payment of charges owed for towing and storage should the owner or lienholder not prevail in the litigation.³⁹ After posting bond, the clerk must issue a notice of the bond to the towing-storage operator and direct the towing-storage operator to release the vehicle or vessel.⁴⁰ A lienor or its agent may charge an administrative fee⁴¹ to the registered owner or other person claiming a lien against the vehicle or vessel for a release from the lien, not to exceed \$250.⁴²

Upon determining the respective rights of the parties, the court may award damages, attorney's fees, and costs in favor of the prevailing party. The final order must provide for immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder; or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.⁴³ Further, upon release of the vehicle or vessel, the owner or lienholder must give a receipt to the towing-storage operator reciting any claims he or she has for loss or damage to the vehicle or vessel or the contents thereof.⁴⁴

Public Sale of Stored Vehicles and Vessels

A towing-storage operator may sell at public sale a stored vehicle or vessel that remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:

- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.⁴⁵

If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 30 days before the date of the sale, to:

- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of NMVTIS or an equivalent commercially available system.⁴⁶

The notice must have clearly identified and printed, if the claim of lien is for a motor vehicle, the last eight digits of the VIN of the motor vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the lien, in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon.⁴⁷ The towing-storage operator must also publish notice of the time and place of the sale, at least ten days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.⁴⁸

³⁷ *Id.*

³⁸ S. 713.78(5)(a), F.S.

³⁹ S. 713.78(5)(b), F.S.

⁴⁰ *Id.*

⁴¹ Section 713.17(15)(a), F.S., defines the term "administrative fee" to mean a lien fee or any fee imposed by the lienor or the lienor's agent for administrative costs added to the amount due for towing and storing the vehicle or vessel.

⁴² *Id.*

⁴³ S. 713.78(5)(c), F.S.

⁴⁴ *Id.*

⁴⁵ S. 713.78(6), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ S. 713.78(6), F.S.

The sale must be a public sale for cash. If the owner or lienholder of the vehicle or vessel sold is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.⁴⁹ The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale; however, the clerk is entitled to receive five percent of such proceeds for their care and disbursement.⁵⁰

The certificate of title issued after such sale must be discharged of all liens unless otherwise provided by court order. Further, the owner or lienholder of the vehicle or vessel sold may file a complaint after the sale in the county court of the county in which it was stored. Upon determining the respective rights of the parties, the court may award damages, attorney fees, and costs in favor of the prevailing party.⁵¹

Good Faith Effort

A towing-storage operator's failure to make a good faith effort to comply with the notice requirements in s. 713.78, F.S., precludes the imposition of any storage charges against the vehicle or vessel.⁵² Further, if a lienor fails to provide notice to a person claiming a lien on a vehicle or vessel, the lienor may not charge the person for more than seven days of storage, but such failure does not affect charges made for towing the vehicle or vessel or the priority of liens on the vehicle or vessel.⁵³

Record-Keeping

Florida law does not contain any record-keeping requirements for towing-storage operators.

Liens for Recovering, Towing, or Storing Vehicles and Vessels – Effect of Proposed Changes

Notice of Lien

CS/HB 701 reduces the time a towing-storage operator has to send a notice of lien from seven business days after the date of storage of the vehicle or vessel to three business days after such date. The bill also modifies how soon before the vehicle or vessel's sale such notice may be sent from not less than 30 days before such sale to not less than:

- 30 days before such sale if the vehicle or vessel is more than three years of age; or
- 60 days before such sale if the vehicle or vessel is less than three years of age.

Law Enforcement Requirements

The bill deletes the requirement that a law enforcement agency contact the DHSMV under specified circumstances and the DHSMV's corresponding obligation to provide specified information to the law enforcement agency.

Inspection and Release of Personal Property

The bill requires a towing-storage operator to allow rental car owners, lienholders, insurance company representatives, or their agents to inspect the towed rental car and release to such persons all personal property not affixed to the vehicle which was in the vehicle at the time the vehicle came into the towing-storage operator's custody. For purposes of this paragraph, the bill provides that a rental car agreement is not evidence that the person who rented the vehicle is an agent of the owner of the vehicle and a towing-storage operator may not release a vehicle owned by a rental car company to the person who rented the vehicle unless the rental car company appoints the renter as its agent.

The bill also requires a towing-storage operator to:

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² S. 713.78(9), F.S.

⁵³ *Id.*

- Allow non-rental vehicle or vessel owners, lienholders, insurance company representatives, or their agents to inspect the towed vehicle or vessel.
- Make the vehicle or vessel available for such inspection during regular business hours within three business days after receiving a written request to inspect the vehicle or vessel.
- Release to the owner, lienholder, or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the towing-storage operator.
- Accept a copy of an electronic title or a paper title as evidence of a person's interest in a vehicle or vessel.

Civil Remedies

The bill clarifies that an owner or lienholder may file a bond with the clerk of the court to have his or her vehicle or vessel released at any time before its sale regardless of whether a complaint is filed, and that such vehicle or vessel may be released after the bond is posted and the owner or lienholder pays the applicable \$240 administrative fee for a release of lien. The bill also deletes the requirement that the:

- Clerk of the court issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the vehicle or vessel.
- Owner or lienholder, at the time of the vehicle's or vessel's release, give a receipt to the towing-storage operator reciting any claims he or she has for loss or damage to the vehicle or vessel.

Finally, the bill clarifies that the final order issued in a civil action brought by an owner or operator to determine whether or not his or her vehicle or vessel was wrongfully taken or withheld must only require the immediate payment in full of recovery, towing, and storage fees if the lienor prevails.

Public Sale of Stored Vehicles and Vessels

The bill provides that all liens on the certificate of title issued after a public sale must be discharged unless otherwise provided by court order only upon the towing-storage operator's compliance with the statutory requirements relating to the public sale.

Good Faith Effort

The bill specifies that a towing-storage operator's failure to substantially comply with the requirements relating to towing-storage liens or to provide a notice of lien to a person claiming a lien on a vehicle or vessel precludes the imposition of storage charges against the vehicle or vessel for more than three days of storage.

Record-Keeping

The bill requires a towing-storage operator to retain for three years records produced for all vehicles or vessels recovered, towed, stored, or released, which records must include:

- All notice publications and certified mailings.
- The purchase price of any unclaimed vehicle or vessel sold.
- The name and address of any person to whom a vehicle or vessel is released.
- The name and address of the purchaser of any unclaimed vehicle or vessel.
- All fees imposed under s. 713.78, F.S.

Bond for Release of Motor Vehicle Repair Shop Lien – Background

Under s. 559.917, F.S., a customer or a person of record claiming a lien against a motor vehicle may obtain the release of the motor vehicle from any lien claimed by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien. The bond must be in the amount stated on the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, and the customer or person does not have to institute judicial proceedings in order to post the bond.

Upon the posting of such a bond, the clerk of the court must automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the motor vehicle.⁵⁴ The lienor then has 60 days to file suit to recover the bond, and the prevailing party in such an action may be entitled to damages, court costs, and reasonable attorney fees. However, if the lienor fails to file suit within 60 days after the posting of such bond, the bond must be discharged by the clerk.⁵⁵

A lienor's failure to release or return to the customer or person the motor vehicle upon which any lien is claimed, upon receiving a copy of a certificate giving notice of the posting of the bond and directing release of the motor vehicle, subjects the lienor to judicial proceedings which may be brought by the customer or person to compel compliance with the certificate. Whenever a customer or person brings such an action, the customer or person need only establish that:

- Bond in the amount of the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, was posted;
- A certificate was issued pursuant to s. 559.917, F.S.;
- The motor vehicle repair shop, or any employee or agent thereof who is authorized to release the motor vehicle, received a copy of a certificate issued pursuant s. 559.917, F.S.; and
- The motor vehicle repair shop or employee authorized to release the motor vehicle failed to release the motor vehicle.

The customer or person, upon a judgment in her or his favor, may be entitled to damages, court costs, and his or her reasonable attorney fees sustained by reason of the motor vehicle's wrongful detention or retention. Upon a judgment in favor of the motor vehicle repair shop, the shop may be entitled to its reasonable attorney fees.⁵⁶ However, a customer or person who stops payment on a credit card charge or a check drawn in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond is prohibited from any recourse with respect to the motor vehicle repair shop.⁵⁷

Bond for Release of Motor Vehicle Repair Shop Lien – Effect of Proposed Changes

CS/HB 701 extends the provisions of s. 559.917, F.S., to vessels and liens claimed by towing-storage operators, so that a customer or person claiming a lien against a motor vehicle or vessel may obtain the release of any lien claimed by a motor vehicle repair shop or by a towing-storage operator by complying with the bond provisions of that section and has all the rights and remedies provided in that section.

Miscellaneous Provisions

The bill amends the following statutes to provide that a lien on a vehicle or vessel arising under such statutes must be foreclosed pursuant to s. 713.78, F.S., and may not be foreclosed under other statutes:

- Section 83.19, F.S., relating to the sale of distrained property in relation to nonresidential tenancies.

⁵⁴ S. 559.917(1)(a), F.S.

⁵⁵ S. 559.917(1)(b), F.S.

⁵⁶ S. 559.917(2), F.S.

⁵⁷ S. 559.917(4), F.S.

- Sections 83.805, F.S., relating to self-storage space liens, and s. 83.806, F.S., relating to the enforcement of such liens.
- Section 677.210, F.S., relating to the enforcement of a warehouse lien.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 321.051, F.S., relating to Florida Highway Patrol wrecker operator system; penalties for operation outside the system.
- Section 2:** Amends s 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.
- Section 3:** Amends s. 559.917, F.S., relating to bond to release possessory lien claimed by motor vehicle repair shop or towing storage operator.
- Section 4:** Amends s. 83.19, F.S., relating to sale of property distrained.
- Section 5:** Amends s. 83.805, F.S. relating to lien.
- Section 6:** Amends s. 83.806, F.S., relating to enforcement of lien.
- Section 7:** Amends s. 677.210, F.S., relating to enforcement of warehouse's lien.
- Section 8:** Amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.
- Section 9:** Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector. The bill may increase costs for and limit revenues collected by towing-storage operators. However, the bill may have a resulting positive fiscal impact on persons whose vehicles or vessels are towed and stored by towing-storage operators.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Florida law gives FHP the authority to promulgate rules relating to wrecker operators. Thus, it is unlikely that additional rulemaking will be necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2022, the Transportation & Modals Subcommittee considered a proposed committee substitute ("PCS") and reported the bill favorably as a committee substitute. The PCS differed from the underlying bill in that it:

- Amended the list of permissible fees that may be charged by towing-storage operators.
- Expanded the options for forms of payments that a towing-storage operator must accept.
- Provided that a person need not file a lawsuit against a towing-storage operator in order to proceed under s. 713.78(5)(b), F.S.
- Provided that s. 559.917, F.S., which is amended by the bill, applies to the release of a lien on a vehicle, as defined in s. 713.78(1), F.S., claimed by a towing-storage operator for recovery, towing, or storage charges.
- Prevented a towing-storage operator that has wrongfully taken or stored a vehicle, as determined by a court, from getting paid the accompanying towing and storage fees.
- Created a process whereby a rental car company which owns a vehicle that has been towed and stored can directly pursue inspection and release of the vehicle without the renter.
- Required the towing-storage operator to make the vehicle or vessel available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle or vessel.
- Reverted provisions regarding lien release administrative fees back to current law.
- Amended the recordkeeping requirement for towing-storage operators.
- Amended s. 83.19, F.S., rather than s. 83.09, F.S.
- Amended s. 83.806, F.S., to require that enforcement of a lien arising under s. 83.805, F.S., be accomplished under s. 713.78, F.S.
- Made other technical and conforming changes.

This analysis is drafted to the committee substitute as passed by the Transportation & Modals Subcommittee.