

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 Transportation

BILL: SB 760

INTRODUCER: Senator Perry

SUBJECT: Wrecker and Towing-storage Operators

DATE: March 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Vickers	TR	Pre-meeting
2.			CA	
3.			RC	

I. Summary:

SB 760 makes changes related to wrecker operator systems and towing-storage operator practices, including allowable fees, credit card acceptance, lien requirements, sale of unclaimed vehicles, and record retention. Specifically, the bill:

- Prohibits the Florida Highway Patrol from excluding a wrecker operator from its wrecker operator system based solely on a prior felony conviction, unless such conviction is for a forcible felony.
- Provides that a towing-storage operator may only charge certain fees.
- Removes allowance of a lien by a towing-storage operator for a local government fee.
- Requires towing-storage operators accept credit cards.
- Reduces the timeframe in which a towing-storage operator must send the notice of lien, from seven to three business days, and reduces storage charges that may be charged if a lienor fails to provide this notice, also from seven to three days.
- Increases the timeframe an unclaimed vehicle or vessel three years of age or newer may be sold by a lienor, from 50 days to 65 days from the storage date, and requires the notice of lien must not be sent less than 60 days before the sale.
- Adds a 60-day time limit for a towing company to file a claim on a bond posted by the owner or lienholder for a towed vehicle or vessel to be released.
- Increases the timeframe for the public notice requirement related to sale on an unclaimed vehicle by a towing-storage operator, from ten days to 30 days before the sale.
- Clarifies that the third-party vendor must “substantially” comply with the notification to enforce a lien.
- Adds that the administrative fee, which may not exceed \$250, may not exceed the amount set by a local government if it is less.
- Requires a towing-storage operator retain all records of vehicles recovered, towed, or stored; all notice publications and certified mailings; and fees imposed under s 713.78, F.S.

- Designates s. 713.78, F.S., as the exclusive remedy for the placement or foreclosure of a storage lien placed on a vehicle or vessel.

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Highway Patrol Wrecker Operator System

Section 321.051, F.S. authorizes the Florida Highway Patrol (FHP) to establish a wrecker operator system using qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles from a crash scene or for removal and storage of abandoned vehicles. All reputable wrecker operators shall be eligible for use in the system provided their equipment and drivers meet recognized safety qualifications and mechanical standards set by FHP rules. The FHP has established rules for wrecker qualifications that apply only for those wreckers who participate in FHP's wrecker operator system.¹

Rule 15B-9.007, F.A.C., provides FHP grounds to deny inclusion of, remove, or suspend a wrecker operator from FHP's wrecker rotation list. The rule includes removal from the list for "lack of reputability of a wrecker operator," which means, "FHP cannot trust the wrecker operator to safeguard the welfare and property of the public." This includes, but is not limited to:

- Conviction of any felony without restoration of the person's civil rights; and
- 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.

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. 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. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.² Any wrecker operator that is included in the wrecker operator system is an "authorized wrecker operator" in the jurisdiction, while any wrecker operation not included is an "unauthorized wrecker operator."³

Counties must establish maximum rates for the towing of vehicles or vessels removed from private property, as well as the towing and storage of vehicles or vessels removed from the scene of an accident or from where the vehicle or vessel is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality

¹ Chapter 15B-9, F.A.C.

² Section 323.002(1)(c), F.S.

³ Section 323.002(1)(a)-(b), F.S.

enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.⁴

Towing and Wrecker Companies

Towing and wrecker companies are licensed and regulated by county ordinances in the counties in which they operate.⁵ These ordinances may establish license application procedures and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.⁶

State law does not require towing and wrecker companies to accept specific forms of payment. However, 11 states mandate towing companies accept credit cards as a form of payment.⁷

Liens for Recovering, Towing, or Storing Vehicles or Vessels

Liens are claims against property that evidence a debt, obligation, or duty. Liens can be created by judgment, equity, agreement, or statute. 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. Liens on a vehicles or vessel for towing and storage charges are created in statute.⁸

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel possesses a lien on the vehicle or vessel for a reasonable towing fee, an administrative fee or charge imposed by a county or municipality, and a storage fee (for a vehicle or vessel stored for six hours or more) if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed according to 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 expiration of tenancy and the removal is performed pursuant to enforcing a lien pursuant to s. 83.806, F.S., or for the removal of property left after a lease is vacated under s. 715.104, F.S.; or
- Any law enforcement agency.⁹

⁴ Sections 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.

⁵ See, e.g., Hillsborough County, *Towing Companies*, <https://www.hillsboroughcounty.org/businesses/entrepreneur-and-small-business-support/business-licensing/towing-companies> ; Orange County, *Towing Information*, <http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk> (last visited March 16, 2023).

⁶ See, e.g., Miami-Dade County, *Towing License*, https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567 (last visited March 16, 2023).

⁷ 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 March 16, 2023).

⁸ Section 713.78, F.S.

⁹ Section 713.78(2), F.S.

A wrecker operator who claims a lien is required to give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle, and all persons claiming a lien, as disclosed by the records in the Department of Highway Safety and Motor Vehicles (DHSMV) or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check.

A towing-storage operator currently must use a third-party service¹⁰ approved by the DHSMV to transmit the notice (as well as any other notices required under s. 713.78, F.S.). If there is no approved service, the operator may mail the notice and provide evidence of compliance upon application for a certificate of title.¹¹ The notice of lien must be sent by certified mail within seven business days after the date of storage of the vehicle or vessel.¹²

A lienor or its agent may charge an administrative fee¹³ to the registered owner or other person claiming a lien against the vehicle or vessel for a release from the lien, not to exceed \$250.¹⁴

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,¹⁵ the law enforcement agency where the vehicle or vessel is stored must contact the 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.¹⁶ The 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.¹⁷ 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.¹⁸

If 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

¹⁰ The term “third-party service” is defined in s. 713.78(16)(a), F.S., 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.

¹¹ Section 713.78(16), F.S.

¹² Section 713.78(4)(a) and (c), F.S.

¹³ Defined 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. Section 713.78(15)(a), F.S.

¹⁴ *Id.*

¹⁵ 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. S. 715.07(2)(a)2., F.S.

¹⁶ Section 713.78(4)(b), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

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”¹⁹ has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System.²⁰

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.²¹

Inspection of Vehicles and Vessels; Release of Property

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 the vehicle, vessel, or all personal property that was not affixed when the vehicle or vessel came into the custody of the towing or storage operator.²² 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.

Whoever violates the inspection and release provisions contained in s. 713.78(10), F.S., is guilty of a third degree felony²³ which is punishable by a fine that does not exceed \$5,000²⁴ and imprisonment that does not exceed five years.²⁵

Bond to Release Vehicle or Vessel

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.²⁶ 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 cash or a 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 litigation.²⁷ 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.²⁸

¹⁹ 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.

²⁰ “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 15, 2023).

²¹ Section 713.78(9), F.S.

²² Section 713.78(10), F.S.

²³ Section 713.78(12)(b), F.S.

²⁴ Section 775.083(1)(c), F.S.

²⁵ Section 775.082(3)(e), F.S. Additional penalties may apply for certain habitual felony offenders under s. 775.084, F.S.

²⁶ Section 713.78(5)(a), F.S.

²⁷ Section 713.78(5)(b), F.S.

²⁸ *Id.*

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 provides immediate payment in full of recovery, towing, and storage fees by the responsible party.²⁹

Sale of Vehicles and Vessels; Notice

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.³⁰

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 the DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of the NMVTIS or an equivalent commercially available system.³¹

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.³²

Proceeds of Sale

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.³³ 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.³⁴

III. Effect of Proposed Changes:

The bill defines a "towing-storage operator" as a person who regularly engages in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier. The bill makes numerous changes relating to towing-storage operators.

Florida Highway Patrol Wrecker Operator System

The bill amends s. 322.051, F.S., to prohibit the Florida Highway Patrol (FHP) from excluding a wrecker operator from FHP's wrecker operator system or fail to designate him or her as an

²⁹ Section 713.78(5)(c), F.S.

³⁰ Section 713.78(6), F.S.

³¹ *Id.*, Exhibits D and E; Section 713.78(6), F.S.

³² Section 713.78(6), F.S.

³³ *Id.*

³⁴ *Id.*

authorized wrecker operator based solely on a prior felony conviction, unless such conviction was for a forcible felony³⁵.

Towing-Storage Operator Fees and Payment

The bill provides towing-storage operators may charge only the following fees for, or incidental to, the recovery, removal, or storage of a vehicle or vessel:

- A reasonable recovery fee.
- A reasonable towing fee.
- A reasonable storage fee.
- A reasonable fee or charge that is imposed by a county or local government.

The bill also requires towing-storage operators accept credit cards.

Liens for Recovering, Towing, or Storing Vehicles or Vessels

The bill amends various parts of s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles or vessels, and designates this section as the exclusive remedy for the placement or foreclosure of a storage lien placed on a vehicle or vessel. The bill prohibits ss. 83.09, 83.805, 677.210, F.S., related to placing and foreclosing a lien by a landlord, self-storage facility, or warehouse, being used for placing a lien on a vehicle or vessel.

The bill also:

- Removes the ability of a towing-storage operator to impose a lien for a local government fee. A lien may only be imposed for a reasonable recovery fee, reasonable towing fee, and a reasonable storage fee (unless the vehicle was stored for fewer than six hours).
- Reduces the notification timeframe in which a towing-storage operator must send the notice of lien to the registered owner, the insurance company insuring the vehicle, and all other lienholders, from 7 business days to 3 business day.
- Removes notification requirements in s. 713.78(4)(b), F.S., to determine the owner, insurance company insuring, or any lienholders on the vehicle or vessel. This requirement may no longer be needed due to required use of the third-party service in s. 713.78(16), F.S.
- Reduces the timeframe, within 3 days instead of 7 business days, for a towing-storage operator to notify the jurisdictional entity where the vehicle or vessel is stored, in writing by certified mail, if the towing-storage operator is unsuccessful in locating the name and address of the owner or other lienholder. Removes that this can be done through acknowledged hand delivery.
- Provides that failure to make good faith efforts to *substantially* comply with the requirements of this section or to provide notice claiming a lien precludes the imposition of storage charges against the vehicle or vessel for more than 3 days of storage (formerly 7 days of storage fees for failure to provide notice of a lien).

³⁵ A “forcible felony” is defined as “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.” Section 776.08, F.S.

- Prohibits an administrative fee (lien fee) charged to exceed \$250 *or* the amount set by a local government if it is less.
- Requires a towing-storage operator retain all records of vehicles recovered, towed, or stored; all notice publications and certified mailings; and fees imposed under s 713.78, F.S.

Bond to Release Vehicle or Vessel

The bill amends s. 559.917, F.S., to add towing-storage operators to the process currently used for posting a bond to release a possessory lien claimed by a motor vehicle repair shop. This process is similar to that already in statute for a bond to release vehicle or vessels, but adds that the lienor has 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damage plus court costs and reasonable attorney fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond will be discharged by the clerk of court.

This change also allows a person to initiate judicial proceedings against a repair towing-storage operator that does not release or return the vehicle after receiving notice of the bond and a directive to release the vehicle.

Sale of Vehicles and Vessels; Notice

The bill increases the timeframe an unclaimed vehicle or vessel 3 years of age or newer may be sold by a lienor, from 50 days to 65 days. For a vehicle 3 years of age or newer, the notice of lien must be sent no less than 60 days before the sale of the vehicle or vessel. The bill also increases the timeframe required for publishing notice of the time and place of the sale in a newspaper of general circulation in the county where the sale will occur, from at least 10 days to 30 days before the sale.

The bill takes effect July 1, 2023.

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:

The bill may have an indeterminate negative fiscal impact on towing-storage operators due to the increased requirements and limitation on fees that can be charged.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide a timeframe that a towing-storage operator must retain records of all vehicles or vessels recovered, towed, or stored; all notice publications and certified mailings; and all fees imposed under s. 713.78, F.S. It may not be feasible for a towing-storage operator to keep all such records indefinitely.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 321.051, 713.78, 559.917, 83.09, 83.805, 677.210, and 715.07.

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.