

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 Rules

BILL: CS/CS/SB 774

INTRODUCER: Rules Committee; Community Affairs Committee; and Senator Perry

SUBJECT: Towing and Storage

DATE: February 22, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Shutes</u>	<u>Vickers</u>	<u>TR</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	<u>Shutes</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 774 makes numerous changes related to wrecker operator systems and towing-storage operator practices, including allowable fees, payment acceptance, lien requirements, sale of unclaimed vehicles, and record retention. Specifically, the bill:

- Requires counties, cities, and the Florida Highway Patrol (FHP) to set maximum rates for towing and related fees, including fees for cleanup and disposal of hazardous and nonhazardous materials.
- Prohibits the FHP from excluding a wrecker operator from its wrecker operator system based solely on a prior felony conviction, unless such conviction is for a specified felony offense.
- Provides that a person who disputes the appropriateness of the tow, or the fees charged can post a bond to retrieve their vehicle back without having to file a lawsuit.
- Requires an investigating agency to take possession of a stored vehicle after 30 days.
- Defines the terms “good faith effort,” “towing-storage operator,” “newer model,” and “older model.”
- Requires towing-storage operators accept specified forms of payment and expressly preempts a county or municipal charter, ordinance, resolution, regulation, or rule that conflicts with the provision specifying the forms of payment that a towing-storage operator must accept.
- Requires a county or city with established maximum towing and storage rates to post them on its website and develop a process for investigating and resolving complaints regarding fees charged for more than maximum rates.
- Requires towing-storage operators to maintain a rate sheet listing posted in the place of business, of all fees for the recovery, removal, or storage of a vehicle or vessel.

- Reduces the timeframe in which a towing-storage operator must send the notice of lien, from seven to five business days, and reduces storage charges that may be charged if a lienor fails to provide this notice, also from seven to five 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 57 days from the storage date, and requires the notice of lien must not be sent less than 52 days before the sale.
- Provides the timeframe in which an unclaimed vehicle or vessel three years of age or older may be sold by a lienor is 35 days from the storage date, and requires the notice of lien must not be sent less than 30 days before the sale.
- Increases the timeframe for the public notice requirement related to sale on an unclaimed vehicle by a towing-storage operator, from ten days to 20 days before the sale.
- Clarifies the process for law enforcement's search for information on a towed vehicle or vessel related to a third-party service.
- Prohibits a towing-storage operator from releasing a towed rental vehicle or vessel to a renter unless the rental company appoints the renter as an agent of the company.
- Requires a towing-storage operator to make a towed vehicle available for inspection during normal business hours within one hour after arrival at a storage facility.
- Authorizes a towing-storage operator to enter a vehicle or vessel for purposes of towing or storing it, but they are liable for damage if the entry is not per the standard of reasonable care.
- Establishes the types of documents the towing-storage operator must accept as documentation of a person's interest in a vehicle or vessel.
- Requires a towing-storage operator retain records of all vehicles and vessels recovered, towed, or stored; all notice publications and certified mailings; and fees imposed under s. 713.78, F.S., for at least three years.

The bill does not appear to have a significant fiscal impact on state or local government. The bill has an indeterminate fiscal impact on the private sector.

The bill takes effect July 1, 2024.

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

¹ Chapter 15B-9, F.A.C.

“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 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

² Section 323.002(1)(c), F.S.

³ Section 323.002(1)(a)-(b), F.S.

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*, available at <https://www.hillsboroughcounty.org/businesses/entrepreneur-and-small-business-support/business-licensing/towing-companies>; Orange County, *Towing Information*, available at <http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk> (last visited December 19, 2023).

⁶ See, e.g., Miami-Dade County, *Towing License*, available at https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567 (last visited December 19, 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, available at <https://pirg.org/resources/towing-kickbacks-only-one-third-states-ban-incentives-property-owners-law-enforcement/> (last visited December 19, 2023).

Florida law does not currently expressly authorize a towing-storage operator to enter a vehicle or vessel that is under its control.

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 vehicle 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 or 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

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

⁸ Section 713.78, F.S.

⁹ Section 713.78(2), F.S.

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.

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 authorizes 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 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 and 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

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.*

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)*, available at <https://www.aamva.org/technology/systems/vehicle-systems/nmvtis#> (last visited December 19, 2023).

²¹ Section 713.78(9), F.S.

²² Section 713.78(10), F.S.

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

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 and Required 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

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.*

²⁹ Section 713.78(5)(c), F.S.

³⁰ Section 713.78(6), F.S.

³¹ *Id.*

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:

This 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 authorized wrecker operator based solely on a prior felony conviction, unless such conviction was for:

- A forcible felony³⁵;
- Theft of a motor vehicle under s. 812.014(2)(c)6., F.S.; or
- Knowingly owning, operating, or conducting a chop shop³⁶ or knowingly aiding and abetting another person in owning, operating, or conducting a chop shop.

Definitions

The bill defines "good faith effort" as all of the following checks have been performed by a towing-storage company to establish prior state of registration and title of a vehicle or vessel that has been towed or stored by the company:

- A check in the department's database for owner or lienholder.
- A check in the electronic National Motor Vehicle Title Information System or an equivalent system to determine the state of registration when not available in the department's database.
- A check of the vehicle for any type of tag, tag record, temporary tag, or regular tag.

³² Section 713.78(6), F.S.

³³ *Id.*

³⁴ *Id.*

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.

³⁶ Section 812.16(1)(a), F.S., defines "chop shop" as, "any area, building, storage lot, field, or other premises or place where one or more persons are engaged or have engaged in altering, dismantling, reassembling, or in any way concealing or disguising the identity of a stolen motor vehicle or of any major component part of a stolen motor vehicle; where there are two or more stolen motor vehicles present; or where there are major component parts from two or more stolen motor vehicles present."

- If the request was made by law enforcement, a check from the law enforcement report for the tag number or other information to identify the vehicle or vessel.
- If the request was a private tow, a check of the tow trip sheet or tow ticket of the tow truck operator to determine whether a tag was on the vehicle or vessel at the beginning of the tow.
- If there is no address available of the owner on the impound report, a check in the law enforcement report to determine whether an out-of-state address is indicated from the driver license information.
- A check of the vehicle stickers or decals that might indicate a state or registration.
- A check of the interior vehicle, whether it be glove box, trunk, or other areas for any papers that may indicate registration.
- A check of the vehicle or vessel for a vehicle or vessel identification number.
- A check of the vessel hull for a hull identification number which should be carved, burned stamped, embossed, or otherwise permanently affixed to the outboard side of the transom, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

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 defines “newer model” as a vehicle or vessel that is 3 model years old or less, beginning with the model year of the vehicle or vessel as year one.

The bill also defines “older model” as a vehicle or vessel that is more than 3 model years old, beginning with the model year of the vehicle or vessel as year one.

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:

- Any reasonable fee for service specifically authorized by ordinance, resolution, regulation, or rule of the county or municipality in which the service is performed.
- Any reasonable fee for service specifically authorized by contract or agreement between a towing-storage operator and a county, municipality, or other governmental agency.
- Any reasonable fee for service specifically authorized by rule of the DHSMV.
- Any reasonable fee for service as agreed upon in writing between a towing-storage operator and the owner of a vehicle or vessel.
- Any lien release administrative fee as set forth in 713.78(15)(a), F.S.
- Any reasonable administrative fee or charge imposed upon the registered owner or other legally authorized person in control of a vehicle or vessel by a county or municipality pursuant to ss. 125.01047, 166.04465, or 323.002, F.S.³⁷

The bill also requires towing-storage operators accept at least one form of payment from at least two of the following groupings of payment methods:

³⁷ These sections authorize a county or municipality to impose a reasonable administrative fee or charge, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement. Authorized wrecker operators or towing businesses may impose, collect, and remit this fee or charge on behalf of the county or municipality.

- Cash, cashier's check, money order, or traveler's check.
- Bank, debit, or credit card.
- Mobile payment service, digital wallet, or other electronic payment system.

The bill expressly preempts a county or municipal charter, ordinance, resolution, regulation, or rule that conflicts with the provision specifying the forms of payment that a towing-storage operator must accept.

The bill requires counties and FHP to establish maximum rates that towers may charge for cleanup and disposal of hazardous and nonhazardous materials incidental to a nonconsensual tow. Cities may enact such rates, in which case the city's rates apply.

A towing-storage operator that is requested to perform cleanup or disposal of hazardous or nonhazardous materials must notify the applicable local government as soon as practicable of its intention not to perform such cleanup or disposal. In the case of a tow requested by FHP, the tower must notify FHP or one of its officers as soon as practicable of its intention not to perform such cleanup or disposal.

The bill clarifies that the provisions relating to maximum rates charged by a tower for cleanup and disposal of hazardous and nonhazardous materials do not create a duty on the part of a vehicle or vessel owner who is a named insured on a valid insurance contract, or the insurer that issues such contract, to pay for cleanup or disposal of hazardous or nonhazardous materials beyond what is covered under the vehicle's or vessel's insurance contract in place at the time of the incident requiring such cleanup or disposal of hazardous or nonhazardous materials.

The bill requires a county or city with established maximum towing and storage rates to post them on its website and develop a process for investigating and resolving complaints regarding fees charged more than the permitted maximum rates. In counties or cities where rates have not been established, the rates established by the Division of Florida Highway Patrol under s. 321.051(2) apply in such areas.

The bill also requires towing-storage operators to maintain a rate sheet listing all fees for the recovery, removal, or storage of a vehicle or vessel. It requires the rate sheet must be posted at the place of business and made available upon request by the vehicle or vessel owner, lienholder, insurance company, or their agent.

Towing-storage operators may not require a person to provide more than one form of current government photo identification for identity verification during payment.

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 also:

- Prohibits a county or municipality from charging a storage fee if a vehicle or vessel is stored for less than 6 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 seven business days to five business days.
- Provides that notification requirements in s. 713.78(4)(b), F.S., are to be used if an approved third-party service cannot obtain the vehicle's or vessel's owner, lienholder, and insurer information or last state of record pursuant to s. 713.78(16), F.S. However, notices still must be sent by the third-party service.
- Provides that the notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien less than 30 days before the sale of a vehicle or vessel that is more than 3 years of age or less than 60 days before the sale of a vehicle or vessel that is 3 years of age or less.
- Reduces the timeframe, to within five days, excluding Saturday, Sunday, and federal holidays, instead of seven business days, for a towing-storage operator to notify the jurisdictional entity where the vehicle or vessel is stored, in writing by certified mail or electronic delivery, 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 while adding electronic 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 five days of storage (formerly seven days of storage fees for failure to provide notice of a lien).
- The bill provides that if a vehicle is stored at a wrecker operator's facility pursuant to an investigatory hold or a hold for other evidentiary purposes, the investigating agency or other person requiring such hold must take possession of the vehicle within 30 days after the first day on which the vehicle is stored, unless another timeframe is otherwise agreed upon by the wrecker operator and the investigating agency or other person requiring the hold.

Inspection of Vehicles and Vessels and Release of Property

The bill clarifies that vehicle or vessel owners, rental vehicle or vessel owners, lienholders, insurance company representatives, or their agents are authorized to inspect a towed vehicle and have released to that person the vehicle or all personal property that was not affixed when the vehicle came into the custody of the towing-storage operator. Towing-storage operators must allow this during normal business hours within one hour after the person arrives at the storage facility where the vehicle or vessel is stored.

The bill clarifies that a rental agreement is not evidence that the renter is an agent of the rental vehicle or vessel owner, prohibiting a towing company from releasing a vehicle or vessel owned by a rental car company to the renter. Additionally, a towing-storage operator must accept a photocopy of a contract between a lender and the owner of a vehicle or vessel, a contract between a lessor and the lessee of the vehicle or vessel, an electronic title, a paper title, a contract between a lender and the owner of the vehicle or vessel, a contract between a lessor and the lessee of the vehicle or vessel, credentials establishing that a person as an employee or contract agent of an insurance company along with documentation identifying the vehicle by the

identification number or vessel by the hull identification number, or a notarized written agreement evidencing that the person is an agent of the vehicle or vessel owner; lienholder; or insurance company as evidence of a person's interest in a vehicle or vessel.

The bill also authorizes a towing-storage operator to enter, using reasonable care, a vehicle or vessel for purposes of recovering, removing, or storing such vehicle or vessel. A towing-storage operator is liable for any damage to the vehicle or vessel if such entry is not in accordance with the standard of reasonable care.

Sale of Vehicles and Vessels and Required Notice

The bill increases the timeframe an unclaimed vehicle or vessel that is a "newer model" may be sold by a lienor, from 50 days to 57 days. For a "newer model," the notice of lien must be sent no less than 52 days before the sale of the vehicle or vessel. The timeframe in which an unclaimed vehicle or vessel that is an "older model" may be sold by a lienor, is 35 days. For a vehicle that is an "older model", the notice of lien must be sent no less than 30 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 from at least 10 days to 20 days before the sale. The notice will be made on the website available to the public that is maintained by an approved third-party service and be provided to DHSMV.

The bill adds the insurance company insuring the vehicle or vessel must be sent, by certified mail, a notice of sale of the vehicle or vessel by the storage owner or operator.

Towing-Storage Operators Record Retention Requirements

The bill requires towing-storage operators to retain records for all vehicles and vessels recovered, towed, stored, or released for at least three years. Such records must include:

- All notice publications and certified mailings;
- The purchase price of unclaimed vehicles or vessels sold;
- The names and addresses of unclaimed vehicle or vessel purchasers;
- The names and addresses of persons to which vehicles or vessels were released; and
- All fees imposed under s. 713.78, F.S.

Bond to Release Vehicle or Vessel

The bill amends provisions relating to challenging a wrongful taking or withholding of a vehicle or vessel and relating to posting a bond for the release of the vehicle or vessel. The registered owner of a vehicle or vessel in the possession of a towing-storage operator, the insurance company insuring such vehicle or vessel, and any other person claiming a lien thereon, other than the towing-storage operator, may initiate judicial proceedings in the court of competent jurisdiction in the county in which the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld or whether fees were wrongfully charged.

Regardless of whether judicial proceedings have been initiated, at any time before the sale of the vehicle or vessel by the towing-storage operator, the owner of the vehicle or vessel, the insurance

company insuring the vehicle or vessel, and any other person claiming a lien thereon, other than the towing-storage operator, may have the vehicle or vessel released upon posting with the clerk of the court in the county in which the vehicle or vessel is held a cash or surety bond or other adequate security equal to the amount of the accrued charges set forth in the notice of lien, plus accrued storage charges, at the time of the release of the vehicle or vessel, if any, to ensure the payment of such charges in the event a court determines that the vehicle or vessel was not wrongfully taken or withheld or fees were not wrongfully charged.

The owner of the vehicle or vessel, the insurance company insuring the vehicle or vessel, and any other person claiming a lien thereon, other than the towing-storage operator, may not be required to initiate judicial proceedings in order to post the bond in the registry of the court and are not required to use a particular form for posting the bond unless the clerk provides such form. Upon the posting of the bond and the payment of other specified fees, the clerk of the court must automatically issue a certificate notifying the towing-storage operator of the posting of the bond and directing the towing-storage operator to release the vehicle or vessel to the party that posted the bond. At the time of such release, after reasonable inspection, the party that posted the bond must give a receipt to the towing-storage operator reciting any claims for loss or damage to the vehicle or vessel or the contents thereof, or such claims are deemed waived.

Upon receiving a copy of a certificate giving notice of the posting of a bond in the required amount and directing the release of the vehicle or vessel, a towing-storage operator must release or return the vehicle or vessel to the party that posted the bond. If the party posting the bond does not initiate judicial proceedings within 45 days after the issuance of the certificate by the clerk of the court, then upon request by the towing-storage operator, the clerk of the court must:

- Release the cash to the towing-storage operator; or
- Issue a notice certifying that a judicial proceeding has not been initiated within 45 days after the issuance of the certificate and requiring the surety that issued the bond to promptly pay the full face value of the bond to the towing-storage operator. The towing-storage operator has the obligation, upon receipt of the clerk's notice, to timely notify the surety of such notice. A notice issued by the clerk under this sub-subparagraph expires 120 days after its issuance if the notice is not delivered to the surety.

Upon determining the respective rights of the parties, the court may award damages, attorney fees, and costs in favor of the prevailing party. In the event the defendant prevails, 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.

Sale of Vehicle or Vessel

The bill requires that the lien sale take place at least ten days after publication of the advertisement of sale, instead of 15 days after the first publication of advertisement of sale.

Failure to make good faith efforts to comply with these notice requirements precludes the imposition of any storage charges against the vehicle or vessel.

Effective Date

The bill takes effect July 1, 2024.

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 significant fiscal impact on state or local government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.0103, 166.043, 321.051, 323.001, 713.78, 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.)

CS/CS by Rules on February 20, 2024:**The committee substitute:**

- Provides that a person who disputes the appropriateness of the tow, or the fees charged can post a bond to retrieve their vehicle back without having to file a lawsuit.
- Amends provisions relating to local governments setting maximum rates for cleanup and disposal of hazardous and nonhazardous materials by towers.
- In cases of investigatory holds on vehicles, requires an investigating agency to take possession of a vehicle after 30 days.
- Revises the list of documents that a towing-storage operator must accept as evidence of a person's interest in a vehicle or vessel.
- Expressly preempts a county or municipal charter, ordinance, resolution, regulation, or rule that conflicts with the provision specifying the forms of payment that a towing-storage operator must accept.
- Authorizes a towing-storage operator to enter a vehicle or vessel for purposes of towing or storing it, but stipulates they are liable for damage if the entry is not per the standard of reasonable care.
- Makes other technical and clarifying changes.

CS by Community Affairs on February 6, 2024:**The committee substitute:**

- Requires a county or city with established maximum towing and storage rates to post them on its website and develop a process for investigating and resolving complaints regarding fees charged more than the maximum rates.
- Provides that foreclosing a storage lien on a vehicle or vessel must be through the process outlined in the towing statute instead of the warehouse lien and landlord/tenant statutes.
- Revises timelines related to notices of sale to account for older and newer model vehicles.
- Clarifies that an owner or lienholder of a vehicle or vessel does not have to file a lawsuit to secure the release when the owner or lienholder disputes the tow or the fees. They may post a cash or surety bond equal to the amount of towing and storage charges to secure the release.
- Requires towing-storage operators to maintain a rate sheet listing all fees for the recovery, removal, or storage of a vehicle or vessel, and requires the rate sheet to be posted at the place of business and make it available upon request by the vehicle or vessel owner, lienholder, insurance company, or their agent.
- Removes a provision related to rental agreement alternate contact requirements.

B. Amendments:

None.

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