

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2044

SPONSOR: Transportation Committee and Senator Burt

SUBJECT: Wrecker Liens

DATE: April 10, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Vickers	Meyer	TR	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	FT	_____
4.	_____	_____	AGG	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

This CS creates the right of a wrecker operator who has towed a motor vehicle, mobile home, or vessel at the request of a law enforcement officer, and which motor vehicle, motor home, or vessel, is sold for salvage, to impose a wrecker operator’s lien. A person against whom a wrecker operator’s lien has been imposed may not receive a license plate or registration decal until the lien is discharged.

The CS also revises requirements relating to the sale of unclaimed vehicles. Currently, s. 713.78, F.S., provides that an unclaimed vehicle may be sold after 35 days free of all prior liens. The CS provides that a vehicle may be sold after 35 days if the vehicle is 3 years of age or older, or after 50 days if the vehicle is 3 years of age or less.

This CS substantially amends sections 320.03 and 713.78 of the Florida Statutes.

II. Present Situation:

Section 320.03, F.S., provides the procedures for registration of motor vehicles and mobile homes. County tax collectors are deemed agents of the state for the purpose of collecting fees, entering tag and title information, and issuing license plates and registration stickers. Section 320.03(4), F.S., requires a tax collector that has on-line information capability to refuse to issue a vehicle registration if the owner has refused to surrender a suspended or revoked driver’s license. Section 320.03(8), F.S., requires a tax collector to check the lists maintained by DHSMV under s. 316.1001(4), F.S. (list of persons who have 3 or more outstanding citations for failure to pay a toll), and s. 316.1967(6), F.S. (list of persons who have 3 or more outstanding parking violations). Should an applicant for a license plate or an annual registration sticker be on either list, a license plate or registration sticker may not be issued until the applicant’s name has been

removed or that person presents a receipt showing that the outstanding fines have been paid. Tax collectors (and their authorized agents) and clerks of the court are each entitled to receive monthly, as costs for implementing and administering the collection of fines through this procedure, 10 percent of the civil penalties and fines recovered from such persons.

Section 713.78, F.S., provides a wrecker company may impose a lien against any motor vehicle, mobile home, or vessel for reasonable towing and storage fees regarding that motor vehicle, mobile home, or vessel. A wrecker lien is not a recorded lien as, for instance, a bank lien is. A wrecker lien is a possessory lien, that is, the wrecker operator may take and hold the motor vehicle, mobile home, or vessel, until the lien is satisfied. There is no statutory requirement that DHSMV receive written notice from a wrecker operator who claims a wrecker operator's lien for recovery, towing, or storage of a vehicle, vessel or mobile home.

Section 713.78, F.S., also provides for the sale of unclaimed vehicles and vessels. Currently, this section provides that a towing operator, after providing the required notification to specified parties, may sale at auction the unclaimed vehicle or vessel after 35 days free of all prior liens.

III. Effect of Proposed Changes:

This CS amends s. 320.03, F.S., to provide that if the applicant's name appears on a list as a result of a wrecker operator's lien filed in accordance with s. 713.78(13), F.S., a license plate or revalidation decal may not be issued. The license plate or revalidation decal may be issued once the person's name no longer appears on the list or the person presents a receipt from the clerk showing that the outstanding fines have been paid. This section also clarifies the term "civil penalty and fines" does not include a wrecker operator's lien as described in s. 713.78(13), F.S.

This CS revises requirements relating to the sale of unclaimed vehicles. Currently, s. 713.78, F.S., provides that an unclaimed vehicle may be sold after 35 days free of all prior liens. The CS provides that a vehicle may be sold after 35 days if the vehicle is 3 years of age or older, or after 50 days if the vehicle is 3 years of age or less.

This CS amends s. 713.78, F.S., to provide for DHSMV to create a wrecker operator's lien list. A wrecker operator may claim a lien for the cost of recovery, towing, or storage of a motor vehicle, mobile home or vessel that was ordered towed by a law enforcement operator and for which a certificate of destruction has been issued. The lien is applicable against all owners of the motor vehicle, mobile home, or vessel. A notice of wrecker operator's lien must be submitted on forms provided by DHSMV, which form must include:

- The name, address, and telephone number of the wrecker operator.
- The name of the registered owner or owners of the motor vehicle, mobile home, or vessel.
- A general description of the motor vehicle, mobile home, or vessel, including its color, make, model, body style, and year.

- The vehicle identification number (VIN); registration license plate number, state, and year; validation decal number, state, and year; mobile home sticker number, state, and year; vessel registration number; hull identification number; or other identification number, as applicable.
- The name of the person and the corresponding law enforcement agency that requested that the motor vehicle, mobile home, or vessel, be recovered, towed, or stored.
- The amount of the wrecker operator's lien.

For purposes of a wrecker operator's recorded lien only, the amount of a wrecker operator's lien may not exceed the amount of the charges for recovery and towing of the motor vehicle, mobile home, or vessel, plus no more than 7 days storage charges. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality under ss. 125.0103(1)(c) and 166.043(1)(c). This limit does not apply to a possessory wrecker operator's lien, nor does it prevent a wrecker operator from seeking civil remedies for enforcement of the entire amount of the charges claimed.

Any registered owner of a motor vehicle, mobile home, or vessel, may dispute a wrecker operator's lien, by notifying DHSMV of the dispute. If at least one of the following applies, the Department must remove that registered owner's name from the list of those persons who may not be issued a license plate or registration sticker for any motor vehicle under s. 320.03(8), F.S.:

- The registered owner presents a notarized CS of sale proving the motor vehicle, mobile home, or vessel, was sold in a private or casual sale before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.
- The registered owner presents proof the Florida certificate of title of the motor vehicle, mobile home, or vessel, was sold to a licensed dealer before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.
- The registered owner submitted to the Department a notice of transfer of the Florida certificate of title of the motor vehicle, mobile home, or vessel, before the motor vehicle, mobile home, or vessel, was recovered, towed, or stored.

A registered owner may not dispute a wrecker operator's lien if the wrecker operator has provided DHSMV with a certified copy of a judgment against the registered owner requiring the registered owner to pay the wrecker operator's lien. A wrecker operator's lien may be increased to include no more than \$500 of the reasonable costs and attorney's fees incurred in obtaining the judgment.

A wrecker operator must issue a certificate of discharge to each registered owner of the motor vehicle, mobile home, or vessel, attesting that the amount of the wrecker operator's lien has been discharged. Upon presentation of the certificate of discharge, the department must remove the registered owner's name from the list. Discharge of the lien does not discharge the debt that may be owed to the wrecker operator for amounts in excess of the lien.

The cost to record a notice of wrecker operator's lien is \$4.50, distributed as follows: \$1.00 to the Florida Motor Vehicle Theft Prevention Trust Fund; \$1.00 to DHSMV for operating costs; and \$2.50 to the tax collector for operating costs.

Like the liens for toll and parking fines, a wrecker operator's lien applies only to the annual renewal in the registered owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under ch. 320, F.S., except for the transfer of registrations which is inclusive of the annual renewals. This subsection does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(7)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This CS imposes a \$4.50 fee for the recordation of a wrecker lien.

B. Private Sector Impact:

This CS will assist towing firms collect on wrecker operator liens.

The CS revises provisions relating to the sale of unclaimed vehicles and vessels to provide that a vehicle may be sold after 35 days if the vehicle is 3 years of age or older, or after 50 days if the vehicle is 3 years of age or less.

C. Government Sector Impact:

The CS provides for the following distribution of the \$4.50 fee: \$1.00 to the Florida Motor Vehicle Theft Prevention Trust Fund; \$1.00 to DHSMV for operating costs; and \$2.50 to the tax collector for operating costs. The Department expects the revenue impact from assessing the wrecker lien fee to be minimal.

The Department anticipates implementation of wrecker liens will require a non-recurring start-up cost of \$27,000. Future costs are expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
