

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Transportation Committee

BILL: SB 1006

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Recovering/Towing/Vehicles & Vessels

DATE: March 16, 2007 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------------|
| 1. | Davis | Meyer | TR | Fav/1 amendment |
| 2. | | | CA | |
| 3. | | | JU | |
| 4. | | | TA | |
| 5. | | | | |
| 6. | | | | |

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Florida regulates many aspects of the recovery, towing, and storage of motor vehicles. For example, state law allows a wrecker company that recovers, tows, or stores a vehicle to impose a lien against the vehicle for those costs. If the charges remain unpaid, the company can sell the vehicle or vessel at public auction. The company is responsible for sending notice of the pending sale within a specified number of days to the vehicle or vessel's owner via certified mail with a return receipt.

Current law also directs the Florida Highway Patrol (FHP) to establish a wrecker operator system and establish a maximum rate schedule that wrecker companies contacted by troopers can charge their customers; however, counties and municipalities may set different rates for wrecker operators contacted by local law enforcement.

The bill modifies and clarifies certain aspects of these statutes. Specifically, the bill:

- Provides that in those counties and municipalities without locally adopted towing rates, the FHP rate schedule shall apply.
- Requires FHP to review its towing rate schedules biennially to determine if the existing rates are equitable.

- Eliminates the return receipt requirement for notification letters sent by wrecker companies to vehicle owners or other lienholders. (Companies must retain some evidence of mailing the letters and must provide such documentation to owners, lienholders, or any other person involved in a legal action, if requested.)
- Caps the administrative charge assessed by wrecker companies operating in counties or cities without a towing-rate ordinance at the lesser of \$100 or 30 percent of the unpaid recovery, towing, and storage fees.
- Makes technical and grammatical changes to the existing laws.

SB 1006 does not appear to have a fiscal impact on state agencies or to local governments.

This bill substantially amends ss. 125.0103, 166.043, 321.051, and 713.78 of the Florida Statutes.

II. Present Situation:

Towing Rates

Counties and municipalities are authorized by ss. 125.0103(1) and 166.043(1), F.S., respectively, to establish rates and maximum fees for the recovery, towing, and storage of motor vehicles and vessels by wrecker companies.

Pursuant to s. 321.051, F.S, the FHP has established a system to allocate towing requests among wrecker operators to remove wrecked, disabled, and abandoned vehicles from roadways. FHP also sets maximum towing and storage rates for situations in which troopers contact a wrecker company to remove vehicles and rates for the area have not been established by a local government. These rates generally are set by the regional FHP troop commanders based on the charges allowed by local governments and the wrecker companies' costs. The rates are periodically reviewed and updated at the troop commanders' discretion. Wrecker companies contacted by FHP may charge a maximum of \$30 for the preparation, filing, or mailing of notification letters for vehicles stored more than 24 hours.¹

Several local ordinances or resolutions allow wrecker companies to collect administrative fees to cover postage, title search, and other related expenses. The amount and timing of these administrative fees vary widely. For example, the City of Orlando allows wrecker companies to charge an administrative fee of \$50 after the first 48 hours the vehicle or vessel is in their possession, if they have complied with statutory requirements to notify owners and lienholders. Broward County allows wrecker companies to charge, after 24 hours, an administrative fee of \$30 plus all actual costs to obtain title information and provide notice to the owners or lienholders. The City of Tallahassee allows wrecker companies, which have mailed a certified letter to the owner, lienholder, or insurance company as required by state law, to assess an administrative fee of \$33 plus postage and any out-of-state charges 3 days after the vehicle was towed but not until the Return Receipt postcard, fax, or email has been received.

¹ Ch. 15B-9.010(4), Fla. Admin. Code. This rule was last amended in 1992.

According to the Professional Wrecker Operators of Florida, there have been reports of wrecker companies charging upfront administrative charges in excess of \$100 to customers in counties or cities without local fee ordinances or in circumstances where the FHP rate schedule does not apply.

Notification

Under s. 713.78(2), F.S., a wrecker operator has “a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee.” The owner of the vehicle or vessel, however, may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker operator tows and stores a vehicle or vessel, the wrecker operator must send notice to the registered owner, the insurance company insuring the vehicle, and all lienholders, as disclosed by state agency records.² The wrecker operator must send notice by certified mail, return receipt requested, within seven business days after the date of storage of the vehicle.³ The notice must state that:

- the wrecker operator has taken possession of the vehicle or vessel;
- a lien is claimed by the towing-storage operator;
- the amount of the towing and storage charges accrued;
- the lien claimed is enforceable by law;
- the owner or other lienholder is entitled to a hearing to determine whether her or his property was wrongfully taken from her or him; and
- a vehicle or vessel which remains unclaimed, or for which recovery, towing, or storage charges remain unpaid, may be sold free of all prior liens after 35 days if the vehicle or vessel is more than three years old, or after 50 days if the vehicle or vessel is three years of age or less.

If unable to locate the name and address of the owner or lienholder, the wrecker operator must notify the local public agency by certified mail indicating the lack of ownership information.⁴

Vehicles or vessels remaining unclaimed may be sold by public auction by the wrecker operator for towing and storage charges.⁵ For vehicles or vessels more than three years old, the sale may take place no sooner than 35 days from the time the vehicle or vessel was stored. For vehicles or vessels three years old or less, the sale may not take place sooner than 50 days from the time of storage. If the date of the sale was not included in the initial notification to the owner and any lienholder, notice must be given by certified mail, return receipt requested, to the owner and any lienholder with the information no later than 15 days before the sale. Additionally, the sale must be advertised once in a general circulation newspaper, at least 10 days before the sale. Proceeds of the sale, less the towing and storage costs, and the cost of the sale, are deposited with the clerk of the circuit court if the owner is absent.

² Section 713.78(4)(a), F.S.

³ Section 713.78(4)(c), F.S.

⁴ Section 713.78(4)(d), F.S.

⁵ Section 713.78(6), F.S.

According to the U.S. Postal Service website, certified mail service gives the person or entity mailing the letter a receipt stamped with the date of mailing, a unique bar-code number allowing the mailer to verify delivery online, and assurances that the recipient's signature is obtained at the time of delivery then maintained by the local Post Office. This service costs \$2.40 in addition to the regular 39 cents postage. Additionally, senders can request a copy of the signature record. This return receipt service provides tangible proof that a letter or package was delivered and that the recipient signed for it. The return receipt can be in the form of a green postcard (at an extra cost of \$1.85), or as a PDF attachment via email or by fax (for \$1.35 extra). The charge is higher if the return receipt service was requested by the sender after mailing the letter.

III. Effect of Proposed Changes:

The bill specifies that in those counties or municipalities without an adopted local ordinance establishing recovery, towing, and storage fees, the FHP's rate schedule applicable to that region of the state shall be used. In addition, the FHP is directed to biennially review its rate schedules in June of the appropriate year to determine whether its rates are equitable.

The bill deletes the requirement that wrecker companies receive a formal return receipt from the postal service, although they must continue to use certified mail. Notwithstanding the removal of the return receipt requirement, wrecker companies must be able to provide proof that the notification letters were mailed to the affected parties upon their request.

The bill authorizes wrecker companies to charge a fee for administrative costs on top of the recovery, towing, and storage fees for the vehicle. The bill caps the charge for administrative costs at either the amount imposed by a local ordinance, or in the absence of a local ordinance, the lesser of \$100 or 30 percent of the unpaid recovery, towing, and storage charges.

The bill takes effect on July 1, 2007.

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:

None.

B. Private Sector Impact:

Indeterminate. The provisions establishing FHP rate schedules in counties and municipalities without locally adopted wrecker rates could impact some wrecker companies positively or negatively, depending on what they are currently charging. In addition, wrecker companies will save \$1.85 per notice mailed by certified mail based on avoiding the cost of the return receipt that must be requested under current law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

As used in Section 4 of the bill, the term “administrative costs” is not defined. Rule 15B-9.010, F.A.C., identifies the “preparation, filing, and mailing” of the statutorily required notification but does not specifically define these costs as “administrative costs.”

VII. Related Issues:

Currently, s. 713.78, F.S., requires wrecker companies that tow and store vehicles to send certified letters, return receipt requested, to the vehicle owner, lienholder, insurance company and anyone of interest.

The average vehicle will need to have 2-3 letters sent with some requiring more. The cost to the towing company for postage is \$4.64 per letter (this is \$0.39 for postage, \$2.40 certified mail, and \$1.85 return receipt requested).

With the electronic tracking ability of the USPS, the return receipt card is no longer needed. Removing the requirement for the return receipt requested portion will save the business owner \$1.85 per letter. A small towing company will save over \$2,000.00 yearly in postage costs, and larger operations will save even more.

This is a benefit to small business owners with no change in service to the vehicle owner.

VIII. Summary of Amendments:

Barcode 033872 by Transportation:

Provides administrative costs authorized by the bill are for the cost to the wrecker company of notifying the owner, lienholder, insurance company and other persons of record who have an interest in the vehicle of the claim of lien.

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