

**STORAGE NAME:** h3345s1.ca

**DATE:** March 23, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY AFFAIRS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 3345

**RELATING TO:** Wrecker Operators

**SPONSOR(S):** Rep. Lacasa

**COMPANION BILL(S):** SB 710 (l) and HB 1665 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMUNITY AFFAIRS YEAS 6 NAYS 0
- (2) LAW ENFORCEMENT & PUBLIC SAFETY
- (3) TRANSPORTATION
- (4)
- (5)

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I. SUMMARY:

The bill provides that cities and counties choosing to operate a wrecker operator system are subject to the provisions of the bill establishing unlawful activities and corresponding criminal penalties. It also revises existing law authorizing the Florida Highway Patrol wrecker operator system to include the same unlawful activities and penalties.

This bill provides that an investigating agency may impose a hold on certain vehicles. A hold arises from an investigating agency's request to store vehicles, linked to unlawful activity, in a wrecker operator's storage facility. Under certain conditions due to a hold, the bill imputes financial responsibility to the appropriate investigating agency or the vehicle owner or lienholder for towing and storage charges.

The bill extends the liability for damages to vehicles in connection with towing and storage services to also cover theft of such vehicles or theft of personal property contained in such vehicles.

The fiscal impacts on state and local governments are indeterminate.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Background**

Persons who tow, recover, or store motor vehicles as their livelihood are often referred to as wrecker operators. However, the term "wrecker operator" is not defined in current law.

Representatives from the towing and recovery industry and state and local law enforcement indicate that a number of independent wrecker operators are responsible for many of the towing scams and substandard towing services occurring on Florida's highways. These scams include: (1) demanding outrageous fees for towing and storage to (2) committing automobile insurance fraud. Although a statewide concern, south Floridians perhaps suffer from unscrupulous operations more than other Floridians.

To illustrate, the Division of Consumer Services (division) with the Florida Department of Agriculture and Consumer Services (department) reported a total of 100 vehicle towing complaints in a three year period beginning January 1, 1995. Of those complaints, 55 came from Brevard, Broward, Dade, Hillsborough, Orange, Osceola, Palm Beach, and Volusia Counties. Broward and Dade Counties had the highest number of complaints with 15 and 16, respectively. The north Florida counties of Alachua, Columbia, Duval, Escambia, Gadsden, Jefferson, Leon, and Suwannee received a total of nine complaints. Leon County received five complaints. The complaints range from pricing, billing, refunding, and claim disputes to vehicle damages.

**Current Rotation System**

Currently, counties and municipalities establish by ordinance, what is commonly known as a "rotation system." Such a system lists reputable wrecker operators to provide for the removal and storage of wrecked or disabled vehicles. Generally, wrecker operators must comply with selection guidelines to be listed as an approved operator. The Association of Counties states that each local government automatically drafts ordinances to provide guidelines for selection. Local governments establishing the system agree to only use the listed wrecker operators for its towing needs.

Wrecker operators not listed are prohibited to tow in situations where the government entity has jurisdiction. According to the Professional Wrecker Operators of Florida (PWOFF), these unapproved wrecker operators tend to cause the problems often attributed to the towing and recovery industry. Currently, there are no statewide criminal penalties for violations of the rotation system provisions.

According to the (PWOFF), these unapproved wrecker operators scan police frequencies to find business, usually at a scene of an accident. Such activity unfairly takes business from wrecker operators who are officially part of a rotation system. The towing industry states that these unapproved wrecker operators are more likely to bilk the public or insurance companies.

**Storage Fees**

The PWOFF states that the towing industry also experiences problems with the length of time it stores vehicles impounded under current vehicle hold practices. Holds allow law

enforcement agencies or state attorney offices to use wrecker operator storage facilities to impound vehicles for criminal investigatory purposes. Such vehicles are sometimes left in the wrecker operators' storage facilities for what the towing industry considers unreasonable and extended periods of time, amounting, in some instances, to significant charges. Currently, there is no official time limit placed on holds .

Inevitably, the wrecker operators must absorb these charges because the owners will not or cannot pay. A mechanism for wrecker operators to collect payment from the appropriate law enforcement agencies does not exist. Both the PWOFF and the law enforcement community admit that holds are rare. By the PWOFF's estimates, holds represent approximately 5 percent of all the business wrecker operators do with law enforcement around the state.

Nevertheless, when holds do occur and the vehicles are not removed in a reasonable time, the financial impact to the affected wrecker operator is significant. The towing industry offered an example where a vehicle had been stored in a wrecker operator's storage facility for two years at a cost of \$2500. The operator of the facility was never paid for the storage service rendered. The PWOFF asserts that this problem is most prevalent among smaller law enforcement agencies rather than the larger ones.

#### **Current Law**

**Sections 125.0103 and 166.043, F.S.**, allow local governments to enact public service rates for towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and storage of vehicles, in the event the owner is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle. These sections do not provide for setting the maximum for such fees.

**Section 321.051, F.S.**, authorizes the Florida Highway Patrol (FHP) of the Department of Highway Safety and Motor Vehicles to establish a system using qualified, reputable wrecker operators for the removal and storage of wrecked or disabled vehicles. There are no criminal penalties for wrecker operators outside the system who violate the provisions of the system.

**Section 322.34, F.S.**, concerns persons driving while their licenses are suspended, revoked, canceled, or disqualified. When such a person's vehicle is required to be impounded or immobilized, either the arresting agency or towing service, whichever is in possession of the vehicle, must: (a) determine whether the vehicle is leased or if there are any persons with a lien upon the vehicle, and (b) notify the lessor or lienholder before 5:00 p.m. on the business day after the day that the vehicle has been impounded or immobilized.

**Section 713.78, F.S.**, governs liens for recovering, towing, or storing vehicles. A wrecker or towing operator who removes or stores a vehicle at the request of the owner of property on which the vehicle is wrongfully parked, a law enforcement agency or a mobile home park owner, must have a lien on such vehicle for a reasonable towing and storage fee. No storage fee can be charged if such vehicle is stored for less than six hours. However, there is no clear indication that this section also authorizes a person to claim a lien on a vehicle when there are fees or charges connected with the immobilization of a vehicle using a vehicle boot or other similar device.

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Also, current law provides that persons who regularly engage in the business of towing, recovering or storing vehicles are not liable for damages connected with such services provided that the services were performed with reasonable care. However, the law fails to set forth what constitutes the use of reasonable care. Furthermore, the law does not expressly include vehicle theft or personal property stolen from the vehicle as damages.

A first degree misdemeanor can result in imprisonment not to exceed one year or a fine of \$1,000 pursuant to s. 775.082 or s. 775.083, F.S.

**B. EFFECT OF PROPOSED CHANGES:**

**Wrecker Operator Defined**

The bill defines "wrecker operator" as any person or firm regularly engaged for hire in the business of towing or removing motor vehicles.

**Holds**

The bill provides that an investigating agency **may** place a hold on a motor vehicle stored within a wrecker operator's storage facility for a period not to exceed 5 days, excluding holidays and weekends (5 days), unless extended in writing.

Holds may be placed when:

(1) The officer has probable cause to believe the vehicle:

- Should be seized and forfeited under the Florida Contraband Forfeiture Act or chapter 372, F.S., wildlife laws,
- Was used as a means of committing a crime,
- Is evidence that tends to show that a crime has been committed,
- Was involved in a traffic accident resulting in death or injury,

(2) The vehicle is impounded due to driving under the influence or with a suspended, canceled, or disqualified license; or

(3) The officer is complying with a court order.

The hold must be in writing and contain specific information.

The bill provides for the disposition and payment of the towing and storage charges accrued by the held vehicle under various situations:

(1) The wrecker operator may release the held vehicle to the vehicle owner or lienholder if the investigating agency fails to submit a written notice to hold the vehicle past the 5 days.

(2) The investigating agency may choose to remove the held vehicle to a designated impound lot after the 5 days have expired. In which case, the investigating agency must not release the vehicle to the owner or lienholder of the vehicle until proof of

payment of the towing and storage charges incurred by the wrecker operator is presented to the investigating agency.

(3) The investigating agency may opt, pursuant to a written notification, to hold the vehicle at the wrecker operator's storage facility beyond the 5-day period. In which case, (1) the investigating agency pays for storage charges incurred by the wrecker operator for the requested extended period, and (2) the owner or lienholder pays for the towing and storage charges for the first 5 days or any period less than the first 5 days.

(4) The investigating agency must pay the towing and storage charges due to the continued hold of a vehicle where the courts find no probable cause for such a hold.

The bill provides that the towing and storage rates for the owner or lienholder of the held vehicle shall not exceed the rates for the investigating agency.

Under the hold provision, a wrecker operator's storage facility must comply with the investigating agency's hold and instructions for storing the vehicle. The facility can only release the vehicle under the directions of the investigating agency placing the hold, except where otherwise provided.

The bill also provides that if the owner of the vehicle placed under a hold is subsequently found guilty or pleads nolo contendere to the offense that predicated the hold, the owner must pay the accrued towing and storage charges.

**Wrecker Operator System: Prohibitions/ Penalties**

The bill defines a "wrecker operation system." The system regulates the towing or removal of wrecked, disabled, or abandoned vehicles. Under the system, a county or municipality contracts with one or more wrecker operators for the towing services at accidents, streets, or highways. The bill states that "[a] wrecker operator system normally uses a method for apportioning the towing assignments among the eligible wrecker operators through the creation of geographic zones, a rotation schedule or a combination of these methods."

The bill provides a system mirroring the rotation system of towing currently adopted by some governmental entities. One difference, however, appears to be that some current local ordinances and rules lack penalties. Also, any existing penalties may be ineffective against wrecker operators operating outside the system.

This bill sets forth provisions to identify and penalize wrecker operators who act outside the system where such a system exists. Specifically, the bill defines an authorized and unauthorized wrecker operator. Unauthorized wrecker operators are not permitted to be part of a wrecker operator system for reasons such as lack of or improper insurance, inadequate equipment, or inappropriate licensure.

Under the bill, unauthorized wrecker operators are prohibited to monitor police radio to locate wrecked vehicles at the scene of accidents. According to the bill, this applies in governmental jurisdictions for the purpose of providing tow services.

Thus, the bill also makes it unlawful for an unauthorized wrecker operator to drive by the scene of a wrecked or disabled vehicle before the arrival of an authorized wrecker

operator or initiate contact with the owner or driver of the vehicle. However, if the owner or driver of the wrecked or disabled vehicle signals an unauthorized wrecker operator to stop and provide towing services, the bill requires the unauthorized wrecker operator to disclose to the owner or driver: (a) that he or she is not an authorized wrecker operator designated as part of the wrecker operator system and (b) in writing, what towing and storing charges will apply before the vehicle is connected to the towing apparatus. It is also unlawful for a wrecker operator to falsely identify herself or himself as being a part of the wrecker operator system.

With the exception of the prohibition to monitor police radio, persons violating these provisions are guilty of a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S. Wrecker operators unlawfully monitoring police radios are guilty of a noncriminal violation, punishable as provided in s. 775.083 (a \$500 fine).

Provisions in this section of the bill do not prevent the owners or drivers of a vehicle involved in an accident from contacting any wrecker operator of their choice.

#### **Towing and Storage Fees Set By Counties**

The bill requires counties to establish maximum fees which may be charged as follows: towing of vehicles from or immobilization of vehicles on private property; removal and storage of wrecked or disabled vehicles from an accident scene; or for the removal and storage of vehicles, 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 removal of the vehicle.

#### **FHP Wrecker Operator System**

The bill modifies the existing FHP wrecker operator system pursuant to s. 321.051, F.S. The modifications include the Section 3 provisions of this bill relating to the definitions of authorized and unauthorized wrecker operators, the unlawful activities of unauthorized wrecker operators and the penalties imposed for violations of the system.

#### **Liability**

The bill clarifies the wrecker operators' liability waiver for damages connected with recovering, towing, or storing vehicles. It expressly provides a liability waiver for wrecker operators from theft of the vehicle in question and theft of personal property contained in such vehicle provided that reasonable care is exercised by the operators. The bill provides a listing of activities that demonstrate the use of reasonable care. The wrecker operator is presumed to have exercised reasonable care if he or she implements all these activities.

### **C. APPLICATION OF PRINCIPLES:**

#### **1. Less Government:**

- a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Wrecker operators who are not lawfully part of a wrecker operator system, where one exists, must now adhere to established prohibitions in the law.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

**Sections 1.01, 125.0103, 166.043, 316.193, 321.051, 322.34, 713.78, 319.30, F. S., are affected.**

E. SECTION-BY-SECTION RESEARCH:

**Section 1. Amends s. 1.01, F.S.,** defines the term "wrecker operator" as any person or firm regularly engaged for hire in the business of towing or removing motor vehicles.

**Section 2. Creates a new provision of law and placement in the Florida Statutes, by Statutory Revision of the provisions, is decided at a later date,** allows investigating agencies to place holds on motor vehicles stored within a wrecker operator's storage facility for a period not to exceed 5 days, excluding holidays and weekends, under certain conditions; provides for the disposition of held vehicles in the absence of written notification from the investigating agency causing the vehicle to be

held; provides responsibilities for payment of accrued towing and storage charges as between the owner or lienholder and the investigating agency; requires wrecker operator's storage facilities to comply with hold instructions; and requires investigating agencies placing a hold on a vehicle to pay the accrued towing and storage charges if probable cause is not found by a court of law.

**Section 3. Creates a new provision of law and placement in the Florida Statutes, by Statutory Revision of the provisions, is decided at a later date,** defines "authorized" and "unauthorized" wrecker operators and "wrecker operator system"; provides for unlawful activities by unauthorized wrecker operators in any county or municipality operating a wrecker operator system; imposes a second degree misdemeanor on violators, punishable by imprisonment not to exceed one year and a fine of \$1000, with the exception of a noncriminal violation involving police radio monitoring by unauthorized wrecker operators; and allows, without penalty, the owner of a vehicle involved in an accident to initiate contact with any wrecker operator of choice regardless of authorized or unauthorized status.

**Section 4. Amends s. 125.0103, F.S.,** requires counties to establish maximum fees which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and storage of vehicles, 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 removal of the vehicle.

**Section 5. Amends s. 166.043, F.S.,** requires counties to establish maximum fees which may be charged on the towing of vehicles from or immobilization of vehicles on private property, removal and storage of wrecked or disabled vehicles from an accident scene or for the removal and storage of vehicles, 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 removal of the vehicle.

**Section 6. Amends s. 316.193, F.S.,** replaces the phrase "towing and storage company" with "wrecker operator."

**Section 7. Amends s. 321.051, F.S.,** establishes a Florida Highway Patrol wrecker operator system and penalties for operating outside of the system; defines "authorize" and "unauthorized" wrecker operators; provides for unlawful activities by unauthorized wrecker operators; imposes a second degree misdemeanor on violators, punishable by imprisonment not to exceed one year and a fine of \$1000, with the exception of a noncriminal violation involving police radio monitoring by unauthorized wrecker operators; and allows, without penalty, the owner of a vehicle involved in an accident to initiate contact with any wrecker operator of choice regardless of authorized or unauthorized status.

**Section 8. Amends s. 322.34, F.S.,** eliminates next-day telephone notifications to owners by the arresting agency or towing service in possession of the owners' impounded or immobilized vehicles; requires such notification to be by certified mail within seven business days after the date of the vehicle's immobilization or impoundment; and provides that the owner of an impounded or immobilized vehicle

arising from an improper driver's license charge must pay for the accrued towing and storage if the owner does not prevail in a complaint that the vehicle was wrongfully held.

**Section 9. Amends s. 713.78, F.S.,** provides that this section does not authorize any person to claim a lien on a vehicle for charges connected with the immobilization of such vehicle using a vehicle boot or similar device pursuant to s. 715.07, F.S.; clarifies that vehicle damage for which wrecker operators are not liable if reasonable care is used to tow, recover, or store the vehicle, includes theft of such vehicles, or theft of personal property contained in such vehicles; provides that a wrecker operator is not liable for damage for towing related services when complying with lawful directions of a law enforcement officer; lists activities constituting reasonable care to prevent vehicle theft from a wrecker operator's storage facility; requires law enforcement agencies to conduct a written inventory of personal property found in certain vehicles before the wrecker operator moves the vehicle and provides that a wrecker operator is not liable for the loss of personal property from such vehicle if it were not listed in the inventory; and conforms a cross-reference with the bill.

**Section 10. Amends s. 319.30, F.S.,** conforms a cross-reference with the bill.

**Section 11.** Provides that the effective date is October 1 of the year in which the bill is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

4. Total Revenues and Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

In areas where wrecker operator systems are established, authorized wrecker operators are expected to experience an increase in revenues as business returns to operators within the wrecker operator system. The bill's provisions and penalties may help to decrease the number of unauthorized wrecker operators, thereby, improving the towing industry's public image and trust.

3. Effects on Competition, Private Enterprise and Employment Markets:

The provisions of the bill might level the playing field so that legitimate wrecker operators may compete with the wrecker operators that provide substandard towing and related services to the public.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to spend money or take action that requires expenditure of money.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

According to some towing industry representatives, the purpose of the hold provisions is to encourage investigating agencies to manage their hold systems more efficiently by using their own or public storage facilities when possible.

The Florida League of Cities, Florida Association of Counties, Florida Sheriff's Association, Florida Police Chief, Florida Highway Patrol, and State Attorney's Office indicate that they do not oppose the committee substitute. These groups and the Professional Wrecker Operators of Florida Association (PWOFA) also agreed that the term "investigating agency" includes law enforcement agencies and state attorney's offices.

The Professional Wrecker Operators of Florida Association supports the committee substitute.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 1998, the House Committee on Community Affairs adopted a strike-everything-after-the-enacting-clause amendment to HB 3345 and two amendments to the strike everything amendment. The two amendments to the strike everything amendment amends the wrecker operator system provisions for counties, cities, and the Florida Highway Patrol. They require that the unauthorized wrecker operator disclose, in writing, what charges for towing and storage will apply under certain circumstances.

Subsequent to the adoption of the amendments, the committee approved a committee substitute to the bill. The committee substitute differs from the bill as introduced as follows:

- Provides technical changes to the bill that includes replacing the term "hold order(s)" with "hold."
- Allows an investigating agency to place a hold on a motor vehicle stored within a wrecker operator's storage facility for a period not to exceed 5 days, excluding holidays and weekends, unless extended in writing.
- Provides for the disposition of the impounded vehicle arising from a hold if the 5 days, excluding holidays and weekends, deadline provisions are not met. Specifically, contracted wrecker operators may release held vehicles to the rightful owner if the investigating agency fails to notify past the 5-day, excluding holidays and weekends, period.
- Assigns financial responsibility for towing and storage charges arising from vehicle holds to the investigating agency if: (1) the agency extends the hold beyond the 5-day, excluding holidays and weekends, period; and (2) there is a judicial finding of no probable cause associated with the hold.
- Clarifies that the owner or lienholder of a held vehicle is responsible for paying accrued towing and storage charges for the first 5 days, excluding holidays and weekends, or less to the appropriate wrecker operator storage facility.

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- Removes law enforcement financial obligations for towing and storage charges under DUI and improper driver's license provisions.
- Prevents wrecker operators from charging the owner or lienholder of a held vehicle at a higher rate than they would charge the investigating agency.

The committee substitute does not require counties or cities to spend money or take action that requires expenditures; thereby, exempting the bill, as amended, from the mandates provisions

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

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Nayola R. Frazier

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Joan Highsmith-Smith