

STORAGE NAME: h3345.ca
DATE: March 13, 1998

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

BILL #: HB 3345

RELATING TO: Wrecker Operators

SPONSOR(S): Rep. Lacasa

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

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

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

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 hold orders may be imposed arising from law enforcement officers' request to store vehicles, linked to unlawful activity, in a wrecker operator's storage facility. Under certain conditions, the bill imputes financial responsibility to the appropriate law enforcement agency for towing and storage charges. These charges are assessed against stored vehicles due to hold orders or where Florida law requires a vehicle to be impounded or immobilized (in cases where driving-under-the-influence charges are involved).

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, 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 Professional Wrecker Operators of Florida (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 hold order practices. Hold orders allow

law enforcement agencies 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 hold orders.

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 hold orders are rare. By the PWOFF's estimates, hold orders represent approximately 5 percent of all the business wrecker operators do with law enforcement around the state.

Nevertheless, when hold orders 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

Section 316.193, F.S., provides that in driving-under-the-influence (DUI) cases the courts must order the impoundment or immobilization of vehicles that were driven by persons under the influence. Routinely, law enforcement agencies, including the Florida Highway Patrol (FHP), contract with wrecker operators to perform these impoundments or immobilization procedures. Currently, the owner must pay all costs and fees for the impoundment or immobilization of the vehicle, including towing or storage, regardless of the outcome of the case. However, the owner may seek relief in court from payment if he or she believes that the vehicle was wrongfully taken or withheld. This payment scheme also applies to vehicles taken in connection with persons driving while their licenses are suspended, revoked, canceled, or disqualified pursuant to s. 322.34, F.S.

Section 321.051, F.S., authorizes the FHP of the Department of Highway Safety and Motor Vehicles (DHSMV) 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, the law does not provide for placing liens on a vehicle when there are for fees or charges connected with the immobilization of a vehicle using a vehicle boot or other similar device.

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.

Hold Orders

The bill provides that a law enforcement officer **may** place a hold order on a motor vehicle stored within a wrecker operator's storage facility for a period not to exceed 72 hours unless extended by a court order. Hold orders 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 order must be in writing and contain specific information. Under the hold order provision, a wrecker operator's storage facility must comply with law enforcement officers' hold orders and instructions for storing the vehicle. The facility can only release the vehicle under the directions of the law enforcement agency placing the hold order.

If the owner of the vehicle placed under a hold order is subsequently found guilty or pleads nolo contendere to the offense that predicated the hold order, the owner must pay the accrued towing and storage charges. Otherwise, the law enforcement agency placing the hold order must pay the 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) what towing and storing charges will apply before the vehicle is connected to the towing apparatus. If there is a dispute as to whether the unauthorized wrecker operator actually made the required disclosures, it is unclear under the bill what proof, if any, is needed make this determination. 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.

Responsibility For Towing and Related Charges

The bill provides that when a vehicle is impounded at a wrecker operator storage facility due to violating a law, (driving under the influence or with an invalid driver's license), the owner or lienholder must pay associated charges if they lose their court case alleging that their vehicle was wrongfully taken or withheld. On the other hand, if the owner or

lienholder of the vehicle wins the complaint, then, the law enforcement agency responsible for impounding the vehicle, pays the storage and towing costs.

FHP Wrecker Operator System

The bill modifies the existing Florida Highway Patrol wrecker operator system pursuant to s. 321.051, F.S. The modifications include the Section 3 provisions 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?

First, wrecker operators who are not lawfully part of a wrecker operator system, where one exists, must now adhere to established prohibitions in the law. Secondly, law enforcement agencies must pay storage and towing charges on vehicles connected with certain unlawful activities in cases where the vehicles' owners are found not guilty of associated crimes and a law enforcement officer has placed a hold order on vehicles stored within a wrecker operator's storage facility.

(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, 316.193, 321.051, 322.34, 713.78, 319.30, Florida Statutes, are affected.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Section 1.01, relating to statutory construction, is amended to define 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. This section allows law enforcement officers the discretion to place hold orders on a motor vehicle stored within a wrecker operator’s storage facility for a period not to exceed 72 hours under certain conditions. Wrecker operator’s storage facilities must comply with hold order instructions. This section also requires law enforcement agencies placing a hold order to pay the accrued towing and storage charges if the vehicle owner is found not guilty.

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. This section defines “authorized” and “unauthorized” wrecker operators and “wrecker operator system.” In any county or municipality that operates a wrecker operator system, this section sets forth unlawful activities for unauthorized wrecker operators. This section 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. The section further 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. Section 316.193, F.S., relating to driving under the influence laws and penalties, establishes financial responsibility for charges accrued against vehicles towed and stored pursuant to this section if the owner or lienholder of the vehicle wins or loses a challenge that the vehicle was wrongfully held.

Section 5. Section 321.051, F.S., establishing a Florida Highway Patrol wrecker operator system and penalties for operating outside of the system, defines “authorize” and “unauthorized” wrecker operators. This section sets forth unlawful activities for

unauthorized wrecker operators. It 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. The section further 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 6. Section 322.34, F.S., relating to driving while license is suspended, revoked, canceled, or disqualified, eliminates next-day telephone notifications to owners by the arresting agency or towing service in possession of the owners' impounded or immobilized vehicles. The section now requires such notification to be by certified mail within seven business days after the date of the vehicle's immobilization or impoundment. Also, if the owner of the impounded or immobilized vehicle complains that his or her vehicle was wrongfully held and is successful in court, then the arresting agency must pay the accrued charges for the immobilization or impoundment (including towing and storage charges). Otherwise, the owner pays if he or she loses the complaint.

Section 7. Section 713.78, F.S., relating to vehicle liens to cover towing, storing and recovering, exempts from this section, any person claiming a lien on a vehicle for charges connected with the immobilization of such vehicle boot or similar device pursuant to s. 715.07, F.S., due to towing vehicles parked on private property. This section clarifies that vehicle damage for which wrecker operators are not liable if reasonable care was used to tow, recover, or store the vehicle, includes theft of such vehicles, or theft of personal property contained in such vehicles. It further provides that a wrecker operator is not liable for damage for towing related services when complying with lawful directions of a law enforcement office regarding the removal of a stopped vehicle that presents a serious traffic hazard. The section conforms penalty language removing imposition of penalties on persons exercising the vehicle boot exemption.

Section 8. Section 319.30, F.S., relating to title certifications, conforms cross-references.

Section 9. This section provides for an effective date of 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:

See Fiscal Comments.

2. Recurring Effects:

See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See Fiscal Comments.

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:

The bill might impact law enforcement at the state and local levels, negatively. The FHP suggests that in certain cases the bill's requirements that law enforcement agencies pay the accrued charges for the immobilization or impoundment of a vehicle stemming from unlawful activity would place a tremendous financial constraint upon law enforcement due to the number of vehicles towed each year.

The FHP provided 1996 statistics on criminal traffic violations. The total number of criminal traffic violations for 1996 was 573,158. Of that amount:

- 178,872 -- found guilty
- 153,352 -- adjudication withheld by the judge
- 37,794-- dismissed
- 70,959-- nolle prose (State Attorney chooses not to prosecute)
- 1,742 -- not guilty
- 130,439 -- deposition of cases pending

It is not clear how cases withheld, dismissed, or nolle prose would be handled fiscally under the bill. Although difficult to predict what categories the pending cases will fall under, final disposition of the pending cases could increase law enforcement agencies fiscal responsibility under the bill.

Of the total 1996 traffic violation, about 13 percent or 73,663 violations belong to the FHP alone. The remainder is divided between the county and municipal law enforcement agencies throughout the state. Consequently, the FHP appears to bear the lion's share of the fiscal responsibility generated by the bill.

Moreover, affected law enforcement agencies would probably incur a non-recurring cost to establish an administrative system to handle payment of charges resulting from the provisions of this bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Even though sections 4 and 6 require local governments to possibly expend funds, the applicable criminal penalties frees them from the provisions of Article VII, Section 18 (a) of the Constitution.

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 order provisions is to encourage law enforcement agencies to manage their hold order systems more efficiently by using their own or public storage facilities when possible.

The law enforcement community has expressed concern about the financial impact of this provision on local and state law enforcement agencies. The law enforcement community believes that its responsibility for storage charges should be based on whether probable

cause existed to impound the vehicle under a hold order and not whether the impounded vehicle's owner was subsequently found guilty.

Law enforcement contends that a finding of probable cause gives the law enforcement officer the legal authority to take particular action. A determination of whether or not probable cause existed is a separate determination from guilt. Similarly, the law enforcement community represents that it should not have to pay for storage and towing charges of vehicles that the court orders them to impound under this bill's DUI and invalid driver's license provisions.

The Florida League of Cities, Florida Association of Counties, Florida Sheriff's Association, Florida Police Chief, Florida Highway Patrol share a concern with the provisions of the bill that require state and local government law enforcement agencies to pay for towing and storage charges under certain conditions. Otherwise, these groups appear to support the remaining provisions of the bill.

The Professional Wrecker Operators of Florida Association supports the bill in its entirety.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor of the bill agrees to a strike everything amendment. The associations listed above endorse the strike everything amendment.

The amendment makes technical changes to the bill that includes replacing the term "hold order(s)" with "hold." It also makes substantive changes which:

- 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.
- 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.

STORAGE NAME: h3345.ca

DATE: March 13, 1998

PAGE 14

The amendment 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:

Nayola R. Frazier

Joan Highsmith-Smith