

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 7, 1998 Revised: _____

Subject: Wrecker Operators

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>McAuliffe</u>	<u>Johnson</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>CA</u>	<u>Withdrawn</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

The CS provides that a law enforcement officer or court may put a hold order on a vehicle which is stored in a wrecker operator’s storage facility. The CS further provides that when the vehicle owner is found guilty of, or pleads nolo contendere to, the offense which resulted in the hold order, regardless of adjudication of guilt, the owner must pay all accrued charges for towing and storage. However, if a court finds that the law enforcement agency did not have probable cause to hold the vehicle, the law enforcement agency must pay the accrued charges.

The CS defines an “unauthorized wrecker” as any wrecker operator who has not been designated as part of the rotation schedule established by the governmental unit having jurisdiction over the removal and storage of disabled vehicles from an accident scene. Further, the CS makes certain activities by unauthorized wreckers illegal.

The CS limits the liability of a wrecker when towing or storing a vehicle. The CS provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, provided the wrecker uses reasonable care.

This CS substantially amends sections 1.01, 125.0103, 166.043, 316.193, 319.30, 321.051, 322.34, 713.78, and 715.07 of the Florida Statutes.

II. Present Situation:

Section 1.1, F.S. provides definitions applicable to the entire Florida Statutes. There currently is no definition for “wrecker operator.”

Sections 125.0103 and 166.043, F.S., provide that local governments may enact ordinances to establish maximum fees which may be charged for: the towing of vehicles from or immobilization of vehicles on private property; the 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 the wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle.

Section 316.193, F.S., provides that the court may order the impoundment of the vehicle that was driven at the time of a DUI offense, unless the court determines that the family of the owner of the vehicle has no other means of transportation. The period of impoundment is 10 days for a first conviction; 30 days for a second conviction within 3 years; and 90 days for third conviction within 5 years.

The section further provides that the person that owns the vehicle, or the person that holds a lien on the vehicle that is impounded after a DUI offense, may, within 10 days after the person knows where the vehicle is stored, file a complaint in the county where the vehicle is stored to determine if the vehicle was wrongfully taken. Upon filing of the complaint, the owner may have the vehicle released by posting a bond with the court equal to the amount of the costs and fees of impoundment or immobilization, including towing or storage, to ensure the payment of such costs and fees if the owner or lienholder does not prevail.

Currently, s. 320.08, F.S. provides that wreckers may either register for a flat fee of \$30 or register by gross vehicle weight (GVW) in the same manner as commercial trucks. If a wrecker registers by paying the flat fee they may only tow disabled motor vehicles or replacement motor vehicles, and if they register by GVW the wrecker may tow non-disabled as well as disabled or replacement vehicles.

Section 321.051, F.S., authorizes the Florida Highway Patrol (FHP) to establish, within areas designated by the patrol, a system utilizing qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles or for removal and storage of abandoned vehicles. The FHP establishes eligibility standards based on safety and mechanical qualifications for wrecker operators. The FHP may also limit the number of operators participating in the system and may establish maximum rates for contracted towing and storage services, pursuant to s. 166.043, F.S. Some local law enforcement agencies have also established a wrecker system using a rotation schedule to provide all contracted wreckers an equal opportunity for business in their designated area. However, wreckers not under contract may monitor law enforcement radios and attempt to arrive at the scene of an accident to solicit the tow before the contracted service arrives. No state law prohibits or restricts this type of operation; however, some local governments have adopted ordinances establishing penalties for roadside solicitation by noncontracted wreckers in designated areas.

An unauthorized towing operation may not meet safety, mechanical, or operational standards set by the FHP or local authority. However, such a wrecker operation may meet all the requirements

but be unable to get on the rotation because of participant limitations imposed by the FHP or the local authority.

Consumers are not required to use contracted towing services. Unauthorized towing services are not covered by price or scheduling restrictions in the FHP or local law enforcement contract, and therefore may charge more or less than contracted services.

When a vehicle is towed, if it is considered evidence of a crime, law enforcement or prosecutors may hold the vehicle with the wrecker service indefinitely while awaiting trial or appeals.

Section 322.34, F.S., provides that after a vehicle is towed and impounded or immobilized after a conviction for driving with a suspended or revoked license, the towing service which has the vehicle in its possession must telephone the lessor, or lienholder by 5:00 p.m. of the day after the vehicle was towed.

The section further provides that the owner of a vehicle that has been impounded or immobilized may, within 10 days after the date the owner has knowledge of the location of the vehicle, file a complaint in the county in which the owner resides to determine whether the vehicle was wrongfully taken or withheld. Upon the filing of a complaint, the owner may have the vehicle released by posting with the court a bond or other adequate security equal to the amount of the costs and fees for impoundment or immobilization, including towing or storage, this security ensures the payment for such costs and fees if the owner does not prevail.

Section 713.78, F.S., provides that when a wrecker or tow service properly tows a vehicle they have a lien against the vehicle for payment of reasonable towing and storage fees. The owner of the vehicle may not be charged storage fees if the vehicle has been stored for less than 6 hours. When a wrecker service tows and stores a motor vehicle they must send notice to the registered owner and all lienholders by certified mail within 7 business days after the date of storage of the vehicles.

The section further provides that a person regularly engaged in towing or storing vehicles is not liable for damages connected with the towing and storage of a vehicle if such towing and storage were done with reasonable care.

III. Effect of Proposed Changes:

Section 1.1, F.S., is amended to define the term “wrecker operator” for purposes of the entire Florida Statutes, as any person or firm regularly engaged for hire in the business of towing or removing motor vehicles.

Section 2 of the CS provides that a law enforcement officer or court may put a hold order on a vehicle which is stored in a wrecker operator’s storage facility, for a period not to exceed 5 days, when the officer has probable cause to believe that the vehicle was used in an illegal act or is

evidence in a crime. The wrecker operator must comply with the hold order and may not release the vehicle.

The hold order must be in writing and must state the name of the agency and reason for holding the vehicle; the date and time the hold order is placed; a general description of the vehicle; the condition of the vehicle; the location where the vehicle is being held; and the name, address and telephone number of the wrecker operator and storage facility.

If the law enforcement agency wishes to continue to hold the vehicle beyond five days they may move the vehicle to another lot, but must hold the vehicle until the owner pays the wrecker operator for all accrued towing and storage charges. If the law enforcement agency chooses to hold the vehicle at the wrecker's storage facility beyond 5 days, the agency will be responsible for payment of the storage fees for the extended period, and the owner of the vehicle is responsible for payment for the first 5 days. However, the law enforcement agency will be responsible for all towing and storage charges if a court finds that the agency did not have probable cause to impound or put a hold order on the vehicle, and the vehicle owner will be responsible for all towing and storage charges if found guilty of, or pleads nolo contendere to, the offense that resulted in a hold being placed on their vehicle.

Section 3 of the CS authorizes a wrecker operator system in cities and counties. The section defines an "authorized wrecker operator" as any wrecker operator who has been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. An "unauthorized wrecker operator" is defined as a wrecker operator who has not been designated as part of the wrecker operator system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle. A "wrecker operator system" is defined as a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker operator system.

The CS provides that in a county or municipality that operates a wrecker operator system for the removal and storage of wrecked, disabled, or abandoned vehicles, which system operates in a manner similar to the rotation operated by the FHP, a wrecker may not solicit or offer towing services as a result of information received by police radio. A violation of this provision is a noncriminal violation. Further, an unauthorized wrecker may not give false information in rendering towing services at the scene of an accident, or falsely identify themselves as under contract for emergency towing services with the governmental unit having jurisdiction over the accident scene. A violation of these provisions is a misdemeanor of the second degree.

The CS provides that an unauthorized wrecker may offer towing services when the operator of a vehicle signals the wrecker for assistance. However, the unauthorized wrecker must disclose the charges for towing and storage and must inform the operator that they are not an authorized wrecker. A violation of this provision is a misdemeanor of the second degree.

The provisions of this CS do not prohibit the owner of a motor vehicle from contracting with any wrecker operator for wrecker services, regardless of whether the wrecker operator is an authorized member of the rotation system.

The CS amends ss. 125.0103 and 166.043, F.S., to require local governments to enact ordinances to establish maximum fees which may be charged for: the towing of vehicles from or immobilization of vehicles on private property; the 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 the wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle.

Section 316.193, F.S., is amended to conform the section to the CS by replacing the words “towing or storage company” with “wrecker operator.”

Section 320.08, F.S., is amended to clarify that wreckers which register at a flat rate of \$30 may also tow vessels as well as abandoned, stolen-recovered, or impounded motor vehicles, and wreckers which register by gross vehicle weight may also tow vessels and any other cargo.

Section 321.051, F.S., is amended to define “authorized wrecker operator,” and “unauthorized wrecker” for purposes of the FHP wrecker operator rotation system. The section is also amended to provide that in the rotation system operated by the FHP a wrecker may not solicit or offer towing services as a result of information received by police radio. A violation of this provision is a noncriminal violation. Further, an unauthorized wrecker may not give false information in rendering towing services at the scene of an accident, or falsely identify themselves as under contract for emergency towing services with the governmental unit having jurisdiction over the accident scene. A violation of these provisions is a misdemeanor of the second degree.

The CS provides that an unauthorized wrecker may offer services when the operator of a motor vehicle signals the wrecker for assistance. However, the unauthorized wrecker must disclose the charges for towing and storage and that the wrecker service is not an authorized member of the rotation system. A violation of this provision is a misdemeanor of the second degree.

The provisions of this CS do not prohibit the owner of a motor vehicle from contracting with any wrecker operator for wrecker services, regardless of whether the operator is an authorized member of the rotation system.

Section 322.34, F.S., is amended to provide that after a vehicle is impounded or immobilized for driving on a suspended or revoked license, the towing service which has the vehicle in its possession must notify the registered owner and all persons of record claiming a lien against the vehicle by certified mail within 7 business days rather than by 5:00 p.m. of the next business day. This provision would conform notification procedures with the provisions of s. 713.78, F.S.

The section is further amended to provide that when a person's vehicle is impounded or immobilized, and that person does not prevail on a complaint that the vehicle was wrongly taken, the owner must pay all accrued charges for towing and storage.

Section 713.78, F.S., is amended to provide that immobilization of a vehicle does not authorize any person to claim a lien on a vehicle for fees or charges connected with the immobilization of the vehicle.

The section is also amended to limit the liability of a wrecker when towing or storing a vehicle. The section provides that a wrecker operator is not liable for the theft of a vehicle or personal property contained in a towed or stored vehicle, providing the wrecker uses reasonable care. The wrecker is not liable for damages when complying with the lawful directions of a law enforcement officer to remove a vehicle which is a hazard or obstructing the normal movement of traffic.

The section provides that a wrecker has used reasonable care if: the wrecker surrounds the storage facility with a chain-link or solid fence at least 6 feet in height; the storage facility is illuminated enough to reveal persons and vehicles at a distance of 150 feet; or the wrecker employs a night watchman, security dog, or security cameras.

The section further provides that any law enforcement agency requesting that a motor vehicle be removed from an accident scene, street, or highway must conduct an inventory and prepare a written record of all personal property found in the vehicle before the vehicle is removed by a wrecker operator. The wrecker operator may not be held liable for the loss of personal property which was not identified on the inventory record prepared by the law enforcement agency.

Section 319.30, F.S., is amended to conform a reference.

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:

This CS should offer some protection to the public from unscrupulous wreckers by providing that wrecker operators who misrepresent themselves to the public and charge excessive fees will be subject to fines and/or prosecution.

Wrecker services under contract with the FHP or local government may experience increased business in designated areas related to less competition from noncontracted wreckers restricted from soliciting in such areas.

The extended time period for the notification of a motor vehicle owner when a vehicle is impounded could result in additional storage charges.

When a court finds that a person has had their vehicle wrongfully impounded or immobilized for driving with a license which has been suspended or for driving under the influence will not be responsible for all towing and storage costs.

C. Government Sector Impact:

The CS requires law enforcement to pay all towing and storage costs when a court finds that the law enforcement agency did not have probable cause to impound, or put a hold order on a vehicle. This provision will have an indeterminable fiscal impact on law enforcement agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.