

# 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/CS/SB 684

SPONSOR: Judiciary Committee, Transportation Committee, Senators Crist and Bennett

SUBJECT: Wrecker Services

DATE: April 14, 2004

REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE  | ACTION                 |
|----|---------------|----------------|------------|------------------------|
| 1. | <u>Eichin</u> | <u>Meyer</u>   | <u>TR</u>  | <u>Favorable/CS</u>    |
| 2. | <u>Cooper</u> | <u>Yeatman</u> | <u>CP</u>  | <u>Fav/1 amendment</u> |
| 3. | <u>Cibula</u> | <u>Lang</u>    | <u>JU</u>  | <u>Favorable/CS</u>    |
| 4. | _____         | _____          | <u>CJ</u>  | _____                  |
| 5. | _____         | _____          | <u>AG</u>  | _____                  |
| 6. | _____         | _____          | <u>AGG</u> | _____                  |
| 7. | _____         | _____          | <u>AP</u>  | _____                  |

## I. Summary:

This bill creates ch. 508, F.S., to establish within the Department of Agriculture and Consumer Services (DACCS), a state-wide wrecker company registration and wrecker operator certification system. The bill also restricts counties and municipalities from issuing or renewing an occupational license unless the wrecker company is registered with DACCS; and restricts participation in the Florida Highway Patrol (FHP) or local government wrecker allocation system to those wrecker companies registered with DACCS.

This bill amends the following: ss. 120.80, 316.530, 316.605, 319.30, 320.01, 320.03, 320.0706, 320.0821, 320.13, 321.051, 323.001, 323.002, 713.69, 713.78, 715.07; creates ss. 205.1975, chapter 508, and 713.785. This bill reenacts ss. 316.550 (4), 320.08 (5) (d) and (e). This bill repeals s. 1.01 (15), of the Florida Statutes.

## II. Present Situation:

Section 120.80 (8)(b), F.S., provides an administrative hearing held by the FHP of the Department of Highway Safety and Motor Vehicles (DHSMV) to deny suspend, or remove a wrecker operator from participating in the wrecker allocation system is not required to be conducted by an administrative law judge, as required with most other administrative hearings under chapter 120, F.S., but may be held by a hearing officer appointed by the director of the FHP.

Chapter 205, F.S., authorizes counties and municipalities to issue local occupational licenses, and levy occupational license taxes for the privilege of engaging in or managing any business, profession or occupation within its jurisdiction.

Section 316.530, F.S., provides that when a wrecker or tow truck is required to remove a disabled motor vehicle from a highway and the combined weights of the wrecker and towed vehicle exceeds maximum weights allowed by law, no penalty may be assessed for the excess weight while transporting that vehicle to a repair shop or other appropriate facility. However, this exception does not apply to weight limits for bridges and culverts.

Section 316.550 (4)(a) and (b), F.S., authorizes the Florida Department of Transportation (FDOT) to issue blanket permits to tow vehicles where the combination of the wrecker and the disabled vehicle exceeds the maximum weights allowed by law. The FDOT must supply the wrecker who receives such a permit a map showing the routes on which the wrecker may safely tow such vehicles.

Section 316.605 (1), F.S., provides vehicles in this state are required to display license plates on the rear of the vehicle, except government vehicles having a gross weight of 26,001 pounds or more. A violation of this section is punishable as a non-moving violation (\$30 fine).

#### *Wrecker Registration Requirements*

Section 320.01 (40), F.S., defines a wrecker as any motor vehicle used to tow, carry, or otherwise transport motor vehicles and equipped for that purpose with a boom, winch, car carrier or other similar equipment.

Section 320.03 (8), F.S., provides a license plate or revalidation sticker may not be issued to any person who has a lien against his or her vehicle for non-payment of towing or storage costs when such vehicle was towed and stored upon the order of a law enforcement officer.

Section 320.0706, F.S., provides a commercial truck weighing 26,001 pounds or more must display a license plate on both the front and rear of the truck; however, a truck tractor is only required to display the license plate on the front of the vehicle.

Section 320.08 (5)(d) and (e), F.S., provides registration fees for wreckers. A wrecker which is used to tow any unclaimed vessel, a disabled, abandoned, stolen-recovered, or impounded motor vehicle or trailer, or a replacement motor vehicle for a disabled vehicle, pays a flat registration fee of \$30. A wrecker used to tow any motor vehicle whether or not such motor vehicle is a disabled motor vehicle, a replacement motor vehicle, a vessel, or any other cargo pays a registration fee as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: \$87 flat.
2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: \$131 flat.
3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: \$186 flat.
4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: \$240 flat.
5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: \$300 flat.
6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: \$572 flat.
7. Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: \$678 flat.
8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: \$800 flat.
9. Gross vehicle weight of 72,000 pounds or more: \$979 flat.

Section 320.0821, F.S., provides DHSMV must issue a wrecker license plate to the owner of any motor vehicle used to tow, carry, or otherwise transport motor vehicles and equipped for that purpose with a boom, winch, carrier, or other similar equipment, except a motor vehicle registered under the International Registration Plan, upon application and payment of the appropriate license tax and fees in accordance with s. 320.08(5)(d) or (e), F.S. A license plate issued under this section must have the word “Wrecker” imprinted on the bottom of the plate in place of the county name.

Section 320.13 (1)(a), F.S., provides any licensed motor vehicle dealer and any licensed mobile home dealer may, upon payment of the license tax imposed by s. 320.08(12), F.S., secure one or more dealer license plates. Such plates are valid for use on motor vehicles or mobile homes owned by the dealer to whom such plates are issued while the motor vehicles are in inventory and for sale, or while being operated in connection with such dealer's business. Dealer license plates may not be used on a for hire vehicle or on any tow truck or wrecker unless the tow truck or wrecker is being demonstrated for sale.

#### *FHP Wrecker Allocation System*

Section 321.051, F.S., authorizes the 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.

The section defines an “authorized wrecker operator” as any wrecker operator who has been designated by FHP as part of the wrecker operator system, and an “unauthorized wrecker operator” as any wrecker operator who has not been designated by FHP as part of the wrecker operator system. The section further provides any owner of a motor vehicle may contract with any wrecker operator for wrecker services, regardless of whether the operator is an authorized member of the rotation system.

#### *Law Enforcement Hold on Vehicles*

Section 323.001, F.S., provides 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, unless extended in writing. The investigating agency must notify the wrecker operator in writing within 5 days whether the hold is to be continued. If no notification follows this period of time, the wrecker operator may release the vehicle to the designated person pursuant to s. 713.78, F.S.

The section provides if the hold continues beyond 5 days, then the investigating agency may have the vehicle removed to a designated impound lot. The vehicle may not be released by the investigating agency 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.

If the investigating agency chooses to have the vehicle remain at the wrecker operator's storage facility beyond 5 days, then the investigating agency will be responsible for payment of the storage charges incurred by the wrecker operator for the requested extended period. The owner or lienholder will be responsible for payment of accrued towing and storage charges for up to the first 5 days.

The section further provides the towing and storage rates for the owner or lienholder of the held vehicle may not exceed the rates for the investigating agency. If there is a judicial finding of no probable cause for having continued the immobilization or impoundment, the investigating agency ordering the hold must pay the accrued charges for any towing and storage.

A vehicle may be held when the following conditions are present:

1. The officer has probable cause to believe the vehicle should be seized and forfeited under the Florida Contraband Forfeiture Act;
2. The officer has probable cause to believe the vehicle should be seized and forfeited under chapters 370 or 372, F.S.;
3. The officer has probable cause to believe the vehicle was used as the means of committing a crime;
4. The officer has probable cause to believe the vehicle is itself evidence that tends to show a crime has been committed or the vehicle contains evidence, which cannot readily be removed, which tends to show a crime has been committed;
5. The officer has probable cause to believe the vehicle was involved in a traffic accident resulting in death or personal injury and should be sealed for investigation and collection of evidence by a vehicular homicide investigator;
6. The vehicle is impounded or immobilized pursuant to s. 316.193 or s. 322.34, F.S. (driving under the influence); or
7. The officer is complying with a court order.

Finally, the section provides a wrecker operator's storage facility must comply with a hold placed by a law enforcement officer, including instructions for inside or outside storage. A wrecker operator's storage facility may not release a motor vehicle subject to a hold to any person except as directed by the law enforcement agency placing the hold. When a vehicle owner is found guilty of, or pleads nolo contendere to, the offense that resulted in a hold being placed on his or her vehicle, regardless of the adjudication of guilt, the owner must pay the accrued towing and storage charges assessed against the vehicle.

#### *Local Wrecker Allocation Systems*

Section 323.002, F.S., 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 any 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.

The section defines a “wrecker operator system” as a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker operator system described in s. 321.051(2), F.S., under which a county or municipality contracts with one or more wrecker operators for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. A wrecker operator system includes using 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.

Section 323.002, F.S., provides it is unlawful for an unauthorized wrecker operator or its employees or agents to monitor a police radio for communications between patrol field units and the dispatcher in order to determine the location of a wrecked or disabled vehicle for the purpose of driving by the scene of such vehicle. Any person who violates this provision is guilty of a noncriminal violation, punishable by a \$500 fine.

Further, it is 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, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle. Any person who violates this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment of up to 1 year and a fine not to exceed \$500.

When an unauthorized wrecker operator drives by the scene of a wrecked or disabled vehicle and the owner or operator initiates contact by signaling the wrecker operator to stop and provide towing services, the unauthorized wrecker operator must disclose to the owner or operator of the vehicle that he or she is not the authorized wrecker operator who has been designated as part of the wrecker operator system and must disclose, in writing, what charges for towing and storage will apply before the vehicle is connected to the towing apparatus. Any person who violates this provision is guilty of a misdemeanor of the second degree, punishable by a term of imprisonment up to 6 months and a fine not to exceed \$500.

At the scene of a wrecked or disabled vehicle, it is unlawful for a wrecker operator to falsely identify himself or herself as being part of the wrecker operator system. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment of up to 1 year and a fine not to exceed \$1,000.

The section does not prohibit the owner or operator of a vehicle involved in an accident or otherwise disabled from contacting any wrecker operator for the provision of towing services, whether the wrecker operator is an authorized wrecker operator or not.

#### *Liens for Recovering Towing and Storage Fees*

Section 713.78, F.S., provides 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 the service must send notice to the registered owner and all lienholders by certified mail within 7 business days after the date of storage of the vehicle. The section further provides 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.

The section also limits the liability of a wrecker when towing or storing a vehicle. The section provides 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 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 any law enforcement agency requesting 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 713.78 (13), F.S., provides upon receipt by DHSMV of written notice from a wrecker operator who claims a lien for recovery, towing, or storage of an abandoned vehicle, vessel, or mobile home upon instructions from any law enforcement agency, for which a certificate of destruction has been issued, DHSMV must place the name of the registered owner of that vehicle, vessel, or mobile home on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle. If the vehicle, vessel, or mobile home is owned jointly by more than one person, the name of each registered owner must be placed on the list.

The section further provides the amount of the wrecker operator's lien for which the DHSMV will prevent issuance of a license plate or revalidation sticker may not exceed the amount of the charges for recovery, towing, and storage of the vehicle, vessel, or mobile home for 7 days. These charges may not exceed the maximum rates imposed by the ordinances of the respective county or municipality.

The registered owner of a vehicle, vessel, or mobile home may dispute a wrecker operator's lien, by notifying DHSMV of the dispute in writing, if at least one of the following applies:

1. The registered owner presents a notarized bill of sale proving the vehicle, vessel, or mobile home was sold in a private or casual sale before the vehicle, vessel, or mobile home was recovered, towed, or stored.
2. The registered owner presents proof that the Florida certificate of title of the vehicle, vessel, or mobile home was sold to a licensed dealer as defined in s. 319.001, F.S., before the vehicle, vessel, or mobile home was recovered, towed, or stored.

#### *Towing Vehicles from Private Property*

Section 715.07, F.S., provides the owner or lessee of real property may have any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in

the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, if certain restrictions are complied with.

Any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county of 500,000 population or more, and within 15 miles of the point of removal in any county of less than 500,000 population. That site must be open from 8:00 a.m. to 6:00 p.m., and when closed, the site must have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle, the operator must return to the site within 1 hour. If no towing business providing such service is located within the area, any towed or removed vehicle must be stored at a site within 20 miles of the point of removal in any county of 500,000 population or more, and within 30 miles of the point of removal in any county of less than 500,000 population.

The person or firm towing or removing the vehicle must, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff of such towing or removal, the storage site, the time the vehicle was towed or removed, and the make, model, color, and license plate number of the vehicle and must obtain the name of the person at that department to whom such information was reported and note that name on the trip record. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment up to 1 year and a fine not to exceed \$1,000.

If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle must be disconnected from the wrecker, and that person must be allowed to remove the vehicle without interference upon the payment of a reasonable service fee of not more than one-half of the posted rate for such towing service.

The rebate or payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited.

Except for property which is obviously a part of a single-family residence, and except for instances when notice is personally given to the owner of the vehicle, any property owner, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:

1. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.
2. The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.

3. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles, if the property owner, lessee, or person in control of the property has a written contract with the towing company.
4. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of vehicles.
5. The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.
6. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.

A business owner or lessee may authorize the removal of a vehicle by a towing company when the vehicle is parked in such a manner that restricts the normal operation of business; and if a vehicle parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle removed by a towing company upon signing an order that the vehicle be removed without a posted tow-away zone sign.

Any person or firm that tows or removes vehicles must file with the local law enforcement agency a complete copy of the current rates for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles. Any person who violates this provision is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment up to 1 year and a fine not to exceed \$1,000.

Any person or firm towing or removing any vehicles from private property without the consent of the owner must have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the wrecker. Any person violating these provisions is guilty of a felony of the third degree, punishable by up to 5 years in jail, a fine of \$5,000, and enhanced penalties for habitual felony offenders.

The section provides the wrecker may enter the vehicle for the purpose of removing the vehicle with reasonable care. Such person or firm is liable for any damage to the vehicle if such entry is not in accordance with the standard of reasonable care.

The requirements in this section are minimum standards and do not preclude the enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles are towed from private property. This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such or to property owned by any governmental entity.

The section provides when a person improperly causes a vehicle to be removed, such person is liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage;

any damages resulting from the removal, transportation, or storage of the vehicle; attorneys' fees; and court costs.

### III. **Effect of Proposed Changes:**

This bill creates ch. 508, F.S., to establish within the Department of Agriculture and Consumer Services (DACS), a state-wide wrecker company registration and wrecker operator certification system. The bill also restricts counties and municipalities from issuing or renewing an occupational license unless the wrecker company is registered with DACS; and restricts participation in the Florida Highway Patrol (FHP) or local government wrecker allocation system to those wrecker companies registered with DACS. The provisions of the bill are discussed in detail below.

#### **Wrecker Certification and Registration with DACS**

The bill creates chapter 508, F.S., to provide for the certification and registration of all wrecker companies and wrecker operators.

##### ***Registration Required***

Section 508.04, F.S., is created to provide a person may not operate a wrecker company unless that person is registered with the DACS. A local occupational license may not be issued or renewed to any person or company that is not registered with DACS. The section exempts from wrecker registration requirements in this bill franchised motor vehicle dealers and any vehicle repair shop registered by DACS that derives at least 80 percent of its gross sales from vehicle repairs.

Section 508.05, F.S., is created to require the registration of wrecker companies with DACS and prohibit the operation of unregistered companies. The annual registration fee shall be set by DACS by administrative rule. All registrants, equitable owners, partners, or those with executive management control must be fingerprinted, and must pay the cost of fingerprinting for initial registration. DACS will issue a certificate with a number to the registrant that must be displayed in a conspicuous place in the company's place of business. Any advertisement must bear the registration number. Annual renewals are subject to a \$25 late fee. A wrecker company may not renew a registration unless local licensing requirements are met and maintained, and the company can present proof of the additional liability insurance that must be carried for a commercial vehicle.

Section 508.06, F.S., is created to provide DACS may deny or refuse registration renewal if:

1. The wrecker company does not meet or adhere to registration requirements;
2. The owners or executive managers have been convicted of a felony within the last 10 years;
3. The owners or executive managers have been convicted in the last 10 years of any crime involving repossession, repair, motor vehicle theft, car jacking, chop shops, parts and accessories; airbags; overcharging for repairs or parts, or towing or storage;
4. The company fails to pay fines or penalties imposed under this new law;
5. The company has an action pending in any jurisdiction for violation of this new law; or

6. The company has a judgment against it for violation of this new law.

#### ***Wrecker Operator Advisory Council***

Section 508.02, F.S., creates the Wrecker Operator Advisory Council (council) within DACS to advise DACS on implementation of this chapter. The Council consists of 7 members including 6 members appointed by the Commissioner of Agriculture and Consumer Services, 3 of which must be persons who have been ultimate equitable owners of a wrecker company for at least 5 years, 1 wrecker operator of at least 5 years service, and 2 lay persons. The Executive Director of the Professional Wrecker Operators of Florida is also a voting member of the council. DACS is required to keep and store all records of the council and to provide administrative support and staff.

#### ***Wrecker Operator Education***

The bill provides in s. 508.10, F.S., that a wrecker operator must become certified as a wrecker operator within 6 months employment as a wrecker operator. The bill provides an exemption for vehicle repair shops and for certain religious organizations.

The bill creates s 508.07, F.S., to provide that the council must establish a certification program for wrecker operators, approve certification courses, schools and exams. A wrecker operator must receive at least 16 hours of training in a certification program for certification. Additionally, s. 08.08, F.S., is created to provide, each approved certification course must offer specialized certification for specialized wrecker services. Section 508.09, F.S., is created to provide that each organization conducting an approved wrecker operator certification course must issue a certification card to each wrecker operator who completes the certification course and passes the certification examination. Each certification card expires 5 years after the date of issuance.

#### ***Continuing Wrecker Education (CWE)***

The bill creates s. 508.11, F.S., to authorize DACS, in consultation with the council to establish CWE requirements of up to 8 hours for the renewal of a wrecker operator's certification.

#### ***Prohibited Acts***

Section 508.12, F.S., prohibits a person from engaging in the following acts:

1. Charging rates in excess of those set by local ordinance;
2. Violating the laws governing the FHP wrecker allocation system;
3. Violating the laws governing the local wrecker allocation system;
4. Violating the laws governing liens for towing or storing vehicles and vessels;
5. Violating the laws governing towing, removing, or storing vehicles and vessels;
6. Refusing to allow a law enforcement officer to inspect a towing and storage facility;
7. Allowing a non-certified person to perform wrecker services or specialized services for more than 6 months after first being employed by, or becoming an equitable owner of, the company;
8. Allowing an operator to provide specialized services without the proper endorsement; or
9. Performing an act prohibited by the new law, or failing to perform an act required by the new law.

***Penalties***

Sections 508.13, 508.14 and 508.15, F.S., are created to provide administrative, civil and criminal penalties. DACS may impose any of these civil penalties:

1. Issue a notice of noncompliance;
2. Impose an administrative fine of no more than \$5,000;
3. Issue cease and desist orders;
4. Revoke, suspend or refuse registration;
5. Impose a department specified probationary period;
6. Seek a civil remedy of up to \$5,000 per violation; or
7. Seek restitution on behalf of an aggrieved party.

The following acts are punishable as crimes:

1. Operation of an unregistered wrecker company is a third-degree felony; or
2. Performance of wrecker services without being employed by, or without being the ultimate equitable owner of a registered wrecker company is a third-degree felony.

***Fees Payable to DACS***

Sections 508.16 and 508.17, F.S., are created to provide a \$495 fee for wrecker company registration and renewal. All fees, penalties, and other monies collected pursuant to this bill are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

***Effect of Act on Local Ordinances***

Section 508.19, F.S., is created to provide local governments may impose regulations on wrecker operators and wrecker companies that are more restrictive than those provided in this bill, and may still levy occupational license taxes. However, no county or municipality may issue or renew an occupational or business license to a wrecker company unless that company is registered with DACS. The department may delegate enforcement of this act to any county or municipality.

***Additional Consequences for Lack of Registration with DACS***

The bill creates s. 205.1975, F.S., to provide a county or municipality may not issue or renew an occupational license for the operation of a wrecker company unless the wrecker company provides proof the company is registered as a wrecker by the DACS.

The bill amends s. 320.0821 (1), F.S., to provide that DHSMV may not renew the registration for a wrecker which is not registered with DACS.

The bill amends s. 321.051, F.S., to provide that only wrecker companies registered with DACS, and meeting recognized safety qualifications and mechanical standards may participate in the Highway Patrol wrecker allocation system.

### **FHP Wrecker Allocation System**

Section 321.051, F.S., is amended to authorize a law enforcement officer to dispatch a wrecker from the wrecker allocation system if the officer believes that a disabled vehicle is a public safety hazard and that the wrecker would arrive before a wrecker requested by the vehicle owner. The section is further amended to provide a law enforcement officer may dispatch an authorized wrecker company out of rotation to the scene of a wrecked or disabled vehicle if the authorized wrecker company next on rotation is not equipped to provide the required wrecker services and the out-of-rotation authorized wrecker company is available with the required equipment.

### **Liens for Recovering Towing and Storage Fees**

The bill amends s. 713.78, F.S., to provide a registered owner may dispute a wrecker operator's lien, if DHSMV's records were marked sold prior to the issuance of a certificate of destruction. The section is further amended to provide the lien dispute resolution process in subsection (13), does not apply to a leased vehicle registered in the name of the lessor.

The bill amends s. 713.78, F.S., to provide that employees or authorized agents of a wrecker company are not liable for civil damages when removing a vehicle or vehicle cargo that is an imminent public safety hazard from a public road if requested by a law enforcement officer, deputy sheriff, or firefighter.

The bill creates s. 713.785, F.S., to provide for the placement of liens on mobile homes that have been legally recovered, removed, or stored for any amount of time by a mobile home transport company. These provisions are similar to the provisions in s. 713.18, F.S., authorizing liens of vehicles and vessels.

Mobile home transport companies are required to give notice by certified mail, return receipt requested to registered owners and lien holders within 7 days after taking possession. The bill also permits owners and lienholders to file an action against the mobile home transport company for a determination of whether the mobile home was wrongfully taken. During the proceeding the mobile home can be released to the owner or lienholder upon posting adequate security with the court. The court may award damages and costs to the prevailing parties in such actions.

Mobile homes that remain unclaimed or for which recovery, towing, storage, or lot rental fees remain unpaid, may be sold at public auction after suitable notice. The certificate of title of a mobile home sold under the provisions of the bill will be free and clear of liens unless a court specifies otherwise. If the mobile home is to be sold for dismantling or destruction, the transport company must obtain a certificate of destruction from the county tax collector.

Mobile home transport companies, landlords, and subsequent purchasers are not responsible to the tenant for loss or damage to the mobile home or personal property if reasonable care is used in storing the mobile home. However, mobile home transport companies in possession of a mobile home must permit the owner or agent of the owner to inspect the home and remove personal property, unless there is a lien on the personal property.

The bill provides that the following acts by a mobile home transport company constitute a misdemeanor:

- Failure to provide notice to the owner or lienholders by certified mail that the mobile home transport company has taken possession of the mobile home and that the mobile home will be sold to satisfy a lien;
- Failure to notify the owner or lienholders of a mobile home that it will be sold at least 15 days before the sale;
- Failure to use reasonable care in storing a mobile home;
- Failure to apply for a certificate of destruction for mobile homes that will be destroyed; and
- Failure to allow the owner or owner's agent to inspect or remove personal property from the mobile home.

The bill provides for placing the names of owners of mobile homes who have had a recovery, towing, or storage lien placed against them on a list of persons who may not be issued a mobile home revalidation sticker. An owner may have their name removed from the list by discharging the lien through payment or posting a bond equal to the lien amount (when challenging a lien).

The bill revises s. 713.69, F.S., to make it unlawful to remove from any mobile home park, any property which has had a lien placed against it.

### **Appropriation**

The bill appropriates \$693,000 from the General Inspection Trust Fund and authorizes 10 additional FTEs.

### **Effective Date**

The bill provides an effective date of July 1, 2004, unless otherwise specified in the bill.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Section 323.001(2), F.S., as provided in the bill and in current law, authorizes a law enforcement agency to place a hold on a vehicle at a wrecker company's storage facility preventing the release of the vehicle to the owner for up to 5 days. No provision of the bill or existing law requires that a law enforcement agency have probable cause to impose a hold on a vehicle for 5 days or less. However, s. 323.001(3) and (5), F.S., as provided in the bill, states that a law enforcement agency can extend the hold for more than 5 days if it has probable cause to do so. As such, the bill appears to permit a law enforcement agency to impose a hold on a vehicle for less than 5 days without having probable cause to do so.

The Fourteenth Amendment to the U.S. Constitution provides that no state "shall deprive any person of life, liberty, or property without due process of law . . . ." Article X, s. 6(a), State Constitution, states, "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner . . . ."

Case law provides that the takings clauses of the State and Federal Constitutions above, apply to even temporary detentions or seizures of property.<sup>1</sup> Further, case law provides that a law enforcement officer may only seize property if the officer has probable cause, such as probable cause to believe that the property was used in the commission of a crime, to seize the property.<sup>2</sup>

Accordingly, it appears that under the State and Federal Constitutions, a law enforcement agency must have probable cause to place a hold of any duration on a vehicle stored within a wrecker company's storage facility. As such, the Legislature may wish to provide that the probable cause needed to hold a vehicle for more than 5 days as provided in s. 323.001(5), F.S., is the same probable cause necessary to hold a vehicle for 5 days or less.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This bill provides all wrecker companies and persons engaged in towing activities must be certified and registered with DACS in order to conduct business in this state. The bill provides the fee for such registration will be \$495. The fee a prospective wrecker operator will have to pay for the certification course and the required 8 hours of

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<sup>1</sup> See e.g., *Welch v. State*, 741 So. 2d 1268, 1270 (Fla. 5th DCA 1999) and *Mulligan v. City of Hollywood*, 2003 WL 22240267 (Fla. 4 DCA 2003). The *Mulligan* opinion provides that it has not been released for publication and may be revised.

<sup>2</sup> *Graham v. State*, 822 So. 2d 576, 578 (Fla. 1st DCA 2002).

continuing education (once every five years) is unknown. Wrecker companies will also be required to pay for finger printing and a background check.

**C. Government Sector Impact:**

According to DACS, this bill will have an annual negative fiscal impact on DACS of approximately \$687,000 to fund the necessary staff to implement this program. However, this impact will be offset by registration fees if the estimated 1,400 wrecker operators in the state pay an annual registration fee of \$495, the maximum allowed by the bill. DACS calculated an annual registration fee of \$495 in order to collect sufficient revenues to cover the anticipated expenses.

The bill appropriates \$693,000 from the General Inspection Trust Fund to DACS to fund the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.