

# 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/SB 684

SPONSOR: Transportation Committee and Senators Crist and Bennett

SUBJECT: Wrecker Services

DATE: February 19, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Eichin</u>	<u>Meyer</u>	<u>TR</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>CJ</u>	_____
5.	_____	_____	<u>AG</u>	_____
6.	_____	_____	<u>AGG</u>	_____

**I. Summary:**

This CS creates ch. 508, F.S., to require wrecker companies to register with the Department of Agriculture and Consumer Services (DACS) and to prohibit the operation of unregistered companies. The annual registration fee will 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. The CS creates the Wrecker Operator Advisory Council within DACS to advise DACS on implementation of ch. 508, F.S.

The CS 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 CS further provides, effective January 1, 2005, wrecker companies registered with DACS, and meeting recognized safety qualifications and mechanical standards may participate in the Florida Highway Patrol (FHP) or local government wrecker allocation system.

This CS amends the following: ss. 120.80, 316.530, 316.605, 320.01, 320.03, 320.0706, 320.0821, 320.13, 321.051, 323.001, 323.002, 713.78, 715.07; creates ss. 205.1975. 508.01, 508.02, 508.03, 508.04, 508.05, 508.06, 508.061, 508.07, 508.08, 508.09, 508.10, 508.11, 508.12, 508.13, 508.14, 508.15, 508.16, 508.17, 508.18, 508.19, 508.20; 715.785. This CS reenacts ss. 316.550 (4), 320.08 (5) (e) and (d). This CS 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 ch. 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 ss. 316.193 or 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 any 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:**

The following discussion represents a section-by-section analysis of the CS:

**Section 1** – Amends s. 120.80, F.S., to change the term “wrecker operators” to “wrecker companies,” and “wrecker rotation system” to “wrecker allocation system.”

**Section 2** – 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.

**Section 3** – Makes conforming changes to s. 316.530, F.S., removing the reference to a tow truck, and refers to such vehicles as wreckers.

**Section 4** – Section 316.550, F.S., is reenacted to incorporate the amendments made by this CS to s. 320.01, F.S.

**Section 5** – Section 316.605, F.S., is amended to authorize wreckers, motor vehicles equipped with a mechanical loading device with only one registered plate, truck tractors with a government issued license plate, or governmental vehicles having a GVWR of 26,001 pounds or more to display the license plate on the front of the vehicle.

#### *Wrecker Registration Requirements*

**Section 6** – Section 320.01, F.S., is amended to provide the definition of a “wrecker,” for registration purposes, is a tow truck or other motor vehicle used to tow, carry or otherwise transport vehicles or vessels upon the streets and highways of this state and equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

**Section 7** - The CS amends s. 320.03, F.S., effective January 1, 2005, to provide the term “wrecker operator” will be changed to “wrecker company.”

**Section 8** – Amends s. 320.0706, F.S., to provide wreckers must display the vehicle’s license plate on the front of the vehicle.

**Section 9** - Section 320.08 (5)(d) and (e), F.S., is reenacted to incorporate the amendments made by this CS to s. 320.01, F.S.

**Section 10** – Amends s. 320.0821, F.S., to provide wreckers must display the vehicle’s license plate on the front of the vehicle.

**Section 11** – The CS amends s. 320.0821 (1), F.S., effective January 1, 2005, to provide the DHSMV may not renew the registration for a wrecker which is not registered with DACS.

**Section 12** – Amends s. 320.13, F.S., to conform to the CS.

*FHP Wrecker Allocation System*

**Section 13** – Amends s. 321.051, F.S., effective January 1, 2005, to provide the following definitions:

1. “Division” means the Division of the Florida Highway Patrol within the Department of Highway Safety and Motor Vehicles.
2. “Authorized wrecker company” means a wrecker company designated by the FHP as part of its wrecker allocation system.
3. “Unauthorized wrecker company” means a wrecker company not designated by the division as part of its wrecker allocation system.
4. “Wrecker company” has the same meaning ascribed in s. 508.01.
5. “Wrecker operator” has the same meaning ascribed in s. 508.01.
6. “Wrecker services” has the same meaning ascribed in s. 508.01.

The section is further amended, effective January 1, 2005, to provide only wrecker companies registered with DACS, and meeting recognized safety qualifications and mechanical standards may participate in the Highway Patrol wrecker allocation system. As with current law, an owner of a disabled vehicle may choose not to use a wrecker from the allocation system and call for an unauthorized wrecker; however, the section is amended to provide if a law enforcement officer determines the disabled vehicle is a public safety hazard, the officer may dispatch an authorized wrecker company if the officer believes the authorized wrecker would arrive at the scene before the unauthorized wrecker requested by the owner of the disabled vehicle arrives.

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.

*Law Enforcement Hold on Vehicles*

**Section 14** – Section 323.001, F.S., effective January 1, 2005, is amended to define “business day” as a day other than a Saturday, Sunday, or federal or state legal holiday. “Wrecker

company” is defined as defined in s. 508.01, F.S. Aside from other conforming changes, the section remains substantively the same as current law.

#### *Local Allocation Systems*

**Section 15** – Section 323.002, F.S., effective January 1, 2005, is amended to define the following concerning local wrecker allocation systems:

1. “Authorized wrecker company” means a wrecker company designated as part of the wrecker allocation system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.
2. “Unauthorized wrecker company” means a wrecker company not designated as part of the wrecker allocation system established by the governmental unit having jurisdiction over the scene of a wrecked or disabled vehicle.
3. “Wrecker allocation system” means a system for the towing or removal of wrecked, disabled, or abandoned vehicles, similar to the Florida Highway Patrol wrecker allocation system, under which a county or municipality contracts with one or more wrecker companies registered under chapter 508 for the towing or removal of wrecked, disabled, or abandoned vehicles from accident scenes, streets, or highways. Each wrecker allocation system must use a method for apportioning the towing assignments among the eligible wrecker companies through the creation of geographic zones, a rotation schedule, or a combination of these methods.

The section is further amended to reflect the changes in terminology and definitions created in this CS, and to authorize certain public officials and authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability if the debris poses an imminent public safety hazard.

#### *Wrecker Certification and Registration*

**Section 16** – Creates ch. 508, F.S., providing for the certification and registration of all wrecker operators.

Section 508.01, F.S. is created to provide the following definitions:

1. “Business entity” means any form of corporation, limited liability company, partnership, association, cooperative, joint venture, business trust, sole proprietorship, or self-employed person conducting business in this state.
2. “Council” means the Wrecker Operator Advisory Council.
3. “Department” means the Department of Agriculture and Consumer Services.
4. “Specialized wrecker services” means those wrecker services described in s. 508.08 for which a wrecker operator must have an endorsement to perform those services.
5. “Ultimate equitable owner” means a natural person who, directly or indirectly, owns or controls 10 percent or more of an ownership interest in a wrecker company, regardless of whether the natural person owns or controls the ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, business entities, or any combination thereof.

6. "Vehicle" means any vehicle which qualifies to register under ch. 320, F.S., regardless of whether the vehicle is actually registered. The term does not include a mobile home.
7. "Vessel" means every description of watercraft, barge, and air boat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02, F.S.
8. "Wrecker" has the same meaning ascribed in s. 320.01, F.S.
9. "Wrecker company" means a business entity engaged for hire in the business of towing, carrying, or transporting vehicles or vessels by wrecker upon the streets and highways of this state. The term does not include mobile home transporters.
10. "Wrecker operator" means a person who performs wrecker services. "Wrecker services" means towing, carrying, or otherwise transporting vehicles, vessels, or mobile homes by wrecker upon the streets and highways of this state for hire.
11. "Wrecker services" means towing, carrying, or otherwise transporting vehicles or vessels by wrecker upon the streets and highways of this state for hire.

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.

Section 508.03, F.S., is created to authorize the council to adopt rules.

Section 508.04, F.S., is created, effective January 1, 2005, 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 to any person or company that is not registered with DACS. The section exempts from wrecker registration requirements in this CS 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.

Section 508.061 is created to require wrecker companies to accept at least two of the following forms of payment: (1) cash, cashiers check, money order, or travelers check, (2) valid personal check, (3) valid credit card.

Section 508.07, F.S., is created to provide, in addition to wrecker company registration, the certification of wrecker operators. The council must establish a certification program, approve certification courses, schools and exams.

Section 508.08, F.S., is created to provide, in addition to the minimum curricula established by the council, each approved certification course must offer specialized certification for specialized wrecker services.

Section 508.09, F.S., is created to provide 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.

Section 508.10, F.S., is created to provide wrecker operators must:

1. Own or be employed by a wrecker company before they may provide wrecker services;
2. Complete 6-month probationary period;
3. Be endorsed as having completed specialty certification to provide specialized wrecker services; and
4. Participate in continuing education programs.

The section authorizes DACS to inspect the records of wrecker companies to verify employees meet all certification requirements. Each wrecker company has a duty to maintain and produce such records.

Section 508.11, F.S., is created to authorize DACS, in consultation with the council to establish continuing education requirements of up to 8 hours for the renewal of a wrecker operator's certification.

Section 508.12, F.S., is created to prohibit persons from:

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.

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.

Sections 508.16 and 508.17, F.S., are created to provide a \$425 fee for wrecker company registration and renewal. All fees, penalties, and other monies collected pursuant to this CS are deposited into the General Inspection Trust Fund and may only be used to implement the new law.

Section 508.18 is created to specifically exclude recovery agents performing repossession services from the requirements of this chapter.

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 CS, 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.

Section 508.20, F.S., is created to require wrecker companies to maintain records of their services for 12 months. Wrecker companies and organizations providing training must also retain records of wrecker operators' certification and continuing education.

*Liens for Recovering Towing and Storage Fees*

**Section 17** - Section 713.78, F.S., is amended 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.

**Section 18** – Section 713.78, F.S., is amended, effective January 1, 2005, to reflect the changes in terminology and definitions created in this CS, to provide for an award of attorneys fees where the non-prevailing party filed the complaint to increase the cost of prosecuting a wrecker lien, and to authorize authorized or unauthorized wrecker companies to remove vehicles and cargo from a public road without liability if the debris poses an imminent public safety hazard.

**Section 19** - Section 713.785, F.S., is created 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. The section defines the following terms:

“Mobile home” means a mobile home or manufactured home as those terms are defined in s. 320.01 and any contents and appurtenances thereof.

“Mobile home transport company” means a person regularly engaged in the business of transporting mobile homes.

“Property owner” has the same meaning ascribed in s. 715.07.

“Store” means a mobile home transport company has legal possession of a mobile home either on the mobile home transport company's property or any property.

“Unpaid lot rental amount” means any unpaid financial obligations of the mobile home owner or tenant to the mobile home park owner.

Mobile home transport companies are required to give notice to registered owners and lien holders after taking possession. 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. 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 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. The CS 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 CS allows the DHSMV to adopt rules to administer this section.

**Section 20**-Section 319.30, F.S., is revised to include s. 713.785(7)(a) in the definition of “Certificate of Destruction” relating to mobile homes.

**Section 21**-Section 713.69, F.S., is revised to make it unlawful to remove from any mobile home park, any property which has had a lien placed against it.

*Towing Vehicles from Private Property*

**Section 22** – Section 715.07, F.S., is amended, effective January 1, 2005, to reflect the changes in terminology and definitions created in this CS, and to provide a property owner may not solicit a wrecker company or wrecker company employee to give him or her a rebate or the payment of money for the privilege of removing or towing a vehicle from his or her premises. Existing requirements regarding parking or storing vehicles on real property are extended to vessels.

**Section 23** – Repeals s. 1.01 (15), F.S., the definition of a wrecker operator, effective January 1, 2005.

**Section 24** – Provides a \$555,000 appropriation from the General Inspection Trust Fund and 9 employees.

**Section 25** – Provides an effective date of July 1, 2004, unless otherwise specified in the CS.

#### **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 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 CS provides the fee for such registration will be \$425. The fee a prospective wrecker operator will have to pay for the certification course and the required 8 hours of 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 CS 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 would be partially offset by registration fees if the estimated 1,400 wrecker



operators in the state pay an annual registration fee of \$425, the maximum allowed by the CS. DACS calculated an annual registration fee of \$500 in order to collect sufficient revenues to cover the anticipated expenses.

The CS appropriates \$595,000 from the General Inspection Trust Fund to DACS to fund the program.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---