

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Transportation

BILL: CS/SB 990

INTRODUCER: Transportation Committee and Senator Diaz

SUBJECT: Towing Vehicles

DATE: February 3, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Price</u>	<u>Vickers</u>	<u>TR</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 990 clarifies that an investigating agency may have a wrecker operator tow a motor vehicle directly from the scene of the tow to the investigating agency's storage facility. If a motor vehicle is towed directly to the investigating agency's storage facility, the vehicle may not be released to the owner or lienholder 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 releases the vehicle without such proof of payment, the investigating agency must pay the wrecker operator accrued expenses within 60 days of the vehicle's release. Additionally, the bill clarifies that the investigating agency's payment to the wrecker operator following a judicial finding of no probable cause must occur within 60 days.

In addition, the bill:

- Revises the timeframe required for sending a notice of lien provided by a wrecker operator for fees or charges for the recovery, towing, or storage of a vehicle or vessel. The notice must be sent by certified mail no earlier than six hours before, and no later than seven business days after, the date of storage of the vehicle or vessel.
- Clarifies that a wrecker operator in possession of a towed vehicle or vessel must release the vehicle, vessel, or all personal property in the vehicle or vessel only to the owner, lienholder, or agent.
- Provides that for the purposes of a wrecker operator releasing a vehicle to the owner's agent, or for the purposes of releasing a vehicle that has been towed from private property, a rental

agreement is insufficient to convey agency necessary to authorize the vehicle's release. A rental car company must appoint a person its agent by original notarized writing.

- Revises a lienor's authorization to charge an "administrative" fee to the registered owner or another person claiming a lien against a vehicle or vessel for releasing a claim of lien, not to exceed \$250. The bill authorizes a lienor to charge a \$75 "notification" fee, plus the actual costs of complying with specified notice requirements, not to exceed \$250.
- Provides that if a towing-storage operator uses a third-party service approved by the Department of Highway Safety and Motor Vehicles (DHSMV) to transmit the required notices, proof of mailing by the third-party service is proof that the towing-storage operator made a good faith effort to comply with the notice requirements, regardless of whether the recipient accepts delivery or otherwise receives notice.

The bill also preempts to the state regulation of claiming a lien for the recovery, removal, towing, or storage of a vehicle or vessel and supersedes any county or municipal ordinance, resolution, rule, regulation, or otherwise to the contrary.

The bill takes effect July 1, 2022.

II. Present Situation:

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.¹ After the establishment of such contract(s), the county or municipality must create a "wrecker operator system" to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.² Any wrecker operator that is included in the wrecker operator system is an "authorized wrecker operator" in the jurisdiction, while any wrecker operation not included is an "unauthorized wrecker operator."³

Counties must establish maximum rates for the towing of vehicles or vessels removed from private property, as well as the towing and storage of vehicles or vessels removed from the scene of an accident or from where the vehicle or vessel is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality

¹ Section 323.002(1)(c), F.S. The definition of "vehicle" does not include a vessel or trailer intended for the transport on land of a vessel. *See* s. 320.01, F.S. (defining "motor vehicle" for the purpose of issuance of motor vehicle licenses and separately defining a "marine boat trailer dealer" as a person engaged in the "business of buying ... trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.") *But see* s. 323.002(4)(b), F.S., which expressly authorizes a county or municipality to adopt or maintain an ordinance or rule that imposes a reasonable administrative fee or charge on the registered owner or other legally authorized person in control of a vehicle or vessel that is towed by an authorized wrecker operator, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the county or municipality when the vehicle or vessel is towed from *public* property. The fee, if imposed and collected by an authorized wrecker operator or towing business, must be remitted to the county or municipality after it is collected.

² Section 323.002(1)(c), F.S.

³ Section 323.002(1)(a)-(b), F.S.

enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.⁴

Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days, unless extended in writing.⁵ A hold may be applied when the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act or ch. 379, F.S.;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.⁶

An officer may also apply a hold when the vehicle is impounded under s. 316.193, F.S., (relating to driving under the influence), or s. 322.34, F.S., (relating to driving with a suspended or revoked license), or when the officer is complying with a court order.⁷ The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.⁸

The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer time.⁹ The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle is held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot, in which case 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 or, if the tow operator chooses to leave the vehicle at the wrecker operator's storage facility, to pay for storage.¹⁰ If a subsequent judicial finding of no probable cause for having continued the hold occurs, the investigating agency ordering the hold is required to pay the accrued charges for any towing and storage.¹¹

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel possesses a lien on the vehicle or vessel for a reasonable towing fee, an administrative fee or charge imposed by a county or municipality,

⁴ Sections 125.0103(1)(c) and 166.043(1)(c), F.S. Section 715.07, F.S., relates to the towing and storage of vehicles or vessels illegally parked on *private* property without the consent of the registered owner or other legally authorized person in control of the vehicle. That section addresses towing, for example, at the direction of the owner or lessee of a condominium association or of a business owner, not at the direction of law enforcement. See "Towing from Private Property" heading below.

⁵ Section 323.001(1), F.S.

⁶ Section 323.001(4)(a)-(e), F.S.

⁷ Section 323.001(4)(f)-(g), F.S.

⁸ Section 323.001(5), F.S.

⁹ Section 323.001(2), F.S.

¹⁰ Section 323.001(2)(a)-(b), F.S.

¹¹ Section 323.001(3), F.S.

and a storage fee (for a vehicle or vessel stored for six hours or more) if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed according to s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy and the removal is performed pursuant to enforcing a lien pursuant to s. 83.806, F.S., or for the removal of property left after a lease is vacated under s. 715.104, F.S.; or
- Any law enforcement agency.¹²

A wrecker operator who claims a lien is required to give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle, and all persons claiming a lien, as disclosed by the records in the Department of Highway Safety and Motor Vehicles (DHSMV) or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check.

A towing-storage operator currently must use a third-party service¹³ approved by the DHSMV to transmit the notice (as well as any other notices required under s. 713.78, F.S.). If there is no approved service, the operator may mail the notice and provide evidence of compliance upon application for a certificate of title.¹⁴ The notice of lien must be sent by certified mail within seven business days after the date of storage of the vehicle or vessel.¹⁵

A lienor or its agent may currently charge an administrative fee¹⁶ to the registered owner or other person claiming a lien against the vehicle or vessel for a release from the lien, not to exceed \$250.¹⁷

If a towing-storage operator is unsuccessful in locating the name and address of the owner or other lienholder, the operator must, after seven business days after the initial tow or storage, notify the jurisdictional entity where the vehicle or vessel is stored, in writing by certified mail or acknowledged hand delivery, that the operator has been unable to local the name and address, a physical search of the vehicle or vessel has revealed no ownership information, and a “good faith

¹² Section 713.78(2), F.S.

¹³ The term “third-party service” is defined in s. 713.78(16)(a), F.S., to mean a qualified business entity that, upon a request submitted through a website by an operator: 1) Accesses the National Motor Vehicle Title Information System records to obtain the last state of record of the vehicle; 2) Accesses the owner, lienholder, and insurer information, as applicable, for a vehicle or vessel from the DHSMV; 3) Electronically generates the notices required of a towing-storage operator through the website; 4) Prints and sends the notices to each owner, lienholder, and insurer of record by certified mail; 5) Electronically returns tracking information or other proof of mailing and delivery of the notices to the towing-storage operator; and 6) Electronically reports to the DHSMV via an electronic data exchange process certain information related to the towing and storage notice.

¹⁴ Section 713.78(16), F.S.

¹⁵ Section 713.78(4)(a) and (c), F.S.

¹⁶ Defined to mean a lien fee or any fee imposed by the lienor or the lienor’s agent for administrative costs added to the amount due for towing and storing the vehicle or vessel. Section 713.78(15)(a), F.S.

¹⁷ *Id.*

effort”¹⁸ has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System.¹⁹

Recovery of a Vehicle or Vessel from a Towing-Storage Operator

Towing and storage operators must permit vehicle or vessel owners, lienholders, insurance company representatives, or agents to inspect a towed vehicle or vessel and release to that person the vehicle, vessel, or all personal property that was not affixed when the vehicle or vessel came into the custody of the towing or storage operator.²⁰ The authorization of agency must be documented in an original writing acknowledged by the owner before a notary public or someone authorized to administer oaths. This subsection, however, does not provide guidance on how an interested party may take possession of the vehicle or vessel once it has been towed or stored.

Whoever violates the inspection and release provisions contained in s. 713.78 (10) , F.S., is guilty of a third degree felony²¹ which is punishable by a fine that does not exceed \$5,000²² and imprisonment that does not exceed five years.²³

Towing from Private Property

A vehicle or vessel may be towed at the direction of an owner or lessee of real property, or their designee if the vehicle or vessel is parked on the property without permission.²⁴ A person regularly engaged in the business of towing vehicles or vessels must conduct the tow. The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or another legally authorized person in control of that vehicle or vessel is subject to strict compliance with certain conditions and restrictions. These conditions and restrictions include:²⁵

- Any towed or removed vehicle or vessel must be stored at a site within a specified distance of the point of removal.²⁶

¹⁸ Section 713.84(4)(e), F.S., defines the term to mean that the operator has performed a list of “checks” of items such as searching specified databases and information systems; looking for any type of tag, tag record, temporary or regular tag on the vehicle or vessel; or looking for the vehicle identification number or the vessel registration number.

¹⁹ “The National Motor Vehicle Title Information System (NMVTIS) is a system that allows the titling agency to instantly and reliably verify the information on the paper title with the electronic data from the state that issued the title.” *See* AAMVA, *National Motor Vehicle Title Information System (NMVTIS)*, available at [National Motor Vehicle Title Information System \(NMVTIS\) \(aamva.org\)](https://www.aamva.org/nmvtis) (last visited February 2, 2022).

²⁰ Section 713.78(10), F.S. One municipal attorney has opined that under current law, “there is no express language ... which expressly limits, mandates or prohibits that the release of towed vehicle(s) is strictly limited to those individuals” identified by statute (*i.e.*, owners, lienholders, insurance company representatives, or agents). *See* email from City Of Miami Beach Chief Deputy City Attorney, January 29, 2020 (on file in the Senate Transportation Committee).

²¹ Section 713.78(12)(b), F.S.

²² Section 775.083(1)(c), F.S.

²³ Section 775.082(3)(e), F.S. Additional penalties may apply for certain habitual felony offenders under s. 775.084, F.S.

²⁴ Section 715.07(2), F.S.

²⁵ Section 715.07(2)(a), F.S.

²⁶ Section 715.07(2)(a)1.a., F.S. The vehicle or vessel must be stored within a 10-mile radius of the removal point in a county with a population of at least 500,000 and within a 15-mile radius of the removal point in a county with a population of fewer than 500,000. If no towing business operated within the given area, these radiuses are extended to 20 miles (for a county with a population of at least 500,000) and 30 miles (for a county with a population of fewer than 500,000). The site must be open

- The towing company must notify local law enforcement within 30 minutes of completing the tow of the storage site; the time the vehicle or vessel was towed; and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. The towing truck operation is required to record the name of the law enforcement officer who received the information in the trip record.
- The owner of a vehicle or vessel must be allowed to redeem the vehicle or vessel from the towing company if the owner seeks the return before the tow has occurred. The towing company may charge a reasonable service fee of up to one-half of the posted towing rate for the return of the vehicle or vessel and may tow the vehicle or vessel if the owner is unable to pay the fee after a reasonable opportunity.
- A towing company may not pay or accept money in exchange for the privilege of towing or removing vehicles or vessels from a particular location.
- If the towing company requires the owner of a vehicle to pay the costs of towing and storage before redemption, the towing company must file and keep on record its rate schedule with the local law enforcement agency and post the rate schedule at the storage site.
- Trucks and wreckers used by the towing company must have the name, address, and telephone number of the company printed on both sides of the vehicle in contrasting letters. The name of the towing company must be in 3-inch or taller permanently affixed letters, while the address and telephone number must be in 1-inch or taller permanently affixed letters.
- The towing company must exercise reasonable care when entering a vehicle or vessel to remove it. The towing company is liable for any damage to the vehicle caused by failure to exercise reasonable care.
- The vehicle or vessel must be released to its owner within one hour after request. The owner maintains a right to inspect the vehicle or vessel, and the towing company operation may not require a release or waiver of damages to be signed as a condition of returning the vehicle. The towing company operator must issue a detailed, single receipt to the owner of the vehicle or vessel.

Additionally, a vehicle or vessel may not be towed without consent of its owner, except from property appurtenant to a single-family residence, unless a notice is posted which states the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or that the vehicle or vessel is subject to being removed at the owner's or operator's expense and the notice meets the following requirements:²⁷

- The notice is placed prominently at each driveway access or curb cut, within five feet from the public right-of-way line. If the property has no curbs or access barriers, signs must be posted at least once every 25 feet of lot frontage.
- The notice must indicate, in not less than two-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense and contain the words "tow-away zone" in letters not less than four inches high.
- The notice must provide the name and telephone number of the towing company.
- The sign containing the notices must be permanently installed in such a way that the words "tow-away zone" is between three and six feet above ground level and the sign must have

from 8 am to 6 pm when the towing business is in operation and must post a telephone number where the operator of the site can be reached when the site is closed. The operator must return to the site within one hour.

²⁷ Section 715.07(2)(a)5., F.S.

been continuously maintained on the property for not less than 24 hours before the towing of any vehicle or vessel.

- Local governments may also require permitting and inspection of signage before any towing is authorized.
- A business with 20 or fewer parking spaces may satisfy the requirement by prominently displaying a sign stating “Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner’s Expense” in not less than four-inch high, light-reflective letters on a contrasting background.
- A property owner towing or removing vessels from real property must post a notice, consistent with the requirements in the statute which apply to vehicles,²⁸ that unauthorized vehicles or vessels will be towed away at the owner’s expense.

A vehicle or vessel may be towed even in the absence of a tow-away zone sign if the vehicle or vessel is parked in such a way that it restricts the normal operation of a business or restricts access to a private driveway and the business owner or lessee requests the tow.²⁹

III. Effect of Proposed Changes:

Section 1 amends s. 323.001, F.S., to clarify that an investigating agency may have a wrecker operator tow a motor vehicle directly from the scene of the tow to the investigating agency’s storage facility. If a motor vehicle is towed directly to the investigating agency’s storage facility, the vehicle may not be released to the owner or lienholder 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 releases the vehicle without such proof of payment, the investigating agency must pay the wrecker operator accrued expenses within 60 days of the vehicle’s release.

Additionally, the section clarifies that the investigating agency’s payment to the wrecker operator following a judicial finding of no probable cause must occur within 60 days.

Section 2 amends s. 713.78, F.S., to:

- Require that a notice of lien provided by a wrecker operator for fees or charges for the recovery, towing, or storage of a vehicle or vessel be sent by certified mail no earlier than six hours before, and no later than seven business days after, the date of storage of the vehicle or vessel. This revision clarifies and re-states current law that a lien for storage of a vehicle or vessel must be for storage that lasts six hours or more.
- Clarify that a wrecker operator must release a towed vehicle or vessel and un-affixed personal property *only* to the owner, lienholder, or agent.
- Provide that, for the purposes of a wrecker operator releasing a vehicle to the owner’s agent, a rental agreement is insufficient to convey agency. A rental car company must appoint a person its agent by original notarized writing.
- Authorize a lienor or lienor’s agent to charge a \$75 notification (rather than “administrative”) fee, *plus the actual costs of complying with the notice requirements*, but the fee remains capped at \$250.

²⁸ These requirements are contained in s. 715.07(2)(a)5.a.-f., F.S.

²⁹ Section 715.07(2)(a)5.g., F.S.

- Provide that if a towing-storage operator uses a third-party service approved by the DHSMV to transmit the required notices, proof of mailing by the third-party service is proof that the towing-storage operator made a good faith effort to comply with the notice requirements, regardless of whether the recipient accepts delivery or otherwise receives notice.
- Preempt to the state regulation of claiming a lien for the recovery, removal, towing, or storage of a vehicle or vessel. Any county or municipal ordinance, resolution, rule, regulation, or otherwise to the contrary is superseded.

Section 3 amends s. 715.07, F.S., to provide that a rental agreement is insufficient to convey agency for the purposes of releasing a vehicle that has been towed from private property. A rental car company must appoint a person its agent by original notarized writing.

Section 4 provides that the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities. Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989.

The bill preempts to the state regulation of claiming a lien for the recovery, removal, towing, or storage of a vehicle or vessel and supersedes any county or municipal ordinance, resolution, rule, regulation, or otherwise to the contrary. Because it is unknown how many counties or municipalities regulate the claiming of a lien and whether that regulation involves revenue generated to the county or municipality, the presence or absence of a mandate is unknown.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Current law authorizes a lienor or the lienor's agent to charge an "administrative" fee to the registered owner or other person claiming a lien against a vehicle or vessel for release from the lien. The amount of the fee is unspecified, except that it may not exceed \$250.

The bill renames the "administrative" fee as a "notification" fee and authorizes a lienor to charge a \$75 fee, plus the actual costs of complying with the notice requirements, but the fee still may not exceed \$250.

Because the specified fee and the addition of actual costs remains capped at \$250, the bill does not appear to present a tax or fee issue.

B. Private Sector Impact:

Indeterminate, as it is unknown, for example, how many tows or claims of lien will occur.

C. Government Sector Impact:

Indeterminate, as it is unknown, for example, how many tows will occur, how many vehicles or vessels are released by an investigating agency without the required proof of payment, or what the amount of applicable towing and storage charges would be.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 323.001, 713.78, and 715.07 of the Florida Statutes.
Additional Information:

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on February 2, 2022:

The committee substitute:

- Revises the timeframe required for sending a notice of lien provided by a wrecker operator for fees or charges for the recovery, towing, or storage of a vehicle or vessel. The notice must be sent by certified mail no earlier than six hours before, and no later than seven business days after, the date of storage of the vehicle or vessel.
- Clarifies that a wrecker operator in possession of a towed vehicle or vessel must release the vehicle, vessel, or all personal property in the vehicle or vessel only to the owner, lienholder, or agent.
- Revises a lienor's authorization to charge an "administrative" fee to the registered owner or another person claiming a lien against a vehicle or vessel for releasing a claim of lien, not to exceed \$250. The bill authorizes a lienor to charge a \$75 "notification" fee, plus the actual costs of complying with specified notice requirements, not to exceed \$250.
- Provides that if a towing-storage operator uses a third-party service approved by the DHSMV to transmit the required notices, proof of mailing by the third-party service is proof that the towing-storage operator made a good faith effort to comply with the notice requirements, regardless of whether the recipient accepts delivery or otherwise receives notice.
- Preempts to the state regulation of claiming a lien for the recovery, removal, towing, or storage of a vehicle or vessel and supersedes any county or municipal ordinance, resolution, rule, regulation, or otherwise to the contrary.

B. Amendments:

None.