

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 701 Wrecker and Towing-Storage Operators

**SPONSOR(S):** Transportation & Modals Subcommittee, Bell

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Modals Subcommittee	15 Y, 0 N, As CS	Johnson	Hinshelwood
2) Civil Justice Subcommittee			
3) Infrastructure Strategies Committee			

### SUMMARY ANALYSIS

The bill addresses issues related to wrecker and towing-storage operators. The bill:

- Prohibits the Florida Highway Patrol from excluding a wrecker operator from being an authorized wrecker operator based solely on a prior felony conviction, unless such conviction was for a forcible felony.
- Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels in the following ways:
  - Defines the term “towing-storage operator.”
  - Provides that a towing-storage operator may only charge specified fees for the recovery, removal, or storage of a vehicle or vessel.
  - Requires towing-storage operators to accept credit cards, debit cards, or electronic payment methods.
  - Reduces to 3 business days, from 7 business days, the deadline for the towing-storage operator to send the notice of lien.
  - Extends from 50 days to 65 days the time frame required prior to a towing-storage operator being allowed to sell an unclaimed vehicle that is 3 years of age or less.
  - Increases from 10 days to 30 days, the number of days prior to the sale of a vehicle that notice must be published in the newspaper.
  - Requires the notice of sale of a vehicle or vessel to be sent to its owner and those having an interest in the vehicle or vessel (insurance companies, lienholders) by certified mail.
  - Requires towing-storage operators to allow owners of towed vehicles and vessels, including a rental car company, to inspect the vehicle or vessel.
  - Requires towing-storage operators to keep specified records for three years.
  - Provides that s. 713.78, F.S., is the exclusive remedy for the placement or foreclosure of a storage lien placed on a vehicle or vessel.
- Amends s. 559.917, F.S., relating to bonds to release possessory liens claimed by motor vehicle repair shops, by adding vessels and towing storage operators to that section and providing for resolution of certain liens regarding vehicles and vessels.
- Provides that liens on vehicles or vessels may not be foreclosed under specified statutory provisions relating to liens.

The bill does not appear to have a fiscal impact on state or local government and has an indeterminate fiscal impact on the private sector.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Florida Highway Patrol Wrecker Operator System**

##### Current Situation

Florida Law authorizes the Florida Highway Patrol (FHP)<sup>1</sup> to establish within areas designated by the patrol a wrecker operator system using qualified, reputable wrecker operators for removal and storage of wrecked or disabled vehicles from a crash scene or for removal and storage of abandoned vehicles, in the event the owner or operator is incapacitated or unavailable or leaves the procurement of wrecker service to the officer at the scene. All reputable wrecker operators are eligible for use in the system provided their equipment and drivers meet recognized safety qualifications and mechanical standards set by FHP's rules for the size of vehicle it is designed to handle. FHP may limit the number of wrecker operators participating in the wrecker operator system, which authority does not affect wrecker operators currently participating in the system. Notwithstanding the Administrative Procedures Act,<sup>2</sup> DHSMV's final order denying, suspending, or revoking a wrecker operator's participation in the system is reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county where such wrecker operator resides.<sup>3</sup>

For the purpose of FHP's wrecker rotation rule,<sup>4</sup> the lack of reputability means that FHP cannot trust the wrecker operator to safeguard the welfare and property of the public. Lack of reputability includes, but is not limited to, the following:

- Conviction of any felony without restoration of the person's civil rights.
- Conviction of any felony or first-degree misdemeanor directly related to the business of operating a wrecker, regardless of whether civil rights have been restored.<sup>5</sup>
- Responding to a call while under the influence of alcohol or any controlled substance or chemical substance.

##### *Forcible Felonies*

Section 776.08, F.S., defines the term "forcible felony" to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

##### Effect of the Bill

The bill prohibits FHP from excluding a wrecker operator system or fail to designate him or her as an authorized wrecker operator<sup>6</sup> based solely on a prior felony conviction, unless such conviction is for a forcible felony.

#### **Liens for Recovering, Towing, or Storing Vehicles and Vessels.**

##### County and Municipal Wrecker Operator Systems

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<sup>1</sup> The Florida Highway Patrol is a division of the Department of Highway Safety and Motor Vehicles.

<sup>2</sup> Ch. 120, F.S., is the Administrative Procedure Act.

<sup>3</sup> S. 321.051(2), F.S.

<sup>4</sup> R. 15B-9.007, F.A.C.

<sup>5</sup> For the purpose of Rule 15B-9007, F.A.C., any offense involving perjury or false statement is considered to be directly related to the business of operating a wrecker.

<sup>6</sup> Section 321.051(1)(a), F.S., defines the term "authorized wrecker operator" to mean any wrecker operator who has been designated by the Florida Highway Patrol as part of the wrecker operator system.

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. After the establishment of such contracts, 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.<sup>7</sup> 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.”<sup>8</sup>

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 a crash 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 enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.<sup>9</sup>

### Towing and Wrecker Companies

Towing and wrecker companies are licensed and regulated by county ordinances in the counties in which they operate.<sup>10</sup> These ordinances may establish license application procedures and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.<sup>11</sup>

Florida law does not require towing and wrecker companies to accept specific forms of payment. However, 11 states require towing companies to accept credit cards as a form of payment.<sup>12</sup>

### Liens for Recovering, Towing, or Storing Vehicles or Vessels

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>13</sup> A lien can be created by judgment, equity, agreement, or statute.<sup>14</sup> The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.<sup>15</sup> A statutory lien expires in the manner and method set forth in statute, and a consensual lien expires according to the terms of the parties’ agreement.<sup>16</sup> Liens on a vehicles or vessel for towing and storage charges are created in s. 713.78, F.S.

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, and a storage fee (for a vehicle or vessel stored for 6 hours or more) if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;

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<sup>7</sup> S. 323.002(1)(c), F.S.

<sup>8</sup> S. 323.002(1)(a)-(b), F.S.

<sup>9</sup> Ss. 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.

<sup>10</sup> See, e.g., Hillsborough County, *Towing Companies*, <https://www.hillsboroughcounty.org/businesses/entrepreneur-and-small-business-support/business-licensing/towing-companies>; Orange County, *Towing Information*, <http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk> (last visited Mar. 17, 2023).

<sup>11</sup> See, e.g., Miami-Dade County, *Towing License*, [https://www8.miamidade.gov/global/license.page?Mduid\\_license=lic1495741572333567](https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567) (last visited Mar. 17, 2023).

<sup>12</sup> Van Cleef, Jacob and Murray, Teresa, *Towing Kickbacks: Only one-third of states ban incentives to property owners, law enforcement* (April 26, 2022), PIRG, <https://pirg.org/resources/towing-kickbacks-only-one-third-states-ban-incentives-property-owners-law-enforcement/> (last visited Mar. 17, 2023).

<sup>13</sup> Fla. Jur. 2d Liens § 37:1

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

- 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.; relating to personal property left by a tenant after tenancy has terminated or
- Any law enforcement agency.<sup>17</sup>

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.

Under current law, a towing-storage operator must use a DHSMV-approved third-party service<sup>18</sup> to transmit the notice (as well as any other notices required under s. 713.78, F.S.). If there is no approved third-party service, the towing-storage operator may mail the notice and provide evidence of compliance upon application for a certificate of title.<sup>19</sup> The notice of lien must be sent by certified mail within 7 business days after the date of storage of the vehicle or vessel.<sup>20</sup>

A lienor or its agent may charge an administrative fee<sup>21</sup> 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.<sup>22</sup>

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,<sup>23</sup> the law enforcement agency where the vehicle or vessel is stored must contact DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.<sup>24</sup> DHSMV, or appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.<sup>25</sup> The towing-storage operator must obtain such information from the law enforcement agency within 5 days after the date of storage and provide the required notice.<sup>26</sup>

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 locate the name and address, a physical search of

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<sup>17</sup> S. 713.78(2), F.S.

<sup>18</sup> Section 713.18(16)(a), F.S., defines the term “third-party service” 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.

<sup>19</sup> S. 713.78(16), F.S.

<sup>20</sup> S.713.78(4)(a) and (c), F.S.

<sup>21</sup> Section 713.17(15)(a), F.S., defines the term “administrative fee” 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.

<sup>22</sup> *Id.*

<sup>23</sup> Section 715.07(2)(a)2., F.S., provides that within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel.

<sup>24</sup> S. 713.78(4)(b), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

the vehicle or vessel has revealed no ownership information, and a “good faith effort”<sup>27</sup> has been made, including a records check of the DHSMV database and of the National Motor Vehicle Title Information System (NMTIS).<sup>28</sup>

Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.<sup>29</sup>

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.<sup>30</sup> 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.

The owner or lienholder of a vehicle or vessel subject to a lien for towing and storage charges may, within ten days after learning of the location of the vehicle or vessel, file a complaint in the county court of the county where the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld.<sup>31</sup> The vehicle or vessel must be released if, at any time before sale of the vehicle or vessel, the owner or lienholder posts with the court cash or a surety bond or other adequate security to ensure the payment of charges owed for towing and storage should the owner or lienholder not prevail in litigation.<sup>32</sup> After posting bond, the clerk must issue a notice of the bond to the towing-storage operator and direct the towing-storage operator to release the vehicle or vessel.<sup>33</sup>

Upon determining the respective rights of the parties, the court may award damages, attorney’s fees, and costs in favor of the prevailing party. The final order must provide for immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder; or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.<sup>34</sup>

A towing-storage operator may sell at public sale a stored vehicle or vessel that remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:

- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.<sup>35</sup>

If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 30 days before the date of the sale, to:

- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of NMTIS or an equivalent commercially available system.<sup>36</sup>

The towing-storage operator must also publish notice of the time and place of the sale, at least ten days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.<sup>37</sup>

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<sup>27</sup> Section 713.78(5)(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.

<sup>28</sup> “The National Motor Vehicle Title Information System (NMTIS) 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 (NMTIS)*, <https://www.aamva.org/technology/systems/vehicle-systems/nmtis#> (last visited March 17, 2023).

<sup>29</sup> S. 713.78(9), F.S.

<sup>30</sup> S. 713.78(10), F.S.

<sup>31</sup> S. 713.78(5)(a), F.S.

<sup>32</sup> S. 713.78(5)(b), F.S.

<sup>33</sup> *Id.*

<sup>34</sup> S. 713.78(5)(c), F.S.

<sup>35</sup> S. 713.78(6), F.S.

<sup>36</sup> *Id.*

<sup>37</sup> S. 713.78(6), F.S.

If the owner or lienholder of the vehicle or vessel sold is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.<sup>38</sup> The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale.<sup>39</sup>

The sale must be at public sale for cash. If the date of the sale was not included in the notice required above, notice of the sale must be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on DHSMV's records or of any corresponding agency in any other state in which the vehicle is identified through a record check of NMVTIS or an equivalent commercially available system as being titled. Notice of the sale must be sent by certified mail. The notice must have clearly identified and printed, if the claim of lien is for a motor vehicle, the last eight digits of the VIN of the motor vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the lien, in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon.<sup>40</sup>

The proceeds of the sale, after payment of reasonable towing and storage charges, and costs of the sale, in that order of priority, are deposited with the clerk of the circuit court for the county if the owner or lienholder is absent, and the clerk must hold such proceeds subject to the claim of the owner or lienholder legally entitled thereto. The clerk is entitled to receive five percent of such proceeds for their care and disbursement. The certificate of title issued must be discharged of all liens unless otherwise provided by court order. The owner or lienholder may file a complaint after the vehicle or vessel has been sold in the county court of the county in which it is stored. Upon determining the respective rights of the parties, the court may award damages, attorney fees, and costs in favor of the prevailing party.<sup>41</sup>

Under current law, failure to make good faith efforts to comply with the notice requirements in s. 713.78, F.S., precludes the imposition of any storage charges against the vehicle or vessel. If a lienor fails to provide notice to a person claiming a lien on a vehicle or vessel, the lienor may not charge the person for more than seven days of storage, but such failure does not affect charges made for towing the vehicle or vessel or the priority of liens on the vehicle or vessel.<sup>42</sup>

Under s. 713.78(10), F.S., towing-storage operators must permit vehicle or vessel owners, lienholders, insurance company representatives, or their agents, which agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths, to inspect the towed vehicle or vessel and shall release to the owner, lienholder, or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the person providing such services. As written, current law does not treat rental car owners of motor vehicles any differently than other owners.

Section 713.78, F.S., does not contain any record keeping requirements for towing-storage operators.

### **Effect of the Bill**

The bill amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.

The bill defines the term "towing-storage operator" to mean a person who regularly engages in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier.

The bill amends s. 713.78(2), F.S., providing that a towing-storage operator may only charge the following fees for, or incidental to, the recovery, removal, or storage of a vehicle or vessel:

- A reasonable hazardous waste fee.

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<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> S. 713.78(9), F.S.

- A reasonable fee for a service authorized by ordinance of the county or municipality in which the service was performed.
- A reasonable fee for service authorized by DHSMV rule.<sup>43</sup>
- A lien release administrative fee as set forth in s. 713.78(15)(a), F.S.
- A reasonable administrative fee or charge imposed by a county or municipality upon the owner of a vehicle or vessel.

If a towing-storage operator recovers, recovers, removes, or stores a vehicle or vessel upon instructions of various entities, he or she has a lien on the vehicle or vessel for a reasonable towing fee, for a reasonable recovery fee, a reasonable towing fee, and a reasonable storage fee. The bill removes the ability for a towing storage operator to impose a lien on a towed vehicle or vessel for a reasonable administrative fee imposed by a county or municipality. The bill keeps the provision that a storage fee may not be charged if a vehicle or vessel is stored for less than 6 hours.

The bill requires towing storage operators to accept credit cards, debit cards, or other electronic payment methods.

The bill provides that notice of lien must be sent by certified mail to the registered owner, the insurance company insuring the vehicle or vessel and all other persons claiming a lien within 3 business days, instead of the current 7 business days, excluding Saturday and Sunday after the date of storage of the vehicle or vessel.

The bill repeals s. 713.87(4)(b), F.S., removing a requirement that when a law enforcement agency authorizes a tow, that the law enforcement agency is supposed to perform specified functions. These duties are now being conducted by the third-party service.

The bill changes from 50 days to 65 days the length of time that a towing-storage operator must have a vehicle stored by a lienor for vehicles or vessels 3 years of age or less, before the towing-storage operate may sell the vehicle free and clear.

The provides that the notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien on the vehicle or vessel less than 30 days before the sale of a vehicle or vessel that is more than 3 years of age or less than 60 days before the sale of a vehicle or vessel that is 3 years of age or less.

The bill removes a provision authorizing some notices under s. 713.78, F.S., to be delivered by acknowledged hand delivery instead of using certified mail. The certified mail requirements currently in statute remains in the bill.

The bill provides that regardless of whether or not a complaint is filed with the clerk of court, any time before the sale of the vehicle or vessel, an owner or lienholder may have his or her vehicle or vessel released upon payment of the applicable fee in s. 28.24, F.S., and posting with the court a cash or surety bond, or other adequate security, in accordance with s. 559.917, F.S., equal to the amount of charges for towing or storage and lot rental mount to ensure the payment of such charges in the event she or he does not prevail. The bill specifies that s. 559.917, F.S., applies to the release of a lien on a vehicle, as defined in s. 713.78(1), F.S., claimed by a towing-storage operator for recovery, towing, or storage charges.

The bill provides that upon determining the respective rights of the parties, the court may award damages, attorney fees, and costs in favor of the prevailing part. In the event the lienor prevails, the final order must provide for the immediate payment in full of recovery, towing, and storage fees by the vehicle or vessel owner or lienholder, or the agency ordering the tow; or the owner, lessee, or agent thereof of the property from which the vehicle or vessel was removed.

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<sup>43</sup> Department of Highway Safety and Motor Vehicles maximum rates for towing and storage are set pursuant to r. 15B-9.010, F.A.C.

The bill provides that a vehicle or vessel that is stored and remains unclaimed for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released, may be sold by the owner or operator of the storage space for such towing or storage charge 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or 65 days, instead of the current 50 days, after the vehicle or vessel is stored by the lienor of the vehicle or vessel is 3 years of age or less.

The bill provides that in addition to the notice by mail, public notice of the time and place of the sale must be made by publishing notice of the sale one-time at least 30 days, instead of the current 10 days, in a newspaper of general circulation in the county in which the sale is to be held.

The bill provides that upon compliance by the towing-storage operator with s. 713.78, F.S., all liens on the certificated of title issued under s. 713.78, F.S., must be discharged.

The bill amends s. 713.78(9), F.S., providing that failure to make good faith efforts to substantially comply with s. 713.78, F.S., or to provide notice to a person claiming a lien on a vehicle or vessel, precludes the imposition of storage charges against the vehicle or vessel for more than three days of storage, but such failure does not affect charges made for towing the vehicle or vessel or the priority liens on the vehicle or vessel.

The bill requires a towing-storage operator to permit rental car owners, lienholders, insurance company representatives, or their agents, which agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths, to inspect the towed vehicle must release to the owner, lienholder, or agent the vehicle or all personal property not affixed to the vehicle which was in the vehicle at the time the vehicle or vessel came into the custody of the towing-storage operator. For this purpose, a rental car agreement is not evidence that the person who rented the vehicle is an agent of the owner of the vehicle, and a towing storage operator may not release a vehicle owned by a rental car company to the person who rented the vehicle unless the rental car company appoints the person who rented the vehicle as its agent.

The bill requires a towing-storage operator to permit non-rental vehicle or vessel owners, lienholders, or their agents to inspect the towed vehicle or vessel. The towing-storage operator must make the vehicle or vessel available for inspection within 3 business days after receiving a written request to inspect the vehicle or vessel and must release to the owner, lienholder, or agent the vehicle, vessel, or all personal property not affixed to the vehicle or vessel which was in the vehicle or vessel at the time the vehicle or vessel came into the custody of the towing-storage operator. A towing-storage operator must accept a copy of an electronic title or a paper title as evidence of a person's interest in a vehicle or vessel.

The bill requires a towing-storage operator to retain, for three years, records produced for all vehicles or vessels recovered, towed, stored, or released. Such records must include at least all of the following:

- All notice publications and certified mailings.
- The purchase price of any unclaimed vehicle or vessel sold.
- The name and address of any person to whom a vehicle or vessel is released.
- The name and address of the purchaser of any unclaimed vehicle or vessel.
- All fees imposed under s. 713.78, F.S.

The bill provides that s. 713.78, F.S., is the exclusive remedy for the placement or foreclosure of a storage lien placed on a vehicle or vessel under s. 83.19, F.S., s. 83.805, F.S., or s. 677.210, F.S., which are amended in the bill.

The bill also makes technical and conforming changes to s. 713.78, F.S.

## **Bond for Possessory Lien of a Vehicle or Vessel**

### Current Situation

Under s. 559.917, F.S., a customer or a person of record claiming a lien against a motor vehicle may obtain the release of the motor vehicle from any lien claimed by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien.

The bond must be in the amount stated on the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice. The customer or person is not required to institute judicial proceedings in order to post the bond in the registry of the court. Upon the posting of such bond, the clerk of the court must automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the motor vehicle.<sup>44</sup>

The lienor has 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond must be discharged by the clerk.<sup>45</sup>

The failure of a lienor to release or return to the customer or person the motor vehicle upon which any lien is claimed, upon receiving a copy of a certificate giving notice of the posting of the bond and directing release of the motor vehicle, must subject the lienor to judicial proceedings which may be brought by the customer or person to compel compliance with the certificate. Whenever a customer or person brings an action to compel compliance with the certificate, the customer or person need only establish that:

- Bond in the amount of the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, was posted;
- A certificate was issued pursuant to s. 559.917, F.S.;
- The motor vehicle repair shop, or any employee or agent thereof who is authorized to release the motor vehicle, received a copy of a certificate issued pursuant s. 559.917, F.S.; and
- The motor vehicle repair shop or employee authorized to release the motor vehicle failed to release the motor vehicle.

The customer or person, upon a judgment in her or his favor in an action brought under this subsection, may be entitled to damages plus court costs and reasonable attorney fees sustained by her or him by reason of such wrongful detention or retention. Upon a judgment in favor of the motor vehicle repair shop, the shop may be entitled to reasonable attorney fees.<sup>46</sup>

A motor vehicle repair shop that, or an employee or agent of the motor vehicle repair shop who is authorized to release the motor vehicle who, upon receiving a copy of a certificate giving notice of the posting of the bond in the required amount and directing release of the motor vehicle, fails to release or return the property to the customer or person commits a second-degree misdemeanor.<sup>47</sup>

A customer or person who stops payment on a credit card charge or a check drawn in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond is prohibited from any recourse with respect to the motor vehicle repair shop.<sup>48</sup>

### Effect of the Bill

The bill adds vessels to s. 559.917, F.S., and provides that a customer or person of record claiming a lien against a motor vehicle or vessel may obtain the release of any lien claimed under ch. 713, part II, F.S., by a towing-storage operator for recovery, towing, or storage charges by filing with the clerk of court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgement which may be entered in the lien. The bond must be in the amount stated on the notice of lien required under s. 713.78(4), F.S.

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<sup>44</sup> S. 559.917(1)(a), F.S.

<sup>45</sup> S. 559.917(1)(b), F.S.

<sup>46</sup> S. 559.917(2), F.S.

<sup>47</sup> S. 559.917(3), F.S.

<sup>48</sup> S. 559.917(4), F.S.

The bill provides that the customer or person of record, claiming a lien against a motor vehicle or vessel, upon a judgement in his or her favor, may be entitled to damages plus court costs and reasonable attorney fees sustained by him or her by reason of such wrongful detention.

The bill defines the terms “vehicle” and “vessel” for purposes of s. 559.917, F.S., to have the same meaning as in s. 713.78, F.S.

### **Conforming Change**

The bill amends the following statutes to provide that a lien on a vehicle or vessel must be foreclosed pursuant to s. 713.78, F.S., any may not be foreclosed under other statutes.

- Section 83.19, F.S., relating to the sale of distrained property as it relates to nonresidential tenancies.
- Sections 83.805, F.S., relating to liens, and s. 83.806, relating to enforcement of liens, as they relate to self-storage spaces.
- Section 677.210, F.S., relating to the enforcement of a warehouse lien.

The bill amends s. 715.07(2)(a), F.S., conforming a cross-reference.

### **Effective Date**

The bill has an effective date of July 1, 2023.

#### **B. SECTION DIRECTORY:**

- Section 1** Amends s. 321.051, F.S., relating to Florida Highway Patrol wrecker operator system; penalties for operation outside the system.
- Section 2** Amends s 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.
- Section 3** Amends s. 559.917, F.S., relating to bond to release possessory lien claimed by motor vehicle repair shop or towing storage operator.
- Section 4** Amends s. 83.19, F.S., relating to sale of property distrained.
- Section 5** Amends s. 83.805, F.S. relating to lien.
- Section 6** Amends s. 83.806, F.S., relating to enforcement of lien.
- Section 7** Amends s. 677.210, F.S., relating to enforcement of warehouse’s lien.
- Section 8** Amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.
- Section 9** Provides an effective date of July 1, 2023.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate. The bill may increase costs and limit revenues to towing-storage operators. However, the bill may have a resulting positive fiscal impact on owners whose vehicles are towed.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

FHP will be required to amend its rules regarding authorized wrecker operators to conform to provisions in the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2022, the Transportation & Modals Subcommittee considered a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from HB 701 in the following ways:

- Amends the list of permissible fees that may be charged by towing-storage operators.
- Expands the options for forms of payments that a towing-storage operator is required to accept.
- Provides that a person need not file a lawsuit against a towing-storage operator in order to proceed under s. 713.78(5)(b), F.S.
- Provides that s. 559.917, F.S., which is amended by the bill, applies to the release of a lien on a vehicle, as defined in s. 713.78(1), F.S., claimed by a towing-storage operator for recovery, towing, or storage charges.
- Prevents a towing-storage operator that has wrongfully taken or stored a vehicle, as determined by a court, from getting paid the accompanying towing and storage fees.

- Creates a process whereby the rental car company which owns the vehicle can directly pursue inspection and release of the vehicle without the renter.
- Requires the towing-storage operator to make the vehicle or vessel available for inspection during regular business hours within 3 business days after receiving a written request to inspect the vehicle or vessel.
- Reverts provisions regarding lien release administrative fees back to current law.
- Amends the recordkeeping requirement for towing-storage operators.
- Amends s. 83.19, F.S., rather than s. 83.09, F.S.
- Amends s. 83.806, F.S., in order to require that enforcement of a lien arising under s. 83.805, F.S., be accomplished under s. 713.78, F.S.
- Makes other technical and conforming changes.

This analysis has been updated to reflect the committee substitute.