

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 381 Towing of Vehicles & Vessels

**SPONSOR(S):** Civil Justice Subcommittee; Wood

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	12 Y, 0 N	Whittaker	Smith
2) Civil Justice Subcommittee	12 Y, 0 N, As CS	Robinson	Bond
3) Economic Affairs Committee		Whittaker	Creamer

### SUMMARY ANALYSIS

Current law provides that the owner or lessee of real property, or their agent, may have any unauthorized vehicle or vessel parked on such property removed by towing if the owner or lessee has complied with strict posted notice requirements. These requirements include the location of the notice, the graphics of the notice, and the length of time the notice is posted. The bill:

- Requires that the posted notice include the fictitious name or any other name of the person or firm providing towing services for the property owner or lessee.
- Specifies that an agent of an owner or lessee of real property who may cause the removal of unauthorized vehicles or vessels by towing includes the designated representative of the cooperative association if the real property is a cooperative, or the designated representative of the homeowners' association if the real property is owned by a homeowners' association.
- Creates an exception to the posted notice requirements if a tow-away notice is attached to the vehicle or vessel and the vehicle or vessel remains on the private property for 5 days thereafter.
- Revises the information that a tow operator must record on a trip record to document law enforcement notification of a tow.
- Requires a tow operator that claims a lien for recovery, towing, or storage services of a vehicle or vessel to verify that the vessel has not been reported stolen prior to a public sale of the vehicle or vessel to recover costs.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill provides that the act shall take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Towing Vehicles or Vessels on Private Property**

###### *Posting Requirements for Towing*

Section 715.07, F.S. provides that the owner or lessee of real property, or their agent, may have any unauthorized vehicle or vessel parked on such property removed by towing without incurring any liability for the cost, storage, damage, or transportation associated with such towing if the owner or lessee has complied with strict posted notice requirements.

Prior to causing the removal of an unauthorized vehicle or vessel from real property without the consent of the owner, the owner or lessee of the property must post a notice meeting the following requirements<sup>1</sup>:

- 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.
- 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.
- The notice must provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.
- The sign structure containing the required notice 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 at least 24 hours prior to the towing or removal of any vehicles or vessels.

A business with 20 or fewer parking spaces satisfies the notice requirements 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 4-inch high, light-reflective letters on a contrasting background.<sup>2</sup>

###### *Exceptions to Posting Requirements*

Lawful towing or removal of any vehicle or vessel without posted notice or the consent of the registered owner may be effected when:<sup>3</sup>

- The property belongs to and is obviously a part of a single-family residence;
- When notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the owner's or operator's expense;
- The vehicle or vessel is parked in such a manner that restricts the normal operation of a business; or
- If a vehicle or vessel parked on a public right-of way obstructs access to a private driveway.

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<sup>1</sup> Section 715.07(2)(a)5., F.S.

<sup>2</sup> Section 715.07(2)(a)5.f., F.S.

<sup>3</sup> Section 715.07(2)(a)5., F.S.

## Effect of Proposed Changes - Towing Vehicles or Vessels on Private Property

The bill provides an additional exception for towing a vehicle or vessel without the posted notice requirements. It provides that the owner, lessee, or agent of the owner or lessee of real property, may have a vehicle or vessel that has been parked without permission on private property for a period exceeding 5 days removed by a towing company. The owner must provide the towing company with a signed order that the vehicle or vessel be removed without a posted tow-away zone sign. The 5-day period does not begin to run until both of the following conditions are met:

- A notice that the vehicle or vessel will be removed from the property is attached to the vehicle or vessel with adhesive material. The notice must:
  - Be at least 8 by 10 inches in size and weatherproofed to withstand normal exposure to the elements;
  - Be attached to the vehicle's windshield or, in the case of a vessel, to the registration number on the left side;
  - Provide the name and phone number of the proposed towing company;
  - Clearly indicate the date posted; and clearly indicate in bold letters that the vehicle or vessel will be towed or removed 5 days from the date local law enforcement verifies and documents that the notice complies with all legal requirements.
- The property owner or lessee, or the agent thereof, notifies the local law enforcement agency of the notice being posted and the local law enforcement agency verifies and documents the sufficiency of the notice in a police report that must be provided to the property owner or lessee, or the agent thereof, and the towing company.

Where a vehicle or vessel is towed pursuant to the current posted notice requirements, the bill requires that the posted notice include the fictitious name or any other name of the person or firm providing towing services for the property owner.

The bill further specifies that an agent of an owner or lessee of real property who may cause the removal of unauthorized vehicles or vessels by towing pursuant to s. 715.07, F.S. includes the designated representative of the cooperative association if the real property is a cooperative, or the designated representative of the homeowners' association if the real property is owned by a homeowners' association.

### Required Notice to Law Enforcement

A person or firm that tows or removes a vehicle or vessel from real property at the direction of the property owner or lessee, or agent of the owner or lessee, pursuant to s. 715.07, F.S. must notify local law enforcement within 30 minutes after the completion of the tow or removal and provide information regarding the location of the tow or removal, vehicle or vessel identifiers, and the vehicle or vessel storage location.<sup>4</sup> Current law requires the person or firm to obtain the name of the person at the law enforcement agency to whom such information was reported and record the name on the trip record.<sup>5</sup>

The bill provides that when notifying the municipal police department or sheriff of the towing or removal of a vehicle or vessel, the person or firm that performed the towing or removal must also note on the trip record the case number, badge number, or name of the person to whom information was reported. Or, if the notification was made by an electronic notification process approved by the police department or sheriff's office, attach the electronic receipt received from the department or office to the trip record.

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

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<sup>4</sup> Section 715.07(2)(a)2., F.S.

<sup>5</sup> *Id.*

Section 713.78, F.S. provides that a tow operator who recovers, removes, or stores a vehicle or vessel upon the instructions of the owner, the owner of private property on which the vehicle or vessel was wrongfully parked or abandoned, or a law enforcement agency, has “a lien on the vehicle or vessel for a reasonable towing fee and for a reasonable storage fee.”<sup>6</sup> If claiming the lien, the tow operator must send notice to the registered owner, the insurance company insuring the vehicle or vessel, and all lienholders, as disclosed by state agency records,<sup>7</sup> by certified mail, return receipt requested, within seven business days after the date of storage of the vehicle.<sup>8</sup> A vehicle or vessel that remains unclaimed or for which tow and storage fees remain unpaid, may be sold by the owner or operator of the storage space at a public sale to recover costs.<sup>9</sup>

### **Effect of Proposed Changes-Liens for Recovering, Towing, or Storing Vehicles and Vessels**

The bill requires an owner or operator of the storage space to obtain written proof of verification that the vehicle or vessel is not currently reported as stolen within 72 hours before the public sale. The owner must submit the vehicle or vessel identification number to:

- A vendor using the National Motor Vehicle Title Information System<sup>10</sup> to obtain a report that includes active theft data from a national vehicle theft database; or
- A state or local law enforcement agency by hand delivery, facsimile, or electronic transmission to obtain a National Crime Information Center<sup>11</sup> stolen vehicle report.

Issuance of a certificate of title or a certificate of destruction is conditioned upon compliance with obtaining the written report that the vehicle is not stolen.

The bill also requires that in addition to the notice required under s. 713.78, F.S. the tow operator must comply with the Servicemembers' Civil Relief Act of 2003<sup>12</sup> (SCRA). The SCRA provides protections for servicemembers in the event that their military service impedes their ability to meet financial obligations incurred before entry into active military service. A servicemember with property or effects subject to a lien, including liens for storage, repair or cleaning of property, is protected from foreclosure or enforcement of the lien during the period of military service plus three months thereafter unless a court finds that the servicemember's ability to meet the obligation is not materially affected by military service.<sup>13</sup> A person who knowingly takes any action contrary to the provisions of the SCRA is punishable by imprisonment up to one year, a fine, or both.<sup>14</sup> As the SCRA is already current law, this provision of the bill does not impose additional requirements on tow operators.

The bill also makes technical and grammatical changes to the current law.

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

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<sup>6</sup> Sec. 713.78(2), F.S.

<sup>7</sup> Sec. 713.78(4)(a), F.S.

<sup>8</sup> Sec. 713.78(4)(c), F.S.

<sup>9</sup> Section 713.78(6), F.S.

<sup>10</sup> A National Motor Vehicle Title Information System Report is intended to only provide data on the current state of title and last title date, brand history, odometer reading, total loss history, and salvage history. National Motor Vehicle Title Information System, [http://www.vehiclehistory.gov/nmvtis\\_understandingvhr.html](http://www.vehiclehistory.gov/nmvtis_understandingvhr.html), (last visited March 11, 2015).

<sup>11</sup> The National Crime Information Center is an electronic clearinghouse of crime data maintained by the Federal Bureau of Investigation. The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; U.S. Secret Service Protective; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System (NICS) Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. Federal Bureau of Investigation, <http://www.fbi.gov/about-us/cjis/ncic> (last visited March 11, 2015).

<sup>12</sup> 50 U.S.C. App. §§ 501-597b.

<sup>13</sup> 50 U.S.C. App. § 537.

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

- Section 1 Amends and reenacts s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.
- Section 2 Amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.
- Section 3 Provides that the act shall take effect upon becoming a law.

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

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

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

To the extent that a property owner may have to replace or modify posted signs to include the fictitious name or any other name of a tow operator providing tow service for the property owner, the bill may have a direct economic impact on property owners. However, the exemption created by the bill may allow such property owners to avoid the cost of posting tow-away signage when a vehicle or vessel has been parked or stored on the property for five days.

Tow operators that foreclose a claim of lien for recovery, towing, or storage services may be required to pay a fee to a third party vendor or law enforcement to obtain the required theft data report from NMVTIS or NCIC.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

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

The bill is effective upon becoming a law, but imposes new procedural requirements on tow operators.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 11, 2015, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide that a police report documenting the sufficiency of the notice attached to a vehicle may be provided to the lessee of real property, as well as the agent of the owner or lessee of real property.
- Require that posted notice include the fictitious name or any other name of the tow operator providing tow service for the property owner.
- Require a tow operator that claims a lien for recovery, towing, or storage services of a vehicle or vessel to verify that the vehicle or vessel has not been reported stolen prior to a public sale of the vehicle or vessel to recover costs.
- Require tow operators to comply with the SCRA.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.