



S.B. 34

125th General Assembly
(As Introduced)

Sen. Armbruster

BILL SUMMARY

Disposition of towed vehicles

- Requires law enforcement to decide within 72 hours of ordering a vehicle into storage whether the law enforcement agency will retain jurisdiction over the vehicle and allows law enforcement to remove the vehicle from a private towing or storage company if the law enforcement agency wishes to retain jurisdiction over the vehicle.
- Requires a towing company or other person, if law enforcement relinquishes jurisdiction over a vehicle, to cause a search to be made of Bureau of Motor Vehicles (BMV) records to identify the vehicle owner and any lienholder.
- Requires the towing company or other person to notify the vehicle owner and any lienholder by certified mail that the vehicle may be disposed of and the person may be prohibited from registering another vehicle if the vehicle is not claimed and the charges are not paid.
- Allows a towing company or other person to obtain the certificate of title to the vehicle, invalidating any lienholder's lien, if the vehicle is unclaimed and the charges are unpaid 14 days after the notice is sent to the vehicle owner and any lienholder of record.
- Requires the Registrar of Motor Vehicles, at the request of a towing company or other person, to prevent a vehicle owner from registering another vehicle for five years unless the registration block is canceled.
- Specifies that a person who is prevented from registering a vehicle may have that registration block canceled by presenting to the Registrar: (1) acceptable proof that the registration applicant was not the owner of the

vehicle at the time it was towed, (2) a copy of a civil complaint involving the applicant and the towing company or other person, or (3) a registration release from the towing company or other person showing payment of specified charges.

- Requires the towing company or other person to give the vehicle owner a registration release if (1) the owner pays specified towing and storage charges, and other expenses, (2) the company or person obtained title to the vehicle and the declared value of the vehicle exceeds the specified towing and storage charges, or (3) the vehicle owner demonstrates a lack of proper notification.

Regulation of tow trucks by the Public Utilities Commission

- Specifies that a motor transportation company that is engaged *exclusively* in the towing of disabled or wrecked vehicles is not subject to regulation by the Public Utilities Commission of Ohio and may be subject to licensing and regulation by political subdivisions.
- Specifies that a motor transportation company that engages in the towing of disabled or wrecked vehicles but not to the exclusion of other activities is subject to regulation by the Public Utilities Commission of Ohio and is not subject to licensing and regulation by political subdivisions.

Unlicensed tow trucks

- Eliminates a prohibition against an owner of a private tow-away zone using unlicensed tow trucks if the property is located within a municipal corporation that licenses tow trucks.

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CONTENT AND OPERATION

Disposition of towed vehicles

Background

Current law authorizes law enforcement officers to order abandoned vehicles to be towed in the following four situations:

(1) Vehicles (other than abandoned junk vehicles) left on private residential or private agricultural property without permission for four hours or more;

(2) Vehicles (other than abandoned junk vehicles) that have been left at a repair garage or place of storage for a longer period than that agreed upon and upon the complaint of the owner of the garage or place of storage;

(3) Vehicles (including abandoned junk vehicles) that have come into the possession of law enforcement as a result of the performance of law enforcement duties; and

(4) Vehicles (including abandoned junk vehicles) that have been left on a public street for more than 48 hours or immediately if the vehicle obstructs traffic. (Secs. 4513.60(A)(1) and 4513.61.) (See **COMMENT 1**.)

Current law also authorizes the establishment of private tow-away zones. Any unauthorized vehicle may be removed from a private tow-away zone provided the zone is marked with specified, visible signs. The property owner who has had a vehicle removed from a private tow-away zone must notify the local law enforcement authorities of its removal.

Whenever a vehicle is removed under (1) or (2) above, the sheriff or chief of police is directed to use a private tow company whenever possible. Under these circumstances and also when a vehicle is removed from a private tow-away zone, the person may reclaim the vehicle upon payment of towing charges of not more than \$90 and storage charges of not more than \$12 per 24-hour period for most noncommercial vehicles (sec. 4513.60(E)). Vehicles ordered into storage under these circumstances that are unclaimed for 30 days must be disposed of at the order of the appropriate local law enforcement official to a motor vehicle salvage dealer or scrap metal processing facility, or to any other facility owned by or under contract with the local government for vehicle disposal. The vehicles also may be sold at public auction. Any money from the disposition of an unclaimed motor vehicle that exceeds the removal and storage expenses is credited to the general fund of the appropriate local government. (Sec. 4513.62.) (See **COMMENT 2**.)

Whenever a vehicle is removed under (3) or (4) above, the sheriff or chief of police must designate the place of storage. The sheriff or chief must have a search made of the records of the Bureau of Motor Vehicles (BMV) to find the vehicle owner and any lienholder. The sheriff or chief then must notify the owner or lienholder that the vehicle will be declared a nuisance and disposed of if not claimed within ten days of the date of mailing of the notice. The owner or lienholder may reclaim the vehicle upon payment of any expenses or charges in removing and storing the vehicle. Unlike vehicles removed from private property, current law does not limit the towing and storage charges for vehicles removed in these circumstances. The owner or lienholder also may be liable for a processing fee of \$25 if it is reclaimed after the owner of the place of storage caused the BMV record search to be conducted and sent the required notice. (Sec. 4513.61.) Unclaimed vehicles are disposed of as described above, either to a motor vehicle salvage dealer or scrap metal processing facility, or to any other facility owned by or under contract with the local government for vehicle disposal, or at public auction. Again, any money from the disposition of an unclaimed motor vehicle that exceeds the removal and storage expenses is credited to the general fund of the appropriate local government. (Sec. 4513.62.)

Any vehicle that is unclaimed for ten days or more following notice to the owner or lienholder and that has been extensively damaged, including missing wheels, tires, motor, or transmission, is apparently inoperable, and has a fair market value of \$1,500 or less, may be disposed of by law enforcement immediately as an abandoned junk motor vehicle (sec. 4513.63, not in the bill).

Overview of the bill

In general, the bill establishes collection methods for motor vehicle towing companies and other persons who tow or store a vehicle at the request of law enforcement. The bill applies to each of the four situations described above under "**Background**" currently authorizing law enforcement to order vehicles to be towed. The bill also applies to vehicles removed from private tow-away zones. (Secs. 4513.60(A)(1) and (E) and 4513.61.) The collection methods established by the bill include allowing the towing company or other person to have the BMV record search conducted, allowing the towing company or other person to obtain title to an unclaimed vehicle, and allowing the towing company or other person to request the Registrar of Motor Vehicles to prevent the vehicle owner from registering another vehicle for five years unless the vehicle owner pays specified outstanding expenses and charges.

Law enforcement jurisdiction over towed vehicles

Under the bill, within 72 hours after ordering an abandoned vehicle into storage, the sheriff, chief of police, or state highway patrol must give written

notice to the private tow truck operator, towing company, or other person in possession of the vehicle stating whether or not the law enforcement office wishes to retain jurisdiction over the motor vehicle. If the law enforcement office decides to retain jurisdiction over the vehicle, they may remove it from the towing company or other person. If the law enforcement official retains jurisdiction over the vehicle, the official proceeds as under current law. The law enforcement official must conduct a search of BMV records to identify the owner and any lienholder. The owner or lienholder may reclaim the vehicle upon payment of any expenses or charges that the county, municipal corporation, township, township police district, or state highway patrol incurred in its removal and storage. (Sec. 4513.61.)

Under the bill, law enforcement officials may dispose of vehicles that are unclaimed for 14 days after mailing the notice to the owner or lienholder (sec. 4513.61(C)). The bill specifies that the disposal requirements of current law apply to vehicles over which the sheriff, chief of police, township or township police district, or highway patrol retains jurisdiction. The disposal must be to a motor vehicle salvage dealer or scrap metal processing facility, or to any other facility owned by or under contract with the local government for vehicle disposal, or at public auction. Any money from the disposition of an unclaimed motor vehicle that exceeds the removal and storage expenses is credited to the general fund of the appropriate local government or to the state treasury to the credit of the general revenue fund if the highway patrol disposes of the vehicle. (Sec. 4513.62.)

Towing or storage company jurisdiction over towed vehicles

If a law enforcement official relinquishes jurisdiction over a motor vehicle that was ordered into storage, the bill establishes procedures for the towing or storage company to notify the owner or lienholder and dispose of the vehicle if it remains unclaimed. These procedures apply to vehicles left on private property without permission, vehicles the owner of a repair garage or place of storage requests to be removed because they have been left for a longer period than that agreed upon, vehicles that have come into the possession of law enforcement as a result of the performance of law enforcement duties, and vehicles that have been left on a public street for more than 48 hours or that constitute a traffic obstruction, and vehicles that have been removed from a private tow-away zone (secs. 4513.60(E) and 4513.621).

Notice. Under the bill, when a towing company or other person is notified that law enforcement officials are relinquishing jurisdiction over the vehicle, the towing company or other person immediately must cause a search to be made of the BMV records to identify the owner and any lienholder of the motor vehicle. The bill specifies that if the search reveals an outstanding lien on the motor vehicle, the company or other person must notify the lienholder in the same

manner as an owner (sec. 4513.621(E)(2)). The company or other person must send a notice to the owner and any lienholder of record at each person's last known address, by certified mail with return receipt requested. The notice must do all of the following:

(1) State that the sheriff, chief of police, or state highway patrol has relinquished jurisdiction over the vehicle to the company or other person;

(2) State that the vehicle may be disposed of if not claimed within 14 days *of the date of mailing of the notice* or if other arrangements are not made that are acceptable to both parties;

(3) Describe in detail the method by which the owner or lienholder may claim the vehicle, including all expenses and charges to be paid, the acceptable method of payment, the hours during which the vehicle may be claimed, and the acceptable proof of ownership;

(4) State that the owner may not be eligible for the issuance of a certificate of registration for any motor vehicle owned or leased by the owner, if the owner fails to pay the expenses or charges incurred in the removal or storage of the motor vehicle. (Sec. 4513.621(A) and (B).)

Expenses and fees to reclaim a vehicle. The owner or lienholder of the vehicle may reclaim it upon payment of the expenses or charges incurred in its removal and storage and presentation of proof of ownership, which may be evidenced by a certificate of title to the vehicle. The bill requires the owner or lienholder to pay the following expenses or charges before the company or other person releases the vehicle to the owner or lienholder:

(1) Towing charges;

(2) Storage charges incurred by the company or other person before the sheriff, chief of police, or state highway patrol relinquished jurisdiction over the vehicle;

(3) Storage charges of not more than 30 days incurred by the company or other person after the company or other person notifies the owner or lienholder that the vehicle is in its possession until the owner or lienholder reclaims the vehicle or the company or other person disposes of the vehicle;

(4) Any postal costs the company or other person incurred in sending mail as certified mail, plus the cost of any associated return receipts;

(5) An additional processing fee of \$25 if the owner or lienholder of the vehicle reclaims it after the company or other person conducted a search of the



BMV records and sent the notice to the owner or lienholder. (Sec. 4513.621(C) and (D).)

Certificates of title to unclaimed vehicles. If the vehicle remains unclaimed by the owner or lienholder for 14 days after the mailing of the notice, and the towing company or other person has received the signed receipt from the certified mail or has been notified that the delivery was not possible, the bill allows the company or other person to obtain a certificate of title to the motor vehicle in the company or person's name. (Sec. 4513.621(E)(1).)

The towing company or other person may obtain a certificate of title by executing an affidavit certifying that all of the requirements of the bill have been met including the proper notice, proof of delivery or failure, and the passage of the 14 days. Specifically, the affidavit must set forth all of the following: (1) the length of time the motor vehicle has remained unclaimed, (2) the expenses incurred relative to the motor vehicle, (3) the value of the vehicle as determined by publications of the National Auto Dealer's Association, (4) that a notice to remove the vehicle has been mailed to the titled owner and lienholder, if known, by certified mail, return receipt requested, and (5) that a search of the BMV records has been made for outstanding liens on the motor vehicle. Under the bill, no affidavit may be executed or filed until after a search of the BMV records has been made. (Sec. 4513.621(E)(2).)

When the towing company or other person presents any clerk of a court of common pleas with the affidavit showing compliance with all requirements, the bill requires the clerk to issue a certificate of title, free and clear of all liens and encumbrances, to the company or person if the vehicle has a value of \$10,000 or less (sec. 4513.621(F)(1)). If the vehicle has a value of more than \$10,000, the clerk must send a notice by certified mail to the owner and any lienholder of record. The notice must state that the owner or lienholder has 14 days from the date of the mailing of the notice to contact the clerk. If the owner or lienholder contacts the clerk within 14 days, the owner or lienholder has an additional 72 hours to pay the expenses or charges described above and claim the vehicle. If the owner or lienholder fails to contact the clerk within 14 days or fails to pay the expenses and charges and claim the vehicle within the additional 72 hours, the clerk must issue a certificate of title, free and clear of all liens and encumbrances, to the company or other person in possession of the vehicle (sec. 4513.621(F)(2)).

At the time the clerk issues a certificate of title, any lienholder's lien becomes invalid (sec. 4513.621(G)). However, no clerk may issue a certificate of title transferring ownership of a motor vehicle from the owner who fails to claim it until the clerk receives the affidavit described above and at least 30 days have passed since the vehicle was ordered into storage (sec. 4513.60(E)).

The bill authorizes a tow truck operator, towing company, or other person to bring a civil action in an appropriate court to recover the outstanding expenses and charges. If there are outstanding expenses, these actions may be pursued regardless of whether the company or other person obtained a certificate of title. Additionally, the operator, company, or other person may request the Registrar to prohibit the vehicle owner from registering, renewing, or transferring the registration of any vehicle. (Sec. 4513.621(H).) (See **COMMENT 3**.)

Blocking of registration. If the vehicle owner fails to pay the expenses and charges that the towing company or other person is authorized to collect (see "**Expenses and fees to reclaim a vehicle**"), the company or other person may notify the Registrar of that fact and request the Registrar to prohibit the person from registering other vehicles. The notice to the Registrar must be given not earlier than 14 days nor later than three years after the date the owner was notified that the company or other person was in possession of the vehicle. The company or other person also must give the Registrar proof that the required notice was mailed. The notice must be in a form and manner, and contain such additional information, as the Registrar prescribes. (Sec. 4513.622(A).)

When the Registrar receives the notice described above and proof of mailing, the bill specifies that neither the Registrar nor any deputy registrar may accept any application for the registration, registration renewal, or transfer of registration of any motor vehicle owned or leased by the person named in the notice for five years following receipt of the notice unless the notice is canceled. However, the prohibition against accepting a registration application does not apply if the person making the application is a licensed motor vehicle leasing dealer or is a motor vehicle renting dealer and is applying to register a vehicle in that capacity (sec. 4513.622(E)). If the Registrar or a deputy registrar refuses a person's registration application, the Registrar or deputy registrar must inform the applicant that no such application may be accepted unless the notice is canceled. The Registrar or deputy registrar also must inform the applicant of the methods for obtaining the cancellation of the notice. (Sec. 4513.622(B) and (C).)

The Registrar must cancel a registration block and may accept a registration application from the person named in the notice upon the occurrence of any of the following:

- (1) The expiration of five years from the date of the notice;
- (2) Receipt of a copy of a registration release; or
- (3) Receipt from the applicant of (a) proof in a form acceptable to the Registrar showing that the applicant was not the owner of the vehicle at the time the vehicle was towed or (b) a copy of a civil complaint involving the vehicle or

the towing and storage charges filed by the applicant or the towing company or other person who filed the notice with the Registrar. (Sec. 4513.622(D).)

The bill authorizes the Registrar to adopt any forms and rules that are necessary to carry out the Registrar's duties concerning blocking a person's registration and canceling the block (sec. 4513.622(F)).

Registration release. The tow truck operator, towing company, or other person who filed the notice with the Registrar immediately must issue a registration release if the following expenses and charges are satisfied: (1) towing charges, (2) storage charges incurred by the company or other person before law enforcement relinquished jurisdiction over the vehicle, (3) storage charges of not more than 30 days incurred after the notification was sent to the owner or lienholder by the company or other person that the vehicle was in their possession, (4) any actual costs of disposing of the vehicle to a salvage dealer that the company or other person is able to document, (5) any postal costs incurred in the certified mailing, plus the cost of any associated return receipt, and (6) a \$25 processing fee for the costs of the company or other person in searching the BMV records. (Sec. 4513.623(A)(1).)

The expenses and charges are satisfied if the person pays the specified expenses and charges to the towing company or other person or if the company or other person obtained title to the vehicle and the value of the vehicle declared in the affidavit presented to the clerk of courts exceeds the specified expenses and charges (sec. 4513.623(A)(2)). If the expenses or charges are satisfied by either of the means, or if the person named in the notice sent by the company or other person is able to demonstrate a lack of proper notification (sec. 4513.623(B)), the towing company or other person must issue the registration release in duplicate, on a form provided by the Registrar. One copy of the release must be delivered to the Registrar and one copy must be delivered to the person who was the subject of the notice. (Sec. 4513.623(C).)

State Highway Patrol

Current law is not consistent in references to the state highway patrol in regard to the towing, storing, and disposal of abandoned vehicles. The bill clarifies that the state highway patrol, as well as a sheriff and a chief of police, may order vehicles to be towed and stored. The highway patrol may elect to retain jurisdiction over a towed vehicle and may order the disposal of an unclaimed vehicle in its possession. (Secs. 4513.61 and 4513.62.)



Regulation of tow trucks by the Public Utilities Commission

Background

Under current law, the Public Utilities Commission (PUCO) regulates the operation of for-hire motor carriers (*see generally*, R.C. Chapter 4921.).

General effects of PUCO regulation. Among other requirements, a motor transportation company that is regulated by PUCO must do all of the following: (1) register annually and obtain a certificate of public convenience and necessity, (2) pay an annual tax determined by whether it is transporting persons or property or both, or whether it is a commercial tractor, (3) comply with the insurance, inspection, audit, and safety rules of the PUCO, (4) in accordance with PUCO rules, restrict a driver's hours of service and use only drivers who qualify by passing a road test, passing a medical examination, submitting to drug and alcohol testing, and having a driving record free of disqualifying offenses, and (5) use vehicles that meet equipment standards and are appropriately marked with required information.

In general, if a motor transportation company is subject to PUCO regulation, all fees, license fees, annual payments, license taxes, or other taxes (except the general property tax) charged to such company by local authorities such as municipal corporations, townships, counties are "illegal." If a motor transportation company complies with PUCO laws and rules, "all local ordinances, resolutions, by-laws, and rules in force shall cease to be operative as to such company, except that such local subdivisions may make reasonable local police regulations within their respective boundaries not inconsistent with such sections." (Sec. 4921.25, not in the bill.)

Additional effects of being subject to PUCO regulation include (1) potential civil penalties for violation of the PUCO rules with fines of not more than \$10,000 for each day of a violation of specified PUCO rules, including the safety rules (sec. 4905.83, not in the bill) and (2) sales tax exemptions for the vehicles and parts (See **COMMENT 4**).

Tow truck exclusion. Vehicles "engaged in the towing of disabled or wrecked motor vehicles" generally are excluded from the definition of a "motor transportation company" and thus are excluded from regulation by the PUCO as described above. However, vehicles that also engage in towing vehicles that are not disabled or wrecked (for example, towing vehicles that are illegally parked) are within PUCO regulatory authority. A company that operates exclusively within the limits of a municipal corporation and contiguous municipal corporations also is excluded from the definition of a motor transportation company and is not subject to PUCO regulation (sec. 4921.02(A)(2)).

The bill

The bill retains the current exemption for vehicles "engaged in the towing of disabled or wrecked motor vehicles," but specifically states that the exemption is limited to vehicles engaged *exclusively* in such towing activities (sec. 4921.02(A)(8)).

The bill expressly states the effect of this change in regard to regulation by local governments. Under the bill, any person or business that is engaged exclusively in the towing of disabled or wrecked motor vehicles is not subject to regulation by the PUCO as a for-hire motor carrier, "but may be subject to an ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow disabled or wrecked motor vehicles." Also, any person or business that is engaged in the towing of disabled or wrecked motor vehicles but does not do so to the exclusion of all other activities, is subject to regulation by the PUCO as a for-hire motor carrier. When such a person or business is regulated by the PUCO, they are not, under the bill, "subject to any ordinance, rule, or resolution of a municipal corporation, county, or township that provides for the licensing, registering, or regulation of entities that tow disabled or wrecked motor vehicles." (Sec. 4921.30.)

Municipal licensing of tow trucks

Current law specifies that if a municipal corporation requires tow trucks and tow truck operators to be licensed, no owner of private property located within the municipal corporation may use an unlicensed tow truck or unlicensed tow truck operator to remove a vehicle from a private tow-away zone. Violation of this is a minor misdemeanor. The bill removes the prohibition against using unlicensed tow trucks under these circumstances and eliminates the penalty for using unlicensed tow trucks. (Secs. 4513.60(B)(3) and 4513.99(A).) (See **COMMENT 4**.)

COMMENT

1. "Abandoned junk vehicles" are treated differently under current law than other abandoned vehicles. Under R.C. 4513.63 (not in the bill), an abandoned junk motor vehicle means any motor vehicle that meets all of the following requirements: (1) has been left for 48 hours or longer on private property without permission or on a public street or other property or the right-of-way of any road or highway, (2) is three years old, or older, (3) has been extensively damaged, including missing wheels, tires, motor, or transmission, (4) is apparently inoperable, and (5) has a fair market value of \$1,500 or less.

Abandoned junk motor vehicles may be disposed of immediately to a salvage dealer or a scrap metal processing facility or to any other facility owned by or under contract with a local government for the disposal of vehicles. Any moneys arising from the disposal of an abandoned junk motor vehicle must be deposited in the general fund of the county, township, or the municipal corporation, as the case may be.

2. If the owner of a repair garage or place of storage does not request law enforcement to remove unclaimed vehicles, R.C. 4505.101 (not in the bill) authorizes such an owner to obtain title to an unclaimed vehicle valued at less than \$2,500. When the owner of the garage or storage facility receives title to the vehicle, the value of the motor vehicle, less expenses incurred by the owner, is paid to the Clerk of Courts for deposit into the county general fund.

3. Unlike the disposal of vehicles by law enforcement officials and the disposal of vehicles valued at less than \$2,500 by repair garages or storage facilities, the bill does not address the distribution of any money realized in the disposition of the vehicle that exceeds the amount of the expenses and charges owed to the towing company or other person (compare secs. 4505.101, not in the bill, and 4513.62).

4. The sales tax does not apply to "[t]he sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire" (sec. 5739.02(B)(32), not in the bill). "Highway transportation for hire" is defined for sales tax purposes to mean the transportation of personal property belonging to others for consideration by "[t]he holder of a permit or certificate issued by this state or the United States authorizing the holder to engage in transportation of personal property belonging to others for consideration" (sec. 5739.01(Z), not in the bill).

HISTORY

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