



H.B. 187

127th General Assembly
(As Introduced)

**Reps. Reinhard, Adams, Combs, Domenick, Flowers, Gibbs, Peterson, Setzer,
Uecker, Webster, Zehringer**

BILL SUMMARY

- Enacts a new towing law providing for PUCO regulation of "towing companies," but not as public utilities.
- Requires the PUCO to establish a certification program for towing companies and imposes certain duties and obligations on certificate holders.
- Restores local authority to regulate a towing company, but only if that action is not in conflict with the public utility motor transportation law and the new towing law.
- Removes existing law provisions that prohibit an owner of private property, located within a municipal corporation that licenses towing, from removing or causing the removal and storage by an unlicensed truck or operator of any vehicle illegally parked in a private tow-away zone and that establish a related criminal penalty.
- Expands the kind of proof of identification required for a person to retrieve a vehicle placed in storage by a county sheriff or municipal or township police because it was parked on residential or agricultural property without permission.
- Exempts the property owner and a tow truck operator or towing company from a prohibition in current law against removing a vehicle from a private tow-away zone in violation of the abandoned vehicles law, and expressly prohibits such an operator or company from removing any vehicle from a private tow-away zone other than in accordance with a

provision of the abandoned vehicles law that authorizes removal of a vehicle parked without a property owner's consent.

CONTENT AND OPERATION

The bill makes changes in current abandoned vehicles law, as explained in the last section of this analysis, entitled "*Towing under the abandoned vehicles law.*" Also, the title of the bill states its intent to provide for the regulation of towing companies.

Regulation of towing companies

Background

Public utility transportation law in R.C. Chapters 4921. and 4923. was originally conceived as law governing two types of business entities: common carriers engaged in transportation of persons or property over public highways in Ohio and contract carriers. The difference between the two is that a common carrier holds itself out to serve the public in general, and a contract carrier provides private service (a contract carrier, for example, could be a business that provides trucking service exclusively for a particular grocery store chain (and not to the general public)).

The statutory name for a common carrier engaged in the transportation of persons or property over public highways in Ohio is a "motor transportation company," and for a contract carrier, a "private motor carrier." The PUCO's authority to regulate motor transportation companies appears in R.C. Chapter 4921., and to regulate private motor carriers, in R.C. Chapter 4923. (Motor transportation companies were subject to more rigorous regulation compared to private motor carriers, govern that the former were serving the general public.) In addition, R.C. 4923.20 recognizes a third type of entity for purposes of extending PUCO regulation of hazardous materials transportation regulation: a not-for-hire private motor carrier.

The historical regulation of motor vehicle towing is complicated, in part because of statutes not further clarified by the bill (see **COMMENT 2**). Also, regulation was possible on the local level. An implied interest of the bill is to expand the scope of regulation to ensure consumer protection. There has been some concern that recent, statutory removal of local regulation, combined with a particular regulatory exemption in public utility law, has allowed some towing companies to avoid any oversight.

The PUCO describes its current regulation of tow trucks as follows:

HB 87 removes the exemption for tow trucks hauling wrecked or disabled vehicles. They now fall under Public Utilities Commission of Ohio (PUCO) jurisdiction under Ohio Revised Code (ORC) 4921.07 and ORC 4921.02.

Just like motor carriers that haul everything from produce to hazardous materials, for-hire tow trucks operating on Ohio's roadways must register with the PUCO. For-hire towing companies must also follow federal motor carrier safety regulations governing maintenance and repair, record keeping, driver licensing, drug and alcohol testing, and hours of service. The PUCO conducts regular inspections to ensure that tow truck operators are in compliance with the federal rules and assesses fines when violations are detected.

Several categories of tow truck operators are exempt from PUCO registration requirements and federal motor carrier safety regulations, including:

- Owners of tow trucks used for private business and not for-hire (This category includes salvage yards hauling only vehicles purchased for salvage and companies that operate tow trucks to service fleet vehicles.).
- For-hire tow truck companies that operate entirely within one or more contiguous municipal areas.
- Government agencies.

The PUCO does not have the authority to set towing rates or vehicle impoundment fees and does not regulate the customer service quality or operating boundaries of tow truck companies.¹

¹ See <<http://www.puco.ohio.gov/PUCO/IndustryTopics/Topic.cfm?id=4520>>.

The PUCO's web site states that it currently registers more than 1,000 towing companies as motor carriers.²

The bill's towing regulation provisions

"Towing company" is used as a generic term in the body of this analysis (see **COMMENT 1**). The bill authorizes the PUCO to establish a certification program for towing companies, adopt related rules, and enforce a certificate holder's compliance with the new towing law it enacts in R.C. Chapter 4925. (There is no express provision in the bill that clarifies how the certification program relates to the PUCO's current registration program applicable to towing companies.)

Regulatory status of a towing company (R.C. 4921.04, 4921.30, 4925.02, and 4925.04(F)). The bill states that, except as otherwise provided in the new towing law, a towing company is not a "public utility."

It also states that, except as otherwise provided in the new towing law, a towing company is subject to continuing common carrier motor transportation law (R.C. 4921.02 to 4921.32) and to all other provisions of the Revised Code that are applicable to a motor transportation company that is subject to that law and is subject to statutory provisions regarding safety rules adopted by the Department of Public Safety, bus transportation of school children, vehicle licensing and registration by the Department of Public Safety, enforcement of highway and other laws by the State Highway Patrol, and inspections by the Patrol's Motor Carrier Enforcement Unit (R.C. 4506.22, 4511.78, 5502.01, 5503.02, and 5503.34, respectively).

Under the bill, the PUCO can investigate the conduct of any certificate holder and take any and all action necessary to ensure compliance (presumably, compliance with the new towing law and PUCO rules and orders). The investigation must be conducted in accordance with the new towing company law and the PUCO rules.

Regarding local authority over towing companies, the bill restores certain authority removed by the 2003-2005 biennium transportation budget bill. That act enacted a provision providing that a towing company is subject to PUCO regulation as a for-hire "motor carrier" under R.C. Chapter 4921., and declared that such a company is not subject to a municipal, township, or county law providing for licensure, registration, or regulation. The bill amends that provision to, in effect, restore local authority regarding regulation (but not licensing and

² See <<http://www.puco.ohio.gov/PUCO/Consumer/information.cfm?id=6256>>.

registration), provided the local authority exercised does not conflict with any provision of R.C. Chapters 4921. and 4925. or any rules adopted under those chapters.

PUCO rulemaking (R.C. 4921.04 and 4925.06). The bill amends PUCO authority under current motor transportation company law to adopt rules affecting public utility motor transportation companies notwithstanding the provisions of any municipal, township, or county law, license, or permit and providing that the PUCO rule prevails in the case of a conflict. The bill extends this grant of authority to non-utility towing companies under the bill.

In addition, the bill *authorizes* the PUCO to adopt rules that are not inconsistent with "applicable federal law" (although, notably with respect to (7) and (10) immediately below, for example, the bill does not require rules to be consistent with its own provisions).

The bill also *requires* that the rules at a minimum provide for (1) disclosure of rates and charges for service, (2) minimum content of invoices, (3) required safety equipment for towing vehicles, (4) permissible forms of payment for services, (5) requirements for hours of operation during weekdays and weekends that specify at a minimum the hours during which an owner or operator may reclaim a towed or stored vehicle, (6) requirements for access to a towed or stored vehicle by an owner or operator to enable the person to retrieve personal property, (7) uniform standards and guidelines by which a person may evidence proof of ownership or right to possession of a motor vehicle that has been towed or stored, (8) standards for display of a certificate number, (9) minimum levels of liability and cargo insurance, (10) suspension and revocation of certificates, and (11) any other provisions the PUCO determines necessary and proper.

Certification requirement (R.C. 4925.03 and 4925.04(D)). The bill requires the PUCO, not later than six months after the bill's effective date, to establish a certification system for towing companies. Such a company is prohibited from operating unless it holds a certificate beginning on the effective date of the PUCO order establishing the certification system. (The bill does not contain a transition provision such as one allowing a company to continue to operate until its certificate is issued.) Certification is valid for one year and can be renewed.

Certification process (R.C. 4925.04 (A) and (B)). To receive certification, a company must submit a completed application. The standard for the PUCO's issuance of certification is that "proper certifications" have been made in the application.

The bill requires that the application must be substantially the same as that prescribed by the PUCO under existing law for a certification of public convenience and necessity by a motor transportation company (R.C. 4921.08 and 4921.09, not in the bill). For that certification, an application must show the location of its principal office or place of business and provide full information concerning physical property to be used. If operation is to be between fixed termini and over a regular route, an application also must show the proposed time or service schedule, the applicable rates, the complete route over which the application desires to operate, including the number of miles of the route in each municipal corporation and county, and a map of the highways and public places on its route. If operation is over an irregular route, the application must show the applicable rates.

Additionally, under the bill, the application for certification as a towing company must include a certification by responsible company officials of all of the following: (1) the applicant's worker's compensation and unemployment compensation coverages are current, (2) its financial responsibility relating to liability and cargo insurance coverage is in accordance with PUCO rules under current motor transportation company law and the bill, (3) the applicant is not insolvent, (4) the applicant or, if it is a corporation or partnership, any officer, director, or partner has not been convicted of fraud or had a civil judgment rendered against it for fraud, (5) if the applicant was an officer, director, or partner of another towing or vehicle storage business, such business was not convicted of or had a civil judgment rendered against it for fraud during the person's tenure with that business.

Application fee (R.C. 4925.04(G)). The application fee for a certificate must be based on the applicant's gross revenue in the prior year for the intrastate towing of motor vehicles. The PUCO must adopt an order establishing ranges of gross revenue and the fee for each range. Fee revenue must be deposited to the credit of the Public Utilities Fund and be used for the purposes of administering and enforcing the new towing company law. (Current R.C. 4923.12, under which the fund was created, prescribes other directions for fund revenue.)

Certification revocation or suspension (R.C. 4925.04(C) and (D)). The PUCO can revoke a certification after 15-days' advance notice (although not necessarily in writing) to the certificate holder and opportunity to be heard. The standard for revocation is that the holder is not in compliance with the new towing company law or rules or orders adopted or issued under that law.

That same standard applies to PUCO suspension of a certification (as a consequence, there is no statutory delineation of when the PUCO should pursue suspension or revocation). For a suspension, the PUCO must give written notice (although not specifically in advance) and provide an opportunity for hearing.

Specific duties of a certificate holder (R.C. 4925.05(A), (B), and (D)). In addition to duties imposed as described at the beginning of "**PUCO authority**," above, the bill imposes certain duties and obligations on a certificate holder. Specifically, it requires a certificate holder to (1) make its current certificate available for public inspection during normal business hours, (2) present each customer, in plain and clear language pursuant to a PUCO-prescribed form, information, written, outlining a customer's rights, (3) include its certificate number on all advertising, written estimates, contracts, and invoices pursuant to rules adopted by the PUCO, (4) annually file with the PUCO its fees and charges for towing motor vehicles *and* for storing motor vehicles (see **COMMENT 3**), (5) charge for storage on the basis of a 24-hour period or any fraction thereof and "[divide] between inside and outside storage," and (6) provide customers an itemized invoice detailing all charges and fees for towing and storage and maintain at least one copy on file at its principal place of business for at least two years after the date of service.

Too, the bill prohibits a certificate holder (7) towing a vehicle unless the vehicle it uses possesses at least the minimum capacity needed to tow the vehicle safely, (8) charging an amount in excess of the charge that it would impose for using a towing vehicle that possesses the minimum capacity needed to perform the towing service safely, and (9) providing wheel-lift or roll-back towing unless a law enforcement officer or the motor vehicle owner or operator requests that service or unless a recognized industry publication or manufacturer has specified that such towing is necessary for proper towing of the vehicle.

The bill, however, broadly states that *none* of those nine requirements and prohibitions will apply to a towing company when towing a vehicle with the advance consent of the vehicle owner.

In an additional provision relating to rates and charges, the bill authorizes a certificate holder to charge a rate other than that provided for in its filed tariff if (1) the towing occurs at the request of a law enforcement officer employed by the law enforcement agency of a political subdivision pursuant to a contract between the certificate holder and that political subdivision and (2) the contract prescribes the amounts of the fees and charges to be imposed (see **COMMENT 4**).

Penalties and procedures (R.C. 4925.03(C), 4925.05(C), and 4925.99). The bill prohibits a towing company from violating or failing to perform a duty imposed by new towing law or any PUCO rule or compliance order under the law.

Under the bill, any person that the PUCO determines, by a preponderance of the evidence and after notice and an opportunity to be heard, has violated a provision of the new towing law is liable to the state for a forfeiture of not more than \$10,000 for each day of each violation. (The only exception is where the

violation is one for which a forfeiture is provided under hazardous materials transportation law (R.C. 4905.83, not in the bill.) (The bill does not, however, provide for the assessment of forfeiture in the event of a violation of a PUCO rule or order under the new towing law.)

This bill limits the authority it grants to the PUCO to assess a forfeiture as follows: (1) if the violation is discovered during a roadside inspection, the PUCO must be consistent with the recommended fine or penalty schedule and recommended civil penalty procedure adopted by the Commercial Vehicle Safety Alliance,³ but the amount shall not exceed \$1,000, and (2) if the violation is discovered during a compliance review of fixed facilities, the PUCO must be consistent with the civil penalty guidelines adopted by the United States Department of Transportation's Federal Highway Administration, but the amount cannot exceed \$10,000.

Too, the bill provides that the amount of any forfeiture can be compromised at any time prior to its collection, and requires the PUCO to adopt rules governing the manner in which the amount of forfeiture can be established by agreement prior to the hearing on the forfeiture.

The Attorney General, upon written request of the PUCO, must bring a civil action in the Court of Common Pleas of Franklin County to collect the forfeiture assessed. The PUCO must account for the forfeitures assessed and pay them to the State Treasurer pursuant to existing motor transportation law (R.C. 4923.12).⁴ Also upon the PUCO's written request, the Attorney General must

³ According to its web site (<<http://www.cvsa.org/aboutus/01index.cfm>>), the Commercial Vehicle Safety Alliance's (CVSA) mission is to promote commercial motor vehicle safety and security by establishing effective transportation safety standards for motor carriers, drivers, vehicles, and inspectors through compliance, education, training, and enforcement programs. CVSA is a not-for-profit organization of state, provincial, and federal officials responsible for the administration and enforcement of motor carrier safety laws in the United States, Canada, and Mexico. In addition, CVSA has several hundred associate members including truck and bus companies, industry associations, insurance companies, manufacturers, safety product and service providers, research organizations, commercial vehicle drivers, academia, and individuals dedicated to highway safety.

⁴ Presumably, this means the forfeitures will be treated as if they were forfeitures imposed by R.C. 4919.99, 4921.99, and 4923.99. Under R.C. 4923.12(C), the first received remittances in a fiscal year are deposited to the credit of the Transportation Enforcement Fund created under that division and used to administer the civil forfeiture program of R.C. 4919.99, 4921.99, and 4923.99, until the aggregate credit in the fiscal year equals the appropriation in the fund for the fiscal year less any outstanding unencumbered cash balance from the previous fiscal year. All subsequent forfeitures

bring an action for injunctive relief in that court against any person who has violated or is violating any PUCO order issued to secure compliance with a provision of the new towing law. The Court has jurisdiction to and may grant preliminary and permanent injunctive relief upon a showing that the person has violated or is violating such order and, under the bill, must give precedence to such an action over all other cases.

The bill states that forfeiture proceedings before the PUCO are subject to and governed by existing public utility law (R.C. Chapter 4903.), except as to appeal of forfeiture or an order to secure compliance with a provision of the new towing law. Generally, any party to a proceeding can file an appeal of a PUCO order, an appeal cannot be filed until 60 days after the PUCO's denial of a rehearing or until 60 days after an order upon rehearing, and such an appeal is made directly to the Supreme Court. Under the bill, only the person to whom the order was issued and the PUCO can file an appeal (although it is not clear under what circumstances the PUCO would appeal its own order), the appeal must be filed within 60 days after the PUCO journal entry of the order, and the appeal must be made to the Court of Appeals of Franklin County. As with an appeal to the Supreme Court, the notice of an appeal under the bill must be served, unless waived, upon the PUCO chairperson or, in his or her absence, upon any public utilities commissioner, or by leaving a copy at the PUCO's Columbus office.

The bill grants the Franklin County Court of Appeals exclusive, original jurisdiction to review, modify, or vacate a compliance or forfeiture order. The Court must hear and determine those appeals in the same manner, and under the same standards, as the Supreme Court hears and determines appeals under the existing public utility law. The bill states that the judgment of the Court of Appeals is final and conclusive unless reversed, vacated, or modified on appeal. The bill provides that an appeal must proceed as in the case of appeals in civil actions as provided in the Rules of Appellate Procedure and appeals law (R.C. Chapter 2505.). The PUCO order must be reversed, vacated, or modified on appeal if, upon consideration of the record, the court is of the opinion that the order was unlawful or unreasonable.

Towing under the abandoned vehicles law

(R.C. 4513.60)

The bill removes a provision of existing law that prohibits an owner of private property located within a municipal corporation that licenses tow trucks

received are credits to the GRF. The bill amends R.C. 4923.12 to cross-reference forfeitures imposed under R.C. 4925.99 of the new towing law.

and tow truck operators from removing or causing the removal and storage by an unlicensed truck or truck operator of any vehicle illegally parked in a private tow-away zone and a provision that establishes a criminal penalty (minor misdemeanor) for a violation of that prohibition.

The bill expands the kind of proof of identification required for a person to retrieve a vehicle placed in storage by a county sheriff or municipal or township police because it was parked on residential or agricultural property without permission. Specifically, current law requires that the person must provide a certificate of title or other proof of ownership. The bill provides that such proof may be a form of identification bearing a photograph of the vehicle owner and the vehicle's registration certificate or, in the case of a leased or rented vehicle, a form of identification bearing the lessee's or renter's photograph and a copy of the lease or rental agreement.

Additionally, the bill exempts the property owner from a prohibition in current law against removing a vehicle from a private tow-away zone in violation of the abandoned vehicles law (R.C. 4513.60 to 4513.65).

It also similarly exempts a tow truck operator or towing company. At the same time, the bill expressly prohibits a tow truck operator or towing company from removing any vehicle from a private tow-away zone other than in accordance with a provision of the abandoned vehicles law (R.C. 4513.60(B)(2), unchanged by the bill) that authorizes removal of a vehicle parked without a property owner's consent. A tow truck operator or towing company that violates that prohibition is subject to a first degree misdemeanor.

COMMENT

1. The bill's terminology is not precise regarding its intended regulatory scope. Within the body of the new towing company law (R.C. Chapter 4925.), there are varying references to a "motor transportation company engaged, for hire, in the business of towing motor vehicles over a public highway in this state" (see, for example, R.C. 4925.02); a "motor transportation company" (e.g., R.C. 4925.03(B)); and a "towing company" (e.g., R.C. 4925.05(A)(5)). It can be assumed, however, that the bill intends to regulate any motor transportation company engaged, for hire, in the business of towing motor vehicles over a public highway in Ohio. Whether it intends to so regulate only businesses operating as a common carrier, rather than as a private motor carrier (see **COMMENT 2** below) is unclear.

The bill's definition of "motor transportation company" in R.C. 4925.01(B) does not clarify the bill's regulatory scope. It is broad, since it cross-references the

entire definition of R.C. 4921.02. By doing so, the bill, by its wording, conceivably includes as a motor transportation company not only a company that engages in the business of towing vehicles only within municipal corporations or areas immediately contiguous, but also *any other* motor transportation company (like a trucking company) under R.C. 4921.02 except entities otherwise excluded from that definition. That construction would not seem to be the bill's intent.

The bill's definition of "motor transportation company" is further unclear because of its incorporation of "towing company" as that term is defined in the bill (that is, "any person, firm, copartnership, voluntary association, joint stock association, company, or corporation that is engaged in the towing of motor vehicles in this state.") That definition does not require that an entity be "engaged in the business" of towing. It also does not refer to towing "over a public highway," a concept specially defined for R.C. Chapter 4921. and 4923. in R.C. 4921.02 (and conceivably for R.C. Chapter 4925. to the extent that R.C. 4925.02(A) makes a towing company subject to R.C. 4921.02).

2. Before June 30, 2003 (the effective date of amendments enacted by the 2003-2005 transportation budget bill), the definitions of "motor transportation company" and "private motor carrier" contained two exclusions that pertained to towing businesses, which exclusions resulted in exemption from PUCO regulation under R.C. Chapters 4921. and 4923. First, there was an exemption for any business engaged in the towing of disabled or wrecked motor vehicles. (However, the PUCO apparently could regulate under those chapters a business that towed vehicles that were not disabled or wrecked (for example, a vehicle that was illegally parked).) Secondly, there was an exemption for any business transporting exclusively within a municipal corporation or within immediately contiguous municipal corporations. The likely rationale for this exemption was that a municipal corporation might opt to exercise Home Rule authority to regulate businesses operating within its jurisdiction.

The 2003-2005 biennium transportation budget bill changed that regulatory framework by (1) removing--for Chapter 4921. motor transportation companies *only*--the *first* exemption described above (but retaining the second exemption in R.C. Chapters 4921. and 4923. regarding businesses that operate exclusively within municipal corporations) while also (2) enacting a provision in R.C. 4921.30 that states both that "[a]ny person, firm, copartnership, voluntary association, joint-stock association, company, or corporation. . .that is engaged in the towing of motor vehicles is subject to regulation by the public utilities commission as a for-hire *motor carrier* under" R.C. Chapter 4921. and that such an entity is not subject to any municipal, county, or township licensing, registration, or regulatory law. Presumably, "motor carrier" in this statute equates to "motor transportation company" under Chapter 4921., but note that, by its language, R.C. 4921.30

extends such PUCO regulation not only to businesses but to individuals and not necessarily towing only over public highways.

Thus, it appears that, under present statute, the PUCO has regulatory authority under R.C. Chapter 4921. regarding all individuals and all businesses that tow vehicles anywhere in Ohio (notwithstanding the exemptions remaining in R.C. Chapter 4923.), and that local governments have no regulatory authority except as what may exist under municipal Home Rule and federal law.⁵ In practice, the PUCO has adopted rules under O.A.C. Chapter 4901:2 that contain various nomenclature and definitions depending on the purpose of each rule. In general, however, it seems that PUCO rules governing motor transportation companies/motor carriers are directed at businesses, not individuals.

But, as explained in the body of this analysis, amended R.C. 4921.30 of the bill restores some of the local authority repealed by the 2003-2005 transportation budget act.

3. R.C. 4925.05(A)(4) and (8) establish requirements and restrictions regarding *storage* of motor or towed vehicles, but its definitions of "motor transportation company" and "towing company" in R.C. 4925.01 do not refer to a company that provides storage.

4. Section 4925.05(D) of the bill can be read as implying that a towing company is *required* to charge the rates included in its filed tariff. Nothing else in the bill expressly states such a requirement. It may be that, aside from relying on that implication, the bill is relying also on existing R.C. 4921.23, which under R.C. 4925.02(A) of the bill applies to a towing company. Section 4921.03 states that the rate schedule of a motor transportation company is governed by Ohio law applicable to the rate schedules of railroads. R.C. 4907.28 of Ohio railroad law restricts a railroad to charging the rates specified in a railroad's filed rate schedule (although, as to railroads, this section may be preempted by federal law). (R.C. 4905.32, which applies to public utility motor transportation companies and private motor carriers under R.C. Chapters 4921. and 4923. and limits them to charging only their filed rates will not apply to a towing company by virtue of the bill's statement in R.C. 4925.02(B) that a towing company is not a public utility.)

⁵ In *City of Columbus v. Ours Garage & Wrecker Serv.*, 536 U.S. 424 (U.S. 2002), the U.S. Supreme Court considered federal law (49 U.S.C. 14501(c)(1)) that preempts prescriptions by "a State [or] political subdivision of a State . . . related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." The Court held, in syllabus, that that law "does not bar a State from delegating to municipalities and other local units the State's authority to establish safety regulations governing motor carriers of property, including tow trucks."

HISTORY

ACTION

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