Ohio Legislative Service Commission

Bill Analysis

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H.B. 425

128th General Assembly
(As Introduced)

Reps. Heard, Winburn, Stewart, Yuko, Okey, Domenick, Slesnick, Weddington, Ujvagi, B. Williams, Murray, Hagan, Brown

BILL SUMMARY

- Enacts new law providing for exclusive PUCO regulation of "towing companies," but not as public utilities, and "vehicle storage companies."
- Requires the PUCO to establish a certification system for towing companies and a registration system for vehicle storage companies, and imposes certain duties and obligations on certificate holders and registrants.
- Prohibits political subdivisions from regulating towing companies and vehicle storage companies.
- 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 because it was parked on residential or agricultural property, or in a private tow-away zone without permission.
- Prohibits tow truck operators and towing companies 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.
- Alters the definitions of "contract carrier by motor vehicle," "private motor carrier," and "motor transportation company."

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CONTENT AND OPERATION

Regulation of towing companies under current law

Public-utility transportation law in R.C. Chapters 4921. and 4923. was originally conceived as governing two types of business entities: (1) common carriers engaged in transportation of persons or property over public highways in Ohio and (2) 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. For example, a contract carrier could be a business that provides trucking service exclusively for a particular grocery store chain.

In statute, a common carrier engaged in the transportation of persons or property over public highways in Ohio is termed a "motor transportation company" and a contract carrier is termed a "private motor carrier." The PUCO's authority to regulate motor transportation companies is codified in R.C. Chapter 4921. and the authority to regulate private motor carriers is codified in R.C. Chapter 4923.

The historical regulation of motor-vehicle towing is complicated, in part because of statutes not further clarified by the bill. Also, regulation has been possible on the local level. 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>, select "Tow Truck Regulations."

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

Overview of new regulation under the bill

(R.C. 4921.45, 4921.46, and 4921.48; Sections 3 and 4)

The bill confers exclusive regulatory jurisdiction on the PUCO over the towing and storage services of towing companies and vehicle storage companies. It prohibits regulation of these companies by political subdivisions including licensure, registration, and permitting.[3] The bill defines a "towing company" as any motor transportation company or private motor carrier engaged on an intrastate basis anywhere in Ohio, for hire, in the business of towing, or in the businesses of towing and incidentally storing, a motor vehicle over any public highway in Ohio. The bill defines a "vehicle storage company" as any person (that is not a towing company) engaged in Ohio, in whole or in part, in the business of storing, on any portion of premises located in Ohio and in which the person has a real property interest, any motor vehicle that has been towed by a towing company to those premises for storage. The bill requires the PUCO, within six months of the bill's effective date, to establish by order a certification system for towing companies and a registration system for vehicle storage companies. As of the effective date of the orders establishing the certification and registration systems, no person is permitted to hold themselves out as either a towing company or vehicle storage company without being certified or registered, as applicable. The bill also requires the PUCO to adopt related rules and enforce compliance with the new regulatory requirements.

The bill permits a towing company as defined under the bill and operating in Ohio under a certificate or permit issued prior to the bill's effective date by the PUCO, to continue to engage in business under the terms and conditions of the certificate or permit, provided that the company files an application for a certificate in accordance with the bill not later than one month after the effective date of the PUCO order establishing the certification system. The company may continue to engage in business under its existing certificate or permit until the later of the last day of that month or the effective date of the PUCO's approval or disapproval of the company's application. On that date, the company's existing certificate or permit is to expire.

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

[3] As part of the bill's new authority, it repeals current law (R.C. 4921.30) that generally provides that any entity engaged in the towing of motor vehicles is subject to PUCO regulation as a for-hire motor carrier, and that such an entity is not 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 motor vehicles.

The bill contains similar provisions for any towing company that was exempt from PUCO regulation (see "**Regulation of towing companies under current law**," above), provided that the company files an application for a certificate not later than 90 days after the effective date of the PUCO order establishing the certification system.

Towing companies

Regulatory status of a towing company

(R.C. 4921.47 and 4921.30 (repealed))

The bill states that a towing company is not a "public utility." It also states that, except as otherwise provided in the bill's provisions governing towing, a towing company that is a motor transportation company is subject to continuing common-carrier, motor-transportation-company law (R.C. 4921.01 to 4921.32), all other provisions of the Revised Code that are applicable to a motor transportation company that is subject to that law, and certain other existing laws regarding safety rules adopted by the Department of Public Safety, vehicle licensing, registration, and operation regulation by the Department of Public Safety, enforcement of highway and other laws by the State Highway Patrol, and inspections by the Department of Public Safety's Motor Carrier Enforcement Unit (R.C. 4506.22, 5502.01, 5503.02, and 5503.34, respectively). Likewise, the bill specifies that, except as provided in the bill's provisions governing towing, a towing company that is a private motor carrier is subject to private-motor-carrier law (R.C. 4923.01 to 4923.17), all other provisions of the Revised Code that are applicable to private motor carriers, and the same four existing laws described above regarding towing companies that are motor transportation companies.

Certification of towing companies

(R.C. 4921.49 and 4923.05; R.C. 4923.06 and 4923.07 (repealed))

To receive a towing company certificate or certificate renewal under the bill, a towing company must submit a completed application to the PUCO and pay the application fee set by the PUCO. The fee amount is to provide sufficient revenue to cover the PUCO's costs in carrying out the bill's provisions governing towing companies. The fee revenue must be deposited to the credit of the Public Utilities Fund for maintaining and administering the PUCO. Certificates are to be valid for one year and renewable annually.

For motor-transportation-company applicants, the bill requires that the application 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 applicant operates or 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.[4]

The bill requires that private-motor-carrier applications be substantially the same as that prescribed by the PUCO under law modified by the bill for a permit for a private motor carrier (R.C. 4923.05). For that permit, the bill requires the application to be in writing on blanks furnished by the PUCO, to show the location of the carrier's principal office or place of business, and to provide full information concerning the number, kind, and capacity of motor vehicles to be used. Current law governing private-motor-carrier-permit applications, which is to be removed by the bill, also requires the application to (1) contain the names of the persons, firms or corporations, and their addresses, with whom the applicant has contracted or proposes to contract, (2) have attached an affidavit signed by each such person, firm, or corporation proposing to employ the applicant as its private contract carrier, evidencing that a bona fide special contract of carriage in writing has been entered into and signed by the applicant and the employer, and (3) be accompanied by the contract of carriage. Current permit application law, also to be removed by the bill, specifies that the contract of carriage is effective only upon the granting of the permit. Current law also sets forth a number of requirements for the contract (again, to be removed by the bill): (1) that the contract be bilateral, (2) specification of the transportation service to be rendered for the contracting party employing the carrier, (3) that the service to be rendered must not include transportation from possession or control for the purposes of storage or transportation by the contracting party, (4) specification of the full compensation to be paid to the applicant for its services, (5) specification of the basis upon which rates and charges are computed, (6) provision for a series of shipments during a stated period of time, and (7) that the contract provide that the full compensation for the services rendered or proposed to be rendered be paid to the contract carrier by the other contracting party. Except for the provisions of current law pertaining to private motor carrier permit applications that are retained as described above, the permit process is repealed.

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[4] "Fixed termini" is defined under existing law not proposed to be changed by the bill as the points between which any motor transportation company usually or ordinarily operates, provides, or proposes to operate or provide motor transportation service. A "regular route" is the public highway portion over which the company usually or ordinarily operates. An "irregular route" is the public highway portion over which other operation occurs. (R.C. 4921.02.)

Additionally, under the bill, the application for a towing company certificate 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) the applicant's financial responsibility relating to liability insurance or bond is in accordance with applicable PUCO rules under current motor-transportation-company law and current private-motor-carrier law, (3) the applicant is not insolvent, and (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.

Duties of a certificate holder

(R.C. 4513.60, 4921.47, and 4921.50)

The bill requires a certified towing company to (1) make its current certificate available for public inspection during normal business hours, (2) include its certificate number on all advertising, written estimates, contracts, and invoices, as prescribed in PUCO rules, (3) notify the PUCO, on a form it prescribes by rule and within 15 days after the change occurs, of any change in the location of the company's offices or principal place of business, (4) file at least annually with the PUCO a schedule of fees and charges for towing a motor vehicle and fees and charges for motor vehicle storage incidental to a tow, (5) refrain from charging storage charges under the schedule until after notification is made to local law enforcement when required by the bill, or for any time the storage facility is closed for business, (6) designate storage fees and charges under the schedule based on 24-hour periods or any fraction thereof, and distinguish between inside and outside storage, except for tows requested by county sheriffs or chiefs of police of a municipal corporation, township, or township police district upon complaint of a motor vehicle left on private residential or private agricultural property for at least four hours without permission and tows for parking in a private tow-away zone, (7) obtain the advance, written consent of the owner or operator of the motor vehicle, except for tows requested by a peace officer,[5] or in the case of a tow for parking in a private tow-away zone, (8) present the operator of the motor vehicle to be towed a customer bill of rights (on a PUCO-prescribed form) for the towing service and any storage service it provides at a storage facility, and, in every case, if the operator is not the owner, present or cause to be presented that bill of rights to the owner at the time of the vehicle's recovery from storage, except for tows requested by a peace officer, or in the case of a tow for parking in a private tow-away zone, (9) provide the owner of the towed motor vehicle an itemized invoice detailing the towing and, if applicable, storage

[5] A "peace officer" under the bill is a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, or state highway patrol trooper (R.C. 4921.45).

fees and charges and maintain at least one copy of the invoice at its principal place of business for at least two years after the date of service, except for tows requested by a peace officer, (10) notify the local law enforcement agency with jurisdiction over the location from which the vehicle is towed, within four hours after the towing, including any tow from a private tow-away zone, except for tows requested by a peace officer, or when the owner or operator of the motor vehicle gives advance consent to the tow, (11) include in the notification the date and time of towing, the locations from which and to which the vehicle was towed, the make, model, approximate model year, color, and license plate number of the towed vehicle, and telephone numbers for the towing company and the storage facility, (12) refrain from charging an amount for towing that exceeds the amount that would apply to use of a towing vehicle of the company having adequate, but not greater, capacity to perform the tow safely in terms of public safety and in accordance with the towing vehicle manufacturer's specifications, (13) provide towing service using a towing vehicle having adequate capacity to perform the tow safely in terms of public safety and in accordance with the towing vehicle manufacturer's specifications, (14) refrain from using wheel-lift or roll-back towing service unless a peace officer or the motor vehicle owner or operator requests the service or a recognized industry publication or manufacturer has specified that the service is necessary for proper towing, and (15) refrain from charging an amount for towing or storage at a storage facility other than the schedule amounts, or if a tow is done at the request of a peace officer other than a state highway patrol trooper or at the request of the owner of private property with a private tow-away zone, refrain from charging an amount other than what applies under any towing service contract between the towing company and the political subdivision employing the peace officer or the owner of the private property.

The bill exempts automobile clubs[6] that are towing companies and provide towing and storage service exclusively to members and subscribers from requirements (1), (2), and (4) through (8) above, as long as all fees and charges for towing and storage services are disclosed to members in the membership or subscriber agreement.

[6] The bill defines an "automobile club" as a legal entity that, in consideration of dues, assessments, or periodic payments of money, promises to assist its members or subscribers in matters relating to motor travel or the operation, use, or maintenance of a motor vehicle by supplying services including towing services, emergency road service, indemnification service, guaranteed arrest bond certificate service, discount service, financial service, theft service, map service, or touring service (R.C. 4921.45(A)).

Rules for towing companies

(R.C. 4921.51)

The bill requires the PUCO to adopt rules governing towing companies, consistent with applicable federal law and prescribing, at minimum, all of the following: (1) requisite disclosure of a towing company's rates and charges for towing service and storage service at its storage facility, (2) the form of the customer bill of rights discussed above, (3) requisite permissible forms of payment for towing and storage service, (4) requisite minimum hours of operation for storage facilities, (5) requisite access for an owner or operator of a motor vehicle for retrieving personal effects from the vehicle, (6) acceptable forms to evidence that a towing company is performing a properly authorized tow, (7) uniform standards by which a person must show proof of ownership or right to possession of a vehicle, consistent with the standards described below under "**Towing under the abandoned vehicles law**," (8) standards for requisite display of a towing company's certificate number sufficient to evidence its certification, (9) in accordance with the manufacturer's specifications for the towing vehicle or for any equipment the company uses in towing, requisite minimum safety equipment for towing motor vehicles, including minimum specifications for a wheel-lift and a roll-back tow vehicle, a light slide-back carrier, heavy slide-back carrier, one-ton towing vehicle, two-ton towing vehicle, and three-ton towing vehicle, among other specifications, and (10) any other rules the PUCO determines necessary for consumer protection or public safety relating to a towing company's towing and storage of motor vehicles that do not affect the contractual agreements between an automobile club and its members or subscribers.

Vehicle storage companies

Registration

(R.C. 4921.52)

The bill requires the PUCO to prescribe the form of vehicle storage company registration, which is to be valid for one year and renewable annually. Registration and renewal fees are to be set in such amounts to provide sufficient revenue to the PUCO in carrying out its duties solely with respect to vehicle storage companies under the bill's provisions. The fee revenues must be deposited to the credit of the Public Utilities Fund for maintaining and administering the PUCO.

Duties of vehicle storage companies

(R.C. 4921.53)

The bill requires vehicle storage companies to do all of the following: (1) at the time of recovery of a motor vehicle brought to the company's storage facility by a towing company, present to the person recovering the vehicle a customer bill of rights for the storage service on a PUCO-prescribed form, (2) file at least annually with the PUCO a schedule of fees and charges for storing motor vehicles, (3) not charge storage fees and charges for any time the vehicle storage company's storage facility is closed for business, (4) except when a tow is requested by a peace officer, or in the case of a tow for parking in a private tow-away zone, designate storage fees and charges under the schedule based on 24-hour periods or any fraction thereof, and distinguish between inside and outside storage, (5) at the time of the vehicle's recovery, provide the owner of a motor vehicle towed to its storage facility by a towing company an itemized invoice detailing the storage fees and charges, and maintain at least one copy of the invoice at its principal place of business for at least two years after the termination date of the storage service, and (6) refrain from charging amounts, for storage of a motor vehicle towed to the vehicle storage company's storage facility by a towing company, other than the applicable schedule amounts, or, if a tow is done at the request of a peace officer other than a state highway patrol trooper or at the request of the owner of private property with a private tow-away zone, refrain from charging amounts other than the applicable amounts under any motor vehicle storage contract between the vehicle storage company and the political subdivision employing the peace officer or the owner of the private property.

Rules for vehicle storage companies

(R.C. 4921.54)

The bill requires the PUCO to adopt rules governing vehicle storage companies, limited to the following: (1) requisite disclosure of rates and charges for storing a motor vehicle brought to the company's storage facility by a towing company, (2) the form of the customer bill of rights discussed above, (3) requisite permissible forms of payment for the company's storage service for motor vehicles brought to its storage facility by a towing company (which are to be the same as those for storage service by towing companies), (4) requisite minimum hours of operation, (5) requisite access for the vehicle owner or operator to retrieve personal effects from a stored motor vehicle, and (6) uniform standards by which a person must evidence proof of ownership or right to possession of such a stored vehicle (which are to be the same as the standards required with regard to towing companies as discussed above).

Compliance by towing companies and vehicle storage companies

(R.C. 4921.55 and 4921.99)

The bill authorizes the PUCO to investigate any alleged violation or noncompliance by a towing company or vehicle storage company of any applicable provision of the bill or a rule or order issued under those provisions. The PUCO may then take any action necessary to ensure compliance or remedy the noncompliance. Such action may include assessing and collecting a forfeiture of at least $1,000 but not more than $10,000 for each day of violation,[7] or, as applicable, a suspension or revocation of a certificate or rescission of registration. Suspension, revocation, or rescission is permitted, if, after at least 15 days' advance, written notice to the certificate holder or registrant of the basis for the action and providing an opportunity for a hearing, the PUCO finds that the holder or registrant is violating or has violated one of the bill's provisions or an order as described above.

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 requires tow trucks and tow truck operators to be licensed, 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 removes a provision that establishes a criminal penalty (minor misdemeanor) for a violation of that prohibition.

The bill expands the kind of identification required for a person to retrieve a vehicle towed and placed in storage because it was parked on residential or agricultural property without permission or in a private tow-away zone. 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 the certificate of title or memorandum certificate of title to the motor vehicle on 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.

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

[7] The current law authorizing forfeitures provides for notice and an opportunity for a hearing under existing procedural rules (R.C. 4921.99).

provision of the abandoned vehicles law (R.C. 4513.60(B)(2), generally 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.

Current law requires each county sheriff and each chief of police of a municipal corporation, township, or township police district to maintain a record of motor vehicles that the sheriff or chief orders into storage that were removed from private property in the sheriff's or chief's jurisdiction that is established as a private tow-away zone (of which the sheriff or chief has received notice as required under current law). The bill removes provisions that specify that the private property must be a private tow-away zone, thereby requiring the recording of all vehicles ordered into storage that were removed from any private property in the sheriff's or chief's jurisdiction. The bill also permits a sheriff or chief to arrange for removal of a vehicle by a private tow truck operator or towing company instead of requiring removal "whenever possible" by such operator or company.

Alterations to definitions

Motor transportation company, private motor carrier, and contract carrier by motor vehicle definition changes

(R.C. 4901.01, 4903.01, 4905.01, 4905.03, 4907.01, 4909.01, 4921.01, 4921.02, 4921.03, 4921.36, 4923.01, and 4923.02)

Under Title 49, "private motor carrier" and "contract carrier by motor vehicle" are defined in the same way; both, as discussed above, are in the business of providing private carriage of persons, property, or both, for hire (R.C. 4923.02). They do not serve the public in general. That is the purview of a "motor transportation company," which is, as discussed above, in the business of transporting persons and property, for hire, to the general public (R.C. 4905.03 and 4921.02). Each of the definitions in the Revised Code also provide a long list of activities that are not included as part of their separate businesses. Motor transportation companies, however, are defined primarily by two separate sections of the Revised Code. Each of those sections has slightly different language than the other, yet they appear to intend to create a unified definition as evidenced by the use of both references throughout Title 49 definitional sections.

The bill does a number of things regarding these definitions. First, it defines contract carrier by motor vehicle like motor transportation company (except it does not apply to contract carriers by motor vehicle the list of activities that are not included in the business of motor transportation companies) instead of private motor carrier and

alters all cross-references in Title 49 to conform to the change.[8] Secondly, the bill alters what is included in, and the list of activities that are excluded from, the definitions of motor transportation company and private motor carrier. With respect to the exclusion alterations, the bill appears to be including certain transportation services within single or contiguous municipal corporations as private motor carrier and motor transportation company activities. Also, entities engaged or proposing to engage as private owners or operators of motor vehicles employed or used by private motor carriers or motor transportation companies are no longer to be excluded from being considered private motor carriers under the bill.

The bill also adds any entity engaged or proposing to engage as a towing company as defined by the bill to the list of entities excluded as private motor carriers. This change is made despite the fact that the bill defines a towing company to be either a motor transportation company or private motor carrier. It should be noted, however, that the bill may be distinguishing between private motor carriers that are not towing companies and those that are. Those private motor carriers that are not towing companies would remain subject to regulation by the PUCO and local subdivisions, provided the local regulations are reasonable local police rules applicable within their boundaries. Those private motor carriers that are towing companies are subject to the bill's new regulatory provisions.

The bill also removes from the definition of private motor carrier any entity engaged in the business of "providing or furnishing [private carriage] transportation service [of persons or property], for hire . . ." This removal, however, may be intended to remove what may be a redundancy in existing law, because the definition still retains entities "engaged in the business of private carriage of persons or property, or both . . ."

With respect to the two sections that define motor transportation company, the bill alters the R.C. 4905.03 definition to also specifically exclude the list of activities not included in the business of motor transportation companies the definition under R.C. 4921.02. The bill also makes clear that a towing company as regulated under the bill is included as a motor transportation company.

Technical change to definition sections in Title 49

(R.C. 4921.01 and 4923.01)

The bill amends certain definition sections applicable to certain chapters of the Revised Code to remove defined terms that are not used in those chapters.

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[8] R.C. 4921.01 appears to have a technical error because it fails to remove "contract carrier by motor vehicle" from the provisions cross-referencing to R.C. 4923.02.

HISTORY

ACTION	DATE
Introduced	01-27-10

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