



# Ohio Legislative Service Commission

## Final Analysis

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### **Am. Sub. S.B. 274** 130th General Assembly (As Passed by the General Assembly)

**Sens.** Hughes, Patton, Bacon, Coley, Eklund, Faber, Kearney, Schaffer, Schiavoni, Seitz

**Reps.** Antonio, Bishoff, Burkley, Carney, Conditt, DeVitis, Duffey, Green, Grossman, Hackett, Kunze, Milkovich, Perales, Sheehy, Stinziano, Terhar, Young, Batchelder

**Effective date:** March 23, 2015

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## ACT SUMMARY

### **Title to vehicles towed from a private tow-away zone**

- Authorizes the owner of a towing service or storage facility in possession of a vehicle to obtain title to it if:
  - The vehicle was towed from a private tow-away zone;
  - The vehicle has a value of less than \$3,500;
  - The owner of the towing service or storage facility complies with certain notice requirements;
  - The vehicle has been left unclaimed for 60 days after initial notice is provided; and
  - The owner of the towing service or storage facility submits a properly executed affidavit to the clerk of courts.
- Establishes the requirements for what must be included in an affidavit submitted to a clerk of courts in order for a towing service or storage facility to obtain title to a motor vehicle and authorizes the Registrar of Motor Vehicles to establish the form by rule.

- Authorizes the owner of a towing service or storage facility to obtain title to certain motor vehicles towed from a private tow-away zone prior to the act's March 23, 2015, effective date (see **COMMENT**).

### **Title to vehicles left at a repair garage or place of storage**

- Specifies that the owner of a repair garage or place of storage may obtain the title to a motor vehicle under specified circumstances if the vehicle has a value of less than \$3,500 rather than a value of less than \$2,500 as under prior law.
- Authorizes the owner of a repair garage or place of storage to obtain title to certain motor vehicles left at the repair garage or place of storage prior to the act's March 23, 2015, effective date (see **COMMENT**).

### **Removal of vehicles from private property not designated as a private tow-away zone**

- Makes the following four changes regarding vehicles towed from private property not designated as a private tow-away zone:
  - A towing service must deliver the towed motor vehicle to the designated storage location within two hours of removal.
  - If the owner of the vehicle arrives after the vehicle has been prepared for removal, but prior to the actual removal, the towing service must give that person notice that the person may pay a drop fee equal to half of the removal fee for immediate release of the vehicle.
  - The owner of a motor vehicle may retrieve any personal items under specified circumstances.
  - A lienholder may recover a motor vehicle towed upon presentation of proof of ownership.

### **Removal of vehicles from a private tow-away zone**

- Modifies the requirements governing private tow-away zone signs, but allows a property owner that does not have a contract with a towing service to retain existing signs for a period of six months.
- If the owner of a vehicle arrives after the vehicle has been prepared for removal, but prior to the actual removal, requires the towing service to give the person notice that the person may pay a drop fee equal to half of the removal fee for immediate release of the vehicle.



- Requires a towing service to take photographs indicating a violation of a private tow-away zone and establishes requirements governing the taking of photographs.
- Generally requires a towing service to deliver a towed vehicle to a location within 20 linear miles of the private tow-away zone within two hours of the removal.
- Establishes expanded requirements governing notice to owners and lienholders of vehicles towed from a private tow-away zone.
- Requires a storage facility to allow a person to retrieve personal items from a vehicle without charge and under specified circumstances.

### **Civil action**

- Authorizes a vehicle owner to bring a civil action against a towing service or storage facility that violates the laws governing the removal of vehicles from private property or a private tow-away zone or the act's accident scene estimate requirement.

### **Removal of vehicles from the street or after coming into the possession of law enforcement**

- Requires law enforcement to allow the operator of a commercial motor vehicle to arrange for the removal of a vehicle from a roadway by a towing service unless the vehicle cannot be removed within a specified period.
- Requires vehicles ordered towed by law enforcement to be delivered to a place of storage not more than two hours after removal.
- Allows vehicle owners to retrieve personal items upon presentation of proof of ownership without retrieving the motor vehicle and without paying a fee unless the vehicle is the subject of a criminal investigation.

### **Other towing provisions**

- Requires the Public Utilities Commission to do all of the following:
  - Establish the acceptable scope of public safety regulations applicable to a for-hire motor carrier engaged in the towing of motor vehicles that a county or township may adopt;
  - Establish safety standards for the type of equipment necessary to safely remove and tow vehicles based on the type of vehicle being removed or towed;



--Establish standards for the removal of a vehicle from a private tow-away zone by a for-hire motor carrier engaged in the towing of motor vehicles;

--Establish an after-hours retrieval fee for the recovery of a vehicle during any time a storage facility is not required to be open;

--Adopt any other necessary rules.

- Prohibits the operation of a towing vehicle unless the towing service that owns the vehicle holds a valid certificate of public convenience and necessity issued by the Public Utilities Commission of Ohio (PUCO) and the certificate number and business telephone number are visibly displayed on both front doors of the vehicle.
- Prohibits a towing service from failing to make its current certificate of public convenience and necessity available for public inspection during normal business hours, and from failing to include its certificate number on all advertising, written estimates, contracts, and invoices.
- Generally requires a towing service to provide an estimate to the operator of a vehicle prior to removing the vehicle from an accident scene.
- Authorizes law enforcement to allow the owner or operator of a commercial motor vehicle involved in an accident to arrange for the removal of the vehicle under certain circumstances.
- Alters one exception to the immunity from civil liability granted to a private towing service that caused damage during the removal of a vehicle, cargo, or personal property from an accident scene.
- Establishes requirements governing hours of operation and the posting of appropriate telephone contact numbers that are applicable to facilities that store vehicles towed from private property, private tow-away zones, and towed by order of law enforcement.
- Makes other changes to the law governing the towing of motor vehicles.

### **Title to motor vehicle in favor of licensed scrap metal dealer**

- Provides that a licensed scrap metal dealer is deemed to have valid title to a motor vehicle if the scrap metal dealer: (1) purchased the motor vehicle in the ordinary course of business, and (2) received an endorsed and notarized certificate of title to the motor vehicle from a seller.



- Provides that any such certificate of title cannot be canceled as having been improperly issued, including having been improperly issued due to the prior theft or conversion of the motor vehicle.
- Provides that if a certificate of title was improperly issued, unlawfully obtained, or falsified prior to the transfer of the certificate to a scrap metal dealer who is deemed to have such valid title, both of the following apply:
  - Any other person with a valid certificate of title for the motor vehicle may seek legal recourse from the person who sold the motor vehicle to the scrap metal dealer; and
  - The person does not have a claim for relief against, and may not recover damages in a civil action against, the scrap metal dealer.

### **Application for motor vehicle salvage certificate of title**

- Modifies the documents an insurance company must submit with an application for a salvage certificate of title to a damaged motor vehicle.

### **Home solicitation sales**

- Enables cancellation of a home solicitation sale to be made by fax or email in addition to physical mail.
- Authorizes the seller of a home security system to provide related services during the home solicitation cancellation period if certain conditions are met.

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## CONTENT AND OPERATION

### Title to unclaimed vehicles: overview

The act alters the procedures with which a repair garage or place of storage must comply in order to obtain title to a motor vehicle left at the repair garage or place of storage. The act also allows such entities to gain title to a greater number of vehicles by authorizing those entities to take title to vehicles with a greater value than under prior law. In addition, the act establishes a new system by which a towing service or storage facility may obtain title to vehicles towed from a private tow-away zone which have been left unclaimed. For purposes of the take title provisions, the act defines motor vehicle "value" to mean the wholesale value for that make and model of motor vehicle at the time an entity seeks to take title to the vehicle, as provided in a vehicle valuation guide that is generally available and recognized by the motor vehicle industry, minus both of the following, as applicable:

- (1) The estimated cost of repairs to restore the motor vehicle to the wholesale value for that make and model of motor vehicle; and
- (2) The cost of any agreed-upon repairs.<sup>1</sup>

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<sup>1</sup> R.C. 4505.101(E)(3).



## **Title to vehicles towed from a private tow-away zone**

### **Vehicles towed after the act's effective date**

The act authorizes the owner of a towing service or storage facility that is in possession of a vehicle to obtain a certificate of title to the vehicle provided that all of the following apply:

(1) The vehicle was towed from a private tow-away zone;

(2) The vehicle has a value of less than \$3,500;

(3) The vehicle has been left unclaimed for 60 days after the date the earliest notice required under the act (see below) is received by the motor vehicle owner, as evidenced by a receipt signed by any person, or 60 days after the towing company or storage facility has been notified that delivery was not possible; and

(4) The owner of the towing service or storage facility submits a properly executed affidavit to the clerk of courts (see below).<sup>2</sup>

Under the act, "towing service or storage facility" means any for-hire motor carrier that removes a motor vehicle from a private tow-away zone and any place to which such a for-hire motor carrier delivers a motor vehicle.<sup>3</sup>

### **Notice requirements**

Under the act, in order to obtain title to a motor vehicle, the owner of a towing service or storage facility must comply with specified notice requirements. Generally, when a vehicle is removed from a private tow-away zone, the owner of the towing service or storage facility from which the vehicle may be recovered must immediately cause a search to be made of the records of the Bureau of Motor Vehicles (BMV) to ascertain the identity of the owner and any lienholder of the motor vehicle. The owner of the towing service or storage facility then must send notice to the vehicle owner and any known lienholder as follows:

(1) Within five business days of removal of the vehicle from the private tow-away zone, if the vehicle has not yet been recovered, to the owner's and lienholder's last known address by certified or express mail with return receipt requested or by a commercial carrier service utilizing any form of delivery requiring a signed receipt;

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<sup>2</sup> R.C. 4505.101(B).

<sup>3</sup> R.C. 4505.101(E)(2).



(2) If the vehicle remains unclaimed 30 days after the first notice is sent, additional notice must be sent as provided in (1) above; and

(3) If the vehicle remains unclaimed 45 days after the first notice is sent, a second additional notice must be sent as provided in (1) above.

Sixty days after the earliest required notice is received, as evidenced by a receipt signed by any person or 60 days after the towing company or storage facility has been notified that delivery was not possible, whichever is applicable, the owner of a towing service or storage facility may initiate the process for obtaining a certificate of title to the motor vehicle.<sup>4</sup>

#### **Limitations on take title provisions**

The act specifically states that the owner of a towing service or storage facility may not obtain title to a motor vehicle in the possession of the towing service or storage facility if the towing service or storage facility has not either received a signed receipt for any of the required notices or been informed that delivery was not possible.<sup>5</sup>

#### **Execution of affidavit**

In order to obtain title to a vehicle, the owner of a towing service or storage facility also must execute an affidavit in a form established by the Registrar of Motor Vehicles by rule and submit it to the clerk of courts. The affidavit must set forth all of the following:

(1) An itemized statement of the value of the motor vehicle as defined under the act (see above);

(2) A statement that notices to remove the vehicle have been mailed to the owner and any lienholder as required under the act;

(3) An indication of the length of time that the motor vehicle has remained unclaimed after either the date the earliest notice required under the act was received or the date the towing service or storage facility was notified that delivery was not possible; and

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<sup>4</sup> R.C. 4513.601(F).

<sup>5</sup> R.C. 4513.601(F)(3).



(4) A statement that a search of the records of the BMV has been made for outstanding liens on the motor vehicle.<sup>6</sup>

Upon submission of a properly executed affidavit, the clerk of courts is required to issue a certificate of title to the owner of the towing service or storage facility, free and clear of all liens and encumbrances. Upon receipt of the certificate of title, the towing service or storage facility must pay the clerk of courts the value of the motor vehicle. The clerk must deposit the amount paid into the county general fund.<sup>7</sup>

#### **Vehicles towed prior to the act's effective date (see COMMENT)**

The owner of a towing service or storage facility may obtain title to a vehicle that came into the possession of the towing service or storage facility between January 31, 2012, and the act's March 23, 2015, effective date, if all of the following apply:

(1) The vehicle was towed from a private tow-away zone prior to the act's March 23, 2015, effective date.

(2) The vehicle has a value of less than \$3,500 as determined under the act.

(3) The towing service or storage facility sends an initial notice to the vehicle owner and any lienholder in accordance with the act not later than 30 days after the act's effective date and otherwise complies with the second and third notice requirements addressed above, in addition, each notice also must include the value of the motor vehicle and a statement that if the owner or lienholder fails to claim the vehicle, the repair garage or place of storage may obtain title to the vehicle.

(4) The towing service or storage facility complies with all other applicable requirements necessary to take title to the vehicle.<sup>8</sup>

#### **Title to vehicles left at a repair garage or place of storage**

##### **Vehicles left at a repair garage or place of storage after the act's effective date**

The act increases the cap on the value of a motor vehicle for which the owner of a repair garage or place of storage may obtain a certificate of title and modifies the process for obtaining title to such a vehicle. Under prior law, a repair garage or place of storage generally could obtain title to a motor vehicle if all of the following applied:

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<sup>6</sup> R.C. 4505.101(B)(4).

<sup>7</sup> R.C. 4505.101(C).

<sup>8</sup> Section 3(A).



(1) The motor vehicle had a value of less than \$2,500;

(2) The vehicle had been left unclaimed for 15 days or more following the completion of a requested repair or agreed term of storage;

(3) The owner of the repair garage or place of storage sent notice to the owner of the vehicle via certified mail, the owner of the repair garage or place of storage either received the signed receipt from the certified mail or was notified that delivery was not possible, and the vehicle remained unclaimed for an additional 15 days or more after the notice was sent;

(4) The owner of the repair garage or place of storage conducted a search of the records of the BMV. If the records indicated any outstanding lien, the owner of the repair garage or place of storage was required to notify the mortgagee or lienholder and give the mortgagee or lienholder 15 days from the mailing of the notice to claim the vehicle.

(5) The owner of the repair garage or place of storage filed an affidavit that contains the information discussed above with regard to a towing service or storage facility, including an itemized statement of the value of the motor vehicle (determined in accordance with rules adopted by the Registrar of Motor Vehicles).<sup>9</sup>

The act allows the owner of a repair garage or place of storage to take title to a vehicle with a value of up to \$3,500 and statutorily specifies the value of a motor vehicle as discussed above. The process for taking title is generally the same as prior law, but the act clarifies that the owner of the repair garage or place of storage must send notice to the owner of the vehicle and any lienholder after a vehicle has remained unclaimed for 15 days or more.<sup>10</sup>

The act also clarifies that "repair garage or place of storage" means any business with which a person entered into an agreement for the repair of a motor vehicle or any business with which a person entered into an agreement for the storage of a motor vehicle.<sup>11</sup>

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<sup>9</sup> R.C. 4505.101(A) and (C).

<sup>10</sup> R.C. 4505.101(A) and (E)(3).

<sup>11</sup> R.C. 4505.101(E)(1).



**Vehicles left at a repair garage or in storage prior the act's effective date (see COMMENT)**

Under the act, the owner of a repair garage or place of storage may obtain title to a motor vehicle with a value of at least \$2,500 but less than \$3,500 that came into the possession of the repair garage or place of storage between January 31, 2014, and the act's March 23, 2015, effective date, if all of the following apply:

(1) The motor vehicle has been left unclaimed for 15 days or more following completion of the requested repair or the agreed term of storage.

(2) The repair garage or place of storage sends the notice to the vehicle owner and any lienholder in accordance with the act not later than 30 days after the act's effective date. The notice also must include the value of the vehicle and a statement that if the owner or lienholder fails to claim the vehicle the repair garage or place of storage may obtain title to the vehicle.

(3) The repair garage or place of storage otherwise complies with all other applicable requirements necessary to take title to the vehicle.<sup>12</sup>

With regard to vehicles with a value of less than \$2,500 that were towed prior to the act's effective date, the prior law applies.<sup>13</sup>

**Removal of vehicles from private property not designated as a private tow-away zone**

The act makes four changes to the law governing the removal of a vehicle from private property not designated as a private tow-away zone and the process by which the owner or lienholder may recover such a vehicle. Those changes are as follows:

(1) A towing service must deliver the motor vehicle to the designated storage location within two hours of removal.<sup>14</sup>

(2) If the owner of the vehicle arrives after the vehicle has been prepared for removal, but prior to the actual removal, the towing service must give that person notice that the person may pay a drop fee equal to half of the removal fee for immediate

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<sup>12</sup> Section 3(B).

<sup>13</sup> R.C. 4505.101 and Section 3(C).

<sup>14</sup> R.C. 4513.60(A)(2).



release of the vehicle. Further, the towing service must give the vehicle owner a receipt showing both the full amount normally assessed and the actual amount received.<sup>15</sup>

(3) The owner of a motor vehicle may retrieve any personal item from the motor vehicle without retrieving the motor vehicle and without paying any fee, upon presentation of proof of ownership, so long as the personal item has not been determined by the sheriff or chief of police to be necessary to a criminal investigation.<sup>16</sup>

(4) A lienholder may recover a motor vehicle upon payment of the statutory removal and storage fees and presentation of proof of ownership.<sup>17</sup>

## **Removal of vehicles from a private tow-away zone**

The act recodifies the law governing the towing of motor vehicles from a private tow-away zone, makes modifications to that law, and adds additional requirements. Specifically, the act alters the law governing the removal of vehicles from a private tow-away zone by modifying the private tow-away zone signage requirements and the requirements related to notice that a vehicle has been removed from a private tow-away zone. The act also establishes requirements that a towing service make reasonable efforts to take photographs of violations, notify the owner or operator of a vehicle of the opportunity to pay a drop fee, deliver a vehicle to the place from which it may be claimed within two hours, and allow the retrieval of personal items from a vehicle.

### **Signage requirements**

The act modifies the required contents of a warning sign at the location of a private tow-away zone. Under the act, the sign must include all of the following:

(1) A statement that the property is a tow-away zone;

(2) A description of persons authorized to park on the property. If the property is a residential property, the owner of the private property may include a statement that only tenants and guests may park in the private tow-away zone, subject to the terms of the property owner. If the property is a commercial property, the owner of the private property may include a statement that only customers may park in the private tow-away zone. In all cases, if it is not apparent which persons may park in the private tow-away zone, the owner must include on the sign the address of the property or the name of the business with which the private tow-away zone is associated.

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<sup>15</sup> R.C. 4513.60(B).

<sup>16</sup> R.C. 4513.60(D)(2).

<sup>17</sup> R.C. 4513.60(D)(1).

(3) If the private tow-away zone is not enforceable at all times, the times during which the parking restrictions are enforced;

(4) The telephone number and the address of the place from which a towed vehicle may be recovered at any time during the day or night; and

(5) A statement that the failure to recover a towed vehicle may result in the loss of title to the vehicle.<sup>18</sup>

The act provides that the owner of property that was established as a private tow-away zone under the Towing Law as it existed prior to the March 23, 2015, effective date of the act who does not have a contract with a towing service for the removal of vehicles from the property may retain existing private tow-away zone signs that comply with the requirements of that law for six months after the effective date of the act. However, at any time, in order to comply with the signage requirements, a property owner may modify existing private tow-away zone signs by affixing stickers or an addendum to the existing sign in lieu of replacing the sign.<sup>19</sup>

Under prior law, the owner of private property could establish a private tow-away zone if the owner posted a sign that contained all of the following:

(1) Notice that the property is a private tow-away zone and that vehicles not authorized to park on the property will be towed;

(2) The telephone number of the person from whom a towed vehicle can be recovered, the address of the place to which the vehicle will be taken, and the place from which it may be recovered; and

(3) A statement that the vehicle may be recovered at any time during the day or night upon the submission of proof of ownership and payment of the statutory removal and storage fees.<sup>20</sup>

### **Photograph requirements**

The act requires that prior to towing a vehicle from a private tow-away zone, a towing service must make all reasonable efforts to take as many photographs as necessary to evidence that the vehicle is clearly parked on private property in violation of the private tow-away zone and record the time and date of all photographs. The

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<sup>18</sup> R.C. 4513.601(A)(1).

<sup>19</sup> R.C. 4513.601(A).

<sup>20</sup> Prior R.C. 4513.60(B)(1)(a), removed by the act.



towing service must retain the photographs and the record for at least 30 days after the date the vehicle is recovered, or at least two years after the date the vehicle is towed, whichever is earlier.<sup>21</sup>

A towing service or storage facility in possession of a vehicle that is removed from a private tow-away zone must show the vehicle owner, operator, or lienholder who contests the removal of the vehicle all photographs taken under the act. Upon request, the towing service or storage facility must provide copies of all photographs in the medium in which the photographs are stored, whether paper, electronic, or otherwise.<sup>22</sup>

### **Drop fee**

The act requires that if the owner of the vehicle arrives after the vehicle has been prepared for removal, but prior to the actual removal, a towing service must give that person notice that the person may pay a drop fee equal to half of the removal fee for immediate release of the vehicle. The towing service also must give the person a receipt showing both the full amount normally assessed and the actual amount received.<sup>23</sup> The drop fee was established under prior law, but prior law did not require a towing service to notify a person of their right to pay a drop fee.<sup>24</sup>

### **Notice of vehicle removal**

The act requires a towing service that removes a vehicle from a private tow-away zone to provide a notice of the removal within two hours to the police department of the municipal corporation, township, or township or joint police district in which the property is located. The notice must contain all of the following, as provided under continuing law: (1) the vehicle's license number, make, model, and color, (2) the location from which the vehicle was removed, (3) the date and time of removal, and (4) the telephone number and address of the place from which the vehicle may be recovered. In addition, the act clarifies that notice may be given to the county sheriff when it is appropriate.<sup>25</sup>

Under the act, the towing service or storage facility also must immediately cause a search to be made of the records of the BMV to ascertain the identity of the owner and

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<sup>21</sup> R.C. 4513.601(D)(1).

<sup>22</sup> R.C. 4513.601(G)(2).

<sup>23</sup> R.C. 4513.601(C).

<sup>24</sup> Prior R.C. 4513.601(C), removed by the act.

<sup>25</sup> R.C. 4513.601(E)(1).



any lienholder of the motor vehicle and send notice to the owner and any lienholder within five business days of the removal. If the towing service or storage facility seeks to obtain title to the motor vehicle, the towing service or storage facility must comply with additional notice requirements as discussed above (see "**Title to vehicles towed from a private tow-away zone**").<sup>26</sup>

### **Delivery of a towed vehicle**

The act specifies that a towing service that removes a vehicle from a private tow-away zone must deliver the vehicle to a location that is within 20 linear miles from the private tow-away zone, unless such a location is not practicable, not more than two hours after it is removed from the private tow-away zone.<sup>27</sup> Prior law required that such a vehicle be delivered to a place that is conveniently located.<sup>28</sup>

### **Retrieval of personal items**

Under the act, the owner of a vehicle that is removed from a private tow-away zone may retrieve any personal items from the vehicle without retrieving the vehicle and without paying any fee if the person presents proof of ownership of the vehicle. For purposes of the act, "personal items" do not include any items attached to the vehicle.<sup>29</sup>

### **Civil actions**

Under the act, a vehicle owner may bring a civil action against a towing service or storage facility that violates the laws governing the removal of vehicles from private property or private tow-away zones or the provisions of the act relating to providing an estimate at an accident scene (see below). If a court determines that the towing service or storage facility committed the violation, the court must award the vehicle owner the following:

(1) If it is a first violation, \$1,000;

(2) If it is a second violation, \$2,500;

(3) If it is a third or subsequent violation, \$2,500. In addition, the court must order the Public Utilities Commission to revoke the towing service's or storage facility's certificate of public convenience and necessity for six months and the Commission is

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<sup>26</sup> R.C. 4513.601(F).

<sup>27</sup> R.C. 4513.601(A)(2) and (D)(2).

<sup>28</sup> Prior R.C. 4513.60(B)(1)(b), removed by the act.

<sup>29</sup> R.C. 4513.601(G)(3).



required to comply with the order. However, the act specifies that upon the expiration of the six-month revocation, a court is not permitted to consider any violation committed by the towing service or storage facility prior to the revocation for purposes of a civil action initiated after the expiration of the six-month revocation.

In addition to those fines, if a court determines that a towing service or storage facility committed a violation that caused actual damages, the court is required to award the vehicle owner three times the actual damages and reasonable attorney's fees.<sup>30</sup>

### **Vehicles towed from the street or after coming into the possession of law enforcement**

The act establishes an exception to the authority of a law enforcement official to immediately order into storage a vehicle that has been left on a public street or other property open to the public for purposes of vehicular travel, or upon or within the right-of-way of any road or highway. The act specifies that if such a vehicle is a commercial motor vehicle, the law enforcement official must allow the owner or operator of the vehicle the opportunity to arrange for the removal of the motor vehicle within a specified period of time. If the vehicle cannot be removed within that period of time, the law enforcement officer may order the removal of the vehicle. The act also clarifies that for purposes of ordering the removal of a vehicle that was in an accident, a law enforcement officer must comply with the requirements applicable to an accident scene removal.<sup>31</sup>

The act also establishes two new requirements applicable to vehicles that have come into the possession of law enforcement or are left on a public street or other property open to the public for purposes of vehicular travel, or upon or within the right-of-way of any road or highway. First, if a law enforcement officer orders the removal of such a vehicle, it must be delivered to the place from which it may be recovered within two hours after it is removed. Second, the owner of the motor vehicle must be allowed to retrieve personal items from the vehicle without retrieving the vehicle or paying any fee, upon presentation of proof of ownership. However, the owner may not retrieve any personal item that has been determined by the law enforcement official to be necessary to a criminal investigation.<sup>32</sup>

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<sup>30</sup> R.C. 4513.611.

<sup>31</sup> R.C. 4513.61(A)(2).

<sup>32</sup> R.C. 4513.61(B) and (C)(2).

## **PUCO safety standards and other rules**

The act expands the rulemaking authority of the Public Utilities Commission (PUCO) with regard to the towing of motor vehicles. Under continuing law, any entity engaged in the towing of motor vehicles is subject to regulation by the Public Utilities Commission. The act specifically requires the PUCO to adopt rules in accordance with the Administrative Procedure Act that do all of the following:

(1) Establish the acceptable scope of public safety regulations applicable to a for-hire motor carrier engaged in the towing of motor vehicles that a county or township may adopt;

(2) Establish safety standards for the type of equipment necessary to safely remove and tow vehicles based on the type of vehicle being removed or towed;

(3) Establish standards for the removal of a vehicle from a private tow-away zone by a for-hire motor carrier engaged in the towing of motor vehicles. The standards may vary based on whether the private tow-away zone is located on residential, retail, or other commercial property.

(4) Establish an after-hours retrieval fee for the recovery of a vehicle during any time a storage facility is not required to be open.

The Public Utilities Commission also may adopt any other rules necessary for these purposes.<sup>33</sup>

## **Towing and certificates of public convenience and necessity**

Under the act, no person may operate a towing vehicle for a towing service and no person who owns a towing vehicle used by a towing service or has supervisory responsibility over a towing vehicle used by a towing service, may permit the operation of a towing vehicle used by a towing service, unless both of the following apply:

(1) The towing service holds a valid certificate of public convenience and necessity issued by the Public Utilities Commission of Ohio (PUCO); and

(2) The certificate number and business telephone number is visibly displayed on both the left and right front doors of the towing vehicle.

The act also provides that no towing service may fail to make its current certificate of public convenience and necessity available for public inspection during

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<sup>33</sup> R.C. 4921.25(B).



normal business hours; or fail to include its certificate number on all advertising, written estimates, contracts, and invoices.

For purposes of these prohibitions, a "towing service" means any for-hire motor carrier that is engaged on an intrastate basis anywhere in Ohio in the business of towing a motor vehicle over any public highway in Ohio.<sup>34</sup>

## **Removal of vehicles from an accident scene**

### **Price estimates**

Under the act, prior to removing a motor vehicle from an accident scene on any street or highway or any other property open to the public for purposes of vehicular travel or parking, a towing service must provide an estimate of the price for the removal to the person who was operating the motor vehicle at the time of the accident. The towing service must ensure that any estimate includes the fees, services to be rendered, and destination of the vehicle. However, the towing service does not have to provide the estimate if the person is incapacitated, seriously injured, or otherwise unavailable. Additionally, the towing service is prohibited from submitting such an estimate to the repair facility or storage facility to which the motor vehicle is transported unless the person who was operating the motor vehicle at the time of the accident was incapacitated, seriously injured, or otherwise unavailable.<sup>35</sup>

The towing service does not have to provide the estimate if all of the following apply:

- (1) The towing service removes a motor vehicle from an accident scene;
- (2) The removal is conducted pursuant to a contract between the towing service and the issuer of a policy of motor vehicle insurance covering the motor vehicle; and
- (3) The contract requires the towing service to be paid directly by the issuer of the policy.<sup>36</sup>

If a towing service fails to provide an estimate at an accident scene as required under the act, the towing service is not permitted to charge fees for the towing and storage of the motor vehicle removed from the accident scene that exceed 25% of the fees authorized for a motor vehicle removed from a private tow-away zone. Further,

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<sup>34</sup> R.C. 4513.67.

<sup>35</sup> R.C. 4513.68(A) and (B).

<sup>36</sup> R.C. 4513.68(C).



any storage facility that accepts vehicles towed from accident scenes must conspicuously post a notice at the entrance to the storage facility that states that limitation on fees.<sup>37</sup>

### **Removal of commercial motor vehicles**

The act alters the requirements governing the removal of commercial motor vehicles from accident scenes. In general, under continuing law, if a motor vehicle accident occurs on a street or highway, specified public safety officials may remove the motor vehicle (if unoccupied), any cargo, or personal property from the street or highway.

The act specifies that if the motor vehicle being removed is a commercial motor vehicle, the public safety official may allow the owner or operator of the vehicle the opportunity to arrange for the removal of the motor vehicle within a period of time specified by the public safety official. If the public safety official determines that the motor vehicle cannot be removed within the specified period of time, the public safety official must remove or order the removal of the motor vehicle.<sup>38</sup>

### **Liability for removal**

The act modifies one exception to the immunity from civil liability granted to a private towing service that caused damage during the removal of a vehicle, cargo, or personal property from an accident scene. Under the act, the immunity does not apply to either of the following:

(1) A private towing service that was authorized to perform the removal but performed the removal in a negligent manner; or

(2) A private towing service that was authorized to perform the removal because the motor vehicle, cargo, or personal property was endangering public safety, and the private towing service performed the removal in a reckless manner.

Prior law specified that a towing service was not immune from civil liability when the private towing service was authorized to perform the removal but performed the removal in a reckless or willful manner.<sup>39</sup>

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<sup>37</sup> R.C. 4513.68(D) and (E).

<sup>38</sup> R.C. 4513.66(A)(2).

<sup>39</sup> R.C. 4513.66(B)(2)(c) and (d).



## **Storage facility requirements**

The act requires the owner of a storage facility to ensure that the facility remains open during both of the following periods of time to allow a vehicle owner or lienholder to retrieve a vehicle in the possession of the storage facility:

(1) Any time during which a towing service is towing a vehicle pursuant to the various towing statutes (tows from private property, private tow-away zones, and from the street after coming into the possession of law enforcement) and the vehicle will be held by the storage facility;

(2) Between nine o'clock in the morning and noon on the day after any day during which the storage facility accepted for storage a vehicle towed under the towing statutes.<sup>40</sup>

Additionally, the act requires the owner of a storage facility that accepts towed vehicles under the act's provisions to ensure that a notice is conspicuously posted at the entrance to the storage facility that states the telephone number at which the owner or lienholder of a vehicle may contact the owner or a representative of the storage facility for the purpose of retrieving a vehicle when the storage facility is closed. The owner of the storage facility also must provide that telephone number to local law enforcement. The owner of the storage facility must ensure that a process is in place for purposes of answering calls at all times of day or night. After receiving a call from the owner or lienholder of a vehicle who seeks to recover the vehicle, the owner of the storage facility must ensure that, within three hours of the phone call, a representative of the storage facility is available to release the vehicle upon being presented with proof of ownership of the vehicle and payment of an after-hours retrieval fee established by rule of the Public Utilities Commission and all other applicable fees.<sup>41</sup>

## **Title to motor vehicle in favor of licensed scrap metal dealer**

Under the act, a licensed scrap metal dealer is deemed to have valid title to a motor vehicle if both of the following apply:

(1) The scrap metal dealer purchased the motor vehicle in the ordinary course of business; and

(2) The scrap metal dealer received an endorsed and notarized certificate of title to the motor vehicle from a seller regardless of whether the certificate of title was issued

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<sup>40</sup> R.C. 4513.69(A),

<sup>41</sup> R.C. 4513.69(B) and 4921.25(B)(4).



under any provision of the Motor Vehicle Certificate of Title Law.<sup>42</sup> Any such certificate of title to a motor vehicle cannot be canceled as having been improperly issued, including having been improperly issued due to the prior theft or conversion of the motor vehicle.<sup>43</sup>

The act also provides that if a certificate of title to a motor vehicle was improperly issued, unlawfully obtained, or falsified prior to the transfer of the certificate of title to a scrap metal dealer who is deemed to have valid title pursuant to the act, any other person with a valid certificate of title for the motor vehicle may seek legal recourse from the person who sold the motor vehicle to the scrap metal dealer. Such a person does not have a claim for relief against, and may not recover damages in a civil action against, the scrap metal dealer.<sup>44</sup>

### **Application for motor vehicle salvage certificate of title**

The act modifies the law regarding an insurance company's application for a salvage certificate of title to a damaged motor vehicle that the insurance company declared impractical to repair and for which the insurance company was unable to obtain the certificate of title. Under the act, the application must be accompanied by:

- (1) Evidence that the insurance company paid a total loss claim on the vehicle;
- (2) A copy of the written request for the certificate of title from the insurance company or its designee; and
- (3) Proof that the request was delivered by a nationally recognized courier service to the last known address of the vehicle owner and any known lienholder.

Prior law also required the application to be accompanied by evidence that the insurance company paid a total loss claim on the vehicle. However, it then required the application to be accompanied by: (1) a copy of the written request for the certificate of title on the insurance company's letterhead, and (2) the original certified mail, return receipt notice, addressed to the last known owner of the vehicle and any known lienholder.<sup>45</sup>

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<sup>42</sup> R.C. 4505.191(A)(1) and (2).

<sup>43</sup> R.C. 4505.02 and 4505.17(A).

<sup>44</sup> R.C. 4505.191(B).

<sup>45</sup> R.C. 4505.11(C)(1)(b).



## Home solicitation sales

The act makes changes to the cooling-off period prescribed for home solicitation sales. Under continuing law, unchanged by the act, a purchaser of an item sold via a home solicitation has three business days to cancel that purchase. This is commonly referred to as a "cooling-off period." Cancellation must be provided by written notice that is delivered to the address stated in the agreement or offer to purchase by mail delivery, personal delivery, or some other means of delivery. Under the act, the cancellation may also be provided by email or fax. Cancellation by fax is effective when the fax transmission has been transmitted to the seller's fax number and the consumer has received confirmation of the fax transmission. Email delivery is effective when the email has been sent to the seller's email address. When cancellation is made by mail, the act requires copies of the cancellation to be delivered by certified mail to the seller's address, as opposed to delivery by standard mail. The act also removes telegram as an acceptable means of cancellation.<sup>46</sup>

### Security systems

The act enables sellers to provide services related to a security system purchased through a home solicitation sale during the cooling-off period if certain conditions are met. Otherwise, services must begin after the cooling-off period. The seller must meet all of the following conditions to provide such services:

- The seller informs the purchaser in writing that the purchaser's right to cancel is not affected by the commencement of services and the purchaser acknowledges this.
- The seller does not make any substantial change in the condition of the purchaser's property.
- The seller does not receive any compensation for the services provided if the buyer cancels during the cooling-off period.

If a seller chooses to provide services to a purchaser during the cooling-off period and makes an alteration to the buyer's property, and if the buyer cancels within the cooling-off period, the seller must restore the property within 14 calendar days. The act defines "substantial change" as any change that requires repair of a significant nature, necessitating significant expense, time, or inconvenience to repair for the buyer.

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<sup>46</sup> R.C. 1345.22(A).

A substantial change also includes a change that is incapable of being returned to its original condition.<sup>47</sup>

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## COMMENT

It is unclear if the act's provisions related to obtaining title to vehicles that were towed prior to the effective date of the act, or left unclaimed at a repair garage or place of storage prior to the effective date of the act, are unconstitutionally retroactive under Article II, Section 28 of the Ohio Constitution. See *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St.3d 100 (1988).

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## HISTORY

ACTION	DATE
Introduced	02-11-14
Reported, S. State Gov't Oversight & Reform	12-04-14
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Reported, H. Commerce, Labor & Technology	12-10-14
Passed House (89-0)	12-10-14
Senate concurred in House amendments (29-1)	12-11-14

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<sup>47</sup> R.C. 1345.22(C) and (D).

