



# Ohio Legislative Service Commission

## Bill Analysis

Amanda M. Ferguson

### H.B. 382

130th General Assembly  
(As Introduced)

**Reps.** Duffey, Bishoff, J. Adams, Terhar, Becker, Dovilla, Grossman, Henne, Hood, Mallory, Fedor, Ramos, Blessing, Heard, R. Hagan

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## BILL SUMMARY

- Alters the procedures and requirements in current law governing nonconsensual towing under the following circumstances:
  - From a private tow-away zone;
  - From private property not designated as a private tow-away zone; and
  - A motor vehicle that is in the possession of law enforcement, or is ordered by law enforcement from a road or highway.
- Generally requires a towing service to take a photograph of a vehicle prior to towing the vehicle from a private tow-away zone, towing a vehicle that is in the possession of law enforcement, or towing a vehicle that has been ordered towed by law enforcement from a road or highway.
- Specifies that a towing service need not take the required photograph if the vehicle constitutes an obstruction to traffic and has been ordered into storage immediately by law enforcement.
- Specifies that, if a vehicle owner contests the removal of a vehicle from a private tow-away zone, the towing service must give the owner both of the following:
  - A copy of the required photograph; and
  - A written statement informing the owner of their rights in challenging the towing of the vehicle.

- Requires a towing service to deliver a towed vehicle to the location from which it may be recovered not more than two hours after it is towed if the vehicle is towed:
  - From a private tow-away zone; or
  - By order of law enforcement because it is in the possession of law enforcement, or by order of law enforcement from a road or highway.
- In all circumstances, requires a towing service to provide notice to the owner of a motor vehicle who arrives after a vehicle is prepared for towing but prior to actual removal of the option to pay a "drop fee" of one-half the normal towing charge in order to obtain immediate release of the vehicle.
- In all circumstances, requires a person who authorizes a vehicle to be towed to ensure that the place where the vehicle will be stored meets both of the following requirements in addition to requirements under current law:
  - It is located within 15 miles of the place from which the vehicle was towed, if possible, and in no case more than 25 miles away; and
  - It accepts major credit cards.
- Applies the requirement that a place where a vehicle is towed be well lighted and near public transportation to all circumstances where towing occurs not just towing from a private tow-away zone as under current law.
- Requires a sign designating a private tow-away zone to include, in addition to the requirements under current law, a description of the persons authorized to park on the property and a description of any time limits or other restrictions on parking at that location.
- With regard to a vehicle towed from a private tow-away zone or from private property not designated as a private tow-away zone, prohibits a towing or storage facility from charging a storage fee for the first 24 hours during which the vehicle is stored.
- Establishes penalties that apply to a towing service that fails to comply with specified requirements.
- Requires the Public Utilities Commission to adopt rules that generally establish consumer protections and safety regulations regarding for-hire motor carriers engaged in the towing of motor vehicles.

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## CONTENT AND OPERATION

### Motor vehicle towing requirements and procedures

The bill generally imposes additional procedures that a towing service, private tow truck operator, or towing company must comply with, requires that the place where a towed vehicle may be stored meet certain requirements, and imposes penalties for specified violations. Under current law, there are generally three situations in which a vehicle may be towed without the consent of the owner: (1) a vehicle is parked in a private tow-away zone without the authority to do so, (2) a vehicle is left on private property not designated as a private tow-away zone without the consent of the owner of the property, or (3) a vehicle has come into the possession of law enforcement as a result of law enforcement duties or a vehicle is left on a public street, other property open to the public for purposes of vehicular travel, or the right-of-way of any road or highway. Each situation has separate applicable procedures and requirements that are modified as discussed below.

#### Vehicles towed from a private tow-away zone

##### Signage requirements

The bill alters the requirement governing the posting of a warning sign at the location of a private tow-away zone. Under current law, the owner of private property may establish a private tow-away zone if the owner posts a sign that is visible from all entrances to the property, is at least 18 x 24 inches, and contains 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 a towing charge of not more than \$90 and a storage charge of not more than \$12 per 24 hour period. (The sign also must state that if the vehicle has a manufacturer's gross vehicle weight rating in excess of 10,000 pounds and is a truck, bus, or a combination of a commercial tractor and trailer or semitrailer, then the towing charge may be up to \$150 and the storage charge may be up to \$20 per 24 hour period.)<sup>1</sup>

The bill adds a requirement that the sign include a description of persons authorized to park on the property, including the name of any business whose patrons are authorized to park on the property, and a description of any time limits or other circumstances restricting authorized parking at the location. The bill also requires the sign to specify that a storage charge cannot be charged for the first 24 hour period during which a vehicle is stored.<sup>2</sup>

### **Storage requirements**

The bill modifies the requirements governing the storage of towed vehicles. Under current law, the owner of the property on which the private tow-away zone is located must ensure that the place where a vehicle will be taken if towed from the private tow-away zone is:

(1) Conveniently located;

(2) Well lighted; and

(3) If any public transportation is available in the municipal corporation or township in which the private tow-away zone is located, on or within a reasonable distance of a regularly scheduled route of one or more modes of public transportation.

The bill modifies the requirement that the place of storage be conveniently located by requiring instead that it be located within 15 miles of the location of the

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<sup>1</sup> R.C. 4513.60(B)(1)(a).

<sup>2</sup> R.C. 4513.60(B)(1)(a).



private tow-away zone, if possible, but in no case located more than 25 miles away. The bill also requires the owner of the property to ensure that the towing service and storage facility accepts major credit cards for payment of towing and storage charges.<sup>3</sup>

### **Photograph of vehicle and other requirements**

The bill requires that prior to towing a vehicle from a private tow-away zone, the towing service must take at least one photograph of the vehicle showing that the vehicle is parked on private property in violation of the private tow-away zone and record the time and date of the photograph. The towing service also must retain the photograph and record for at least two years. Additionally, the bill specifies that the vehicle must be delivered to the location from which it may be recovered not more than two hours after it is removed from the private tow-away zone.<sup>4</sup>

### **Drop fees**

Under current law, if the owner or operator of a vehicle that is being removed from a private tow-away zone arrives after the vehicle has been prepared for removal but before the vehicle is removed, the owner or operator has the opportunity to pay a fee of not more than one-half of the charge for removal. This is commonly called a "drop fee." Upon payment of the fee, the vehicle must be released to the owner and the owner must move the vehicle. The bill requires the towing service, at the time the owner arrives, to give the owner verbal or written notification of the opportunity to pay a drop fee to obtain release of the vehicle. The bill also requires the towing service to accept major credit cards and give the owner a receipt showing both the full amount normally assessed and the actual amount received.<sup>5</sup>

### **Vehicle recovery**

The bill clarifies that the owner of a vehicle towed from a private tow-away zone may file an action of replevin to recover a vehicle that was wrongfully towed and requires the towing or storage service to inform the owner of that right. Under current law, in order for the owner to recover a vehicle that has been towed from a private tow-away zone, the owner must present proof of ownership and pay a towing charge of not more than \$90 and a storage charge of not more than \$12 per 24 hour period (or if the vehicle has a manufacturer's gross vehicle weight rating in excess of 10,000 pounds and is a truck, bus, or a combination of a commercial tractor and trailer or semitrailer pay a towing charge of up to \$150 and a storage charge of up to \$20 per 24 hour period).

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<sup>3</sup> R.C. 4513.60(B)(1)(b) and (c).

<sup>4</sup> R.C. 4513.60(B)(2)(b) and (c).

<sup>5</sup> R.C. 4513.60(C).

The bill clarifies that the owner also may file an action of replevin if the owner disputes the removal of the vehicle and continued possession of the vehicle by the towing service or storage facility. Under the bill, if the owner contests the removal of a vehicle from a private tow-away zone, the towing or storage service in possession of the vehicle must give the owner a photograph evidencing the parking violation and a written statement in at least ten-point font. The statement must be substantially similar to the following: "IMPORTANT: IF YOU CONTEST THE REMOVAL OF YOUR VEHICLE, YOU MAY SEEK TO RECOVER POSSESSION OF THE VEHICLE IN A REPLEVIN ACTION UNDER CHAPTER 2737. OF THE REVISED CODE AND, IF APPLICABLE, MAY BRING A CIVIL ACTION PURSUANT TO DIVISION (A) OF SECTION 2307.60 AND SECTION 2307.61 OF THE REVISED CODE TO RECOVER DAMAGES FROM ANY PERSON WHO COMMITS A THEFT OFFENSE."<sup>6</sup>

### **Penalties**

The bill expands the prohibitions applicable to persons engaged in the towing of vehicles from private tow-away zones. Under current law, a person is prohibited from doing either of the following: removing, or causing the removal of, a vehicle from property established as a private tow-away zone other than in accordance with the Towing Law; or storing a vehicle other than in accordance with the aforementioned storage requirements. A violation of either of these prohibitions is a minor misdemeanor.<sup>7</sup>

The bill adds prohibitions against doing any of the following: (1) failing to provide a photograph of an alleged violation of a private tow-away zone and a statement regarding the opportunity to file an action for replevin to any person who contests the removal of their vehicle from a private tow-away zone; (2) charging or collecting any fee related to the removal, towing, storage, or recovery of a vehicle under the Towing Law other than the specified towing and storage charges; and (3) if applicable, failing to notify a vehicle owner or operator of the opportunity to pay a drop fee. A violation of any of these prohibitions is a minor misdemeanor, and if the offender is a for-hire motor carrier, the offender may be subject to sanctions pursuant to the rules of the Public Utilities Commission (see below).<sup>8</sup>

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<sup>6</sup> R.C. 4513.60(B)(2) and (E)(1) and (2).

<sup>7</sup> R.C. 4513.60(F) and (G).

<sup>8</sup> R.C. 4513.60(F), (G), and (H).



## Towing from private property other than a private tow-away zone

### Background

Under current law, if a motor vehicle has been left on private residential or private agricultural property that is not designated as a private tow-away zone for at least four hours without the permission of the person having the right to possession of the property, upon that person's request, the sheriff or chief of police, as applicable, may order the vehicle into storage. Additionally, a vehicle that has been left at a garage or place of storage for a longer period of time than agreed upon may be ordered into storage by the sheriff or chief of police upon the request of the owner of the repair garage or place of storage. With regard to a vehicle that is ordered into storage pursuant to either of those provisions, the sheriff or chief of police must arrange for the removal of the vehicle by a private tow truck operator or towing company.<sup>9</sup>

### Designated place of storage

The bill requires the sheriff or chief of police to designate a place of storage that meets all of the following requirements:

(1) It is located within 15 miles of the location of the private tow-away zone (see **COMMENT 1**), if possible, but in no case is located more than 25 miles away;

(2) It is well lighted;

(3) It is on or within a reasonable distance of a regularly scheduled route of one or more modes of public transportation, if any public transportation is available in the municipal corporation or township in which the private tow-away zone (see **COMMENT 1**) is located; and

(4) It accepts major credit cards for payment of towing and storage charges.<sup>10</sup>

### Drop fees and penalties

The requirements of the bill governing drop fees (see above) that apply to towing a vehicle from a private tow-away zone also apply when the vehicle is towed from private property not designated as a private tow-away zone. Further, the bill applies two of the new prohibitions applicable to private tow-away zones to the towing of a vehicle from private property not designated as a private tow-away zone. First, the bill prohibits charging or collecting any fee related to the removal, towing, storage, or

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<sup>9</sup> R.C. 4513.60(A).

<sup>10</sup> R.C. 4513.60(A) and (B)(1)(b).



recovery of a vehicle under the Towing Law other than the specified towing and storage charges. Second, the bill prohibits failing to notify a vehicle owner or operator of the opportunity to pay a reduced drop fee. A violation of either of these prohibitions is a minor misdemeanor, and if the offender is a for-hire motor carrier, the offender may be subject to sanctions pursuant to the rules of the Public Utilities Commission (see below).<sup>11</sup>

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

### **Background**

Under current law, if a vehicle comes into the possession of the sheriff, chief of police, or state highway patrol trooper as a result of the performance of that law enforcement officer's duties, the law enforcement officer may order the vehicle into storage. Additionally, such a law enforcement officer may order a vehicle into storage if the vehicle 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 for 48 hours or longer without notification to the sheriff or chief of police. In either case, if the vehicle is ordered to be removed, the applicable law enforcement officer must designate the place of storage.<sup>12</sup>

### **Designated place of storage**

Under the bill, the applicable law enforcement officer who orders the removal of a vehicle must arrange for the removal of the vehicle by a private tow truck operator or towing company and ensure, whenever possible, that the place of storage where the vehicle will be taken meets all of the following requirements:

(1) It is conveniently located within 15 miles of the location of the place from which the towed vehicle was removed, if possible, but in no case is located more than 25 miles away;

(2) It is well lighted;

(3) It is on or within a reasonable distance of a regularly scheduled route of one or more modes of public transportation, if any public transportation is available in the municipal corporation or township from which the vehicle is removed; and

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<sup>11</sup> R.C. 4513.60(C), (E)(1), (F), (G), and (H).

<sup>12</sup> R.C. 4513.61(A).



(4) It accepts major credit cards for payment of towing and storage charges.<sup>13</sup>

### **Requirements for a private tow truck operator or towing company**

Additionally, under the bill, the private tow truck operator or towing company that removes a vehicle upon the order a law enforcement officer must do all of the following:

(1) Comply with the applicable rules adopted by the Public Utilities Commission governing removal by for-hire motor carriers (see below);

(2) Accept major credit cards for payment of the towing charges;

(3) Take at least one photograph of the vehicle prior to towing it and record the time and date of the photograph, unless the vehicle constitutes an obstruction to traffic and has been ordered into storage immediately. The tow truck operator or towing company must retain the photograph and record for at least two years.

(4) If the owner or operator arrives after the vehicle has been prepared for removal but before it has been removed, give a verbal or written notification that the owner or operator may obtain immediate release of the vehicle upon the payment of a fee of not more than one-half of the charge for removal. Upon payment of that fee, the tow truck operator or towing company must release the vehicle and give the owner or operator a receipt showing both the full amount normally assessed for vehicle removal and the actual amount received.

(5) Deliver the vehicle to the location from which it may be recovered not more than two hours after it is removed.<sup>14</sup>

### **Penalties**

The bill prohibits a private tow truck operator or towing company from removing a vehicle that is ordered into storage by a law enforcement officer unless the private tow truck operator or towing company complies with the requirements discussed above. A violation of this prohibition is a minor misdemeanor, and if the offender is a for-hire motor carrier, the offender may be subject to sanctions pursuant to the rules of the Public Utilities Commission (see below).<sup>15</sup>

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<sup>13</sup> R.C. 4513.61(C).

<sup>14</sup> R.C. 4513.61(B).

<sup>15</sup> R.C. 4513.61(G), (H), and (I).

## Public Utilities Commission rules

The bill requires the Public Utilities Commission to adopt rules pursuant to the Administrative Procedure Law governing for-hire motor carriers engaged in towing motor vehicles. The Commission's rules must do all of the following:

(1) Establish the acceptable scope of consumer protection or public safety regulations that may apply to a for-hire motor carrier engaged in the towing of motor vehicles under an ordinance, rule, or resolution of a municipal corporation, county, or township;

(2) Require the display of the business telephone number of a for-hire motor carrier engaged in the towing of motor vehicles on both sides of a vehicle used by the motor carrier to tow other motor vehicles. The rules must require the telephone number to be displayed in a manner that is readily legible and consistent with applicable markings required under federal law for a commercial motor vehicle.

(3) 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;

(4) Establish standards for the removal of a motor vehicle from a private tow-away zone by a for-hire motor carrier engaged in the towing of motor vehicles in addition to standards and requirements established under the Towing Law. The standards may vary based on whether the private tow-away zone is located on residential, retail, or other commercial property. The standards may include methods by which a for-hire motor carrier may confirm the property owner's consent to the removal of a motor vehicle from the private tow-away zone. The standards may establish minimum periods of time that a motor vehicle must be parked in a private tow-away zone prior to the motor vehicle's removal by a for-hire motor carrier.

(5) Determine the time and manner of notification that a for-hire motor carrier engaged in the towing of motor vehicles must follow when notifying a police department of a municipal corporation, township, or township or joint police district of the removal of a vehicle from a private tow-away zone as required under the Towing Law, provided that the time of notification must not exceed four hours from the time the vehicle is removed from the private tow-away zone.

(6) Require any for-hire motor carrier engaged in the towing of motor vehicles to notify the Commission of any violation of the Towing Law.

(7) Establish a procedure for any vehicle owner to file a complaint against a for-hire motor carrier engaged in the towing of motor vehicles alleging that the motor



carrier violated any of the prohibitions that apply to the towing of a vehicle from private property or a private tow-away zone.

(8) Require a monetary fine to be imposed on a for-hire motor carrier engaged in the towing of motor vehicles upon verification of the violation of a prohibition in the Towing Law. The fine must be at least two times the amount of the towing and storage fees collected from the vehicle owner and must be remitted to the vehicle owner in the manner provided by the Commission.

(9) Establish a schedule of sanctions to be imposed on a for-hire motor carrier engaged in the towing of motor vehicles upon verification of the violation of a prohibition in the Towing Law, which may include a monetary fine and the suspension or revocation of the certificate of public convenience and necessity issued to the for-hire motor carrier in accordance with the For-hire Motor Carrier Suspension Law. Any such fines collected must be deposited in the Public Utilities Transportation Safety Fund.<sup>16</sup>

(10) Adopt any other rules necessary to carry out the Commission's responsibilities under the bill.

The bill also prohibits any person from knowingly falsifying or failing to submit any information required to be submitted to the Commission under any of the aforementioned rules.<sup>17</sup>

With respect to the Commission's current authority to regulate persons engaged in towing motor vehicles, current law provides that any entity that is engaged in the towing of motor vehicles is subject to regulation by the Commission as a for-hire motor carrier. Current law also provides 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 (see **COMMENT 2**).<sup>18</sup>

Under current law, a "for-hire motor carrier" generally means a person engaged in the business of transporting persons or property by motor vehicle for compensation, except when engaged in specified activities in intrastate commerce. A "for-hire motor carrier" includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and

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<sup>16</sup> R.C. 4921.25(B).

<sup>17</sup> R.C. 4921.25(C).

<sup>18</sup> R.C. 4921.25(A).

employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.<sup>19</sup>

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## COMMENT

1. With respect to towing from private property that is not designated as a private tow-away zone, the bill requires the sheriff or chief of police to designate a place of storage that meets certain requirements. The bill accomplishes this by cross referencing requirements that apply when a vehicle is towed from a private tow-away zone (see R.C. 4513.60(A)(1)(b) and 4513.60(B)(1)(b)). However, one of those requirements relates to the proximity of the place of storage to the "private tow-away zone" even though in this circumstance the proximity should be tied to the private property. Therefore, this analysis is drafted to reflect the inconsistency in the bill.

2. The Ohio Supreme Court recently found that the provision of current law that prohibits a municipal corporation from licensing, registering, or regulating entities that tow vehicles violates the Ohio Constitution. Specifically the Court determined that the provision violated a municipal corporation's home rule authority under Article XVIII, Section 3 of the Ohio Constitution. Consequently, the Court severed the provision from the statute. See *Cleveland v. State*, Slip Opinion No. 2014-Ohio-86.

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## HISTORY

ACTION	DATE
Introduced	12-10-13

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<sup>19</sup> R.C. 4921.01(B).

