



Ohio Legislative Service Commission

Bill Analysis

Amanda M. Ferguson

Sub. H.B. 382

130th General Assembly

(As Re-referred to H. Commerce, Labor, and Technology)

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

BILL SUMMARY

Removal of vehicles from a private tow-away zone

- Modifies the required contents of a private tow-away zone sign.
- Requires the place a vehicle will be taken upon removal from a private tow-away zone to be within 20 linear miles, if practicable, rather than "conveniently located" as in current law.
- Requires a written contract between a property owner and a towing service for the removal of vehicles from a private tow-away zone.
- Requires a towing service to provide notice to the owner or operator of a vehicle who arrives after the 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.
- Clarifies when the "drop fee" applies.
- Requires a towing service, prior to removal of a vehicle from a private tow-away zone, to make all reasonable efforts to take as many photographs as necessary to clearly evidence the violation.
- Requires a towing service that has removed a vehicle from a private tow-away zone to provide notice to the appropriate law enforcement agency and deliver the vehicle to the place from which it may be recovered within 2 hours of removal.

- Allows a vehicle owner or lienholder to retrieve a vehicle removed from a private tow-away zone upon presentation of proof of ownership and payment of all applicable fees established by the PUCO.
- Allows the owner of a vehicle towed from a private tow-away zone to retrieve personal items from the vehicle upon showing proof of ownership.
- If a vehicle owner, operator, or lienholder contests the removal of a vehicle from a private tow-away zone, requires a towing service or storage facility to show the person all photographs of the violation and give the person written notice that the person may contact the PUCO regarding options for contesting the tow.
- Requires a towing service or storage facility to provide, upon request, copies of all photographs in the medium in which they are stored, whether paper, electronic, or otherwise.
- Prohibits a towing service from offering, or a property owner from accepting, any compensation in exchange for the authorization of the towing service to remove vehicles from a private tow-away zone.
- Establishes penalties that apply if a towing service, storage facility, or property owner fails to comply with applicable requirements of the Towing Law.

PUCO regulation

- Requires the PUCO to adopt rules that generally establish consumer protections and safety regulations that include the following:
 - The scope of regulation that local authorities may impose with respect to tows conducted from a private tow-away zone;
 - The maximum amount of towing and storage fees that may be imposed by a towing service that tows a vehicle from a private tow-away zone (for five years after the bill's effective date, generally \$90 maximum for towing; \$12 maximum per day for storage with a 24-hour grace period; and larger fees when the vehicle at issue is above a certain size);
 - The maximum amount of other fees that may be imposed when towing a vehicle from a private tow-away zone;
 - A review of maximum fees beginning five years after the bill's effective date;
 - Requirements governing the display of the towing service's telephone number on the side of tow trucks engaging in towing from a private tow-away zone;



- Safety standards for tow trucks engaged in all types of towing;
 - Requirements governing the terms of a contract between a towing service and the owner of private property designated as a private tow-away zone; and
 - Other specified requirements.
- Authorizes the PUCO to impose sanctions, including monetary fines and the suspension or revocation of the certificate of public convenience and necessity, on a for-hire motor carrier that violates the Towing Law with regard to private tow-away zones.
 - Requires the PUCO to conduct mediation and arbitration hearings concerning tows from a private tow-away zone upon request and in conformance with rules established by the PUCO.
 - Establishes the Motor Vehicle Towing Advisory Council for the purpose of providing advice and recommendations to the PUCO regarding administrative rules.

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CONTENT AND OPERATION

Requirements and procedures for the removal of a vehicle from a private tow-away zone

The bill generally imposes additional procedures and requirements on a towing service or place of storage with regard to a vehicle removed from a private tow-away zone. Those procedures and requirements are as follows.



Signage requirements

The bill modifies the required contents of a warning sign at the location of a private tow-away zone.

Under the bill, the sign must contain only the following:

- (1) A statement that the property is a tow-away zone;
- (2) A description of persons authorized to park on the property;
- (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;
- (5) The telephone number of the PUCO and a statement that if a person contests the tow, the person may contact the PUCO.¹

With regard to the description of persons authorized to park on the property, the bill specifies that if the property is a residential property, the owner of the private property may include on the sign a statement that only tenants and guests may park in the private tow-away zone, subject to the terms of the property owner. Additionally, if the property is a commercial property, the owner of the private property may include on the sign a statement that only customers may park in the private tow-away zone. However, 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 on which the private tow-away zone is located or the name of the business which is located on the property designated as a private tow-away zone.²

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. The bill also 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 effective date of the bill may retain existing private tow-away zone signs that comply with the requirements of that law for up to five years after the effective date of the bill.³

¹ R.C. 4513.601(A)(1).

² R.C. 4513.601(A)(1)(b).

³ R.C. 4513.601(A) and R.C. 4513.60(B), which this bill revises and recodifies as R.C. 4513.601.



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 at least 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.)⁴

Storage requirements

The bill modifies the requirements governing the storage of towed vehicles. Under current law, the owner of property on which a 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.⁵

The bill modifies the requirement that the place of storage be conveniently located by requiring instead that it be located within 20 linear miles of the location of the private tow-away zone, unless it is not practicable to take the vehicle to a place of storage within 20 linear miles. The bill also requires the owner of the property to ensure

⁴ R.C. 4513.60(B)(1)(a).

⁵ R.C. 4513.60(B)(1)(b).



that the towing service and storage facility accepts major credit cards for payment of towing and storage charges.⁶

Removal of vehicles from a private tow-away zone

The bill allows the owner of private property that is established as a private tow-away zone to cause the removal of a vehicle that is parked on the property without consent or in violation of any posted parking condition by a towing service pursuant to a written contract, so long as the written contract contains all terms required in rules established by the PUCO (discussed below). Additionally, the towing service is required to remove the vehicle in accordance with the Towing Law and rules established by the PUCO.⁷

Under current law, the property owner or the owner's agent may remove, or cause the removal of, such a vehicle.⁸ There is no specific provision in current law governing a contract between a towing service and the property owner.

Drop fees

The bill requires a towing service to provide notice that a person may pay a "drop fee" and clarifies when such a fee may be applicable. 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 actually removed from the property, 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.⁹

The bill clarifies when the drop fee is applicable by defining "vehicle has been prepared for removal" and "prior to its actual removal from the property." Under the bill, "vehicle has been prepared for removal" means that the vehicle has been loaded onto a tow vehicle or any part of the vehicle has been placed upon or connected in any manner to an assembly that is connected to the tow vehicle that enables the tow vehicle to tow the vehicle. "Prior to its actual removal from the property" means that after a vehicle has been prepared for removal, any part of the vehicle that is being towed or the

⁶ R.C. 4513.601(A)(2) and (3).

⁷ R.C. 4513.601(B)(1).

⁸ R.C. 4513.60(B)(2)(a).

⁹ R.C. 4513.60(C).



tow vehicle, including a tire and wheel assembly, is on the property from which the vehicle is being towed.¹⁰

The bill also requires the towing service, at the time the owner arrives, to give the owner oral or written notification of the opportunity to pay a drop fee to obtain release of the vehicle. Additionally, the towing service must accept major credit cards for the payment of a drop fee and must give any vehicle owner or operator who chooses to pay a drop fee a receipt showing both the full amount normally assessed and the actual amount received.¹¹

Photographs of a violation

The bill 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 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.¹²

Notice of vehicle removal and delivery of the vehicle

The bill imposes a timeframe within which a towing service must notify law enforcement that a vehicle has been removed from a private tow-away zone. Under current law, the owner of private property or the agent of the owner that causes the removal of a vehicle from a private tow-away zone must promptly notify the police department of the municipal corporation, township, or township or joint police district in which the property is located of all of the following: (1) the removal, (2) the vehicle's license number, make, model, and color, (3) the location from which the vehicle was removed, (4) the date and time of removal, (5) the telephone number of the person from whom the vehicle may be recovered, and (6) the address of the place to which the vehicle has been taken and from which it may be recovered.¹³ Under the bill, the towing service that removes the vehicle must provide that notice to the appropriate law

¹⁰ R.C. 4513.601(C)(2).

¹¹ R.C. 4513.601(C)(1).

¹² R.C. 4513.601(D)(1).

¹³ R.C. 4513.60(D)(1).



enforcement agency within two hours of vehicle removal. In addition, the bill clarifies that notice also may be given to the county sheriff when it is appropriate.¹⁴

The bill also specifies that the towing service must deliver the vehicle to the location from which it may be recovered not more than two hours after it is removed from the private tow-away zone.¹⁵

Vehicle recovery and retrieval of personal items

The bill modifies the process for retrieving a vehicle that has been towed from a private tow-away zone. Under current law, in order for a vehicle owner to recover the vehicle that has been towed from a private tow-away zone, the owner must present proof of ownership and pay the applicable towing and storage charges.¹⁶ Under the bill, the vehicle owner or lienholder must present proof of ownership and pay all applicable fees in accordance with rules established by the PUCO (see below). However, the owner of the vehicle also may retrieve any personal items from the vehicle without retrieving the vehicle or paying any fee. For purposes of the bill, "personal items" do not include any items that are attached to the vehicle.¹⁷

Additionally under the bill, if the vehicle owner, operator, or lienholder contests the removal of the vehicle, the towing service or storage facility in possession of the vehicle must show the person all photographs taken of the violation. 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. The towing service or storage facility also must give written notice that if the person disputes that the vehicle was lawfully towed, the person may contact the PUCO about options for contesting the tow, including mediation and legal action.¹⁸

Prohibitions

The bill expands the prohibitions applicable to persons engaged in the towing and storage of vehicles removed 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

¹⁴ R.C. 4513.601(E)(1).

¹⁵ R.C. 4513.601(D)(2).

¹⁶ R.C. 4513.60(D).

¹⁷ R.C. 4513.601(F)(1) and (3).

¹⁸ R.C. 4513.601(F)(2).



the aforementioned storage requirements. A violation of either of these prohibitions is a minor misdemeanor.¹⁹

The bill also prohibits a towing service or storage facility from doing any of the following:

(1) Failing to show or provide photographs of an alleged violation of a private tow-away zone and the written notice regarding contesting the tow;

(2) Charging or collecting any fee that exceeds the maximum fee established by the PUCO, charging or collecting any fee that is not authorized by the PUCO, or refusing to accept a major credit card for the payment of applicable fees;

(3) Refusing to allow the owner of a vehicle to retrieve personal items from the vehicle or charging or collecting any fee related to the retrieval of personal items;

(4) If applicable, failing to notify a vehicle owner or operator of the opportunity to pay a drop fee;

(5) Failing to display the business telephone number of the towing service on both sides of the towing vehicle in accordance with rules established by the PUCO; and

(6) Offering any compensation, financial or otherwise, to a property owner in exchange for the authorization to remove vehicles from a private tow-away zone.²⁰

Additionally, the bill prohibits a property owner from accepting any compensation, financial or otherwise, from a towing service in exchange for authorizing the towing service to remove vehicles from a private tow-away zone.²¹ The bill establishes a violation of any of these prohibitions as a minor misdemeanor on the first offense, a fourth degree misdemeanor on the second offense, and a third degree misdemeanor on the third or subsequent offense.²² If the offender is a for-hire motor carrier, the offender also may be subject to sanctions pursuant to the rules of the Public Utilities Commission (see below).²³

¹⁹ R.C. 4513.60(E) and (G).

²⁰ R.C. 4513.601(G).

²¹ R.C. 4513.601(G)(7).

²² R.C. 4513.601(I).

²³ R.C. 4513.601(J).



Regulation by the Public Utilities Commission

The bill requires the Public Utilities Commission (PUCO) to adopt rules pursuant to the Administrative Procedure Act 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 from a private tow-away zone that a county or township may adopt pursuant to a resolution;

(2) Establish fees applicable to a for-hire motor carrier engaged in the towing of motor vehicles from a private tow-away zone in accordance with the following:

- For five years after the effective date of the bill, the maximum fee for the removal of a vehicle is \$90; or for a vehicle that has a manufacturer's gross vehicle weight rating in excess of 10,000 pounds that is a truck, bus, or a combination of commercial tractor and trailer or semitrailer, the maximum fee is \$150;
- For five years after the effective date of the bill, the maximum storage fee is \$12 per 24-hour period, except the first 24-hour period during which no fee may be assessed; or for a vehicle that has a manufacturer's gross vehicle weight rating in excess of 10,000 pounds that is a truck, bus, or a combination of commercial tractor and trailer or semitrailer, the maximum storage fee is \$20 per 24-hour period, except the first 24-hour period during which no fee may be assessed;
- Beginning five years after the effective date of the bill, the PUCO may revise the maximum removal and storage fees;
- At any time, the PUCO may establish any other fees in addition to the removal and storage fees, but must establish maximum amounts that may be charged for each additional fee; and
- The PUCO must review the fees every five years, beginning five years after the effective date of the bill.

(3) Require the display of the business telephone number of a for-hire motor carrier engaged in the towing of motor vehicles from a private tow-away zone 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.

(4) 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;

(5) 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.

(6) Establish minimum terms that must be part of a written contract between a property owner and a towing service in order for the towing service to remove a vehicle from a private tow-away zone, including all of the following:

- The circumstances under which a towing service may remove vehicles from a private tow-away zone;
- The hours during which the towing service may remove vehicles from the private tow-away zone; and
- A description of the area in which the towing restrictions may be enforced.

(7) Determine which documents may be used by the owner or lienholder of a vehicle to establish proof of ownership of a vehicle that is in possession of a for-hire motor carrier engaged in the towing of motor vehicles from a private tow-away zone;

(8) 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 a private tow-away zone.

(9) Establish procedures and requirements governing mediation and arbitration of towing disputes (see below);

(10) Establish a schedule of sanctions to be imposed on a for-hire motor carrier engaged in the towing of motor vehicles from a private tow-away zone upon verification of the violation of the Towing Law or a rule adopted by the Commission, 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 and utilized only for purposes of administering the duties of the PUCO related to towing.

(11) Adopt any other rules necessary to carry out the PUCO's responsibilities under the bill.²⁴

The bill also prohibits any person from knowingly falsifying or failing to submit any information required to be submitted to the PUCO under any of the aforementioned rules.²⁵

Under current law, the PUCO may regulate as a for-hire motor carrier any entity that is engaged in the towing of motor vehicles.²⁶ 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 employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.²⁷

Municipal regulation of entities engaged in the towing of motor vehicles

The bill removes a provision of current law that the Ohio Supreme Court determined was in conflict with Article XVIII, Section 3 of the Ohio Constitution. Current law provides that an entity engaged in the towing of motor vehicles 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.²⁸ In *Cleveland v. State*, Slip Opinion No. 2014-Ohio-86, the court held that provision violated a municipal corporation's home rule authority. Accordingly, the bill removes that provision from the law.²⁹

²⁴ R.C. 4921.25(B).

²⁵ R.C. 4921.25(C).

²⁶ R.C. 4921.25(A).

²⁷ R.C. 4921.01(B), not in the bill.

²⁸ R.C. 4921.25(A).

²⁹ R.C. 4921.25(A).



PUCO mediation and arbitration procedures

The bill allows any person whose vehicle has been towed from a private tow-away zone and who disputes some aspect of the removal to request the PUCO to facilitate mediation between the vehicle owner and the towing service that removed the vehicle. Under the bill, the PUCO is required to request the towing service to participate in the mediation. If the towing service agrees to participate, the PUCO is required to hold a mediation hearing as expeditiously as possible. At the hearing, the PUCO must mediate the dispute and attempt to reach a conclusion that is satisfactory to both parties. The mediation hearing must be conducted in accordance with rules adopted by the PUCO for such a proceeding.³⁰

The bill also allows a person to submit a written request asking the PUCO to hold an arbitration hearing if the towing service refuses to participate in mediation, or if the mediation is conducted but does not reach a conclusion that is satisfactory to the person whose vehicle was towed. After receiving such a request, the PUCO must hold an arbitration hearing, in which a towing service is required to participate. The arbitration must be conducted in accordance with rules adopted by the PUCO for such a proceeding.³¹

Under the bill, the PUCO must deliver a written statement of the PUCO's decision to the person who requested arbitration and the towing service that towed the vehicle upon completion of the arbitration hearing. If the PUCO determines that the towing service violated a prohibition in the Towing Law, the PUCO must require the towing service to pay a fine of at least two times the amount of fees collected from the vehicle owner, which will be remitted to the vehicle owner. Both parties are bound to the PUCO arbitration decision. The decision may be enforced by the Franklin County Court of Common Pleas and may be appealed to the Franklin County Court of Appeals.³²

The Motor Vehicle Towing Advisory Council

The bill establishes the Motor Vehicle Towing Advisory Council, for purposes of providing advice and recommendations to the PUCO regarding the adoption of rules for the towing industry, including the regulation of fees. Under the bill, the Council will consist of representatives from the towing industry, law enforcement, the insurance industry, the Bureau of Motor Vehicles, the automotive repair shop industry, and a

³⁰ R.C. 4921.251(A).

³¹ R.C. 4921.251(B)(1).

³² R.C. 4921.251(B)(2) and (3).



member of the public. Those members must be jointly appointed by the Speaker of the House of Representatives and the President of the Senate and then approved by the Governor. The bill also establishes procedural requirements applicable to the Council.³³

HISTORY

ACTION	DATE
Introduced	12-10-13
Reported, H. Commerce, Labor & Technology	02-26-14
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³³ R.C. 4921.252.

