



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. H.B. 341\***

131st General Assembly

(As Reported by S. Transportation, Commerce & Labor)

**Reps.** Young and Sweeney, Becker, Boose, Hall, Retherford, Terhar, Thompson, Amstutz, Barnes, Boyd, Conditt, Dever, Green, Grossman, Hambley, Howse, G. Johnson, Rogers

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## **BILL SUMMARY**

### **Salvage title to certain inoperable vehicles**

- Establishes a process by which a repair facility, towing service, or place of storage for towed vehicles may obtain a salvage certificate of title to a vehicle in its possession for purposes of disposing of the vehicle through a motor vehicle salvage dealer or scrap metal processing facility if the vehicle:
  - Has a value of less than \$1,500;
  - Is inoperable; and
  - Is impossible to restore for highway operation.

### **Title to an unclaimed vehicle**

- When an entity specified above pays the clerk of courts the value of a vehicle in order to obtain title to the vehicle, allows the entity to deduct both of the following:
  - A towing fee, if the vehicle was towed by the party seeking title to the vehicle; and
  - Storage fees for the period of time the vehicle was stored without payment.

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\* This analysis was prepared before the report of the Senate Transportation, Commerce and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifies that a repair garage or place of storage may take title to a vehicle under a provision of current law, even if the person who requested the repair or who agreed to the storage of the motor vehicle is not an owner or a lienholder of the motor vehicle as indicated in the records of the Bureau of Motor Vehicles.

### **Towing prohibitions and penalties**

- Modifies the penalties that may be imposed by a court in a civil action initiated against a towing service or storage facility for certain towing violations.
- Prohibits a towing service from permitting the operation of a towing vehicle on behalf of the towing service unless the towing service holds a valid certificate of public convenience and necessity.
- Prohibits a towing service from removing a vehicle from a private tow-away zone other than pursuant to a written contract with the owner of the private property on which the private tow-away zone is located.
- Prohibits a towing service from knowingly offering or providing monetary compensation in exchange for the authorization to tow motor vehicles from a specified location or on behalf of the person to whom the towing service offered or provided compensation.

### **Towing and storage fees**

- Replaces the statutorily prescribed maximum fees for the removal and storage of a vehicle towed from private property or a private tow-away zone with maximum fees to be established by the Public Utilities Commission by rule.
- Requires the Public Utilities Commission to establish a process for reviewing the fees every five years and to adjust any fee the Commission determines is not just, reasonable, or compensatory.
- Allows a municipal corporation to establish towing and storage fees for the removal of a vehicle from private property, other than a private tow-away zone, within the municipal corporation that differ from those established by the Public Utilities Commission.
- Specifies that a lienholder that reclaims a vehicle that was towed from a private tow-away zone is not required to pay storage fees for any period of time prior to the date a notice indicating that the vehicle had been towed was received by the lienholder.
- Generally authorizes a towing service or storage facility to charge an after-hours retrieval fee for the retrieval of personal items from a vehicle that was towed from

private property or from the street or after coming into the possession of law enforcement if the owner retrieves personal items when the towing service of storage facility is not open to the public and is not required to be open.

- Generally allows a person to use a major credit card to pay a "drop fee," which is a reduced fee that may be paid to a towing service for the release of a vehicle that has been prepared for removal but not yet removed from private property or a private tow-away zone.

### **Other towing provisions**

- Authorizes an insurance company to bring a civil action against a towing service for purposes of recovering a motor vehicle that has been towed and for which a claim has been filed with the insurance company, objecting to the amount billed by the towing service, or both.
- Allows a towing service to deliver a vehicle towed from private property or a private tow-away zone to a place of storage after the required two-hour time frame if the delay is due to an uncontrollable force, natural disaster, or unforeseeable event.
- Requires a towing service, storage facility, or authorized entity, in specified circumstances, to notify the owner of a towed vehicle that if the owner disputes that the motor vehicle was lawfully towed the owner may be able to file a civil action.
- Extends the deadline by which a towing service or storage facility must notify the owner of a vehicle that the vehicle has been towed from a private tow-away zone.
- Extends the deadline by which the sheriff or chief of police must notify the owner of a vehicle that the vehicle has been ordered into storage by law enforcement.
- Eliminates the requirement that a storage facility remain open during periods of time that a towing service is towing a vehicle from private property or from the street or after coming into the possession of law enforcement when the vehicle will be held by the storage facility.
- Eliminates the requirement that a storage facility must ensure that, within three hours of receiving a call from the owner of a vehicle towed from private property or from the street or after coming into the possession of law enforcement, a representative of the storage facility is available to release the vehicle.



- Prohibits the owner of a motor vehicle that has been towed from retrieving personal items from the motor vehicle if it would endanger the safety of the owner, unless the owner agrees to sign a waiver of liability.
- Modifies the requirement that a towing service must provide a written estimate for towing services under specified circumstances, so that the requirement only applies if the estimate is requested.

### Notice from salvage motor vehicle auction

- Requires a salvage motor vehicle auction that is seeking a salvage title to a motor vehicle to provide proof that it sent a notice to the owner of the vehicle and any known lienholder and that the notice was delivered by a nationally recognized courier service.

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## CONTENT AND OPERATION

### Salvage title to certain inoperable vehicles

The bill allows an authorized entity to obtain a salvage certificate of title to a vehicle in its possession for purposes of disposing of the vehicle through a motor vehicle salvage dealer or scrap metal processing facility if the vehicle:

(1) Has a value of less than \$1,500 (the wholesale value for that make and model of motor vehicle at the time an affidavit is submitted, minus all of the following: the estimated cost of repairs to restore the motor vehicle to the wholesale value, a towing fee if the motor vehicle was towed by the party seeking title to the motor vehicle, storage fees for the period of time the motor vehicle was stored without payment up to a maximum of 30 days);

(2) Is inoperable; and

(3) Is impossible to restore for highway operation.

In order to obtain the salvage certificate of title under the bill, an authorized entity must comply with the steps set forth below. An authorized entity is any business with which a person entered into an agreement for the repair of a motor vehicle, any for-hire motor carrier that tows motor vehicles, or any place to which such a for-hire motor carrier delivers a towed motor vehicle for storage.<sup>1</sup>

#### Step 1: Notice to the owner and lienholder of the vehicle

The authorized entity must cause a search to be made of the records of the Bureau of Motor Vehicles in order to determine the identity of the owner or any lienholder of the motor vehicle. Within eight business days after the Registrar of Motor Vehicles provides the identity of the owner and any lienholder of a motor vehicle, if the vehicle remains unclaimed, the authorized entity must send written notice to any owner and any lienholder of the vehicle by certified or express mail with return receipt

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<sup>1</sup> R.C. 4505.103(A)(1) and (4) and (B)(1).



requested or by a commercial carrier service utilizing any form of delivery requiring a signed receipt.<sup>2</sup>

## **Step 2: Obtain a salvage certificate of title**

Not sooner than 30 days after notice to the owner and any lienholder has been received (as evidenced by a receipt signed by any person) or the authorized entity has been notified that delivery of the notice was not possible, an agent of the authorized entity may complete and sign an affidavit attesting that the vehicle qualifies for disposal and that all applicable requirements have been met. The affidavit must be on a form prescribed by the Registrar of Motor Vehicles and must include the make and model of the vehicle; the vehicle identification number (if available); an itemized statement of the value of the motor vehicle; a description of the damage to the motor vehicle; the length of time the motor vehicle has remained unclaimed; that a notice to remove the vehicle has been sent to any owner or lienholder; and that a search of the records of the BMV has been made for outstanding liens. The authorized entity also must photograph the vehicle to substantiate the determination that the value of the motor vehicle is less than \$1,500.<sup>3</sup>

An agent of the authorized entity may present the affidavit, along with the photographs, an application for a salvage certificate of title, and a fee of \$4 to the clerk of courts. Upon receipt of a properly executed application, the clerk of courts must issue a salvage certificate of title to the motor vehicle, on a form prescribed by the Registrar and mark the certificate of title with the words "FOR DESTRUCTION." The clerk also must retain a record of the issuance of the salvage certificate of title and all accompanying documentation in the automated title processing system for not less than ten years. The clerk must deposit the \$4 fee into the certificate of title administration fund, which is used to pay the costs incurred by the clerk in processing titles.<sup>4</sup>

Under the bill, such a salvage certificate of title is free and clear of all liens and must be used solely for purposes of disposing of the vehicle through a motor vehicle salvage dealer or a scrap metal processing facility. If a salvage certificate of title has been issued using this procedure, the bill prohibits the use of the motor vehicle for anything except parts and scrap metal.<sup>5</sup>

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<sup>2</sup> R.C. 4505.103(B)(2).

<sup>3</sup> R.C. 4505.103(B)(3).

<sup>4</sup> R.C. 325.33, not in the bill, and 4505.103(C).

<sup>5</sup> R.C. 4505.103(C).



### **Step 3: Disposal of the vehicle**

#### **Disposal under the bill**

After obtaining a salvage certificate of title, the authorized entity may dispose of the vehicle through a motor vehicle salvage dealer or scrap metal processing facility. "Scrap metal processing facility" means an establishment having facilities for processing iron, steel, or nonferrous scrap and whose principal product is scrap iron and steel or nonferrous scrap for sale for remelting purposes.<sup>6</sup> "Motor vehicle salvage dealer" means any person who engages in business primarily for the purpose of selling salvage motor vehicle parts and secondarily for the purpose of selling at retail salvage motor vehicles or manufacturing or selling a product of gradable scrap metal.<sup>7</sup>

At the time of disposal, the authorized entity must deliver the salvage certificate of title to the salvage dealer or scrap metal processing facility for its records. The authorized entity is permitted to retain any money arising from the disposal of the vehicle.<sup>8</sup>

#### **Disposal under current law**

There are three provisions of current law that authorize the disposal of a motor vehicle by law enforcement in circumstances that overlap with those provided in the bill. The first provision allows a county sheriff or the chief of police of a municipal corporation, township, or joint police district to order an unclaimed vehicle that was towed from private property, from the street, or after coming into the possession of law enforcement to be disposed of through a motor vehicle salvage dealer or scrap metal processing facility or to be sold at a public auction. Any money in excess of the towing and storage expenses is credited to the general fund of the county, municipal corporation, township, or joint police district, as applicable.<sup>9</sup>

The second provision allows a county sheriff or the chief of police of a municipal corporation, township, or joint police district to order the disposal of an "abandoned junk motor vehicle" through a motor vehicle salvage dealer or scrap metal processing facility that is under contract with the county, township, or municipal corporation. Any money arising from the disposal of an abandoned junk motor vehicle is deposited in the general fund of the county, township, or municipal corporation, as applicable. An

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<sup>6</sup> R.C. 4505.103(D)(2) and 4737.05(D), not in the bill.

<sup>7</sup> R.C. 4505.103(A)(2) and 4738.01, not in the bill.

<sup>8</sup> R.C. 4505.103(C).

<sup>9</sup> R.C. 4513.62, not in the bill.



abandoned junk motor vehicle is defined as a vehicle that meets all of the following requirements:

(1) It is left on private property for 48 hours or longer without the permission of the person having the right to the possession of the property, on a public street or other property open to the public for purposes of vehicular travel or parking, or upon or within the right-of-way of any road or highway, for 48 hours or longer;

(2) It is three years old or older;

(3) It is extensively damaged, including but not limited to any of the following: missing wheels, tires, motor, or transmission;

(4) It is apparently inoperable; and

(5) It has a fair market value of \$1,500 or less.<sup>10</sup>

The third provision allows a county sheriff or the chief of police of a municipal corporation, township, or joint police district to dispose of a vehicle that was towed from the street or after coming into the possession of law enforcement and that is extensively damaged, apparently inoperable, and has a fair market value of \$1,500 or less if the vehicle has remained unclaimed for ten days or longer after the sheriff or chief of police has provided notice to the owner or lienholder. The means of disposal and the disposition of money arising from the disposal is the same as in the second provision above.<sup>11</sup>

### **Title to an unclaimed vehicle**

Under current law, there are two circumstances in which an entity in possession of a vehicle may be able to obtain title to the vehicle (discussed below). The bill modifies the existing processes in the following ways:

(1) The bill allows for the deduction of towing and storage fees from the amount an entity must pay to the clerk of courts in order to obtain title to the vehicle.

(2) The bill modifies the procedure under Circumstance 1 (below) if the person who requested the repair or who agreed to the storage of the motor vehicle is not an owner or a lienholder of the motor vehicle.

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<sup>10</sup> R.C. 4513.63, not in the bill.

<sup>11</sup> R.C. 4513.63, not in the bill.





## **Background**

### **Circumstance 1: Vehicles left at a repair garage or place of storage**

Under current law, a repair garage or place of storage may take title to a vehicle if all of the following apply:

- (1) The motor vehicle has a value of less than \$3,500;
- (2) The vehicle has been left unclaimed for 15 days or more following the completion of a requested repair or agreed term of storage;
- (3) The repair garage or place of storage complies with requirements governing the mailing of notice to the vehicle owner and any lienholder and the vehicle remains unclaimed 15 days after the mailing of all required notices; and
- (4) The repair garage or place of storage submits a properly executed affidavit to the clerk of courts.<sup>12</sup>

### **Circumstance 2: Vehicles towed from a private tow-away zone**

Under current law, a towing service or storage facility may obtain title to a vehicle if 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 owner of the towing service or storage facility complies with requirements governing notice to the vehicle owner and any lienholder;
- (4) The vehicle has been left unclaimed for 60 days after an initial notice is provided; and
- (5) The owner of the towing service or storage facility submits a properly executed affidavit to the clerk of courts.<sup>13</sup>

### **Payment to the clerk of courts**

Under current law, when obtaining a certificate of title to a motor vehicle under either circumstance above, the repair garage or place of storage or towing service or storage facility must pay the value of the vehicle to the clerk of courts. The "value" of a

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<sup>12</sup> R.C. 4505.101(A).

<sup>13</sup> R.C. 4505.101(B).



motor vehicle is the wholesale value for that make and model of motor vehicle at the time the affidavit is submitted (as provided in a vehicle valuation guide that is generally available and recognized by the motor vehicle industry) minus: (1) the estimated cost of repairs to restore the motor vehicle to the wholesale value, and (2) the cost of any agreed-upon repairs. The bill allows the entity to deduct both of the following from the value:

(1) A towing fee, if the motor vehicle was towed by the party seeking title to the motor vehicle; and

(2) Storage fees for the period of time the vehicle was stored without payment.<sup>14</sup>

With the exception of the fees for the towing and storage of a vehicle that is removed from private property or a private tow-away zone (see "**Statutory towing and storage fees**," below), towing and storage fees are not established by law and may be set by the entity responsible for the towing or storage of the vehicle.

### **Additional procedures**

The bill specifies that a repair garage or place of storage may take title to a vehicle under Circumstance 1 (above) even if the person who requested the repair or who agreed to the storage of the motor vehicle is not an owner or a lienholder of the motor vehicle as indicated in the records of the Bureau of Motor Vehicles. However, if that person is not an owner or lienholder, in addition to the above requirements, the repair garage or place of storage must notify the sheriff of the county or the police department of the municipal corporation, township, or township or joint police district in which the repair garage or place of storage is located that the repair garage or place of storage is in possession of the motor vehicle.<sup>15</sup>

### **Penalties for towing violations**

The bill modifies the penalties that may be imposed by a court in a civil action initiated against a towing service or storage facility for a violation of the law governing the removal of a vehicle from private property or a private tow-away zone or the law governing the provision of estimates for certain towing services. Under current law, the court must impose the following penalties against a towing service or storage facility if the court determines that the entity committed a violation:<sup>16</sup>

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<sup>14</sup> R.C. 4505.101(C)(3) and (E)(3).

<sup>15</sup> R.C. 4505.101(A)(1) and (C)(2).

<sup>16</sup> R.C. 4513.611(B) and (C).



| <b>Table 1: Existing penalties for towing violations</b>           |  |
|--|--|
| <b>Number of prior violations within one year of the violation</b> | <b>Penalty</b>   |
| 0  | \$1,000  |
| 1  | \$2,500  |
| 2  | \$2,500 and a six-month revocation of the towing service's or storage facility's certificate of public convenience and necessity (After the expiration of the six-month revocation, a court cannot 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) |

### **Under the bill**

The bill establishes a two tier system of penalties that may be imposed in such a civil action by classifying violations of the towing law as major and minor violations. The penalties for major violations are similar to the penalties under current law, while the penalties for minor violations are less severe. The penalties under the bill for major violations are as follows:<sup>17</sup>

| <b>Table 2: Penalties for <i>major</i> towing violations under the bill</b>     |  |
|---|--|
| <b>Number of prior <i>major</i> violations within one year of the violation</b> | <b>Penalty</b>   |
| 0   | \$1,000  |
| 1   | \$2,500  |
| 2   | \$3,500 and a six-month revocation of the towing service's or storage facility's certificate of public convenience and necessity (After the expiration of the six-month revocation, a court cannot 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) |

The penalties under the bill for a minor violation are as follows:<sup>18</sup>

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<sup>17</sup> R.C. 4513.611(B)(3).

<sup>18</sup> R.C. 4513.611(B)(2).



| <b>Table3: Penalties for <i>minor</i> towing violations under the bill</b>      |   |
|---|---|
| <b>Number of prior <i>minor</i> violations within one year of the violation</b> | <b>Penalty</b>                                  |
| 0   | \$150   |
| 1   | \$350   |
| 2   | Count as a major violation (see <b>Table2</b> ) |
| 3   | \$1,500   |
| 4   | \$2,000   |
| 5   | Count as a major violation (see <b>Table2</b> ) |
| 6   | \$2,500   |
| 7   | \$2,500   |
| 8   | Count as a major violation (see <b>Table2</b> ) |

*The bill retains a provision in current law that specifies that if a court determines that a towing service or storage facility committed a violation (major or minor) that caused actual damages, the court must award the vehicle owner three times the actual damages and reasonable attorney's fees.*

### **Major violations**

A major violation is any of the following:

(1) Failure to give the owner of a vehicle, who arrives after the owner's vehicle has been prepared for removal but prior to its actual removal, notification that the owner may pay a "drop fee" (equal to not more than one-half of the fee for the removal of the vehicle) for the immediate release of the vehicle as required under the laws governing tows from private property and private tow-away zones;

(2) Failure to release a vehicle upon payment of a drop fee (as discussed above);

(3) Refusal to allow a vehicle owner to reclaim the owner's vehicle upon payment of the applicable fees established by the Public Utilities Commission and presentation of proof of ownership as required under the laws governing tows from private property and private tow-away zones;

(4) Refusal to allow a vehicle owner to retrieve personal items from the owner's vehicle under circumstances in which the owner is permitted to retrieve personal items under the laws governing tows from private property and private tow-away zones;

(5) Failure to provide notice to the appropriate law enforcement agency within two hours of removing a vehicle as required under the private tow-away zone law; and



(6) Failure to send notice that a vehicle has been towed to the vehicle owner and any known lienholder within 30 days of removal of the vehicle from a private tow-away zone. (If a court determines that a towing service or storage facility committed this violation and a minor violation for failure to send notice to the owner as provided in minor violation (5) below with regard to the same transaction, the court must find the towing service or storage facility liable for only the major violation.)

(7) Failure to visibly display the certificate of public convenience and necessity number on both sides of a towing vehicle.<sup>19</sup>

### **Minor violations**

A minor violation is any of the following:

(1) Failure to deliver a vehicle to the designated location within two hours after removal, unless the towing service is unable to deliver the vehicle within two hours due to an uncontrollable force, natural disaster, or other event that is not within the power of the towing service, as required under the laws governing tows from private property and private tow-away zones;

(2) Failure to provide a receipt as required under the laws governing tows from private property and private tow-away zones;

(3) Failure to take a towed vehicle to a location that meets the requirements of the private tow-away zone law;

(4) Failure to comply with any photograph-related requirement established under the private tow-away zone law. (If a court determines that a towing service or storage facility committed more than one violation of the photograph-related requirements with regard to the same transaction, the court must find the towing service or storage facility liable for only one minor violation.)

(5) Failure to send notice to the owner and any lienholder as required under the private tow-away zone law;

(6) Failure to provide an estimate, upon request, when a vehicle is towed other than from private property, a private tow-away zone, or by law enforcement, containing the required information;

(7) Charging a fee that does not comply with fee limitations for failure to provide an estimate; and

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<sup>19</sup> R.C. 4513.611(A)(2).



(8) Failure to post a notice pertaining to the fee limitations for failure to provide an estimate.<sup>20</sup>

### **Multiple violations**

Under the bill, if the civil action alleges multiple violations, the court must award a penalty for each violation for which the towing service or storage facility is determined to be liable. The court must consider each violation as a separate violation for purposes of determining how many violations the towing service or storage facility has committed within one year. In determining if a towing service or storage facility has committed prior violations within one year, the court must consider only violations that have been determined by a court of competent jurisdiction to have been committed by the towing company or storage facility.<sup>21</sup>

### **Copy of judgment**

The bill also requires a court that issues a judgment in a civil action against a towing service or storage facility to send a copy of the judgment to the Public Utilities Commission. The Commission must provide a copy of the judgment upon request.<sup>22</sup>

### **Penalty for failure to obtain a valid certificate of public convenience and necessity**

The bill prohibits a towing service from permitting the operation of a towing vehicle on behalf of the towing service unless the towing service holds a valid certificate of public convenience and necessity. The bill specifies that this is a strict liability offense. A violation of this prohibition is a minor misdemeanor on the first offense and a towing service that is issued a citation for the violation is not permitted to enter a written plea of guilty and waive the right to contest the citation in a trial but instead must designate an agent to appear in person in the proper court to answer the charge. If the towing service is convicted of or pleads guilty to the offense, the court must notify the towing service that a subsequent offense will result in the seizure and impoundment of any tow truck that is used to tow vehicles on behalf of the towing service until the towing service obtains a certificate of public convenience and necessity.<sup>23</sup>

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<sup>20</sup> R.C. 4513.611(A)(1).

<sup>21</sup> R.C. 4513.611(B)(4) and (5).

<sup>22</sup> R.C. 4513.611(D).

<sup>23</sup> R.C. 4513.67(B)(1) and (D)(1) and (3).



If the towing service previously has been convicted of or pleaded guilty to such a violation, the violation is an unclassified misdemeanor. The court is required to impose upon the towing service a \$500 fine. The court also must require the towing service to disclose the license plate number of every vehicle used to tow vehicles on behalf of the towing service and order an appropriate law enforcement agency to seize and impound all such vehicles. Upon presentation of a certificate of public convenience and necessity for the towing service, the court must terminate the order and the law enforcement agency in possession of the vehicles must release the vehicles.<sup>24</sup>

Under current law, if a towing service does not hold a valid certificate of public convenience and necessity, both of the following prohibitions apply:

(1) No person shall operate a towing vehicle for the towing service; and

(2) No person who owns a towing vehicle used by the towing service, or who has supervisory responsibility over a towing vehicle used by the towing service, shall permit the operation of a towing vehicle used by the towing service.<sup>25</sup>

There is no existing penalty for a violation of either of the above prohibitions.

### **Written contract for removal of a vehicle from a private tow-away zone**

The bill prohibits a towing service from removing a vehicle from a private tow-away zone other than pursuant to a written contract entered into with the owner of the private property on which the private tow-away zone is located. A violation of this prohibition is a minor misdemeanor.<sup>26</sup>

### **Definition of property owner for purposes of the private tow-away zone law**

The bill defines owner of a private property, for purposes of the private tow-away zone law, to include any of the following with respect to a private property:

(1) Any person who holds title to the property;

(2) Any person who is a lessee or sublessee with respect to a lease or sublease agreement for the property;

(3) A person who is authorized to manage the property; and

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<sup>24</sup> R.C. 4513.67(D)(2).

<sup>25</sup> R.C. 4513.67(B)(1).

<sup>26</sup> R.C. 4513.601(B)(3).



(4) A duly authorized agent of any person listed above.<sup>27</sup>

## **Kickbacks**

The bill prohibits a towing service from knowingly offering or providing monetary compensation in exchange for the authorization to tow motor vehicles from a specified location or on behalf of the person to whom the towing service offered or provided compensation. The bill specifies that this prohibition does not prohibit a towing service from negotiating or reducing towing and storage fees. A violation of this prohibition is a minor misdemeanor.<sup>28</sup>

## **Towing and storage fees**

### **Fees related to tows from private property or a private tow-away zone**

The bill eliminates the existing statutory towing and storage fees for the removal of a vehicle from private property or a private tow-away zone and instead requires the Public Utilities Commission to adopt rules, under the Administrative Procedure Act, within one year of the effective date of the bill that establish maximum fees that may be charged with regard to those types of tow.<sup>29</sup> Until the rules are adopted, the bill specifies that the existing statutory fee amounts remain in effect.<sup>30</sup> The bill further requires the Commission to establish a process for reviewing the fees every five years, beginning on the five-year anniversary of the date the initial rules are adopted, to determine whether the fees are just, reasonable, and compensatory. If the Commission determines that any existing fee is not just, reasonable, or compensatory, the Commission must adjust the fee by rule so that it is equal to an amount the Commission determines to be appropriate.<sup>31</sup> The bill also allows a municipal corporation to establish different towing and storage fees for the removal of a vehicle within its territory from private property other than a private tow-away zone.<sup>32</sup>

Under current law, the statutory towing and storage fees for vehicle removals from private property, including private tow-away zones, are as follows:<sup>33</sup>

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<sup>27</sup> R.C. 4513.601(K).

<sup>28</sup> R.C. 4513.612.

<sup>29</sup> R.C. 4513.60(B) and (D)(1), 4513.601(B)(1), (C), and (G)(1), 4513.68(C), and R.C. 4921.25(B)(4).

<sup>30</sup> Section 3.

<sup>31</sup> R.C. 4921.25(B)(5).

<sup>32</sup> R.C. 4513.60(B) and (D)(1).

<sup>33</sup> R.C. 4513.60(D)(1) and 4513.601(G)(1)(b).





| <b>Table 4: Existing statutory towing and storage fees</b> |                         |   |
|--|-------------------------|---|
| <b>Type of fee</b>   | <b>Standard vehicle</b> | <b>Truck, bus, or commercial tractor and trailer/semitrailer with a gross vehicle weight rating of greater than 10,000 pounds</b> |
| Towing fee   | \$90                    | \$150   |
| Storage fee  | \$12 per 24 hour period | \$20 per 24 hour period   |

### **Reduced storage fee for lienholders**

The bill allows a lienholder to reclaim a vehicle that was towed from a private tow-away zone without paying the storage fee for any period of time prior to the date the lienholder received a notice from the towing service or storage facility that the vehicle had been towed. Under current law, the lienholder is required to pay storage fees for the entire period the vehicle was held by the towing service or storage facility.<sup>34</sup>

### **Fee for after-hours retrieval of personal items**

The bill authorizes a towing service or storage facility to charge a fee for the retrieval of personal items from a vehicle that was towed from private property or from the street or after coming into the possession of law enforcement if the owner retrieves the personal items after-hours. However, the towing service or storage facility may not charge the fee if the owner of the vehicle called the towing service or storage facility about the retrieval of personal items and the towing service or storage facility failed to provide the owner with notice of the fee, including the fee amount (see "**Requirements upon receiving a call from a vehicle owner**," below). The bill specifies that the after-hours retrieval fee may only be charged if the entity in possession of the vehicle is not open to the public and is not required to be open under the law governing the business hours of a storage facility (see "**Storage facility hours of operation**," below). As specified above, the Public Utilities Commission is required to establish the after-hours retrieval fee by rule.<sup>35</sup>

### **Use of a credit card to pay a "drop fee"**

Under current law, if the owner or operator of a motor vehicle that is being towed from private property or from a private tow-away zone arrives after the motor vehicle has been prepared for removal but prior to the removal of the vehicle, the owner or operator may pay a fee of not more than half of the fee for removal of the vehicle to the towing service in order to have the vehicle released. This is commonly called a

<sup>34</sup> R.C. 4513.601(G)(1)(b).

<sup>35</sup> R.C. 4513.60(D)(2), 4513.61(C)(2), 4513.69(B)(3), and 4921.25(B)(6).

"drop fee." The bill specifies that the owner or operator may pay a drop fee with a major credit card unless the towing service uses a mobile credit card processor and mobile service is not available at the time of the transaction.<sup>36</sup>

### **Civil action initiated by an insurance company**

The bill authorizes an insurance company to file a civil action against a towing service seeking the recovery of a motor vehicle that has been towed and for which a claim has been filed with the insurance company, objecting to the amount billed by the towing service, or both. The action may be filed on behalf of the insurance company, on behalf of the holder of a policy of automobile insurance, or on behalf of a motor vehicle owner. Such an action must be filed in the municipal or county court with territorial jurisdiction over the location from which the vehicle was towed within 30 days of receipt of the bill for towing services. If the insurance company objects to the amount billed by the towing service, the complaint must include the amount of the bill that is undisputed and the reasons the insurance company objects to the remainder of the bill. The insurance company is required to file, along with the complaint, a copy of the bill and any evidence supporting the assertion that the billed amount is unreasonable. If the insurance company seeks the recovery of the vehicle, the insurance company also must pay the undisputed amount of the bill to the towing service.<sup>37</sup>

Upon receipt of payment of the undisputed amount of the bill and not later than two business days after receiving service of the complaint, the towing service must release the vehicle that is the subject of the complaint to the owner of the vehicle or to a representative of the insurance company that filed the complaint. If the towing service fails to release the vehicle, the court is permitted to issue an order that imposes a penalty of up to \$100 per day against the towing service for each day the towing service fails to release the vehicle. The towing service must pay any such fines to the clerk of courts.<sup>38</sup>

The court is required to make a determination as to whether the amount charged by the towing service is unreasonable. If the court determines that the amount is reasonable, the court must order the insurance company to pay the amount billed minus the undisputed amount that the insurance company paid to the towing service for the release of the vehicle, if such a payment was made. If the court determines that the amount charged was unreasonable, the court must determine a reasonable amount and order the insurance company to pay that amount minus the undisputed amount

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<sup>36</sup> R.C. 4513.60(B) and 4513.601(C).

<sup>37</sup> R.C. 4513.70(A)(1).

<sup>38</sup> R.C. 4513.70(A)(2).



that the insurance company paid for the release of the vehicle, if such a payment was made. The court also may require either party to pay any additional amount and may impose any monetary penalties the court determines to be appropriate.<sup>39</sup>

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

The bill modifies the law governing the delivery of a vehicle that is removed by a towing service from private property or a private tow-away zone. Under current law, a towing service is required to deliver a towed vehicle not more than two hours after the time it is removed as follows:

(1) If the vehicle is removed from private property it must be delivered to a location specified by the law enforcement officer that ordered the removal.

(2) If the vehicle is removed from a private tow-away zone it must be delivered to the location from which it may be recovered.

The bill qualifies this requirement by specifying that the vehicle must be delivered within two hours unless the towing service is unable to deliver the vehicle within two hours due to an uncontrollable force, natural disaster, or other event that is not within the power of the towing service.<sup>40</sup> The bill also specifies that a vehicle removed from a private tow-away zone must be taken to a location within 25 linear miles (unless it is not practicable), rather than 20 miles (unless it is not practicable) as under current law.<sup>41</sup>

### **Notice that a person may file a civil action**

The bill requires a towing service or storage facility to notify the owner of a vehicle towed from private property or from a private tow-away zone that if the owner disputes that the motor vehicle was lawfully towed the owner may be able to file a civil action. The notice must be provided when the owner retrieves the vehicle.<sup>42</sup>

An authorized entity must provide such a notice to the owner of a vehicle to which the authorized entity is seeking to obtain a salvage title (see "**Salvage title to certain inoperable vehicles**," above).<sup>43</sup>

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<sup>39</sup> R.C. 4513.70(A)(3).

<sup>40</sup> R.C. 4513.60(A)(2) and 4513.601(D)(2).

<sup>41</sup> R.C. 4513.601(A)(2)(a).

<sup>42</sup> R.C. 4513.60(D)(1) and 4513.601(G)(3).

<sup>43</sup> R.C. 4505.103(B)(2).

## **Notice to the owner of a vehicle towed from a private tow-away zone**

The bill extends the timeframe for notifying the owner of a vehicle that has been towed from a private tow-away zone. Under current law, when a vehicle is removed from a private tow-away zone, the owner of the towing service or the storage facility from which the vehicle may be recovered must immediately cause a search of the BMV records to be conducted to identify the owner of the vehicle and any lienholder. The owner of the towing service or storage facility then must send notice to the owner and any lienholder within five business days of the removal. The bill instead requires that the BMV search be conducted within three business days of the removal and that a notice must be sent to the vehicle's owner and any lienholder within five business days after the Registrar of Motor Vehicles provides the identity of the owner and any lienholder.<sup>44</sup>

## **Notice to the owner of a vehicle ordered into storage by law enforcement**

The bill extends the timeframe for notifying the owner of a vehicle that has been ordered into storage by law enforcement. Under current law, the sheriff of a county, the chief of police of a municipal corporation, township, or joint police district, or a state highway patrol trooper may order a vehicle into storage if any of the following applies:

- (1) The vehicle has come into the possession of the sheriff, chief of police, or trooper as a result of the performance of their duties;
- (2) The vehicle has been left on a public street or other property for 48 hours or longer without notification to law enforcement; or
- (3) The vehicle constitutes an obstruction to traffic.<sup>45</sup>

If the sheriff, chief, or trooper orders the removal, the sheriff or chief of police must immediately cause a search of the records of the BMV records to identify the owner of the vehicle and any lienholder. The bill instead requires that the search be conducted within five business days of the removal of the vehicle. Under current law, unchanged by the bill, the sheriff or chief then must send notice to the owner or lienholder.<sup>46</sup>

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<sup>44</sup> R.C. 4513.601(F)(1).

<sup>45</sup> R.C. 4513.61(A).

<sup>46</sup> R.C. 4513.61(C)(1).



## Storage facility hours of operation

The bill modifies the periods of time during which a storage facility is required to be open in order to allow a vehicle owner or lienholder to retrieve a vehicle in the possession of the storage facility. Under current law, a storage facility is required to be open during both of the following periods of time:

(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 or after coming into the possession of law enforcement) when the vehicle will be held by the storage facility;

(2) Between 9 a.m. and noon on the day after any day during which the storage facility accepted for storage a vehicle towed under the towing statutes.

The bill removes the requirement under (1) above that the storage facility remain open during periods of time that a towing service is towing a vehicle from private property or from the street or after coming into the possession of law enforcement, but retains the requirement that a storage facility remain open during periods of time that a towing service is towing a vehicle from a private tow-away zone.<sup>47</sup>

### Requirements upon receiving a call from a vehicle owner

The bill modifies the requirements with which a storage facility must comply related to phone calls from vehicle owners who seek to retrieve vehicles. Under current law, a storage facility must provide a telephone number that a vehicle owner may call at any time, day or night, in order to retrieve their vehicle. After receiving a call from a vehicle owner, the storage facility must ensure that a representative is available within three hours to release the vehicle to the vehicle owner. The bill narrows the three-hour release requirement so that it only applies to vehicles that were towed from a private tow-away zone. Under the bill, this requirement does not apply to vehicles towed from private property or from the street or after coming into the possession of law enforcement as under current law.<sup>48</sup>

The bill also specifies that if a storage facility receives a call from a person who seeks to recover personal items from a vehicle that was towed from private property or from the street or after coming into the possession of law enforcement, the storage facility must notify the person that an after-hours retrieval fee applies and must state the amount of the fee, which is established by the Public Utilities Commission. The

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<sup>47</sup> R.C. 4513.69(A).

<sup>48</sup> R.C. 4513.69(B)(1) and (2).



storage facility must allow a person to retrieve personal items, subject to certain restrictions that apply depending on the type of tow.<sup>49</sup>

### **Retrieval of personal items from a towed vehicle**

The bill prohibits the owner of a motor vehicle that has been towed from retrieving personal items from the motor vehicle if it would endanger the safety of the owner, unless the owner agrees to sign a waiver of liability.<sup>50</sup>

### **Written estimates for certain towing services**

The bill modifies the requirement that a towing service provide a written estimate for towing services under specified circumstances. Under current law, a towing service must provide a written estimate for the price of the removal of a vehicle in all circumstances except when the vehicle is being removed from private property, from a private tow-away zone, after coming into the possession of law enforcement, or from an accident scene. The towing service is not required to provide the estimate if the vehicle operator is incapacitated, seriously injured, or otherwise unavailable to accept the estimate. The bill removes the provisions governing incapacitated, injured, and unavailable vehicle operators and, instead, requires a towing service to provide the estimate only if requested.<sup>51</sup>

Current law also specifies that if a towing service fails to provide such an estimate, the towing service is prohibited from charging towing and storage fees that exceed 25% of the statutory fees for towing and storage under the private tow-away zone law. The bill modifies this provision by tying the 25% cap to either the fees established by the Public Utilities Commission (see "**Towing and storage fees**," above) or, if the vehicle is towed within a municipal corporation that has established removal and storage fees, to those fees established by the municipal corporation.<sup>52</sup>

### **Notice from salvage motor vehicle auction**

The bill requires a salvage motor vehicle auction that is seeking a salvage title to a motor vehicle to provide proof that it sent a notice to the owner of the vehicle and any known lienholder and that the notice was delivered by a nationally recognized courier

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<sup>49</sup> R.C. 4513.69(B)(3).

<sup>50</sup> R.C. 4513.60(D)(2)(b), 4513.601(G)(4), and 4513.61(C)(2)(b).

<sup>51</sup> R.C. 4513.68(A).

<sup>52</sup> R.C. 4513.68(C).

service. Current law requires the auction to provide proof via submission of the original certified mail, return receipt notice.<sup>53</sup>

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## HISTORY

| ACTION  | DATE     |
|---|----------|
| Introduced                                    | 09-28-15 |
| Reported, H. State Gov't                      | 05-03-16 |
| Passed House (92-4)                           | 05-18-16 |
| Reported, S. Transportation, Commerce & Labor | ---      |

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<sup>53</sup> R.C. 4505.11(C)(2).

