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H.B. 172*
133rd General Assembly

Bill Analysis

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Version: As Reported by Senate Transportation, Commerce and Workforce

Primary Sponsor: Rep. Hillyer

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SUMMARY

Self-service storage facilities

- Allows the sale of personal property in a self-service storage facility for the satisfaction of amounts due the facility owner to take place on the internet.
- Allows notices required to be sent before the sale of personal property kept in self-service storage facilities to be delivered by email or private delivery service.
- Expands the class of persons who may enforce liens under the Self-Service Storage Facility Law by expanding the definition of “owner” of a self-service storage facility to include the sublessor of an entire self-service storage facility as well as agents of facility owners, lessors, and sublessors.
- Expands the costs to which proceeds from the sale of personal property held in a self-service storage facility may be applied to include late fees and expenses incurred to enforce a lien.
- Requires that the same notice that is given to persons with liens on motor vehicles and watercraft in self-service storage facilities also be given to persons with liens on trailers prior to a sale.
- Grants self-service storage facility owners discretion in deciding whether and when to have motor vehicles, trailers, and watercraft removed from self-service storage spaces in which other personal property will be sold to collect amounts due.

* This analysis was prepared before the report of the Senate Transportation, Commerce and Workforce Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

- Grants self-service storage facility owners discretion as to whether to rent previously delinquent self-service storage facility space or allow removal of the personal property following payment by a person other than the occupant.

Unsafe used tires

- Decriminalizes and makes it no longer an unconscionable consumer sales act or practice to install unsafe used tires on a multipurpose passenger vehicle, truck, or passenger car that is not designed primarily for carrying passengers.
- Allows the vehicles specified above to be outfitted legally with retread tires, which otherwise fall under the meaning of an unsafe used tire.

Towing law changes

Law enforcement tows

- Establishes procedures that allow the owner of a towing service or a storage facility to obtain title to another's motor vehicle after:
 - Law enforcement ordered the motor vehicle to be towed, and the vehicle or items in the vehicle are not necessary to a criminal investigation;
 - The service or facility owner has sent proper notice to the vehicle owner and any lienholder;
 - The vehicle continues to remain unclaimed for 60 days after notice was received; and
 - The service or facility owner executes an affidavit with the clerk of courts affirming that proper requirements have been met to take title.
- Requires the Registrar of Motor Vehicles to create the form of the affidavit (to be used by the service or facility owner) within 90 days of the effective date of the bill.
- Requires a clerk of court to issue a certificate of title for a motor vehicle to a service or facility owner that presents an affidavit affirming compliance with all necessary procedures.

Motor vehicle dealership and repair facility tows

- Allows a motor vehicle dealership or repair facility to request a towing service to remove a motor vehicle from its property as long as certain conditions are met.
- Establishes procedures for the owner or any lienholder to reclaim the motor vehicle.
- Establishes procedures for the towing service to take title to the motor vehicle (regardless of value) if it remains unclaimed for an additional 60 days after the service sends the proper notice to the owner and any lienholder.

Notice requirements for private tow-away zones

- Reduces the number of notices from three to two that must be sent to an owner and any lienholder of a motor vehicle after that motor vehicle has been towed from a private tow-away zone and before a towing service or storage facility may take title to the motor vehicle.

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DETAILED ANALYSIS

Self-service storage facility

Continuing law defines a “**self-service storage facility**,” as real property that is designed and used only to rent individual storage space to occupants whose access is limited to storing or removing personal property. While the definition includes other conditions and exclusions, their explanation is not necessary to an understanding of the bill.¹

¹ R.C. 5322.01(A).

The bill modifies the procedures self-service storage facility owners may use, primarily through liens the Self-Service Storage Facility Law places on personal property stored at a facility, when occupants default on their obligations.

Self-service storage facility liens

Continuing law grants self-service storage facility owners liens on personal property kept in the facilities pursuant to rental agreements. The bill adds late fees and expenses incurred in the enforcement of the lien to the list of expenses that the liens secure. Under continuing law, the liens secure expenses for rent, labor, or other charges specified in the rental agreement that have become due, and for expenses necessary for the preservation of the property or reasonably incurred in the disposition of the property.²

Lien enforcement

A self-service storage facility owner who wishes to enforce a lien on personal property kept in the facility has to follow certain procedures established by law. The requirements are mandatory and exclusive, as continuing law states that an owner's lien can only be enforced pursuant to the Self-Service Storage Facility Law.

The bill modifies those procedures by changing requirements for the sale itself, changing the definition of "owner" (and thus who may enforce the lien), and several aspects of the law's notice and advertising requirements.

Sale requirements

Self-service storage facility liens are enforced through the sale of personal property held in the facilities. Before a sale may take place, notice and advertising procedures must be followed, but those procedures are affected by the bill's changes to the law. Specifically, existing law requires the sale of personal property to be held at the self-service storage facility or at the nearest suitable place to the facility, so long as the address of that place is included on the required notice.

The bill adds the internet to the allowable sale locations and also makes the listed sale locations permissive rather than exclusive.³

"Owner" – who may enforce the lien

Existing law defines "owner," with respect to a self-service storage facility, as a person who receives rent from occupants pursuant to rental agreements in the person's capacity as the owner of the facility or the lessor of the entire facility. The bill expands the definition by adding operators and sublessors of an entire facility, as well as the agents of an owner,

² R.C. 5322.02(A).

³ R.C. 5322.03(F).

operator, lessor, or sublessor who are authorized to manage a facility or receive rent from occupants pursuant to rental agreements.⁴

Required notice and advertisement

An owner seeking to enforce a lien through the sale of personal property must provide notice to the following persons under existing law:

- All persons who claim an interest in the personal property and who the owner has actual knowledge of;
- All persons who hold liens on motor vehicles or watercraft amongst the property;
- All persons who have filed security agreements, with relevant officials, in the name of the occupant showing a security interest in the property.

The bill adds persons holding liens on trailers amongst the personal property to the list of persons who must be served notice.⁵ It also modifies the contents of the notice and expands the manner in which notice may be delivered.

Under existing law, the notice must include, among other things unaffected by the bill:

- A demand for payment within a specified time, not less than ten days after delivery of the notice;
- A conspicuous statement that unless the claim is paid, the personal property will be advertised for sale and sold by auction at a specified time and place;
- The address of the place where the sale will take place if it will be held at a location other than the self-service storage facility.

The bill removes the requirement that a specified time and place be listed in every notice, and clarifies that if the sale is to be held at a place other than the self-service storage facility, the street or internet address be provided, rather than simply an address.⁶

With respect to delivery methods, existing law requires the notice to be delivered in person, sent by certified mail, or sent by first-class mail with a certificate of mailing to the last known address of each person who must be given notice. The bill adds email and private delivery service to the list of permissible delivery methods, and makes related modifications to the circumstances under which notice will be presumed to be delivered.

Under existing law, notice will be presumed delivered if sent by first-class mail with a certificate of mailing when it is deposited with the U.S. Postal Service and properly addressed with proper prepaid postage. The bill adds a presumption of delivery to notices sent by private

⁴ R.C. 5322.01(B).

⁵ R.C. 5322.03(A).

⁶ R.C. 5322.03(C)(6) and (7).

delivery service or email so long as certain conditions are met. For private delivery service, the notice will be presumed delivered when deposited with the service so long as it is sent with a verification of mailing, properly addressed, and the postage is prepaid. For email, the notice will be presumed delivered when it is properly addressed and sent.⁷

After the expiration of the time given in the notice, continuing law requires the owner to advertise the sale, and include all of the following in the advertisements:

- A general description of the personal property;
- The name and last known address of the occupant;
- The self-service storage facility's address; and
- The time, place, and manner of the sale.

The bill specifies that it is the self-service storage facility's street address, rather than an unspecified type of address, that must be included in the advertisement alongside the time, place, and manner of the sale. (See **COMMENT 1**.)

Existing law states that an advertisement will be deemed commercially reasonable if at least three independent bidders attend the sale at the time and place advertised. The bill maintains the three independent bidders requirement, but allows their registration for, viewing of, or attendance at the sale to demonstrate commercial reasonableness.⁸

Removal of vehicles

Under existing law, when the property upon which the self-service storage facility owner's lien attaches is a motor vehicle or watercraft, the owner must have the vehicle or watercraft removed if any of the following circumstances apply:

- The required notice was sent to all persons holding a lien on the motor vehicle or watercraft and 30 days have elapsed without a response from any of those persons;
- Rent and other charges remain unpaid for 60 days and no lien holders have been identified;
- The owner is planning to hold an auction of the personal property that was stored in the storage unit with the motor vehicle or watercraft.

In the third case, the motor vehicle or watercraft must be removed prior to the sale. The bill makes several changes to these requirements.

First, the provisions are made to apply to trailers, in addition to motor vehicles and watercraft. Second, when the listed circumstances are present, the bill makes the motor vehicles, trailers, or watercraft's removal optional, to be executed at the owner's sole

⁷ R.C. 5322.03(B) to (D), with conforming change in R.C. 5322.01(G).

⁸ R.C. 5322.03(G).

discretion. Third, in cases where notice was sent to persons holding a lien on the vehicle, trailer, or watercraft, the removal may occur 30 days after the notice is sent, whether or not a response is received. Finally, removal in the event of a sale may occur before or after the sale, and reference to a sale at auction is modified to refer to any sale, which results in consistency with provisions in continuing law that allow for private sales or other disposition of property if property does not sell at auction.⁹

Payment by others

Continuing law allows any person who has a legal interest or a security interest in, or who holds a lien against, personal property other than a motor vehicle or watercraft, to pay the self-service storage facility owner's lien and reasonable expenses and remove the personal property from the facility. Existing law also states that, upon receipt of payment from a person other than the occupant, the owner must either allow the personal property to be removed or enter into a new rental agreement for the storage of the personal property. The bill modifies this provision to state that the owner may, at his or her sole discretion, allow the person to enter into a new rental agreement or permit the person to remove the personal property from the self-service storage facility.¹⁰ (See **COMMENT 2.**)

After property is removed

After all personal property is removed from a self-service storage facility pursuant to the Self-Service Storage Facility Law (e.g., through sale at auction or removal by another person with an interest in the property), provision is made for the vacated space. Under existing law, any person can enter into a rental agreement for the storage for personal property with the owner, and the owner has no obligation to the prior occupant of the space in the self-service storage facility. Existing law also states that, before entering into a new rental agreement, the facility owner must have any motor vehicle or watercraft towed from the storage space.

The bill revises these provisions to state that the owner may enter into a rental agreement with a new occupant, rather than that any person may enter into a rental agreement with the owner. It also eliminates the requirement that the owner first have any motor vehicle or watercraft towed from the storage space, though that requirement may have been redundant as the law only made provision for new rental agreements once all personal property was removed.¹¹

Delivery of excess funds

Continuing law requires self-service storage facility owners to deliver the balance of any funds obtained from the sale of personal property under a lien to the occupant whose property was sold. Existing law states that the balance is to be sent by certified mail to the occupant's

⁹ R.C. 5322.03(K) and (P).

¹⁰ R.C. 5322.03(H)(2) and (3).

¹¹ R.C. 5322.03(H)(2).

last known address. The bill clarifies that the balance is to be sent to the occupant's last known mailing address, and also allows it to be sent by first class mail or private delivery service with a certificate or verification of mailing.¹²

Unsafe used tires

The bill decriminalizes and makes it no longer an unconscionable consumer sales act or practice to install unsafe used tires on a multipurpose passenger vehicle, truck, or passenger car that is not designed primarily for carrying passengers.¹³ Under current law, a supplier is prohibited from installing an unsafe used tire on all passenger cars, multipurpose passenger vehicles, and trucks that will operate on a public highway. To do so is considered an unconscionable consumer sales act or practice, prosecutable by the Ohio Attorney General or a private attorney.¹⁴

Under current law, an unsafe used tire includes: a tire that has any damage exposing the reinforcing plies of the tire, including cuts, cracks, punctures, scrapes, or wear; a tire that has any repair in the tread shoulder or belt edge area; a tire that has repair to the sidewall or bead area of the tire; a tire that shows evidence of prior use of a temporary tire sealant without evidence of a subsequent proper repair; a tire that has any inner liner damage or bead damage; or a tire with indication of internal separation, such as bulges or local areas of irregular tread wear indicating possible tread or belt separation.¹⁵

Currently, trailers and semitrailers are excluded from the installation prohibition because such vehicles use retread tires. A retread tire (or "reproved tire") is a used tire that has had the worn down tread replaced with new tread. While authorized under certain circumstances for sale, installation, and use by federal regulations, a retread tire falls under the meaning of an unsafe used tire under current Ohio law.¹⁶ Because of the bill's changes, a multipurpose passenger vehicle, truck, or passenger car that is not designed primarily for carrying passengers may be outfitted legally with retread tires, which otherwise fall under the meaning of an unsafe used tire.

¹² R.C. 5322.03(L).

¹³ A "multipurpose passenger vehicle" is a motor vehicle with motive power (but not a motorcycle), designed to carry ten persons or less, that is constructed either on a truck chassis or with special features for occasional off-road operation. "Passenger car" means any motor vehicle with motive power, designed for carrying ten persons or less, except a multipurpose passenger vehicle or motorcycle. A "truck" is every motor vehicle designed and used to carry property and having a gross vehicle weight rating of ten thousand pounds or less (but not a trailer or semitrailer). R.C. 4513.021, not in the bill.

¹⁴ R.C. 1345.022; R.C. 1345.03, 1345.05, and 1345.09, not in the bill.

¹⁵ R.C. 1345.022(A)(2).

¹⁶ 49 United States Code of Federal Regulations §393.75 and Part 569.

Towing law changes

Law enforcement tows

Currently, the owner of a towing service or storage facility may obtain either:

1. A certificate of title to an unclaimed motor vehicle in its possession if the vehicle is towed from a private tow-away zone and is valued at less than \$3,500;¹⁷ or

2. A salvage certificate of title if the vehicle is valued at less than \$1,500 (after taking into account necessary repairs, towing fees, and up to 30 days of storage fees), the vehicle is inoperable, and the vehicle cannot be restored for highway operation.¹⁸

To obtain title, the service or facility owner must conduct a search for the vehicles owner and any lienholder, send notice to the owner and lienholder(s), and after either a 30-day or 60-day waiting period, if the vehicle remains unclaimed, apply to the appropriate clerk of court for title.¹⁹

The bill establishes the following procedures for a towing service or storage facility owner to obtain title to an unclaimed motor vehicle (of any value) that a law enforcement agency has ordered to be towed:

Step 1: A law enforcement agency orders the vehicle to be towed.²⁰

Step 2: To identify the vehicle owner and any lienholder, the towing service or storage facility owner causes a search to be made of the records of the Bureau of Motor Vehicles.

Step 3: The service or facility owner sends notice by certified mail, return receipt requested, to the vehicle owner and any lienholder's last known address. The notice must inform the vehicle owner and any lienholder that the service or facility will obtain title to the motor vehicle if it is not claimed within 60 days after the date the notice is received.

Step 4: The service or facility owner either receives the signed receipt from the certified mail or is notified that the delivery of the certified mail was not possible.

Step 5: The motor vehicle continues to remain unclaimed for 60 days after the date that the service or facility owner receives the required notice (as evidenced by a signed receipt) or the date that the owner was notified that the delivery was not possible.

Step 6: A sheriff, chief of police, or a state highway patrol trooper has determined that the vehicle or items in the vehicle are not necessary to a criminal investigation.

¹⁷ R.C. 4513.601.

¹⁸ R.C. 4505.103.

¹⁹ R.C. 4505.103 and 4513.601.

²⁰ Law enforcement must have ordered the vehicle towed or stored at the owner's service or facility pursuant to R.C. 4513.60, 4513.61, or 4513.66.

Step 7: The service or facility owner executes an affidavit (the form of which must be created by the Registrar of Motor Vehicles by 90 days after the effective date of the bill) affirming that all of the requirements to take title (**Steps 1-6**) have been met.

Step 8: The clerk of court must issue a certificate of title for the motor vehicle, free and clear of all liens and encumbrances, to the service or facility owner if the owner presents an affidavit that complies with **Step 7**.

After obtaining title and disposing²¹ of the vehicle, the towing service or storage facility may retain any money arising from the disposal. The towing service or storage facility also must inform the entity that ordered the motor vehicle into storage (e.g., the appropriate law enforcement agency) that the motor vehicle has been so disposed – this notice must be provided by the last business day of the month in which the service or facility obtained the title.²²

Motor vehicle dealerships and repair facility tows

Towing an unclaimed vehicle

The bill authorizes a motor vehicle dealership and a repair facility to have a towing service remove a motor vehicle from their property after all of the following occur:

Step 1: The dealership or facility causes a search to be made of the BMV title records to identify the vehicles owner and any lienholder.

Step 2: The dealership or facility sends notice to the owner and any lienholder by certified or express mail, return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt. The notice must give the location of the motor vehicle, explain that the motor vehicle will be towed if the motor vehicle remains unclaimed 14 days after receipt of the notice (or notification that delivery was not possible), and that the towing service may take title to the motor vehicle if it remains unclaimed after the tow.

Step 3: The motor vehicle remains unclaimed for 14 days after the notice is received (as evidenced by a signed receipt) or after the dealership or facility is informed that delivery was not possible.²³

The dealership or facility may have the motor vehicle towed using this procedure regardless of who left the motor vehicle with the dealership or facility for repairs. Failure to claim the motor vehicle within the required 14 days is considered consent to the motor vehicles removal, storage, payment of all accompanying charges, and the towing service taking title to the motor vehicle if it is left unclaimed for an additional 60 days. The towing service may not

²¹ Although the bill does not define “dispose,” it may include selling or otherwise removing the vehicle from the service or facility’s property.

²² R.C. 4505.104.

²³ R.C. 4513.602(B).

charge more than the standard fees set by the Public Utilities Commission for the tow and storage of the motor vehicle.²⁴

Reclaiming the vehicle and liability

The motor vehicle owner or lienholder may reclaim the motor vehicle from either the dealership, facility, or towing service if the owner or lienholder presents proof of ownership, pays all of the incurred charges, and the title has not already been issued to the towing service. The bill expressly exempts the dealership, facility, and towing service from liability for any damage, claims of conversion, or any other claim arising from the towing or storage of the motor vehicle, provided the dealership, facility, and towing service comply with the proper procedures. Additionally, the dealership or facility retains any cause of action it has against the owner or lienholder, unless possession of the motor vehicle is necessary for the claim.²⁵

Taking title to the vehicle

When the tow from the dealership or facility is completed, the towing service may take title to the motor vehicle, regardless of the motor vehicles value, after all of the following occur:

Step 1: The towing service causes a search to be made of the BMV title records to identify the motor vehicles owner and any lienholder.

Step 2: The towing service sends notice to the owner and any lienholder by certified or express mail, return receipt requested, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt. The notice must explain that the towing service will take title to the motor vehicle if it remains unclaimed 60 days after receipt of the notice (or notification that delivery was not possible).

Step 3: The motor vehicle remains unclaimed for 60 days after the notice is received (as evidenced by a signed receipt) or after the towing service is informed that delivery was not possible.

Step 4: The towing service's agent executes an affidavit (the form of which must be created by the Registrar of Motor Vehicles within 90 days of the bill's effective date affirming that all of the requirements to take title (**Steps 1 to 3**) have been met.

If a towing service presents the appropriate affidavit, the clerk of courts must issue a certificate of title, free and clear of all liens and encumbrances, for the motor vehicle to the towing service. The towing service may retain any money arising from the disposal of the motor vehicle after taking title to it.²⁶

²⁴ R.C. 4513.602(B), (C), and (E).

²⁵ R.C. 4513.602(D) and (F).

²⁶ R.C. 4513.603.

Notice requirements for private tow-away zones

The bill reduces the number of notices (from three to two) that a towing service or storage facility must send prior to initiating a title transfer for an unclaimed motor vehicle (valued at less than \$3,500) towed from a private tow away zone. Under current law, after a towing service tows a motor vehicle from a private tow-away zone, the towing service or storage facility must obtain title information from the BMV regarding the motor vehicle's owner and any lienholders. The service or facility must then notify such parties that the service or facility will take title to the motor vehicle if it is left unclaimed for 60 days after receipt of the notice (or notification that delivery of the notice was not possible). The service or facility must send the notice by certified or express mail with return receipt requested or by a commercial carrier service using any form of delivery requiring a signed receipt. Currently, the notices must be made as follows:

- Within five days after the Registrar provides the identity of the owner and any lienholder;
- 30 days after the first notice is sent (if the vehicle is not retrieved after the first notice);
- 45 days after the first notice is sent (if the vehicle is not retrieved after the second notice).

The bill eliminates the third notice, but maintains the 60-day time frame before the service or facility may take title to the unclaimed motor vehicle.²⁷

COMMENT

1. Continuing law requires the advertisement for a sale of personal property kept in a self-service storage facility to include the time, place, and manner of the sale. The bill allows such sales to be conducted on the internet, but does not specify whether the advertisement is to state the place of sale in that instance as the internet, or at a specific address on the internet.

2. Existing law's requirement that the self-service storage facility owner either enter into a new rental agreement or permit personal property to be removed upon payment from a person with an interest in or lien against the personal property, other than the occupant, ensures that the person making payment will be permitted to remove the property or store it under an agreement with the owner. The bill's modification to make the new agreement or removal of property permissive, under the owner's discretion, could result in an owner accepting payment but refusing to enter into a new rental agreement or allow removal of the property. The owner would likely be subject to civil and criminal liability under other provisions of law for such conduct, but it would not be prohibited under the Self-Service Storage Facility Law.

²⁷ R.C. 4513.601(F)(1).

HISTORY

| Action | Date |
|---|----------|
| Introduced | 03-27-19 |
| Reported, H. Civil Justice | 05-15-19 |
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