

Department of Legislative Services
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FISCAL AND POLICY NOTE

Senate Bill 788

(Senator Pugh)(Task Force to Study Motor Vehicle
Towing Practices)

Judicial Proceedings

Motor Vehicles - Towing Practices and Procedures

This bill generally implements the Task Force to Study Motor Vehicle Towing Practices' recommended legislative changes relating primarily to the regulation of nonconsensual towing of vehicles from private property and the disposition of towed vehicles.

Fiscal Summary

State Effect: General fund revenues increase due to civil penalties established by the bill and application statewide of existing penalty provisions. General fund expenditures increase due to the cost of incarceration and also to the extent that the workload of the District Court increases beyond what can be handled with existing resources.

Local Effect: Local revenues decrease in jurisdictions that currently regulate the towing of vehicles from private property, which may now be preempted from enforcing similar regulations and collecting associated fines. Local towing-related personnel expenditures are affected in some jurisdictions to implement the bill. Circuit court workloads and revenues increase minimally due to the bill's penalty provisions and the authorization to seek declaratory relief. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful adverse impact on towing services due to numerous restrictions on existing business practices, new fee limits, additional fines, criminal penalties, higher insurance requirements, and potentially the cost to acquire additional equipment. Potential meaningful and generally beneficial impact on small business law practices and automotive auctioneers due to an increase in business opportunities.

Analysis

Bill Summary: The bill makes the current private parking lot towing protections for Baltimore City and county applicable statewide. The bill also requires signage at private parking lots to include the name of the tow company and a statement that the vehicle can be reclaimed 24 hours per day, 7 days per week. The maximum tow distance is established to be not more than 15 miles or another limit established by a local government.

The bill establishes the towing and daily storage rates to conform to the limits set by the political subdivision, or if no limit is established, no more than \$400 for towing and \$35 per day for storage. Total fees charged to a vehicle owner are capped at \$1,200 for vehicles that weigh less than 10,001 pounds.

In addition, towing services are required to notify police within one hour of the tow and photograph the violation or event that precipitated the violation. The bill also prohibits towing a vehicle solely for failing to display current registration, except until 72 hours have passed since a notice of the violation is placed on the vehicle.

The bill requires that a towed vehicle be moved immediately to the storage facility location indicated on the sign posted and prohibits the tower from moving the vehicle from that facility for at least 72 hours, and requires a storage facility be available 24 hours per day, 7 days per week. In addition, the bill sets a “drop fee” of one-half of the cost of the full towing charge, and requires a towing service to accept two major credit cards or have an automated teller machine (ATM) on the premises.

The bill establishes a motor vehicle towing and storage lien, and establishes notice procedures for the auction of a vehicle subject to the lien. The procedures include requiring advertising once per week for three weeks and publication of the sale in both the county where the vehicle was acquired and in the county of the auction, as well as electronically on a web site in accordance with Motor Vehicle Administration (MVA) regulations. The lien holder must also send notice by certified mail and first class mail at least 30 days before the sale to the registered owner and each secured party. The notice must include the vehicle description and location, time frame for reclaiming the vehicle, and that the failure to reclaim the vehicle may result in its sale. The penalty for lien violations is a fine of up to \$5,000, or imprisonment for up to one year, or both.

The purchaser of an auctioned vehicle is entitled to a salvage certificate, free and clear of any lien, if the lien holder applies for a salvage certificate, along with, among other information, a photograph of the vehicle identification number, a copy of a nationwide vehicle history report, and if the purchaser is not an individual person, then the entity’s federal or Maryland tax identification number.

Vehicles with a published value of more than \$7,500 may only be sold after filing an action to sell the vehicle in circuit court in a case with all necessary parties joined.

The bill also changes the definition of salvage vehicle to include a vehicle purchased at an auction of abandoned and tow lien vehicles, and creates a new brand of “salvage” to be placed on the title of a vehicle purchased acquired by an insurance company following a claim settlement.

The minimum required insurance for tow trucks is increased to match federal requirements, and the bill clarifies that this requirement applies to certain tow trucks. The bill also eliminates the requirement to obtain a \$20,000 surety bond. Additional penalties for improperly registered tow trucks include impounding of the vehicle and a fine of up to \$3,000 or up to one year in jail, or both.

Towers in violation of the bill are liable for actual damages sustained by any person as a result of the violation, and liable for triple damages to the owner, secured party, insurer, or a successor in interest. Finally, the bill creates misdemeanor penalties for towing violations related to the removal of vehicles from private parking lots including a fine of up to \$500 or up to two months imprisonment, or both.

Current Law: The Maryland Vehicle Law currently applies to the towing or removal of vehicles from parking lots in Baltimore City and Baltimore County, and authorizes the Charles County Commissioners to adopt ordinances and regulations relating to the towing or removal of vehicles from privately owned parking lots in the county. In addition, the Maryland Vehicle Law authorizes automotive dismantlers, recyclers, and scrap processors to remove abandoned vehicles under the oversight of MVA and law enforcement authorities.

Background: The Task Force to Study Motor Vehicle Towing Practices was created by Chapter 514 of 2008, and extended by Chapter 704 of 2009. The task force was charged with studying the following areas of towing:

- (1) the State and local laws governing towing practices, including the storage and disposal of towed vehicles, and any recommended changes to these laws;
- (2) the costs, benefits, and feasibility of a State program of licensure or registration for the towing industry;
- (3) issues related to notice given by a private property owner to the owner of a motor vehicle before towing the vehicle;

(4) issues related to notice given by a police department to the motor vehicle owner, a secured party, or an insurer of an abandoned motor vehicle in police custody;

(5) issues related to notice given by a private tower to the motor vehicle owner, a secured party, an insurer, or the local police department of a towed vehicle in the possession of a private tower;

(6) issues related to State preemption of local authority governing the towing or removal of motor vehicles; and

(7) any other issues that the task force considers relevant to motor vehicle towing practices in the State.

The task force met 12 times between October 14, 2008 and December 8, 2009, and each meeting was open to the public. The task force considered two main proposals: (1) creation of an independent tow licensure board; and (2) focusing on private nonconsensual towing, the creation of penalties (civil and criminal), consumer protection measures, and allowing towers a process to dispose of unclaimed vehicles.

State Fiscal Effect: General fund revenues increase due to the statewide application of existing penalty provisions for violations of private parking lot towing protections that currently apply only in Baltimore City and Baltimore County. In addition to an increase in penalty revenues from the statewide application of existing penalty provisions, general fund revenues may increase due to new civil penalties established by the bill.

However, general fund expenditures also increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction facilities for convictions in Baltimore City. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

General fund expenditures may also increase to the extent that the bill increases the workload of the District Court beyond what can be handled with existing resources. The Judiciary advises that it cannot reliably estimate to what extent the bill will increase its workload but notes that additional contested cases will result from the additional fines authorized to be imposed as well as the creation of additional incarceration penalties. In addition, the bill gives towing services new enforceable rights and establishes new liens, all of which are subject to judicial review and potentially cause a strain on workloads. Transportation Trust Fund expenditures may increase, but only if the additional computer reprogramming work estimated to be required by MVA cannot be handled with existing resources.

Local Fiscal Effect: Local revenues may decrease in jurisdictions statewide as local governments that currently regulate the towing of vehicles from private property may be preempted from enforcing similar regulations and collecting associated fines. For example, Montgomery County advises that it enforces extensive towing regulations established in its county code, some of which may be preempted by the bill. Thus, revenues for some jurisdictions may decrease as certain local towing regulations and associated penalties are replaced by similar State provisions and applicable penalties. Consequently, local expenditures may decrease in jurisdictions that no longer decide to maintain towing enforcement staff at current levels.

However, local government expenditures may increase in some jurisdictions that will need to hire additional towing enforcement personnel to implement the bill. Expenditures may also increase minimally as a result of the bill's incarceration penalty. The bill establishes new incarceration penalties and extends the application of existing incarceration penalties to additional jurisdictions and additional entities. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Circuit court workloads and revenues also increase minimally due to new penalty provisions as well as the authorization to seek declaratory relief. However, the Judiciary is not able to reliably estimate to what extent circuit court workloads may increase under the bill, but they are presumed to be absorbed with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 1120 (Delegate Niemann, *et al.*) (Task Force to Study Motor Vehicle Towing Practices) - Environmental Matters.

Information Source(s): Charles, Frederick, Montgomery, and Somerset counties; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Evan M. Isaacson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510