

## **THE PUBLIC UTILITIES COMMISSION OF OHIO**

**IN THE MATTER OF THE ADOPTION OF  
RULES RELATED TO RATES FOR TOWING  
AND STORAGE OF MOTOR VEHICLES.**

**CASE NO. 17-713-TR-ORD**

### **FINDING AND ORDER**

Entered in the Journal on February 28, 2018

#### **I. SUMMARY**

{¶ 1} The Commission approves proposed rules contained in Ohio Adm.Code Chapter 4901:2-24 concerning maximum rates for towing and storage of motor vehicles.

#### **II. PROCEDURAL BACKGROUND**

{¶ 2} The 131st Ohio General Assembly adopted Amended Substitute House Bill 341 (HB 341) to, in part, amend R.C. 4921.25(B). Amended R.C. 4921.25(B) directs the Commission to adopt rules under R.C. Chapter 119 to establish maximum rates for towing and storage of motor vehicles. The Commission has opened this docket in order to consider and adopt rules in conformance with amended R.C. 4921.25(B).

{¶ 3} The Commission notes that, on January 10, 2011, the governor of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede business growth.

{¶ 4} In addition, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must conduct a business impact analysis (BIA) regarding the rules. If there will be an adverse impact on business, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative (CSI) office the draft rules and the BIA.

{¶ 5} In an April 5, 2017 Entry, the Commission stated that it is considering new rules establishing maximum rates for towing and storage of motor vehicles. The Entry scheduled a workshop on May 21, 2017, in order to provide interested stakeholders with the opportunity to offer feedback before the Commission issued the proposed rules and opened them up to public comment. The workshop was held as scheduled; stakeholder comments were offered by the Towing and Recovery Association of Ohio (TRAO), the Association of Professional Towing of Ohio (APTO), and other parties representing individual towing companies. After the hearing, supplemental comments were filed by APTO on June 6, 2017.

### III. COMMENTS

{¶ 6} In a January 3, 2018 Entry, the Commission issued Staff's proposed rules and invited public comment. Comments were filed by TRAO and APTO on January 18, 2018, and January 19, 2018, respectively. The Commission has carefully reviewed the rules proposed by Staff and the comments filed by TRAO and APTO. A summary of comments received and the Commission's responses and conclusions follows.

{¶ 7} Proposed Ohio Adm.Code 4901:2-24-03 establishes maximum towing and storage fees for motor vehicles. For a motor vehicle with a manufacturer's gross vehicle weight rating (GVWR) less than 10,001 lbs., the proposed maximum towing fee is \$127 and the proposed maximum storage fee is \$17 per day. If a motor vehicle's GVWR is greater than or equal to 10,001 lbs., the proposed maximum towing fee is \$212 and the

proposed maximum storage fee is \$28 per day. The proposed rule also prohibits other fees from being charged or collected by a towing service or storage facility pursuant to R.C. 4513.60 and 4513.601 that are not provided for in this rule or otherwise allowed by law. Finally, this rule proposes that any towing service or storage facility found to be in violation of this rule may be liable to the Commission for a civil forfeiture assessed under R.C. 4923.99.

{¶ 8} In its comments, TRAO observes that the current maximum towing and storage fees were established in 2000 and that the proposed fees are increased in accordance with the Consumer Price Index (CPI). TRAO argues, however, that costs have risen at a higher rate than the increase reflected in the CPI. Based on a survey of its members and a review of manufacturers' cost sheets, TRAO asserts that equipment costs have increased by 100 percent and liability insurance costs have increased by 75 percent since 2000. In contrast, TRAO contends the CPI has increased by just 40 percent. TRAO notes that, in 2008, the city of Columbus established several levels of maximum towing and storage fees, as determined by a vehicle's GVWR. For example, Columbus Municipal Code 2107.06 established a maximum towing fee of \$125 and maximum storage fee of \$18 per hour for vehicles with GVWR of 7,000 lbs. or less. TRAO recommends that the Commission "incorporate the rates set [by Columbus] in 2008 and apply the CPI increase \* \* \* for the last ten years" to those rates.

{¶ 9} APTO similarly asserts that the Commission's proposed towing rates only account for inflation and are too low because towing costs are "significantly higher" than in June 2000. APTO focuses on two costs that it contends were not present in June 2000. First, APTO notes towing companies are now required by R.C. 4513.601 to take photos of a vehicle before removing it from a private tow-away zone. APTO adds that R.C. 4513.601 also requires towing companies to record the time and date of each photo, and to save the records and photos for up to two years. APTO contends that the tow truck operators that take the photos are typically paid at least \$20 per hour, and on average

devote ten minutes to take photos, record the time and date of the photos, and save or print the photos and records. APTO concludes that this results in a \$3.33 labor cost per tow.

{¶ 10} Second, observes APTO, towing companies now must send up to three notices by certified mail to the owner and lienholder of any vehicle towed pursuant to R.C. 4513.60 and 4513.601. APTO adds that R.C. 4513.601(F)(1) requires as many as three notices sent to the vehicle owner and to lienholders via certified or express mail with return receipt requested, or via a commercial carrier service using any form of delivery that requires a signed receipt. APTO notes that there could be a maximum three notices totaling \$18.30 sent to the vehicle owner and three notices totaling \$18.30 sent to a lienholder, for a total overall cost for notices of \$36.60.

{¶ 11} In APTO's opinion, increased maximum fees are also justified because the cost of a wrecker and of liability/physical damage premiums have risen more than the CPI since 2000. According to APTO, the cost of a small wrecker has risen from \$35,000 to \$75,000-\$80,000 since 2000; for a medium-duty wrecker, from \$75,000-\$80,000 to \$150,000; and for a heavy-duty wrecker, from \$200,000 to at least \$400,000. Regarding liability and physical damage premiums, APTO states that the premium for a light-duty wrecker has risen \$950 in 2010 to \$1,400 today; for a medium-duty wrecker from \$1,313 to \$2,450; and for a heavy-duty wrecker from \$2,750 to \$3,800. APTO concedes that the costs "are difficult to quantify in terms of a per-tow expense" but yet "further justify an increase to the towing fee maximum above and beyond mere inflation."

{¶ 12} APTO recommends that the Commission increase the current fee maximums by \$10 each and then adjust for 18 years of inflation. Applying this rationale, APTO proposes a \$143 maximum towing fee for motor vehicles with a GVWR less than 10,001 lbs. and a \$228 maximum towing fee for motor vehicles with a GVWR equal to or greater than 10,001 lbs.

#### IV. DISCUSSION

{¶ 13} The Commission finds that the proposed rules, including the maximum towing rates and storage fees, should be adopted, as modified below. As discussed, the proposed rates in the January 3, 2018 Entry were calculated by adjusting the current storage and towing fees for inflation since 2000, as determined by the CPI. However, the Commission will adjust the proposed rates to reflect the most current CPI data. In an effort to apply the most recent CPI information, the Commission finds it is appropriate to further adjust current towing and storage rates as follows: for a motor vehicle with a GVWR less than 10,001 lbs., the proposed maximum towing fee should \$129 and the proposed maximum storage fee should be \$17 per day. If a motor vehicle's GVWR is greater than or equal to or greater than 10,001 lbs., the proposed maximum towing fee should be \$216 and the proposed maximum storage fee should be \$29 per day.

{¶ 14} The rates, as proposed, represent a 44 percent increase over the present fees that have been in operation since 2000. This is a significant increase over the rates that have been in effect for almost 18 years. We do not find that TRAO or APTO sufficiently demonstrated that their expenses increased at a disproportionately higher rate than what is reflected in the CPI.<sup>1</sup> As described by APTO, quantifying expenses per-tow is a difficult endeavor as there are varying factors to consider. Although APTO provided testimonials regarding the increased costs equipment and insurance, we do find that this sampling is encompassing of all expenditures to justify increasing fees more than the proposed 44 percent increase. Thus, the Commission finds that adjusting the rates in accordance with the CPI is a just and reasonable approach.

{¶ 15} The Commission disagrees with APTO's perspective concerning the added costs for photos of towed vehicles. For towing companies, the insignificant amount of time to obtain the photos required by R.C. 4513.601 can negate legal actions or claims that

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<sup>1</sup> The CPI represents changes in prices of all goods and services purchased for consumption. See <https://www.bls.gov/cpi/>.

the vehicle was improperly towed. Consequently, the benefits of taking and storing photos of towed vehicles likely outweigh any added cost. Similarly, the Commission disagrees with APTO's opinion concerning the mailing of certified letters to owners of towed vehicles, as also required by R.C. 4513.601. If the vehicle is not retrieved, the letters indicate a storage facility's attempts to contact the vehicle's owner before attempting to obtain title to the vehicle pursuant to R.C. 4505.101. Mailing of certified letters to vehicle owners, when necessary, therefore, has the potential to benefit towing companies and storage facilities.

{¶ 16} The Commission additionally declines TRAO's request to adopt adjusted rates from the city of Columbus. Columbus' rates are governmental charges for impounding and storing a vehicle, and thus include a broad universe of costs, including but not limited to the costs of contract labor and/or city labor to conduct tows, city staff to oversee and operate the towing and storage program, and other administrative costs that may not normally be incurred by a private towing company engaged in tows from private property. In sum, such a comparison and use of city of Columbus rates as a baseline is inappropriate. That being said, we note that the \$125 fee issued by the city of Columbus for vehicle under 7,000 lbs. is less than the fee in the proposed rules.

{¶ 17} Finally, we also note that, pursuant to R.C. 4921.25(B)(5), these rules will be reviewed again in five years to determine whether the fees are "just, reasonable, and compensatory."

## V. CONCLUSION

{¶ 18} Upon considering Staff's proposal and comments from interested parties, the Commission concludes that a clean version of the attached rules,<sup>2</sup> proposed Ohio Adm.Code Chapter 4901:2-24, as set forth in Attachment A, should be approved.

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<sup>2</sup> The Commission notes that Attachment A shows deletions from and additions to the rules originally proposed and attached to the January 3, 2018 Entry in strikethrough and underline, respectively.

{¶ 19} The rules are posted on the Commission's Docketing Information System website at <http://dis.puc.state.oh.us/>. To minimize the expense of this proceeding, the Commission will serve notice of this Finding and Order upon the transportation industry list-serve. Interested persons are directed to input case number 17-713-TR-ORD in the Case Lookup box to view the rules, as well as this Finding and Order, or to contact the Commission's Docketing Division to request a paper copy.

{¶ 20} Finally, in accordance with R.C. Chapter 119, the attorney examiner is directed to establish a public hearing regarding these rules by subsequent entry.

## VI. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That proposed Ohio Adm.Code Chapter 4901:2-24, as set forth in Attachment A, be approved. It is, further,

{¶ 23} ORDERED, That the new rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. Chapter 119. It is, further,


{¶ 24} ORDERED, that the attorney examiner issue an entry establishing a public hearing in accordance with Paragraph 20. It is, further,

{¶ 25} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:2-22 shall be in compliance with R.C. 106.03. It is, further,

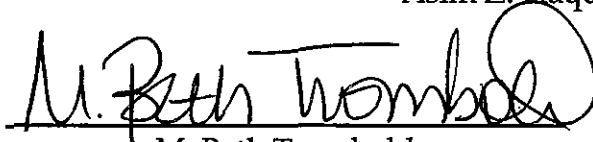
{¶ 26} ORDERED, That a copy of this Finding and Order be served via the transportation industry list-serve. It is, further,

{¶ 27} ORDERED, That a copy of this Finding and Order be served upon the Ohio State Highway Patrol, Ohio Trucking Association, Ohio Department of Transportation, Ohio Association of Chiefs of Police, Buckeye State Sheriff's Association, Ohio Municipal League, County Commissioners Association of Ohio, Ohio Township Association, WreckMaster Inc. USA, Towing and Recovery Association of America, North American Towing Academy, American Towing and Recovery Institute, Ohio Insurance Institute, Towing and Recovery Association of Ohio, AAA Ohio, Fraternal Order of Police of Ohio Inc., Association of Professional Towers-Ohio, and the transportation list-serve.

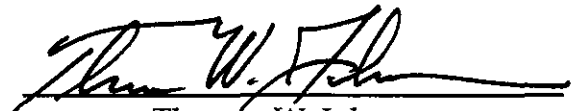
THE PUBLIC UTILITIES COMMISSION OF OHIO



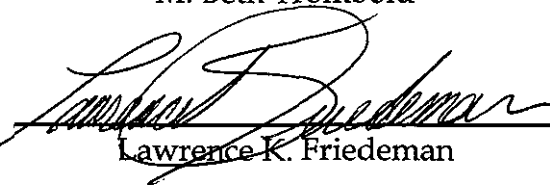
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

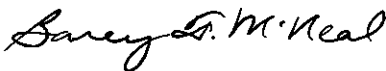


Daniel R. Conway

JML/sc

Entered in the Journal

**FEB 28 2018**



Barcy F. McNeal  
Secretary



**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**"NEW"**

4901:2-24-01 Definitions.

- (A) "Commission" means the public utilities commission of Ohio.
- (B) "For-hire motor carrier" has the same meaning as in section 4923.01 of the Revised Code.
- (C) "Gross vehicle weight rating" has the same meaning as in section 4506.01 of the Revised Code.
- (D) "Motor vehicle" has the same meaning as in section 4921.01 of the Revised Code.
- (E) "Storage facility" means any place to which such a for-hire motor carrier delivers a motor vehicle towed pursuant to sections 4513.60 or 4513.601 of the Revised Code.
- (F) "Towing service" has the same meaning as in section 4513.67 of the Revised Code.

**"NEW"**

4901:2-24-02 Purpose and scope.

- (A) This chapter governs the establishment of maximum fees for towing and storage of motor vehicles and other requirements applicable to for-hire motor carriers charging such fees.
- (B) The commission may, upon an application or motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

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**"NEW"**

4901:2-24-03      Fees for Towing and Storage.

- (A) The maximum fees that may be charged relative to the towing of motor vehicles shall be the following:
- (1) If a motor vehicle has a manufacturer's gross vehicle weight rating less than ten thousand one pounds, any fee for the removal of the motor vehicle charged by a towing service pursuant to sections 4513.60 and 4513.601 of the Revised Code shall not exceed the reasonable cost of complying with the requirements of those sections, but in no instance shall the fee exceed one hundred twenty-seven nine dollars.
  - (2) If a motor vehicle has a manufacturer's gross vehicle weight rating greater than or equal to ten thousand one pounds, any fee for the removal of the vehicle charged by a towing service pursuant to sections 4513.60 and 4513.601 of the Revised Code shall not exceed the reasonable cost of complying with the requirements of those sections, but in no instance shall the fee exceed two hundred ~~twelve~~ sixteen dollars.
- (B) The maximum fees that may be charged relative to the storage of motor vehicles shall be the following:
- (1) If a motor vehicle has a manufacturer's gross vehicle weight rating less than ten thousand one pounds, any fee for the storage of the vehicle charged by a storage facility pursuant to sections 4513.60 and 4513.601 of the Revised Code shall not exceed the reasonable cost of complying with the requirements of those sections, but in no instance shall the fee exceed seventeen dollars per day.
  - (2) If a motor vehicle has a manufacturer's gross vehicle weight rating greater than or equal to ten thousand one pounds, any fee for the storage of the vehicle charged by a towing service pursuant to sections 4513.60 and 4513.601 of the Revised Code shall not exceed the reasonable cost of complying with the requirements of those sections, but in no instance shall the fee exceed twenty-~~eight~~ nine dollars per day.

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- (C) No other fees shall be permitted to be charged or collected by a towing service or storage facility pursuant to sections 4513.60 and 4513.601 of the Revised Code that are not provided for in this rule or otherwise allowed by law.
- (D) Any towing service or storage facility found to be in violation of this rule, may be liable to the state for a forfeiture assessed under section 4923.99 of the Revised Code.