

Legislative Analysis



TOWING SERVICE: PROHIBIT SOLICITING FOR BUSINESS AT SCENE OF ACCIDENT

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**House Bill 4545 as enacted
Public Act 303 of 2014
Sponsor: Rep. Dale W. Zorn**

**House Committee: Judiciary
Senate Committee: Judiciary**

Second Analysis (7-9-19)

BRIEF SUMMARY: The bill would do all of the following:

- Prohibit unsolicited tow trucks or wreckers from responding to the scene of an accident or disabled vehicle.
- Make a violation a civil infraction.
- Exempt Good Samaritan responders from the civil penalty.
- Allow the damaged or disabled vehicle's owner to choose a tow agency, with some exceptions.
- Prohibit a local government from requiring a tow agency to pay a fee to respond to a call for towing services.
- If the roadway were blocked by a vehicle involved in an accident, allow a law enforcement agency to have it removed, without the owner's permission, and provide immunity from civil actions related to exercising that authority.
- Require the owner of the vehicle or of personal property having to be removed from the roadway to reimburse the public entities and towing companies for its removal and disposal.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the judiciary. Courts may face increased costs due to processing any new civil infractions resulting from the bill, which would be partially or fully offset by fees paid on all civil infractions. Any additional civil fine revenue would benefit local libraries.

THE APPARENT PROBLEM:

Reportedly, drivers have experienced problems with tow truck or wrecker operators that use aggressive, badgering, or even unethical business practices to solicit customers. Some use police scanners and attempt to beat a tow service called by law enforcement to the scene of an accident or disabled vehicle. Others drive the highways trolling for stranded motorists. Some are legitimate businesses whose drivers promptly leave the scene when told that their services are not needed because another service is on its way, but stories abound of licensed and sometimes unlicensed operators who harass motorists into accepting their tow services, insist on towing to a shop where they have a financial interest, demand cash payments for towing, and/or charge outrageous amounts for towing or repair services.

Moreover, untrained and undertrained tow operators who do not know how to properly tow a specific vehicle model have caused significant damage to vehicles. In addition, when an unsolicited tow operator shows up at the scene of an accident, the attention of law enforcement officers is drawn away from securing the scene and forced to focus instead on settling disputes regarding which operator was originally called by the police dispatcher or by a person involved in the accident.

Some feel that one way to discourage unsolicited tow operators from showing up at accident scenes or harassing stranded motorists is to make the practice a civil infraction with a fine stiff enough to act as a deterrent.

In a related matter, some feel that the authority of a law enforcement agency to order a disabled vehicle that is blocking the roadway or creating a hazard to be moved or impounded should be clarified.

THE CONTENT OF THE BILL:

The bill would add a new section to the Michigan Vehicle Code to make it a civil infraction to travel to the scene of an accident or disabled vehicle located on public property, property opened to the public, or a state trunk line highway and solicit business for a wrecker, recovery, or towing service.

The bill would not apply under either of the following conditions:

- A law enforcement agency having jurisdiction over the scene of the accident or disabled vehicle, or an individual involved in that accident or disabled vehicle, requests the owner or operator of a wrecker or towing service to come to the scene.
- A wrecker, recovery truck, or tow truck operator, who does not travel to the scene of motor vehicle accident or disabled vehicle to solicit business for a wrecker, recovery, or towing service, offers assistance to a stranded motorist without creating a nuisance or interfering with management of a motor vehicle accident by law enforcement.

A violator would be ordered to pay a civil fine of \$1,000 as well as costs as currently provided in the code for civil infractions.

(Under the Michigan Vehicle Code, the judge or district court magistrate determines the costs of an action, which may include all expenses, direct and indirect, to which the plaintiff has been put in connection with the civil infraction up to the entry of judgment. However, the costs that may be imposed are capped at \$100. The code also prohibits a court from waiving the civil fine unless costs ordered under this provision are also waived. Unless otherwise provided by law, costs are payable to the general fund of the plaintiff. In addition, the court would have to order the defendant to pay a \$40 Justice System Assessment.)

Subject to section 252d of the Michigan Vehicle Code, which provides for the removal of a vehicle from private or public property to a place of safekeeping by a police agency at the owner's cost, the bill would permit the vehicle's owner or operator to request the towing, wrecker, or recovery service of his or her choice unless any of the following apply:

- The vehicle is involved in suspected criminal activity, fatality, or law enforcement investigation.

- The vehicle is being impounded.
- The requested wrecker service is unavailable or cannot respond in a timely manner **and** the vehicle is creating a road or safety hazard as determined by law enforcement at the scene.

Further, a local governmental unit could not require—as a term of a contract with a wrecker, recovery, or towing service—that the service pay a fee to the local government for responding to the scene of an impound, accident, disabled vehicle, or abandoned vehicle and providing wrecker, recovery, or towing services. The provision would only apply to a contract between a local unit of government and a wrecker, recovery, or towing service that entered into or renewed after the January 7, 2015 (the bill’s effective date).

In addition, the bill would clarify that a law enforcement agency could, without consent of the owner or operator and with the assistance of the Michigan Department of Transportation, other road agencies, fire department, emergency management, other local public safety agencies, or towing or recovery companies under the direction of any of those entities, remove and dispose of vehicles and their contents involved in accidents (including any personal property) from the main traveled portion of a roadway and the right-of-way **if** the vehicle, cargo, or personal property were blocking the roadway or right-of-way or could otherwise endanger public safety.

A public agency or department moving a vehicle, cargo, or personal property (and any of their officers, employees, or agents) or anyone acting in good faith under, and within the scope of, the authority to remove and dispose of the vehicle’s cargo, would not be liable for any damages or claims arising from the exercise or the failure to exercise that authority. However, immunity from civil actions would not apply to the transport of a vehicle from the scene of an accident, or if the conduct of the individual acting under the authority to remove a vehicle constitutes gross negligence as defined in section 606a of the code.

The bill would require the owner or carrier, if any, of a motor vehicle, cargo, or personal property that had been removed or disposed of to reimburse the public agency, departments, and towing companies, if any, for all documented reasonable costs incurred in that removal and disposal.

MCL 257.618a et al.

BACKGROUND INFORMATION:

The National Insurance Crime Bureau (NICB) recommends the following actions regarding roadside towing services:

- Call your insurance company for towing options or recommendations.
- Never give permission to a tow truck operator who arrives unsolicited to take your vehicle.
- If law enforcement has responded to the scene, follow their towing guidance. If you or law enforcement did not call a tow truck to the scene, do not deal with that operator.
- Do not provide tow truck operators with your insurance information.
- Do not provide tow truck operators with personal lien holder information.

- Determine that the tow truck signage is identical to what appears on any documentation that the tow truck operator provides (they may say they "work with" your insurance company).
- If the tow truck does not display signage identifying the name of the tow company, ask for company identification.
- If a tow operator's legitimacy is in doubt, call the police.

The NICB encourages consumers to report fraud anonymously by calling toll-free 1-800-TEL-NICB (1-800-835-6422), texting keyword "fraud" to TIP411 (847411), or visiting www.nicb.org.

Additional advice is given by the Business Consumer Alliance, a nonprofit promoting business self-regulation, www.businessconsumeralliance.org:

- Be cautious of unsolicited help. Do not allow any tow operator to take your vehicle if you did not contact them.
- Contact the police or your roadside service contractor and allow them to handle towing arrangements. If the police arrange to have your vehicle towed don't sign any additional paperwork from the company, which could allow them to add extra fees later on.
- Check that the name on the tow truck is consistent with the documentation. Do not deal with operators that show up with no company information on their vehicle. Also, if the operator claims to be from AAA or another motor club, contact your motor club membership hotline to see if they authorized the operator.
- If possible, arrange to have the vehicle towed to your home or to a trusted repair facility of your choice. Be wary of any towing company that wants to take your vehicle to its own repair shop.
- Do not provide the tow truck operator with your insurance information. Do not provide them with your personal information, as this may be used to file a lien against you.
- Obtain a printed invoice which includes towing, storage, and any miscellaneous fees.
- If you suspect fraud or if the tow truck driver refuses to leave, contact the police.

ARGUMENTS:

For:

The stated intent of the bill is to crack down on nuisance tow operators, those who engage in a form of "ambulance chasing." Some use police scanners and try to arrive ahead of the operator called by the dispatcher after a 9-1-1 call (some municipalities use an approved tow service list or contract with a specific tower). Some are said to drive around and prey upon stranded motorists they come across. Rather than asking if they can be of service, and then leaving if their services are not needed or wanted, nuisance operators are those characterized as using tactics that can range from being overly competitive to manipulative, abusive, badgering, or intimidating in order to coerce persons to sign a contract, then tow the vehicles to a preferred shop, often getting a kickback in return. There have been reports of motorists having difficulty finding their vehicles when an unsolicited operator tows the vehicle to an unauthorized facility. Some of these operators are not licensed and have little to no knowledge or experience, or even proper equipment, to properly tow a vehicle. With today's

sophisticated vehicles, incorrectly towing can cause major damage that may not be covered by a person's insurance.

The bill seeks to provide a deterrent to those tow operators who would prey on accident victims or stranded motorists by making it a civil infraction with a flat fine of \$1,000 to travel to the scene of an accident or disabled vehicle to solicit business for a wrecker, recovery, or towing service. The bill would not apply to tow services responding to a call for assistance by the police or a motorist. The bill also would not punish tow service operators who, in the normal course of business, happen to come across the scene of an accident or a stranded motorist and offer assistance. Simply leaving when told their services are not required would absolve them of responsibility under the bill.

Obviously, no law could stop the unscrupulous conduct of some tow operators, but the fine created by the bill is significantly stiff enough to catch their attention and encourage more ethical business practices. Plus, the bill would provide law enforcement officers at the scene of an accident greater authority to shoo away unsolicited operators, thus increasing their ability to manage the scene appropriately.

For:

Although the Michigan Vehicle Code already authorizes a police agency or a governmental unit authorized by a police agency to remove motor vehicles from public or private property, and to have those vehicles impounded, under certain conditions, the bill would strengthen and clarify such authority when a vehicle or its cargo has been involved in an accident and the vehicle or its cargo is blocking the roadway or presents a public safety hazard. The bill would also provide immunity from civil actions for damages or claims for any entity authorized under the bill to clear the road, including the tow or wrecker service if operating under the direction of a law enforcement agency and if the conduct in removing the vehicle or cargo did not constitute gross negligence. The code already places responsibility for towing and impound costs with the vehicle's last titled owner, and the bill would follow this practice.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.