

SECOND REGULAR SESSION

HOUSE BILL NO. 2075

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPENCER.

5604H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 304.156 and 304.157, RSMo, and to enact in lieu thereof two new sections relating to abandoned property, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 304.156 and 304.157, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 304.156 and 304.157, to read as follows:

304.156. 1. Within five working days of receipt of the crime inquiry and inspection report under section 304.155 or the abandoned property report under section 304.157, the director of revenue shall search the records of the department of revenue, or initiate an inquiry with another state, if the evidence presented indicated the abandoned property was registered or titled in another state, to determine the name and address of the owner and lienholder, if any. After ascertaining the name and address of the owner and lienholder, if any, the department shall, within fifteen working days, notify the towing company. Any towing company which comes into possession of abandoned property pursuant to section 304.155 or 304.157 and who claims a lien for recovering, towing or storing abandoned property shall give notice to the title owner and to all persons claiming a lien thereon, as disclosed by the records of the department of revenue or of a corresponding agency in any other state. The towing company shall notify the owner and any lienholder within ten business days of the date of mailing indicated on the notice sent by the department of revenue, by certified mail, return receipt requested. The notice shall contain the following:

- (1) The name, address and telephone number of the storage facility;
- (2) The date, reason and place from which the abandoned property was removed;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (3) A statement that the amount of the accrued towing, storage and administrative costs
18 are the responsibility of the owner, and that storage and/or administrative costs will continue to
19 accrue as a legal liability of the owner until the abandoned property is redeemed;

20 (4) A statement that the storage firm claims a possessory lien for all such charges;

21 (5) A statement that the owner or holder of a valid security interest of record may retake
22 possession of the abandoned property at any time during business hours by proving ownership
23 or rights to a secured interest and paying all towing and storage charges;

24 (6) A statement that, should the owner consider that the towing or removal was improper
25 or not legally justified, the owner has a right to request a hearing as provided in this section to
26 contest the propriety of such towing or removal;

27 (7) A statement that if the abandoned property remains unclaimed for thirty days from
28 the date of mailing the notice, title to the abandoned property will be transferred to the person
29 or firm in possession of the abandoned property free of all prior liens; and

30 (8) A statement that any charges in excess of the value of the abandoned property at the
31 time of such transfer shall remain a liability of the owner.

32 2. A towing company may only assess reasonable storage charges for abandoned
33 property towed without the consent of the owner. Reasonable storage charges shall not exceed
34 the charges for vehicles which have been towed with the consent of the owner on a negotiated
35 basis. Storage charges may be assessed only for the time in which the towing company complies
36 with the procedural requirements of sections 304.155 to 304.158.

37 3. In the event that the records of the department of revenue fail to disclose the name of
38 the owner or any lienholder of record, the department shall notify the towing company which
39 shall attempt to locate documents or other evidence of ownership on or within the abandoned
40 property itself. The towing company must certify that a physical search of the abandoned
41 property disclosed that no ownership documents were found and a good faith effort has been
42 made. For purposes of this section, "good faith effort" means that the following checks have
43 been performed by the company to establish the prior state of registration and title:

44 (1) Check of the abandoned property for any type of license plates, license plate record,
45 temporary permit, inspection sticker, decal or other evidence which may indicate a state of
46 possible registration and title;

47 (2) Check the law enforcement report for a license plate number or registration number
48 if the abandoned property was towed at the request of a law enforcement agency;

49 (3) Check the tow ticket/report of the tow truck operator to see if a license plate was on
50 the abandoned property at the beginning of the tow, if a private tow; and

51 (4) If there is no address of the owner on the impound report, check the law enforcement
52 report to see if an out-of-state address is indicated on the driver license information.

53 4. If no ownership information is discovered, the director of revenue shall be notified in
54 writing and title obtained in accordance with subsection 7 of this section.

55 5. (1) The owner of the abandoned property removed pursuant to the provisions of
56 section 304.155 or 304.157 or any person claiming a lien, other than the towing company, within
57 ten days after the receipt of notification from the towing company pursuant to subsection 1 of
58 this section may file a petition in the associate circuit court in the county where the abandoned
59 property is stored to determine if the abandoned property was wrongfully taken or withheld from
60 the owner. The petition shall name the towing company among the defendants. The petition
61 may also name the agency ordering the tow or the owner, lessee or agent of the real property
62 from which the abandoned property was removed. The director of revenue shall not be a party
63 to such petition but a copy of the petition shall be served on the director of revenue who shall not
64 issue title to such abandoned property pursuant to this section until the petition is finally decided.

65 (2) Upon filing of a petition in the associate circuit court, the owner or lienholder may
66 have the abandoned property released upon posting with the court a cash or surety bond or other
67 adequate security equal to the amount of the charges for towing and storage to ensure the
68 payment of such charges in the event he does not prevail. Upon the posting of the bond and the
69 payment of the applicable fees, the court shall issue an order notifying the towing company of
70 the posting of the bond and directing the towing company to release the abandoned property. At
71 the time of such release, after reasonable inspection, the owner or lienholder shall give a receipt
72 to the towing company reciting any claims for loss or damage to the abandoned property or the
73 contents thereof.

74 (3) Upon determining the respective rights of the parties, the final order of the court shall
75 provide for immediate payment in full of recovery, towing, and storage fees by the abandoned
76 property owner or lienholder or the owner, lessee, or agent thereof of the real property from
77 which the abandoned property was removed.

78 6. A towing and storage lien shall be enforced as provided in subsection 7 of this section.

79 7. Thirty days after the notification form has been mailed to the abandoned property
80 owner and holder of a security agreement and the property is unredeemed and no satisfactory
81 arrangement has been made with the lienholder in possession for continued storage, and the
82 owner or holder of a security agreement has not requested a hearing as provided in subsection
83 5 of this section, the lienholder in possession may apply to the director of revenue for a
84 certificate. **Upon such application, the lienholder in possession shall become liable for any**
85 **damage occurring to the abandoned property.** The application for title shall be accompanied
86 by:

87 (1) An affidavit from the lienholder in possession that he has been in possession of the
88 abandoned property for at least thirty days and the owner of the abandoned property or holder
89 of a security agreement has not made arrangements for payment of towing and storage charges;

90 (2) An affidavit that the lienholder in possession has not been notified of any application
91 for hearing as provided in this section;

92 (3) A copy of the abandoned property report or crime inquiry and inspection report;

93 (4) A copy of the thirty-day notice given by certified mail to any owner and person
94 holding a valid security interest and a copy of the certified mail receipt indicating that the owner
95 and lienholder of record was sent a notice as required in this section; and

96 (5) A copy of the envelope or mailing container showing the address and postal markings
97 indicating that the notice was "not forwardable" or "address unknown".

98 8. If notice to the owner and holder of a security agreement has been returned marked
99 "not forwardable" or "addressee unknown", the lienholder in possession shall comply with
100 subsection 3 of this section.

101 9. Any municipality or county may adopt an ordinance regulating the removal and sale
102 of abandoned property provided such ordinance is consistent with sections 304.155 to 304.158,
103 and, for a home rule city with more than four hundred thousand inhabitants and located in more
104 than one county, includes the following provisions:

105 (1) That the department of revenue records must be searched to determine the registered
106 owner or lienholder of the abandoned property;

107 (2) That if a registered owner or lienholder is disclosed in the records, that the owner and
108 lienholder or owner or lienholder are mailed a notice by the local governmental agency, by U.S.
109 mail, advising of the towing and impoundment;

110 (3) That if the vehicle is older than six years and more than fifty percent damaged by
111 collision, fire, or decay, and has a fair market value of less than two hundred dollars as
112 determined by using any nationally recognized appraisal book or method, it must be held no less
113 than ten days after the notice is sent pursuant to this section before being sold to a licensed
114 salvage or scrap business; provided however where a title is required under this chapter an
115 affidavit from a certified appraiser attesting that the value of the vehicle is less than two hundred
116 dollars;

117 (4) That all other vehicles must be held no less than thirty days after the notice is sent
118 pursuant to this subsection before they may be sold.

119 10. Any municipality or county which has physical possession of the abandoned property
120 and which sells abandoned property in accordance with a local ordinance may transfer ownership
121 by means of a bill of sale signed by the municipal or county clerk or deputy and sealed with the
122 official municipal or county seal. Such bill of sale shall contain the make and model of the

123 abandoned property, the complete abandoned property identification number and the odometer
124 reading of the abandoned property if available and shall be lawful proof of ownership for any
125 dealer registered under the provisions of section 301.218, or section 301.560, or for any other
126 person. Any dealer or other person purchasing such property from a municipality or county shall
127 apply within thirty days of purchase for a certificate. Anyone convicted of a violation of this
128 section shall be guilty of an infraction.

129 11. Any persons who have towed abandoned property prior to August 28, 1996, may,
130 until January 1, 2000, apply to the department of revenue for a certificate. The application shall
131 be accompanied by:

132 (1) A notarized affidavit explaining the circumstances by which the abandoned property
133 came into their possession, including the name of the owner or possessor of real property from
134 which the abandoned property was removed;

135 (2) The date of the removal;

136 (3) The current location of the abandoned property;

137 (4) An inspection of the abandoned property as prescribed by the director; and

138 (5) A copy of the thirty-day notice given by certified mail to any owner and person
139 holding a valid security interest of record and a copy of the certified mail receipt.

140 12. If the director is satisfied with the genuineness of the application and supporting
141 documents submitted pursuant to this section, the director shall issue one of the following:

142 (1) An original certificate of title if the vehicle owner has obtained a vehicle examination
143 certificate as provided in section 301.190 which indicates that the vehicle was not previously in
144 a salvaged condition or rebuilt;

145 (2) An original certificate of title designated as prior salvage if the vehicle examination
146 certificate as provided in section 301.190 indicates the vehicle was previously in a salvage
147 condition or rebuilt;

148 (3) A salvage certificate of title designated with the words "salvage/abandoned property"
149 or junking certificate based on the condition of the abandoned property as stated in the
150 abandoned property report or crime inquiry and inspection report;

151 (4) Notwithstanding the provisions of section 301.573 to the contrary, if satisfied with
152 the genuineness of the application and supporting documents, the director shall issue an original
153 title to abandoned property previously issued a salvage title as provided in this section, if the
154 vehicle examination certificate as provided in section 301.190 does not indicate the abandoned
155 property was previously in a salvage condition or rebuilt.

156 13. If abandoned property is insured and the insurer of property regards the property as
157 a total loss and the insurer satisfies a claim by the owner for the property, then the insurer or
158 lienholder shall claim and remove the property from the storage facility or make arrangements

159 to transfer the title, and such transfer of title subject to agreement shall be in complete
160 satisfaction of all claims for towing and storage, to the towing company or storage facility. The
161 owner of the abandoned vehicle, lienholder or insurer, to the extent the vehicle owner's insurance
162 policy covers towing and storage charges, shall pay reasonable fees assessed by the towing
163 company and storage facility. The property shall be claimed and removed or title transferred to
164 the towing company or storage facility within thirty days of the date that the insurer paid a claim
165 for the total loss of the property or is notified as to the location of the abandoned property,
166 whichever is the later event. Upon request, the insurer of the property shall supply the towing
167 company and storage facility with the name, address and phone number of the insurance
168 company and of the insured and with a statement regarding which party is responsible for the
169 payment of towing and storage charges under the insurance policy.

304.157. 1. If a person abandons property, as defined in section 304.001, on any real
2 property owned by another without the consent of the owner or person in possession of the
3 property, at the request of the person in possession of the real property, any member of the state
4 highway patrol, state water patrol, sheriff, or other law enforcement officer within his jurisdiction
5 may authorize a towing company to remove such abandoned property from the property in the
6 following circumstances:

7 (1) The abandoned property is left unattended for more than forty-eight hours; or

8 (2) In the judgment of a law enforcement officer, the abandoned property constitutes a
9 safety hazard or unreasonably interferes with the use of the real property by the person in
10 possession.

11

12 **When a tow is authorized under this subsection or subsection 2 of this section, the**
13 **abandoned property report shall be signed by a law enforcement officer employed by an**
14 **agency having jurisdiction over the location to which the abandoned property is towed.**

15 2. A local government agency may also provide for the towing of motor vehicles or
16 vessels from real property under the authority of any local ordinance providing for the towing
17 of vehicles or vessels which are derelict, junk, scrapped, disassembled or otherwise harmful to
18 the public health under the terms of the ordinance. Any local government agency authorizing
19 a tow under this subsection shall report the tow to the local law enforcement agency within two
20 hours with a crime inquiry and inspection report pursuant to section 304.155.

21 3. Neither the law enforcement officer, local government agency nor anyone having
22 custody of abandoned property under his or her direction shall be liable for any damage to such
23 abandoned property occasioned by a removal authorized by this section other than damages
24 occasioned by negligence or by willful or wanton acts or omissions.

25 4. The owner of real property or lessee in lawful possession of the real property or the
26 property or security manager of the real property may authorize a towing company to remove
27 abandoned property or property parked in a restricted or assigned area without authorization by
28 a law enforcement officer only when the owner, lessee or property or security manager of the real
29 property is present. A property or security manager must be a full-time employee of a business
30 entity. An authorization to tow pursuant to this subsection may be made only under any of the
31 following circumstances:

32 (1) There is displayed, in plain view at all entrances to the property, a sign not less than
33 seventeen by twenty-two inches in size, with lettering not less than one inch in height,
34 prohibiting public parking and indicating that unauthorized abandoned property or property
35 parked in a restricted or assigned area will be removed at the owner's expense, disclosing the
36 maximum fee for all charges related to towing and storage, and containing the telephone number
37 of the local traffic law enforcement agency where information can be obtained or a
38 twenty-four-hour staffed emergency information telephone number by which the owner of the
39 abandoned property or property parked in a restricted or assigned area may call to receive
40 information regarding the location of such owner's property;

41 (2) The abandoned property is left unattended on owner-occupied residential property
42 with four residential units or less, and the owner, lessee or agent of the real property in lawful
43 possession has notified the appropriate law enforcement agency, and ten hours have elapsed
44 since that notification; or

45 (3) The abandoned property is left unattended on private property, and the owner, lessee
46 or agent of the real property in lawful possession of real property has notified the appropriate law
47 enforcement agency, and ninety-six hours have elapsed since that notification.

48 5. Pursuant to this section, any owner or lessee in lawful possession of real property that
49 requests a towing company to tow abandoned property without authorization from a law
50 enforcement officer shall at that time complete an abandoned property report which shall be
51 considered a legal declaration subject to criminal penalty pursuant to section 575.060. The report
52 shall be in the form designed, printed and distributed by the director of revenue and shall contain
53 the following:

54 (1) The year, model, make and abandoned property identification number of the property
55 and the owner and any lienholders, if known;

56 (2) A description of any damage to the abandoned property noted by owner, lessee or
57 property or security manager in possession of the real property;

58 (3) The license plate or registration number and the state of issuance, if available;

59 (4) The physical location of the property and the reason for requesting the property to
60 be towed;

- 61 (5) The date the report is completed;
- 62 (6) The printed name, address and phone number of the owner, lessee or property or
63 security manager in possession of the real property;
- 64 (7) The towing company's name and address;
- 65 (8) The signature of the towing operator;
- 66 (9) The signature of the owner, lessee or property or security manager attesting to the
67 facts that the property has been abandoned for the time required by this section and that all
68 statements on the report are true and correct to the best of the person's knowledge and belief and
69 that the person is subject to the penalties for making false statements;
- 70 (10) Space for the name of the law enforcement agency notified of the towing of the
71 abandoned property and for the signature of the law enforcement official receiving the report;
72 and
- 73 (11) Any additional information the director of revenue deems appropriate.
- 74 6. Any towing company which tows abandoned property without authorization from a
75 law enforcement officer pursuant to subsection 4 of this section shall deliver a copy of the
76 abandoned property report to the local law enforcement agency having jurisdiction over the
77 location from which the abandoned property was towed. The copy may be produced and sent
78 by facsimile machine or other device which produces a near exact likeness of the print and
79 signatures required, but only if the law enforcement agency receiving the report has the
80 technological capability of receiving such copy and has registered the towing company for such
81 purpose. The registration requirements shall not apply to law enforcement agencies located in
82 counties of the third or fourth classification. The report shall be delivered within two hours if
83 the tow was made from a signed location pursuant to subdivision (1) of subsection 4 of this
84 section, otherwise the report shall be delivered within twenty-four hours.
- 85 7. The law enforcement agency receiving such abandoned property report must record
86 the date on which the abandoned property report is filed with such agency and shall promptly
87 make an inquiry into the national crime information center and any statewide Missouri law
88 enforcement computer system to determine if the abandoned property has been reported as
89 stolen. The law enforcement agency shall enter the information pertaining to the towed property
90 into the statewide law enforcement computer system, and an officer shall sign the abandoned
91 property report and provide the towing company with a signed copy. The department of revenue
92 may design and sell to towing companies informational brochures outlining owner or lessee of
93 real property obligations pursuant to this section.
- 94 8. The law enforcement agency receiving notification that abandoned property has been
95 towed by a towing company shall search the records of the department of revenue and provide
96 the towing company with the latest owner and lienholder information, if available, on the

97 abandoned property, and if the tower has online access to the department of revenue's records,
98 the tower shall comply with the requirements of section 301.155. If the abandoned property is
99 not claimed within ten working days, the towing company shall send a copy of the abandoned
100 property report signed by a law enforcement officer to the department of revenue.

101 9. If any owner or lessee of real property knowingly authorizes the removal of abandoned
102 property in violation of this section, then the owner or lessee shall be deemed guilty of a class
103 C misdemeanor.

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