

SECOND REGULAR SESSION

HOUSE BILL NO. 1201

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES DUSENBERG (Sponsor), PRATT, YATES, ERVIN,
WILSON (119), DOUGHERTY, BROWN, LeVOTA, SKAGGS, JOLLY, BAKER, SCHAAF, MEINERS,
BURNETT, YOUNG, RECTOR, PHILLIPS, GUEST AND BISHOP (Co-sponsors).

Read 1st time January 21, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3243L.011

AN ACT

To repeal section 304.156, RSMo, and to enact in lieu thereof one new section relating to disposal of damaged vehicles.

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

Section A. Section 304.156, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 304.156, to read as follows: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;
- (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. The application for title shall be accompanied by:

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

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

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

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

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

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

99 9. Any municipality or county may adopt an ordinance regulating the removal and sale
100 of abandoned property provided such ordinance is consistent with sections 304.155 to 304.158,
101 **and includes the following provisions:**

102 (1) **That the department of revenue records must be searched to determine the**
103 **registered owner of the abandoned property;**

104 (2) **That if a registered owner is disclosed in the records, that the owner is mailed**
105 **a notice, by U.S. mail, advising of the towing and impoundment;**

106 (3) **That if the vehicle is older than six years and more than fifty percent damaged**
107 **by collision, fire, or decay, it must be held no less than ten days before being sold to a**
108 **licensed salvage or scrap business;**

109 (4) **That all other vehicles must be held no less than thirty days before they may be**
110 **sold.**

111 10. Any municipality or county which has physical possession of the abandoned property
112 and which sells abandoned property in accordance with a local ordinance may transfer ownership
113 by means of a bill of sale signed by the municipal or county clerk or deputy and sealed with the
114 official municipal or county seal. Such bill of sale shall contain the make and model of the
115 abandoned property, the complete abandoned property identification number and the odometer
116 reading of the abandoned property if available and shall be lawful proof of ownership for any
117 dealer registered under the provisions of section 301.218, RSMo, or section 301.560, RSMo, or
118 for any other person. Any dealer or other person purchasing such property from a municipality
119 or county shall apply within thirty days of purchase for a certificate. Anyone convicted of a
120 violation of this section shall be guilty of an infraction.

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

124 (1) A notarized affidavit explaining the circumstances by which the abandoned property
125 came into their possession, including the name of the owner or possessor of real property from

126 which the abandoned property was removed;

127 (2) The date of the removal;

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

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

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

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

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

137 (2) An original certificate of title designated as prior salvage if the vehicle examination
138 certificate as provided in section 301.190, RSMo, indicates the vehicle was previously in a
139 salvage condition or rebuilt;

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

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

148 13. If abandoned property is insured and the insurer of property regards the property as
149 a total loss and the insurer satisfies a claim by the owner for the property, then the insurer or
150 lienholder shall claim and remove the property from the storage facility or make arrangements
151 to transfer the title, and such transfer of title subject to agreement shall be in complete
152 satisfaction of all claims for towing and storage, to the towing company or storage facility. The
153 owner of the abandoned vehicle, lienholder or insurer, to the extent the vehicle owner's insurance
154 policy covers towing and storage charges, shall pay reasonable fees assessed by the towing
155 company and storage facility. The property shall be claimed and removed or title transferred to
156 the towing company or storage facility within thirty days of the date that the insurer paid a claim
157 for the total loss of the property or is notified as to the location of the abandoned property,
158 whichever is the later event. Upon request, the insurer of the property shall supply the towing
159 company and storage facility with the name, address and phone number of the insurance
160 company and of the insured and with a statement regarding which party is responsible for the
161 payment of towing and storage charges under the insurance policy.