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LEGISLATIVE TESTIMONY
Presented By The
Kansas Motor Carriers Association
Before The
House Transportation Committee
Representative Richard Proehl, Chairman
Tuesday, March 15, 2016

MR. CHAIRMAN AND MEMBERS OF THE
HOUSE TRANSPORTATION COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear before you this afternoon representing our 950 member firms and specifically our Towing and Recovery Division in support of Senate Bill No. 382. The bill repeals K.S.A 8-1107 which would eliminate the requirement that a person providing towing and recovery service file notices and publications required by the Towing and Recovery Lien law (K.S.A. 8-1103 through K.S.A. 8-1108) with the county clerk.

The towing and recovery possessory lien law was adopted by the Legislature in 1987 following a court case that resulted in a ruling that the tow operator only had a lien on a vehicle if the request for the tow was made by the owner of the vehicle. In many cases, towing requests are made by law enforcement officers or relatives of the owner. The resulting statutes were modeled after the mechanic's lien law which does require a filing with the county clerk.

The towing and recovery possessory lien law spells out notice requirements to the owner and any lienholders, publication requirements and that any such vehicle be sold a public auction. When a vehicle is sold the new owner of the vehicle is required to have a VIN verification by the Kansas Highway Patrol and file all notices and publications with the county treasurer. Since the lien laws inception, towers have only been filing with the county treasurer and not the county clerk.

Following a review by the Kansas Department of Revenue of the Towing and Recovery Possessory Affidavit, it was discovered that all notices and publications be filed with the county clerk as well as the county treasurer. Thus a duplication of the filing process. We are asking for the repeal of the county clerk filing requirement which will eliminate this duplication. I have attached a copy of K.S.A. 8-1107 to my testimony to allow the Committee to see the current content of this statute.



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Mr. Chairman, KMCA further requests the Committee approve an amendment to the towing and recovery possessory lien law to clarify that Paragraph (c) of K.S.A. 8-1103 pertains only to tows from private property. I have attached a copy of K.S.A. 8-1103 with the proposed amendment. This section of the lien law was designed to protect consumers should their vehicle be towed from a parking lot without the knowledge of the owner. Some cities and counties have interpreted the statute to require the city or county to regulate all tows. Senator Mike Petersen and former Senator Pat Apple helped draft the original language. We have checked with Senator Petersen to verify the original intent of the statute and he agrees with the proposed amendment.

With adoption of the proposed amendment, KMCA respectfully requests the House Transportation Committee pass SB 382 favorably as amended. We thank you for the opportunity to appear before you today and would be pleased to respond to any questions you may have.

2015 Kansas Statutes

8-1107. Notices, publications and affidavit filed with clerk of the county. Copies of the notices and publications required by this act, and an affidavit of the person providing wrecker or towing service, setting forth the claim and actual expenses of notice, publication and sale, shall be filed with the clerk of the county in which the sale takes place, and such documents or copies thereof duly certified by such clerk shall be received as presumptive evidence of the matters therein contained.

History: L. 1987, ch. 209, § 5; July 1.

2015 Kansas Statutes

8-1103. Towed motor vehicles, lien thereon; procedure; personal property; providing notice of fee; city ordinance or county resolution. (a) Whenever any person providing wrecker or towing service, as defined by law, while lawfully in possession of a vehicle, at the direction of a law enforcement officer or the owner or as provided by a city ordinance or county resolution, renders any service to the owner thereof by the recovery, transportation, protection, storage or safekeeping thereof, a first and prior lien on the vehicle is hereby created in favor of such person rendering such service and the lien shall amount to the full amount and value of the service rendered. The lien may be foreclosed in the manner provided in this act. If the name of the owner of the vehicle is known to the person in possession of such vehicle, then within 15 days, notice shall be given to the owner that the vehicle is being held subject to satisfaction of the lien. Any vehicle remaining in the possession of a person providing wrecker or towing service for a period of 30 days after such wrecker or towing service was provided may be sold to pay the reasonable or agreed charges for such recovery, transportation, protection, storage or safekeeping of such vehicle and personal property therein, the costs of such sale, the costs of notice to the owner of the vehicle and publication after giving the notices required by this act, unless a court order has been issued to hold such vehicle for the purpose of a criminal investigation or for use as evidence at a trial. If a court orders any vehicle to be held for the purpose of a criminal investigation or for use as evidence at a trial, then such order shall be in writing, and the court shall assess as costs the reasonable or agreed charges for the protection, storage or safekeeping accrued while the vehicle was held pursuant to such written order. Any personal property within the vehicle need not be released to the owner thereof until the reasonable or agreed charges for such recovery, transportation or safekeeping have been paid, or satisfactory arrangements for payment have been made, except as provided under subsection (c) or for personal medical supplies which shall be released to the owner thereof upon request. The person in possession of such vehicle and personal property shall be responsible only for the reasonable care of such property. Any personal property within the vehicle not returned to the owner shall be sold at the auction authorized by this act.

(b) At the time of providing wrecker or towing service, any person providing such wrecker or towing service shall give written notice to the driver, if available, of the vehicle being towed that a fee will be charged for storage of such vehicle. Failure to give such written notice shall invalidate any lien established for such storage fee.

(c) A city ordinance or county resolution authorizing the towing of vehicles shall specify in such ordinance or resolution: (1) The maximum rate such wrecker or towing service may charge for such wrecker or towing service and storage fees; (2) that an owner of a vehicle towed shall have access to personal property in such vehicle for 48 hours after such vehicle has been towed and such personal property shall be released to the owner; and (3) that the wrecker or towing service shall report the location of such vehicle to local law enforcement within two hours of such tow.

History: L. 1987, ch. 209, § 1; L. 1991, ch. 40, § 1; L. 2000, ch. 179, § 12; L. 2004, ch. 37, § 2; L. 2009, ch. 119, § 9; July 1.