As Introduced

136th General Assembly
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H. B. No. 1040

Representative LaRe

To amend section 4923.99 of the Revised Code to modify when and where the Public Utilities Commission may assess a forfeiture penalty on a towing service or storage facility.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4923.99 of the Revised Code be amended to read as follows:

Sec. 4923.99. (A)(1) ~~Whoever~~ Except as provided in division (B) of this section, whoever violates Chapter 4921. or 4923. of the Revised Code, or rules adopted thereunder, is liable to the state for a forfeiture of not more than twenty-five thousand dollars for each day of each violation. The public utilities commission, after providing reasonable notice and the opportunity for a hearing in accordance with the procedural rules adopted under section 4901.13 of the Revised Code, shall assess, by order, a forfeiture upon a person whom the commission determines, by a preponderance of the evidence, committed the violation. In determining the amount of the forfeiture for a violation discovered during a driver or motor-vehicle inspection under section 4923.06 of the Revised Code, or discovered during a compliance review under section 4923.07 of the Revised Code, the commission shall not act in a manner incompatible with the

applicable requirements of the United States department of transportation.

The attorney general, upon the written request of the commission, shall bring a civil action in the court of common pleas of Franklin county to collect a forfeiture assessed under division (A)(1) of this section. The commission shall account for the forfeitures collected under division (A) of this section and pay them to the treasurer of state under section 4921.21 of the Revised Code.

(2) ~~The~~ Except as provided in division (B) of this section, the attorney general, upon the written request of the commission, shall bring an action for injunctive relief in the court of common pleas of Franklin county against any person who has violated or is violating any order issued by the commission to secure compliance with any provision of Chapter 4921. or 4923. of the Revised Code. The court of common pleas of Franklin county has jurisdiction to and may grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating any such order. The court shall give precedence to such an action over all other cases.

~~(B)~~ (B)(1) Except as otherwise provided in this division, the commission shall not assess a forfeiture under division (A)(1) of this section upon a for-hire motor carrier engaged in the towing of motor vehicles or a storage facility that accepts such vehicles for a violation of Chapter 4921. or 4923. of the Revised Code or the rules adopted thereunder. The commission may assess such a forfeiture if both of the following apply:

(a) The for-hire motor carrier or the storage facility violates section 4921.25 of the Revised Code or a rule adopted

thereunder.

(b) The violation does not constitute a minor violation or a major violation for purposes of bringing a civil action under section 4513.611 of the Revised Code. As used in this division, "minor violation" and "major violation" have the same meanings as in section 4513.611 of the Revised Code.

(2) The attorney general, upon the written request of the commission, shall bring a civil action in the court of common pleas of the county having jurisdiction of the defendant to collect a forfeiture assessed under division (B)(1) of this section. The commission shall account for the forfeitures collected under division (B) of this section and pay them to the treasurer of state under section 4921.21 of the Revised Code.

(3) The attorney general, upon the written request of the commission, shall bring an action for injunctive relief in the court of common pleas of the county having jurisdiction of the defendant against any person who has violated or is violating any order issued by the commission to secure compliance with section 4921.25 of the Revised Code. The applicable court of common pleas has jurisdiction to and may grant preliminary and permanent injunctive relief upon a showing that the person against whom the action is brought has violated or is violating any such order. The court shall give precedence to such an action over all other cases.

(C) The amount of any forfeiture may be compromised at any time prior to collection of the forfeiture. The commission shall adopt rules governing the manner in which the amount of a forfeiture may be established by agreement prior to the hearing on the forfeiture before the commission.

~~(C)~~ (D)(1) The proceedings of the commission specified in ~~division~~ divisions (A) and (B) of this section are subject to and governed by Chapter 4903. of the Revised Code, except as otherwise specifically provided in this section. ~~The~~

(2) The court of appeals of Franklin county has exclusive, original jurisdiction to review, modify, or vacate an order of the commission issued under division (A) of this section to secure compliance with any applicable provision of Chapter 4921. or 4923. of the Revised Code. The court of appeals of the county having jurisdiction of the defendant has exclusive, original jurisdiction to review, modify, or vacate an order of the commission issued under division (B) of this section to secure compliance with section 4921.25 of the Revised Code.

(3) The applicable court of appeals shall hear and determine those appeals in the same manner, and under the same standards, as the supreme court hears and determines appeals under Chapter 4903. of the Revised Code. The judgment of the court of appeals is final and conclusive unless reversed, vacated, or modified on appeal. Such appeals may be taken either by the commission or the person to whom the compliance order or forfeiture assessment was issued and shall proceed as in the case of appeals in civil actions as provided in the rules of appellate procedure and Chapter 2505. of the Revised Code.

~~(D)~~ (E) Section 4903.11 of the Revised Code does not apply to an appeal of an order issued to secure compliance with Chapter 4921. or 4923. of the Revised Code or an order issued under division (A)(1) or (B)(1) of this section assessing a forfeiture. Any person to whom any such order is issued who wishes to contest a compliance order, the fact of the violation, or the amount of the forfeiture shall file a notice of appeal,

setting forth the order appealed from and the errors complained of, within sixty days after the entry of the order upon the journal of the commission. The notice of appeal shall be served, unless waived, upon the chairperson of the commission or, in the event of the chairperson's absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. An order issued by the commission to secure compliance with Chapter 4921. or 4923. of the Revised Code or an order issued under division (A)(1) or (B)(1) of this section assessing a forfeiture shall be reversed, vacated, or modified on appeal if, upon consideration of the record, the court is of the opinion that the order was unlawful or unreasonable.

~~(E)~~ (F) Only for such violations that constitute violations of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1804 and 1805, or regulations adopted under the act, the commission, in determining liability, shall use the same standard of culpability for civil forfeitures under this section as that set forth for civil penalties under section 12 of the "Hazardous Materials Transportation Uniform Safety Act of 1990," 104 Stat. 3244, 49 U.S.C.A. App. 1809. The commission shall consider the assessment considerations for civil penalties specified in regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C. 1801.

Section 2. That existing section 4923.99 of the Revised Code is hereby repealed.