



hook & winch

FROM THE DESK OF EXECUTIVE DIRECTOR BART GIESLER

I attended a meeting earlier this month that was called by State Representative Jim Pressel, who chairs the House Roads and Transportation Committee, where legislation dealing with towing often is assigned. Over the past several years, there have been several issues that have come before his committee and he wanted to get the parties to the table to discuss the issues prior to the start of session. In addition to myself, there were representatives from the BMV, Secretary of State's Dealer Services, banking and credit union associations.

I discussed the following issues:

- Rates caps are too low for Electric Vehicles because of NTSB's 50 feet clearance;
- Towing are performing government service and therefore should receive the government rate for placing a legal advertisement and reduction in fees for accessing state database to find owner's information;
- Change the Title 32 mechanic lien maximum storage to match the Title 9 storage amount as this causes confusion;
- Clarify statute that the legal advertisement is the place of the mechanic's lienholder versus the financial lienholder;
- Create a better mechanism to dispose of mopeds where there is no owner identified; and
- Penalties on owners and insurance companies who dump vehicles.

During discussions, the issue was raised about starting the search for the owner. Per statute, we must start the search within 3 business days. I asked the question, "What happens if the owner tells the towing company on Monday that they will be in on Friday and the towing company does not start the search?" Have we waived the right to charge storage since we didn't start the search on time? BMV's initial reaction was that we have lost the right to charge storage if we don't start it within the 3 business days because that was a business decision that the towing company made. I tried to explain that this will cause costs to rise for the car owner if we start the search on all cars in order to protect ourselves.

This question has come up by members and I think the law is gray (remember – I and the ITWA do not give legal advice). If you do decide to not start the search within 3 business days, please note – the BMV may not back you even if you are being the good guy by not starting the search and trying to avoid fees to the car owner. It was pointed out that by not starting the search within the 3 days, the towing company may be violating the unfair trade practices under IC 24-14. I received a call this past week from a towing company where the city was upset that they started the process within the time period and the city thought they were adding fees unnecessarily.

Continued on Page 3



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From the Desk of the Executive Director – continued from page 1

In addition to me, the banks and credit unions wanted to see the certificate of mailing changed to certified mail. They also had issues with the various fees that end up on an invoice – towing – storage – admin – setout – city release – and others. There was also discussion on what regulations are on towing companies and who regulates towing. I don't think this discussion will go anywhere, but it was raised and discussed.

In the end, Rep. Pressel said he would look into everyone's issues.

What does ITWA need from you?

In order to justify changing the law to increase the cap for electric vehicles, please send me some of the issues you have, dealt with, such as: use of additional space on your storage lot (how many spaces for cars did you storage lot "decrease" by because of this?); how long you had to hold the car; issues with disposal of the vehicle; or extra disposal charges.

We understand that EVs make up a small percentage of the cars today, but we are looking ahead to prevent future issues.

CHAPTER MEETINGS

Chapter 7 (south) will have its chapter meeting on October 15th as part of the Hybrid/Electrical Vehicle Operations Class. More details to come.

Please contact your Chapter directors and give them input on chapter meetings. If you are willing to host a Chapter meeting, please let your director know.

EV TRAINING – RENSSELAER FIRE DEPARTMENT

ITWA participated on a recent INTIME virtual meeting and the Northwest District Emergency Coordinator for INDOT mentioned an upcoming training on EV. The training will be held at the Rensselaer Fire Department on October 29, 2022 at 8 am central time. This is a half-day training session with the instructor participating virtually and there will be vehicles on site. It is a half-day program and lunch is provided.

To register – please contact khaun@cityofrensseelaer.com



FROM THE DESK OF PRESIDENT MORELAND

When is the last time you had a genuine conversation with a close friend? Regardless of the content of your discussion, you felt better afterward, right? And more importantly, it did indeed contribute to your overall level of happiness as well. What everyone needs to know about the value of friendship is its strong correlation to our state of happiness and well-being. It's a known fact after many studies, that friendship not only boosts our health, but our happiness as well.

True friends are those who are there for you not just for the good times, but when times are not so good. True friends are reciprocal to one another and bring out the best of the best in each other. True friends demonstrate the real definition of being nonjudgmental and what unconditional love really means.

Childhood friends were the best, right? Childhood friendship is innocent, free from care, and it is unconditional. If you're lucky enough, you may even have developed a lifelong friend sealed with a pinkie promise!

Friendships in later life — as we age 'gracefully' as I say since I am... the older generation has the luxury of being more selective of who their true friends are. Yes, we have longtime friends from childhood all the way through college and career. But because 'time is more precious' in these formidable years, we tend to gravitate to those who are 'authentic' and who make one feel special and important. In fact, it's common that many older adults have just as many friends of the younger generation as they do of their own age group.

In this regard, true friendship along these lines is more 'give and take' of imparting knowledge and wisdom and experiencing the 'freshness and energy' of youth. Cross-generational friendships can be every bit as rewarding as same-aged friends. I cannot express how much I value the friendships that I have made and the people I have had the pleasure of meeting through my participation in this association. For the folks that are not active, I want to say that you are missing out on so much more than just belonging to an association.

As most of us are aging, we need to be recruiting the next generation of towers to come into the association and find out what their interests are. If you have sons or daughters in the business, please encourage them to become active, participate in the meetings, give input, and help us plan for the future!

Sue



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ITWA LADIES AUXILIARY

Hello Everyone!

The mission of the Ladies Auxiliary is to promote fellowship amongst our members. One way that we do this is to plan a Christmas Party in conjunction with our annual meeting. This year the Annual Meeting and Christmas Party will take place at the Double Tree by Hilton in Lafayette. Please mark your calendar for December 3, 2022.

A survey was emailed to our members. We would like to have your thoughts on how we should proceed with plans for the day. Please look it over and get back to Bart or President Moreland.

Another mission of the Ladies Auxiliary is to help provide financial support to ITWA. At the Christmas Party we will have a Silent Auction as a fundraiser for the Sonny Henline Survivor Fund. Start thinking about what you might donate and ask the vendors that you do business with to donate to this worthy cause.

One last note, ladies we are always looking for new ideas to promote fellowship and provide financial support to ITWA. Please let us know any suggestions you might have.

Watch for more information on the Annual Meeting and Christmas Party in next month's newsletter.

Until next time stay safe and healthy,

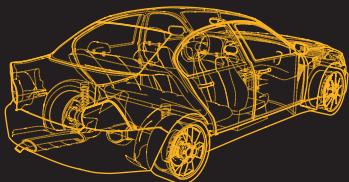
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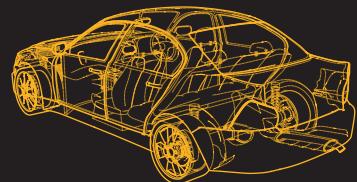


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Title 32 Liens and Why You Should File One if Someone Refuses to Pay a Towing Invoice

My name is Ryan Leagre and I am an attorney at Plews Shadley Racher & Braun LLP. I represent towing companies in various capacities, including helping them to recover the costs of responding to large accidents and navigating statutes and ordinances that regulate the industry.

This month's update focuses on what are called "Title 32 Liens" or "non-possessory liens." These liens are useful when a responsible party refuses to pay a towing invoice. A Title 32 Lien provides towing companies with a lien on any motor vehicle towed "for the reasonable charges for the towing and storage of the vehicle." While this is similar to "possessory liens" regulated under Title 9 of the Indiana Code, there are at least three key differences.

First, if a responsible party refuses to pay the towing invoice and you are forced to sue them, you can be **awarded your attorney fees** in that lawsuit if you have properly filed a Title 32 Lien. I.C. § 32-33-10-9. This is extremely valuable because litigation is expensive and no one wants to pay the other side's attorney fees. Plus, the threat of attorney fee awards usually speeds up resolution of a dispute. Possessory Liens under Title 9 do not provide the same relief or leverage.

Second, to secure a Title 32 Lien, the towing company must "record" the lien at the County Recorder's office within **60 days** of performing the towing services. Possessory liens require no such action because a possessory lien is secured as long as you maintain possession of the vehicle. Given Title 32 Lien's advantages, it makes sense to file the Title 32 Lien even when you have possession of the vehicle.

Third, to have a possessory lien under Title 9, you must have provided the towing services "at the request of the owner of the vehicle." I.C. § 9-22-6-2. You do not need the owner's "request" or permission for a Title 32 Lien. This is particularly important when you provide towing services from an accident scene requested by law enforcement with no explicit request or permission by the owner of the vehicle. For a Title 32 Lien, it does not matter if the services were requested by the owner, law enforcement, or anyone else.

Given the benefits of Title 32 Liens, it makes sense to file them. There are a few downsides: you have to record the lien quickly (within 60 days), there is a recording fee (likely less than \$50), and there is a cap on how much in storage fees you can collect (\$1,500). The value of being able to recover your attorney fees in any subsequent litigation, however, far exceeds the value you lose by capping storage costs at \$1,500 should litigation be necessary.

The Main Takeaway for Your Business: When a responsible party is dragging their feet, trying to dispute charges, or outright refusing to pay a towing invoice, you should consider preserving your rights by filing a Title 32 Lien. This lien provides a lot of leverage, making it easier to resolve disputes more quickly and efficiently. But remember: You must file the lien within **60 days** of providing the towing services.

If you have any questions about this statute or other legal matters related to the towing industry, please shoot me an email (rleagre@psrb.com) or give me a call (317-637-0700).

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DOT CHAT WITH BRENT HOOVER



Hello and welcome back! If you are new to the column I would like to take a minute and bring you up to speed on who I am. My name is Brent Hoover. I am a Master Trooper with the Indiana State Police. October will mark my 19th year with the ISP. I am assigned to the Commercial Vehicle Enforcement Division or CVED for short. My primary daily duty is to enforce the State and Federal Regulations for CMVs in the State of Indiana. I am certified to complete Part A and B Inspections as well as General Haz-mat and Cargo Tank inspections. I am also a Part B Instructor for the National Training Center, which means I teach new inspectors how to inspect and document Level 1 Inspections. I have competed twice in the North American Inspectors Championships. I am the current administrator of the CVED Facebook page where I post about tips and tricks to improve your pre-trip inspections and to avoid common roadside violations.

This week I would like to write about a stop I made last week. I stopped a tow truck towing a semi-tractor backwards and only had the 4-way flashers activated.

I want to remind you that in FMCSRs 393.9 and 393.11 that a working set of tail, turn and brake lights must be always displayed on the towed vehicles.

Not only is not having these lights a safety concern for you and those that are following you and your tow truck, but it is an Out of Service violation as well. I would hate for someone to rear-end you coming to a stop or turning, and it was because you failed to have the required lights.



So please take a minute and make sure that your added lights are used and function properly. If

you have any other questions, please feel free to contact me at bhoover@isp.in.gov

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