

**ABANDONED VEHICLES AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James R. Gowans**

Senate Sponsor: Mike Dmitrich

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**LONG TITLE**

**General Description:**

This bill modifies the Motor Vehicles Code to amend provisions related to abandoned vehicles.

**Highlighted Provisions:**

This bill:

- ▶ allows the Motor Vehicle Division to authorize certain public garages, impound lots, or impound yards to conduct the sale of seized vehicles, vessels, and outboard motors;
- ▶ requires the Motor Vehicle Division to provide notice to the registered owner and lienholder of the vehicle, vessel, or outboard motor that is removed or impounded that the vehicle, vessel, or outboard motor will be sold if, within 30 days from the date of the removal or impoundment, the owner fails to make a claim for release of the vehicle, vessel, or outboard motor; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**41-1a-1101**, as last amended by Chapter 2, Laws of Utah 2005

**41-1a-1103**, as renumbered and amended by Chapter 1, Laws of Utah 1992

**41-1a-1104**, as renumbered and amended by Chapter 1, Laws of Utah 1992

**41-6a-1406**, as renumbered and amended by Chapter 2, Laws of Utah 2005

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **41-1a-1101** is amended to read:

**41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.**

(1) The division or any peace officer, without a warrant, may seize and take possession of any vehicle, vessel, or outboard motor:

- (a) that the division or the peace officer has reason to believe has been stolen;
- (b) on which any identification number has been defaced, altered, or obliterated;
- (c) that has been abandoned [~~on the public highways~~] in accordance with Section

41-6a-1408;

(d) for which the applicant has written a check for registration or title fees that has not been honored by the applicant's bank and that is not paid within 30 days;

(e) that is placed on the water with improper registration; or

(f) that is being operated on a highway:

- (i) with registration that has been expired for more than three months;
- (ii) having never been properly registered by the current owner; or
- (iii) with registration that is suspended or revoked.

(2) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.

(3) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard motor under this section shall comply with the provisions of Section 41-6a-1406.

(4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission shall make rules setting standards for public garages, impound lots, and impound yards that may be used by peace officers and the division.

(b) The standards shall be equitable, reasonable, and unrestrictive as to the number of public garages, impound lots, or impound yards per geographical area.

(5) (a) Except as provided under Subsection (5)(b), a person may not operate or allow to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated under this part without prior written permission of the owner of the vehicle.

(b) Incidental and necessary operation of a vehicle to move the vehicle from one parking space to another within the facility and that is necessary for the normal management of the facility is not prohibited under this Subsection (5)(a).

(6) A person who violates the provisions of Subsection (5) is guilty of a class C misdemeanor.

(7) The division or the peace officer who seizes a vehicle shall record the mileage shown on the vehicle's odometer at the time of seizure, if:

- (a) the vehicle is equipped with an odometer; and
- (b) the odometer reading is accessible to the division or the peace officer.

Section 2. Section **41-1a-1103** is amended to read:

**41-1a-1103. Sale.**

(1) If the owner or lienholder of a seized vehicle, vessel, or outboard motor does not recover the vehicle, vessel, or outboard motor within 30 days from the date of seizure, or if the division is unable to determine the owner or lienholder through reasonable efforts, the division shall sell the vehicle, vessel, or outboard motor.

(2) The sale [~~shall be conducted by an authorized representative of the division and~~] shall:

- (a) be held in the form of a public auction at the place of storage[-]; and
- (b) at the discretion of the division, be conducted by:
  - (i) an authorized representative of the division; or
  - (ii) a public garage, impound lot, or impound yard that:
    - (A) is authorized by the division;
    - (B) meets the standards under Subsection 41-1a-1101(4); and
    - (C) complies with the requirements of Section 72-9-603.

(3) At least five days prior to the date set for sale, the division shall publish a notice of

sale in a newspaper of general statewide circulation setting forth the date, time, and place of sale and a description of the vehicle, vessel, or outboard motor to be sold.

(4) At the time of sale the division or other person authorized to conduct the sale shall tender to the highest bidder a certificate of sale conveying all rights, title, and interest in the vehicle, vessel, or outboard motor.

(5) The proceeds from the sale of a vehicle, vessel, or outboard motor under this section shall be distributed as provided under Section 41-1a-1104.

(6) ~~Where~~ If the owner or lienholder of a vehicle, vessel, or outboard motor seized under Section 41-1a-1101 and subsequently released by the division fails to take possession of the vehicle, vessel, or outboard motor and satisfy the amount due to the place of storage within 30 days from the date of release, the division shall renotify the owner or lienholder and sell the vehicle, vessel, or outboard motor, in accordance with this section, 30 days from the date of the notice.

Section 3. Section **41-1a-1104** is amended to read:

**41-1a-1104. Disposition of proceeds from sale.**

(1) If, for purposes of this part and Section 41-1a-1301, the ownership of a vehicle, vessel, or outboard motor seized ~~[and sold by the division under Section 41-1a-1301 or this part]~~ cannot be determined, ~~[then]~~ the excess of the proceeds of any sale over the fees for registration or transfer and penalties and costs shall be deposited with the state treasurer in a suspense account.

(2) (a) If the owner or the owner's heirs or assigns file a claim for the excess of the proceeds within one year of date of sale of the vehicle, vessel, or outboard motor, the excess of the proceeds shall be refunded to the claimant.

(b) If a claim is not filed in accordance with Subsection (2)(a), then the moneys shall be deposited in the General Fund.

Section 4. Section **41-6a-1406** is amended to read:

**41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

(1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace officer or by an order of a person acting on behalf of a law enforcement agency or highway authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the expense of the owner.

(2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or impounded to:

- (a) a state impound yard; or
- (b) if none, a garage, docking area, or other place of safety.

(3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be removed by a tow truck motor carrier that meets standards established:

- (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and
- (b) by the department under Subsection (10).

(4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report of the removal shall be sent to the Motor Vehicle Division by:

- (i) the peace officer or agency by whom the peace officer is employed; and
- (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck operator is employed.

(b) The report shall be in a form specified by the Motor Vehicle Division and shall include:

- (i) the operator's name, if known;
- (ii) a description of the vehicle, vessel, or outboard motor;
- (iii) the vehicle identification number or vessel or outboard motor identification number;
- (iv) the license number or other identification number issued by a state agency;
- (v) the date, time, and place of impoundment;
- (vi) the reason for removal or impoundment;
- (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or outboard motor; and

(viii) the place where the vehicle, vessel, or outboard motor is stored.

(c) Until the tow truck operator or tow truck motor carrier reports the removal as required under this Subsection (4), a tow truck motor carrier or impound yard may not:

(i) collect any fee associated with the removal; and

(ii) begin charging storage fees.

(5) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner prescribed by Section 41-1a-114.

(b) The notice shall:

(i) state the date, time, and place of removal, the name, if applicable, of the person operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal, and the place where the vehicle, vessel, or outboard motor is stored;

(ii) state that the registered owner is responsible for payment of towing, impound, and storage fees charged against the vehicle, vessel, or outboard motor; ~~and~~

(iii) inform the registered owner of the vehicle, vessel, or outboard motor of the conditions that must be satisfied before the vehicle, vessel, or outboard motor is released[-]; and

(iv) inform the registered owner and lienholder of the division's intent to sell the vehicle, vessel, or outboard motor, if within 30 days from the date of the removal or impoundment under this section, the owner, lien holder, or the owner's agent fails to make a claim for release of the vehicle, vessel, or outboard motor.

(c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort to notify the registered owner and any lien holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.

(d) The Motor Vehicle Division shall forward a copy of the notice to the place where the vehicle, vessel, or outboard motor is stored.

(6) (a) The vehicle, vessel, or outboard motor shall be released after the registered owner, lien holder, or the owner's agent:

(i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of the

State Tax Commission;

(ii) presents identification sufficient to prove ownership of the impounded vehicle, vessel, or outboard motor;

(iii) completes the registration, if needed, and pays the appropriate fees;

(iv) if the impoundment was made under Section 41-6a-527, pays an administrative impound fee of \$230; and

(v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard motor is stored.

(b) (i) Twenty-nine dollars of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

(ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the Department of Public Safety Restricted Account created in Section 53-3-106; and

(iii) the remainder of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be deposited in the General Fund.

(c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent presents written evidence to the State Tax Commission that:

(i) the Driver License Division determined that the arrested person's driver license should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter or other report from the Driver License Division presented within 30 days of the final notification from the Driver License Division; or

(ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the stolen vehicle report presented within 30 days of the impoundment.

(7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in accordance with that section and the proceeds, if any, shall be disposed of as provided under Section 41-1a-1104.

(b) The date of impoundment is considered the date of seizure for computing the time period provided under Section 41-1a-1103.

(8) The registered owner who pays all fees and charges incurred in the impoundment of the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and charges, together with damages, court costs, and attorney fees, against the operator of the vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

(9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel, or outboard motor.

(10) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department shall make rules setting the performance standards for towing companies to be used by the department.

(11) (a) The Motor Vehicle Division may specify that a report required under Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and retrieval of the information.

(b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the administrator of the database may adopt a schedule of fees assessed for utilizing the database.

(ii) The fees under this Subsection (11)(b) shall:

(A) be reasonable and fair; and

(B) reflect the cost of administering the database.