

Senator Kathleen A. Riebe proposes the following substitute bill:

POSSESSORY LIEN AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kathleen A. Riebe

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to a possessory lien on personal items in a vehicle that has been towed.

Highlighted Provisions:

This bill:

- ▶ removes certain personal items from items included in a possessory lien of a tow truck motor carrier or tow truck operator on a vehicle, vessel, or outboard motor that has been towed;
- ▶ requires a tow truck motor carrier or tow truck operator to grant an owner access to a vehicle, vessel, or outboard motor that has been towed for the owner to inspect the vehicle, vessel, or outboard motor or remove personal items;
- ▶ in certain circumstances, requires a tow truck operator or tow truck motor carrier to release a vehicle to an individual if the individual provides certain proof of indigence or homelessness; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **72-9-603**, as last amended by Laws of Utah 2020, Chapter 45

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

32 Section 1. Section **72-9-603** is amended to read:

33 **72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned**
34 **vehicle title restrictions -- Rules for maximum rates and certification.**

35 (1) Except for a tow truck service that was ordered by a peace officer, a person acting
36 on behalf of a law enforcement agency, or a highway authority, after performing a tow truck
37 service that is being done without the vehicle, vessel, or outboard motor owner's knowledge,
38 the tow truck operator or the tow truck motor carrier shall:

39 (a) immediately upon arriving at the place of storage or impound of the vehicle, vessel,
40 or outboard motor:

41 (i) send a report of the removal to the Motor Vehicle Division that complies with the
42 requirements of Subsection **41-6a-1406(4)(b)**; and

43 (ii) contact the law enforcement agency having jurisdiction over the area where the
44 vehicle, vessel, or outboard motor was picked up and notify the agency of the:

45 (A) location of the vehicle, vessel, or outboard motor;

46 (B) date, time, and location from which the vehicle, vessel, or outboard motor was
47 removed;

48 (C) reasons for the removal of the vehicle, vessel, or outboard motor;

49 (D) person who requested the removal of the vehicle, vessel, or outboard motor; and

50 (E) description, including the identification number, license number, or other
51 identification number issued by a state agency, of the vehicle, vessel, or outboard motor;

52 (b) within two business days of performing the tow truck service under Subsection
53 (1)(a), send a certified letter to the last-known address of each party described in Subsection
54 **41-6a-1406(5)(a)** with an interest in the vehicle, vessel, or outboard motor obtained from the
55 Motor Vehicle Division or, if the person has actual knowledge of the party's address, to the
56 current address, notifying the party of the:

- 57 (i) location of the vehicle, vessel, or outboard motor;
- 58 (ii) date, time, and location from which the vehicle, vessel, or outboard motor was
59 removed;
- 60 (iii) reasons for the removal of the vehicle, vessel, or outboard motor;
- 61 (iv) person who requested the removal of the vehicle, vessel, or outboard motor;
- 62 (v) a description, including its identification number and license number or other
63 identification number issued by a state agency; and
- 64 (vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor; and
- 65 (c) upon initial contact with the owner whose vehicle, vessel, or outboard motor was
66 removed, provide the owner with a copy of the Utah Consumer Bill of Rights Regarding
67 Towing established by the department in Subsection (16)(e).

68 (2) Until the tow truck operator or tow truck motor carrier reports the removal as
69 required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound
70 yard may not:

- 71 (a) collect any fee associated with the removal; or
- 72 (b) begin charging storage fees.

73 (3) (a) Except as provided in Subsection (3)(b) or (9), a tow truck operator or tow truck
74 motor carrier may not perform a tow truck service at the request or direction of a private
75 property owner or the property owner's agent unless:

- 76 (i) the owner or a lien holder of the vehicle, vessel, or outboard motor consents to the
77 tow truck service; or
- 78 (ii) the property owner erects signage that meets the requirements of:
79 (A) Subsection (4)(b)(ii); and
80 (B) Subsection (7) or (8).

81 (b) Subsections (7) through (9) do not apply to the removal of a vehicle, vessel, or
82 outboard motor:

- 83 (i) from a location where parking is prohibited by law, including:
84 (A) a designated fire lane;
85 (B) within 15 feet of a fire hydrant, unless the vehicle is parked in a marked parking
86 stall or space; or
- 87 (C) a marked parking stall or space legally designated for disabled persons;

88 (ii) from a location where it is reasonably apparent that the location is not open to
89 parking;

90 (iii) from a location where all public access points are controlled by:

91 (A) a permanent gate, door, or similar feature allowing the vehicle to access the
92 facility; or

93 (B) a parking attendant;

94 (iv) from a location that materially interferes with access to private property;

95 (v) from the property of a detached single-family dwelling or duplex; or

96 (vi) pursuant to a legal repossession.

97 (4) (a) A private property owner may, subject to the requirements of a local ordinance,
98 enforce parking restrictions by:

99 (i) authorizing a tow truck motor carrier to patrol and monitor the property and enforce
100 parking restrictions on behalf of the property owner in accordance with Subsection (7);

101 (ii) enforcing parking restrictions as needed by requesting a tow from a tow truck
102 motor carrier on a case-by-case basis in accordance with Subsection (8); or

103 (iii) requesting a tow from a tow truck motor carrier after providing 24-hour written
104 notice in accordance with Subsection (9).

105 (b) (i) Any agreement between a private property owner and tow truck motor carrier
106 authorizing the tow truck motor carrier to patrol and monitor the property under Subsection
107 (4)(a)(i) shall include specific terms and conditions for the tow truck motor carrier to remove a
108 vehicle, vessel, or outboard motor from the property.

109 (ii) In addition to the signage described in Subsection (7) or (8), a private property
110 owner who allows public parking shall erect appropriate signage on the property indicating
111 clear instructions for parking at the property.

112 (iii) Where a single parking area includes abutting parcels of property owned by two or
113 more private property owners who enforce different parking restrictions under Subsection (7)
114 or (8), each property owner shall, in addition to the requirements under Subsection (7) or (8),
115 erect signage as required by this section:

116 (A) at each entrance to the property owner's parcel from another property owner's
117 parcel; and

118 (B) if there is no clearly defined entrance between one property owner's parcel and

119 another property owner's parcel, at intervals of 40 feet or less along the line dividing the
120 property owner's parcel from the other property owner's parcel.

121 (iv) Where there is no clearly defined entrance to a parking area from a highway, the
122 property owner shall erect signage as required by this section at intervals of 40 feet or less
123 along any portion of a property line where a vehicle, vessel, or outboard motor may enter the
124 parking area.

125 (5) Nothing in Subsection (3) or (4) restricts the ability of a private property owner
126 from, subject to the provisions of this section, instituting and enforcing regulations for parking
127 at the property.

128 (6) In addition to any other powers provided by law, a political subdivision or state
129 agency may:

130 (a) enforce parking restrictions in accordance with Subsections (7) through (9) on
131 property that is:

132 (i) owned by the political subdivision or state agency;

133 (ii) located outside of the public right-of-way; and

134 (iii) open to public parking; and

135 (b) request or direct a tow truck service in order to abate a public nuisance on private
136 property over which the political subdivision or state agency has jurisdiction.

137 (7) For private property where parking is enforced under Subsection (4)(a)(i), the
138 property owner shall ensure that each entrance to the property has the following signs located
139 on the property and clearly visible to the driver of a vehicle entering the property:

140 (a) a top sign that is 24 inches tall by 18 inches wide and has:

141 (i) a blue, reflective background with a 1/2 inch white border;

142 (ii) two-inch, white letters at the top of the sign with the capitalized words "Lot is
143 Patrolled";

144 (iii) a white towing logo that is six inches tall and 16 inches wide that depicts an entire
145 tow truck, a tow hook, and an entire vehicle being towed; and

146 (iv) two-inch, white letters at the bottom of the sign with the capitalized words
147 "Towing Enforced"; and

148 (b) a bottom sign that is 24 inches tall by 18 inches wide with a 1/2 inch white,
149 reflective border, and has:

150 (i) a top half that is red background with white, reflective letters indicating:
151 (A) who is authorized to park or restricted from parking at the property; and
152 (B) any type of vehicle prohibited from parking at the property; and
153 (ii) a bottom half that has a white, reflective background with red letters indicating:
154 (A) the name and telephone number of the tow truck motor carrier that the property
155 owner has authorized to patrol the property; and
156 (B) the Internet web address "tow.utah.gov".
157 (8) For private property where parking is enforced under Subsection (4)(a)(ii):
158 (a) a tow truck motor carrier may not:
159 (i) patrol and monitor the property;
160 (ii) perform a tow truck service without the written or verbal request of the property
161 owner or the property owner's agent; or
162 (iii) act as the property owner's agent to request a tow truck service; and
163 (b) the property owner shall ensure that each entrance to the property has a clearly
164 visible sign located on the property that is 24 inches tall by 18 inches wide with a 1/2 inch
165 white, reflective border, and has:
166 (i) at the top of the sign, a blue background with a white, reflective towing logo that is
167 at least four inches tall and 16 inches wide that depicts an entire tow truck, a tow hook, and an
168 entire vehicle being towed;
169 (ii) immediately below the towing logo described in Subsection (8)(b)(i), a blue
170 background with white, reflective letters at least two inches tall with the capitalized words
171 "Towing Enforced";
172 (iii) in the middle of the sign, a red background with white, reflective letters at least
173 one inch tall indicating:
174 (A) who is authorized to park or restricted from parking at the property; and
175 (B) any type of vehicle prohibited from parking at the property; and
176 (iv) at the bottom of the sign, a white, reflective background with red letters at least
177 one inch tall indicating:
178 (A) either:
179 (I) the name and telephone number of the property owner or the property owner's agent
180 who is authorized to request a tow truck service; or

181 (II) the name and telephone number of the tow truck motor carrier that provides tow
182 truck services for the property; and

183 (B) the Internet web address "tow.utah.gov".

184 (9) (a) For private property without signage meeting the requirements of Subsection (7)
185 or (8), the property owner may request a tow truck motor carrier to remove a vehicle, vessel, or
186 outboard motor from the private property 24 hours after the property owner or the property
187 owner's agent affixes a written notice to the vehicle, vessel, or outboard motor in accordance
188 with this Subsection (9).

189 (b) The written notice described in Subsection (9)(a) shall:

190 (i) indicate the exact time when the written notice is affixed to the vehicle, vessel, or
191 outboard motor;

192 (ii) warn the owner of the vehicle, vessel, or outboard motor that the vehicle, vessel, or
193 outboard motor will be towed from the property if it is not removed within 24 hours after the
194 time indicated in Subsection (9)(b)(i);

195 (iii) be at least four inches tall and four inches wide; and

196 (iv) be affixed to the vehicle, vessel, or outboard motor at a conspicuous location on
197 the driver's side window of the vehicle, vessel, or outboard motor.

198 (c) A property owner may authorize a tow truck motor carrier to act as the property
199 owner's agent for purposes of affixing the written notice described in Subsection (9)(a) to a
200 vehicle, vessel, or outboard motor.

201 (10) The department shall publish on the department Internet website the signage
202 requirements and written notice requirements and illustrated or photographed examples of the
203 signage and written notice requirements described in Subsections (7) through (9).

204 (11) It is an affirmative defense to any claim, based on the lack of notice, that arises
205 from the towing of a vehicle, vessel, or outboard motor from private property that the property
206 had signage meeting the requirements of:

207 (a) Subsection (4)(b)(ii); and

208 (b) Subsection (7) or (8).

209 (12) The party described in Subsection [41-6a-1406\(5\)\(a\)](#) with an interest in a vehicle,
210 vessel, or outboard motor lawfully removed is only responsible for paying:

211 (a) the tow truck service and storage fees set in accordance with Subsection (16); and

212 (b) the administrative impound fee set in Section [41-6a-1406](#), if applicable.

213 (13) (a) The fees under Subsection (12) are a possessory lien on the vehicle, vessel, or
214 outboard motor [~~and any nonlife essential items contained in the vehicle, vessel, or outboard~~
215 ~~motor that are owned by the owner of the vehicle, vessel, or outboard motor~~] until paid.

216 (b) The tow truck operator or tow truck motor carrier shall securely store the vehicle,
217 vessel, or outboard motor and items described in Subsection (13)~~(a)~~(d) in an approved state
218 impound yard until a party described in Subsection [41-6a-1406\(5\)\(a\)](#) with an interest in the
219 vehicle, vessel, or outboard motor:

220 (i) pays the fees described in Subsection (12); and

221 (ii) removes the vehicle, vessel, or outboard motor from the state impound yard.

222 (c) Subject to Subsection (13)(f), the tow truck operator or tow truck motor carrier
223 shall, for 72 hours after submitting the report described in Subsection (1)(a), provide a party
224 described in Subsection [41-6a-1406\(5\)\(a\)](#) with an interest in the vehicle, vessel, or outboard
225 motor access to the vehicle, vessel, or outboard motor to inspect the vehicle, vessel, or
226 outboard motor or remove personal items from the vehicle, vessel, or outboard motor.

227 (d) For purposes of this Subsection (13), "personal item" includes a:

228 (i) wallet;

229 (ii) purse;

230 (iii) laptop, personal computer, or tablet device;

231 (iv) mobile phone;

232 (v) government issued identification; or

233 (vi) prescription medications.

234 (e) Notwithstanding Subsection (13)(a), subject to Subsection (13)(f), and in lieu of
235 Subsection (13)(c), a tow truck operator or tow truck motor carrier shall waive the fees
236 described in Subsection (12) and shall release the vehicle, vessel, or outboard motor to the
237 owner of the vehicle, vessel, or outboard motor, if the owner of the vehicle, vessel, or outboard
238 motor provides a government-issued identification, and also:

239 (i) provides proof of indigence in the form of:

240 (A) documentation from the Department of Workforce Services indicating that the
241 individual is a present recipient of the Supplemental Nutrition Assistance Program under Title
242 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program; or

243 (B) documentation from the Department of Workforce Services indicating that the
244 individual is a present recipient of Medicaid benefits; or
245 (ii) provides written verification that the person is homeless from:
246 (A) a homeless shelter, as defined in Section 10-9a-526;
247 (B) a permanent housing, permanent, supportive, or transitional facility, as defined in
248 Section 35A-5-302;
249 (C) the Department of Workforce Services; or
250 (D) a local educational agency liaison for homeless children and youth designated
251 under 42 U.S.C. Sec. 11432(g)(1)(J)(ii).
252 (f) A tow truck operator or tow truck motor carrier is not required to release items as
253 described in Subsection (13)(c) or release a vehicle as described in Subsection (13)(e) to the
254 same individual more than once within a 365-day period.
255 (14) (a) A vehicle, vessel, or outboard motor shall be considered abandoned if a party
256 described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard
257 motor does not, within 30 days after notice has been sent under Subsection (1)(b):
258 (i) pay the fees described in Subsection (12); and
259 (ii) remove the vehicle, vessel, or outboard motor from the secure storage facility.
260 (b) A person may not request a transfer of title to an abandoned vehicle, vessel, or
261 outboard motor until at least 30 days after notice has been sent under Subsection (1)(b).
262 (15) (a) A tow truck motor carrier or impound yard shall clearly and conspicuously
263 post and disclose all its current fees, rates, and acceptable forms of payment for tow truck
264 service and storage of a vehicle in accordance with rules established under Subsection (16).
265 (b) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept
266 payment by cash and debit or credit card for a tow truck service under Subsection (1) or any
267 service rendered, performed, or supplied in connection with a tow truck service under
268 Subsection (1).
269 (16) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
270 the department shall:
271 (a) subject to the restriction in Subsection (17), set maximum rates that:
272 (i) a tow truck motor carrier may charge for the tow truck service of a vehicle, vessel,
273 or outboard motor that are transported in response to:

- 274 (A) a peace officer dispatch call;
- 275 (B) a motor vehicle division call; and
- 276 (C) any other call or request where the owner of the vehicle, vessel, or outboard motor
277 has not consented to the removal; and
- 278 (ii) an impound yard may charge for the storage of a vehicle, vessel, or outboard motor
279 stored as a result of one of the conditions listed under Subsection (16)(a)(i);
- 280 (b) establish authorized towing certification requirements, not in conflict with federal
281 law, related to incident safety, clean-up, and hazardous material handling;
- 282 (c) specify the form and content of the posting and disclosure of fees and rates charged
283 and acceptable forms of payment by a tow truck motor carrier or impound yard;
- 284 (d) set a maximum rate for an administrative fee that a tow truck motor carrier may
285 charge for reporting the removal as required under Subsection (1)(a)(i) and providing notice of
286 the removal to each party described in Subsection 41-6a-1406(5)(a) with an interest in the
287 vehicle, vessel, or outboard motor as required in Subsection (1)(b); and
- 288 (e) establish a Utah Consumer Bill of Rights Regarding Towing form that contains
289 specific information regarding:
- 290 (i) a vehicle owner's rights and responsibilities if the owner's vehicle is towed;
- 291 (ii) identifies the maximum rates that a tow truck motor carrier may charge for the tow
292 truck service of a vehicle, vessel, or outboard motor that is transported in response to a call or
293 request where the owner of the vehicle, vessel, or outboard motor has not consented to the
294 removal; and
- 295 (iii) identifies the maximum rates that an impound yard may charge for the storage of
296 vehicle, vessel, or outboard motor that is transported in response to a call or request where the
297 owner of the vehicle, vessel, or outboard motor has not consented to the removal.
- 298 (17) An impound yard may not charge a fee for the storage of an impounded vehicle,
299 vessel, or outboard motor if:
- 300 (a) the vehicle, vessel, or outboard motor is being held as evidence; and
- 301 (b) the vehicle, vessel, or outboard motor is not being released to a party described in
302 Subsection 41-6a-1406(5)(a), even if the party satisfies the requirements to release the vehicle,
303 vessel, or outboard motor under Section 41-6a-1406.
- 304 (18) (a) (i) A tow truck motor carrier may charge a rate up to the maximum rate set by

305 the department in rules made under Subsection (16).

306 (ii) In addition to the maximum rates established under Subsection (16) and when
307 receiving payment by credit card, a tow truck operator, a tow truck motor carrier, or an
308 impound yard may charge a credit card processing fee of 3% of the transaction total.

309 (b) A tow truck motor carrier may not be required to maintain insurance coverage at a
310 higher level than required in rules made pursuant to Subsection (16).

311 (19) When a tow truck motor carrier or impound lot is in possession of a vehicle,
312 vessel, or outboard motor as a result of a tow service that was performed without the consent of
313 the owner, and that was not ordered by a peace officer or a person acting on behalf of a law
314 enforcement agency, the tow truck motor carrier or impound yard shall make personnel
315 available:

316 (a) by phone 24 hours a day, seven days a week; and

317 (b) to release the impounded vehicle, vessel, or outboard motor to the owner within
318 one hour of when the owner calls the tow truck motor carrier or impound yard.