

HB0266S02 compared with HB0266S01

~~text~~ shows text that was in HB0266S01 but was deleted in HB0266S02.

text shows text that was not in HB0266S01 but was inserted into HB0266S02.

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Representative Kim Coleman proposes the following substitute bill:

VEHICLE TOWING AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim Coleman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to tow truck operations.

Highlighted Provisions:

This bill:

- ▶ enacts provisions requiring tow truck drivers to have a criminal background check before performing tow truck services; and
- ▶ enacts provisions related to towing vehicles from ~~privately owned~~ private parking lots.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

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Utah Code Sections Affected:

AMENDS:

41-6a-1407, as renumbered and amended by Laws of Utah 2005, Chapter 2

72-9-601, as last amended by Laws of Utah 2005, Chapter 2

72-9-602, as last amended by Laws of Utah 2009, Chapter 183

72-9-603, as last amended by Laws of Utah 2014, Chapter 249

~~{ **72-9-604**, as last amended by Laws of Utah 2014, Chapter 249~~

ENACTS:

72-9-602.5, Utah Code Annotated 1953

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

Section 1. Section **41-6a-1407** is amended to read:

41-6a-1407. Removal of unattended vehicles prohibited without authorization --

Penalties.

(1) In cases not amounting to burglary or theft of a vehicle, a person may not remove an unattended vehicle without prior authorization of:

- (a) a peace officer;
- (b) a law enforcement agency;
- (c) a highway authority having jurisdiction over the highway on which there is an unattended vehicle; or
- (d) the owner or person in lawful possession or control of the real property.

(2) (a) An authorization from a person specified under Subsection (1)(a), (b), or (c) shall be in a form specified by the Motor Vehicle Division.

(b) The removal of the unattended vehicle shall comply with requirements of Section 41-6a-1406.

(3) The removal of the unattended vehicle authorized under Subsection (1)(d) shall comply with the requirements of ~~[Section]~~ Sections 72-9-602.5 and 72-9-603.

(4) A person who violates Subsection (1) or (3) is guilty of a class C misdemeanor.

Section 2. Section **72-9-601** is amended to read:

72-9-601. Tow truck motor carrier requirements -- Authorized towing certificates.

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(1) In addition to the requirements of this chapter, a tow truck motor carrier shall:

(a) ensure that all the motor carrier's tow truck drivers are properly:

(i) trained to operate tow truck equipment;

(ii) licensed, as required under Title 53, Chapter 3, Uniform Driver License Act; ~~[and]~~

(iii) certified, as described in Section 72-9-602; and

~~[(iii)]~~ (iv) complying with the requirements under Sections 41-6a-1406 and 72-9-603;

~~[and]~~

(b) ensure that employees of the tow truck motor carrier have cleared the criminal background check as described in Subsections 72-9-602(3) through (6); and

~~[(b)]~~ (c) obtain and display a current authorized towing certificate for the tow truck motor carrier, and each tow truck and driver, as required under Section 72-9-602.

(2) A tow truck motor carrier may only perform a towing service described in Section 41-6a-1406, 41-6a-1407, or 72-9-603, with a tow truck and driver that has a current authorized towing certificate under this part.

Section 3. Section **72-9-602** is amended to read:

72-9-602. Towing inspections, investigations, and certification -- Equipment requirements -- Consumer information.

(1) (a) The department shall inspect, investigate, and certify tow truck motor carriers, tow trucks, and tow truck drivers to ensure compliance with this chapter and compliance with Sections 41-6a-1406 and 41-6a-1407.

(b) The inspection, investigation, and certification shall be conducted prior to any tow truck operation and at least every two years thereafter.

(c) (i) The department shall issue an authorized towing certificate for each tow truck motor carrier, tow truck, and driver that complies with this part.

(ii) The certificate shall expire two years from the month of issuance.

(d) The department may charge a biennial fee established under Section 63J-1-504 to cover the cost of the inspection, investigation, and certification required under this part.

(2) The department shall make consumer protection information available to the public that may use a tow truck motor carrier.

(3) (a) At the tow truck driver's expense, a tow truck driver shall obtain a criminal background check of Utah criminal history from the Bureau of Criminal Identification, and

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provide a copy of the criminal background check to the department.

(b) The department shall ensure that a tow truck driver has submitted the criminal background check described in this Subsection (3) as a condition of the tow truck driver's initial and biennial certification.

(c) The department may deny a tow truck driver's certification if the tow truck driver has been convicted of any felony offense within the previous five years that involves a motor vehicle, fraud, or theft.

(4) (a) An employee of a tow truck motor carrier who has access to a motor vehicle, vessel, or outboard motor that has been towed shall obtain a criminal background check of Utah criminal history from the Bureau of Criminal Identification, and provide a copy of the criminal background check to the department.

(b) The department shall ensure that each tow truck motor carrier employee described in Subsection (4)(a) has submitted the criminal background check described in this Subsection (3) as a condition of the tow truck motor carrier's certification.

(c) The department may deny a tow truck motor carrier's certification if the tow truck motor carrier has not terminated an employee, described in Subsection (4)(a), who has been convicted of any felony offense within the previous five years that involves a motor vehicle, fraud, or theft.

(5) The department may deny a tow truck motor carrier's certification if the department has evidence that a tow truck motor carrier's tow truck driver is not providing copies of the Utah Consumer Bill of Rights Regarding Towing to owners, as described in Subsection 72-9-603(1)(c).

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the inspection, investigation, and certification procedures described in this section.

Section 4. Section 72-9-602.5 is enacted to read:

72-9-602.5. Towing from ~~{privately owned}~~a private parking lot -- Notice requirements.

(1) ~~{Except as provided in Subsection (4), a}~~For purposes of this section:

(a) "Private parking lot owner" includes a lessee of the private parking lot owner.

(b) "Vehicle" means a motor vehicle, vessel, or outboard motor.

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(2) A tow truck driver may not tow a vehicle ~~{, vessel, or outboard motor}~~ from a ~~{privately owned}; private parking~~ lot, without the vehicle ~~{, vessel, or outboard motor}~~ owner's consent, unless:

(a) the tow truck driver or tow truck motor carrier has entered into a written contract with the private ~~{lot owner or the private}; parking~~ lot ~~{owner's lessee}; owner~~ for tow truck services on the lot; ~~{and};~~

(b) the private parking lot owner ~~{or the private lot owner's lessee erects}~~ has provided:

(i) a physical barricade ~~{that prevents}~~ intended to prevent vehicular access to the lot;

or

(ii) ~~{two signs at each vehicular entrance to the lot,}~~ notice as described in Subsection ~~(2)~~:

~~———— (2) (a) Each sign shall be posted, one beneath the other, and shall have reflective lettering that can be read at a distance of 25 feet.~~

~~———— (b) The top sign shall be 18 inches wide by 24 inches high and shall state in red lettering:~~

~~———— (i) who is allowed to park in the lot; 4); or~~

~~(c) the tow truck driver obtains written authorization from:~~

~~(i) the private parking lot owner;~~

~~(ii) an individual in lawful possession of the private parking lot; or~~

~~(iii) an employee or agent of the private parking lot owner.~~

~~(3) For purposes of Subsection (2)(c):~~

~~(a) the private parking lot owner's employee or agent may not be the tow truck driver or a tow truck motor carrier's employee or agent.~~

~~(b) the written authorization may be made by a tenant who verifies the violation at a residential rental property of 15 or fewer units that does not have an on-site owner, an on-site agent, or an on-site employee, and the violation occurs in the tenant's assigned parking space; and~~

~~(d) the written authorization shall include:~~

~~(i) the make, model, vehicle identification number, and license plate number of the removed vehicle;~~

~~(ii) the name, signature, job title, residential or business address, and working~~

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telephone number of the ~~{tow truck motor carrier; and~~

~~—— (iii) the website address, "tow.utah.gov."~~

~~—— (c) The bottom sign shall be 18 inches wide by 18 inches high and shall have a blue towing symbol, as described in Subsection (3):~~

~~—— (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall:~~

~~—— (a) create an image of the blue towing symbol, to be displayed on a sign described in Subsection (2)(c), that depicts a tow truck with a hook; and~~

~~—— (b) post an example of the blue towing symbol on the department's website}~~ individual authorizing the removal:

(iii) the grounds for removal of the vehicle and the method by which the vehicle owner was notified that the vehicle would be towed at the vehicle owner's expense;

(iv) the time when the vehicle was first observed parked in the parking lot; and

(v) the time the authorization to tow was given.

~~(4) A private {property owner of a privately owned lot, who does not have a physical barricade or signs posted as described in Subsections (1) through (3), may remove an unattended vehicle, vessel, or outboard motor from the lot according to the following procedure:~~

~~—— (a) the private property owner shall call a certified tow truck motor carrier to remove the vehicle, vessel, or outboard motor from the privately owned lot;~~

~~—— (b) the private property owner shall enter into a single tow agreement with the tow truck motor carrier to remove the vehicle, vessel, or outboard motor from the privately owned lot;~~

~~—— (c) the tow truck motor carrier shall affix a}~~ parking lot owner is considered to have provided notice for the purpose of this chapter if the private parking lot owner:

(a) erects signage or placards visible from areas available for parking in a private parking lot, and at each location within the lot where a special parking restriction applies, calculated to offer notice to vehicle owners that a vehicle may be towed at the owner's expense;

(b) affixes a written notice to the vehicle, {vessel, or outboard motor in a conspicuous place warning the owner of the vehicle, vessel, or outboard motor} warning the vehicle owner that if the owner does not remove the vehicle {, vessel, or outboard motor} from the private

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property within 24 hours, the vehicle ~~{, vessel, or outboard motor}~~ will be towed to an impound lot ~~}; and~~

~~———— (d) the tow truck motor carrier shall wait for the 24 hours to expire, and if the owner of the vehicle, vessel or outboard motor has not removed the vehicle, vessel, or outboard motor} at the owner's expense; or~~

(c) has provided personal notice to the vehicle owner that the vehicle will be towed unless it is immediately removed from the {privately owned lot} private parking lot.

(5) Subsection (2) does not limit or affect any right or remedy that the private parking lot owner may have under other provisions of the law that authorize the removal of a vehicle upon private property.

(6) (a) When the vehicle owner or the vehicle owner's agent claims the vehicle, the tow truck motor carrier shall ~~remove the vehicle, vessel, or outboard motor as described in Section 72-9-603}~~ provide a photocopy of the written authorization described in Subsection (2)(c) to the vehicle owner or vehicle owner's agent prior to payment of a towing or storage charge.

(b) Subsection (6)(a) does not apply if the private parking lot owner has erected the signage described in Subsection (4) and that signage displays the name of the authorized tow truck driver or tow truck motor carrier.

Section 5. Section **72-9-603** is amended to read:

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

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

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

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

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

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

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

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

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

(E) vehicle, vessel, or outboard motor's description, including its identification number and license number or other identification number issued by a state agency;

(b) within two business days of performing the tow truck service under Subsection (1)(a), send a certified letter to the last-known address of the registered owner and lien holder of the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or if the person has actual knowledge of the owner's address to the current address, notifying the owner of the:

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

(ii) date, time, location from which the vehicle, vessel, or outboard motor was removed;

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

(iv) person who requested the removal of the vehicle, vessel, or outboard motor;

(v) a description, including its identification number and license number or other identification number issued by a state agency; and

(vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor; and

(c) upon initial contact with the owner whose vehicle, vessel, or outboard motor was removed, provide the owner with a copy of the Utah Consumer Bill of Rights Regarding Towing established by the department in Subsection (7)(e).

(2) ~~[(a)]~~ Until the tow truck ~~[operator]~~ driver or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck ~~[operator]~~ driver, tow truck motor carrier, or impound yard may not:

~~[(i)]~~ (a) collect any fee associated with the removal; or

~~[(ii)]~~ (b) begin charging storage fees.

~~[(b) (i)]~~ Except as provided in Subsection (2)(c), a tow truck operator or tow truck motor carrier may not perform a tow truck service without the vehicle, vessel, or outboard motor owner's or a lien holder's knowledge at either of the following locations without signage that meets the requirements of Subsection (2)(b)(ii):]

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~~[(A) a mobile home park as defined in Section 57-16-3; or]~~

~~[(B) a multifamily dwelling of more than eight units.]~~

~~[(ii) Signage under Subsection (2)(b)(i) shall display:]~~

~~[(A) where parking is subject to towing; and]~~

~~[(B) (i) the Internet website address that provides access to towing database information in accordance with Section 41-6a-1406; or]~~

~~[(H) one of the following:]~~

~~[(Aa) the name and phone number of the tow truck operator or tow truck motor carrier that performs a tow truck service for the locations listed under Subsection (2)(b)(i); or]~~

~~[(Bb) the name of the mobile home park or multifamily dwelling and the phone number of the mobile home park or multifamily dwelling manager or management office that authorized the vehicle, vessel, or outboard motor to be towed.]~~

~~[(c) Signage is not required under Subsection (2)(b) for parking in a location:]~~

~~[(i) that is prohibited by law; or]~~

~~[(ii) if it is reasonably apparent that the location is not open to parking.]~~

~~[(d) Nothing in Subsection (2)(b) restricts the ability of a mobile home park as defined in Section 57-16-3 or a multifamily dwelling from instituting and enforcing regulations on parking.]~~

(3) The owner of a vehicle, vessel, or outboard motor lawfully removed is only responsible for paying:

(a) the tow truck service and storage fees set in accordance with Subsection (7); and

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

(4) The fees under Subsection (3) are a possessory lien on the vehicle, non-life essential items that are owned by the owner of the vehicle and securely stored by the tow truck operator, vessel, or outboard motor until paid.

(5) A person may not request a transfer of title to an abandoned vehicle until at least 30 days after notice has been sent under Subsection (1)(b).

(6) (a) A tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current fees, rates, and acceptable forms of payment for tow truck service and storage of a vehicle in accordance with rules established under Subsection (7).

(b) A tow truck ~~[operator]~~ driver, a tow truck motor carrier, and an impound yard shall

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accept payment by cash and debit or credit card for a tow truck service under Subsection (1) or any service rendered, performed, or supplied in connection with a tow truck service under Subsection (1).

(c) A tow truck driver, a tow truck motor carrier, or an impound yard may charge a 3% credit card processing fee.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Transportation shall:

(a) subject to the restriction in Subsection (8), set maximum rates that:

(i) a tow truck motor carrier may charge for the tow truck service of a vehicle, vessel, or outboard motor that are transported in response to:

(A) a peace officer dispatch call;

(B) a motor vehicle division call; and

(C) any other call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal; and

(ii) an impound yard may charge for the storage of a vehicle, vessel, or outboard motor stored as a result of one of the conditions listed under Subsection (7)(a)(i);

(b) establish authorized towing certification requirements, not in conflict with federal law, related to incident safety, clean-up, and hazardous material handling;

(c) specify the form and content of the posting and disclosure of fees and rates charged and acceptable forms of payment by a tow truck motor carrier or impound yard;

(d) set a maximum rate for an administrative fee that a tow truck motor carrier may charge for reporting the removal as required under Subsection (1)(a)(i) and providing notice of the removal to the registered owner and lienholder of the vehicle, vessel, or outboard motor as required in Subsection (1)(b); and

(e) establish a Utah Consumer Bill of Rights Regarding Towing form that contains specific information regarding:

(i) a vehicle owner's rights and responsibilities if the owner's vehicle is towed;

(ii) identifies the maximum rates that a tow truck motor carrier may charge for the tow truck service of a vehicle, vessel, or outboard motor that is transported in response to a call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal; and

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(iii) identifies the maximum rates that an impound yard may charge for the storage of vehicle, vessel, or outboard motor that is transported in response to a call or request where the owner of the vehicle, vessel, or outboard motor has not consented to the removal.

(8) A tow truck motor carrier or a tow truck driver may not charge fees that are not expressly allowed in the Utah Consumer Bill of Rights Regarding Towing.

~~[(8)]~~ (9) An impound yard may not charge a fee for the storage of an impounded vehicle, vessel, or outboard motor if:

(a) the vehicle, vessel, or outboard motor is being held as evidence; and

(b) the vehicle, vessel, or outboard motor is not being released to the registered owner, lien holder, or the owner's agent even if the registered owner, lien holder, or the owner's agent satisfies the requirements to release the vehicle, vessel, or outboard motor under Section 41-6a-1406.

(10) For a tow truck service of a vehicle, vessel, or outboard motor that was requested without the consent of the owner, ~~and that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency,~~ an impound yard shall make personnel available ~~24 hours a day, seven days a week, to release an impounded vehicle to the owner of the impounded vehicle within two hours of when the owner calls the tow truck motor carrier.~~

~~(11) A complaint about a tow truck driver, a tow truck motor carrier, or an impound yard, regardless of whether the complaint is made by an owner, a law enforcement officer or agency, or a local government, shall be made to the department.~~

~~Section 6. Section **72-9-604** is amended to read:~~

~~**72-9-604. Regulatory powers of local authorities -- Tow trucks.**~~

~~(1) (a) [Except as provided in Subsection (1)(b), a] A county or municipal legislative or governing body may not enact or enforce any ordinance, regulation, or rule pertaining to a tow truck or tow truck motor carrier that [does not conflict with] is not the same as the provisions in this part, Section 41-6a-1406, Section 41-6a-1407, or rules made by the department under this part or under Sections 41-6a-1401 through 41-6a-1408.~~

~~(b) A county or municipal legislative governing body may not charge a fee for the storage of; to release an impounded vehicle, vessel, or outboard motor ~~if the county or municipality:~~~~

~~(i) is holding the vehicle, vessel, or outboard motor as evidence; and~~

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~~—— (ii) will not release the vehicle, vessel, or outboard motor } to the {registered } owner {, lien holder, } or the owner's agent { even if the registered owner, lien holder, or the owner's agent satisfies the requirements to release the vehicle, vessel, or outboard motor under Section 41-6a-1406.~~

~~—— (2) A tow truck motor carrier that has a county or municipal business license for a place of business located within that county or municipality may not be required to obtain another business license in order to perform a tow truck service in another county or municipality if there is not a business location in the other county or municipality.~~

~~—— (3) A county or municipal legislative body may require an annual tow truck safety inspection in addition to the inspections required under Sections 53-8-205 and 72-9-602 if:~~

~~—— (a) no fee is charged for the inspection; and~~

~~—— (b) the inspection complies with federal motor carrier safety regulations.~~

~~—— (4) A tow truck shall be subject to only one annual safety inspection under Subsection (3). A county or municipality that requires the additional annual safety inspection shall accept the same inspection performed by another county or municipality.~~

~~—— Section 7:~~

~~(a) during normal office hours; or~~

~~(b) during non-office hours, within two hours of a request.~~

~~Section 6. Effective date.~~

~~This bill takes effect on May 12, 2015, except the amendments in this bill to Section 72-9-602.5 take effect on May 10, 2016.~~