

HB0393S01 compared with HB0393

~~{deleted text}~~ shows text that was in HB0393 but was deleted in HB0393S01.

Inserted text shows text that was not in HB0393 but was inserted into HB0393S01.

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Representative A. Cory Maloy proposes the following substitute bill:

VEHICLE TOWING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: ~~{~~ Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to tow truck operations.

Highlighted Provisions:

This bill:

- ▶ requires tow truck operators to have a criminal background check and valid medical examiner's certificate before performing tow truck operations;
- ▶ requires the Department of Transportation to make certain consumer protection information electronically available to the public;
- ▶ provides for circumstances where the Department of Transportation may suspend a tow truck motor carrier's and tow truck operator's authorized towing certificate;

~~{~~ enacts provisions related to towing vehicles from privately owned lots;

~~}~~ ▶ amends provisions related to certification of tow truck operators and tow truck

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motor carriers;

- ▶ creates the Towing Advisory Board to make recommendations regarding towing-related rules to:
 - the Department of Transportation;
 - the Department of Public Safety; and
 - the State Tax Commission;
- ▶ prohibits a member of the Towing Advisory Board from receiving compensation or reimbursement for expenses related to the member's service on the board; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

41-6a-1407, as last amended by Laws of Utah 2015, Chapter 412

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 2016, Chapters 103 and 148

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

ENACTS:

~~{ **72-9-602.5**, Utah Code Annotated 1953~~

{ **72-9-606**, 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;

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(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 an infraction.

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

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

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

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

(i) trained to operate tow truck equipment;

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

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

(b) ensure that all the tow truck motor carrier's tow truck operators:

(i) have cleared the criminal background check required in Subsections 72-9-602(2) and (3); and

(ii) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec. 391.45; and

~~[(b)]~~ (c) obtain and display a current authorized towing certificate for the tow truck motor carrier, and each tow truck and ~~[driver]~~ tow truck operator, 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]~~ tow truck operator that has a current authorized towing certificate under this part.

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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~~] operators 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~~] tow truck operator that complies with this part and rules made by the department in accordance with Subsection (6).

(ii) The authorized towing certificate described in this section 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) (a) To qualify for an authorized towing certificate described in Subsection (1), a tow truck operator shall:

(i) submit to a fingerprint-based criminal background check, as described in Subsection (3); and

(ii) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec. 391.45.

(b) For each tow truck operator employed, a tow truck motor carrier shall:

(i) maintain records of the updated background checks and a valid medical examiner's certificate, as required under this section; and

(ii) biennially, make the records described in Subsection (2)(b)(i) available to the department.

(3) (a) Before a tow truck motor carrier may hire an individual as a tow truck operator and receive an authorized towing certificate from the department as required in Subsection (2), the tow truck motor carrier shall require the individual to submit to the Department of Public Safety:

(i) a fingerprint card in a form acceptable to the Department of Public Safety; and

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(ii) consent to a state and regional fingerprint background check by the Bureau of Criminal Identification.

(b) The Bureau of Criminal Identification shall:

(i) check the fingerprints submitted under this section against the applicable state and regional criminal records databases;

(ii) report the results of the background check to the requesting tow truck motor carrier;

(iii) maintain a separate file of fingerprints submitted under this part for search by future submissions to the local and regional criminal records databases, including latent prints;
and

(iv) establish a privacy risk mitigation strategy to ensure that the entity only receives notifications for the individuals with whom the entity maintains an authorizing relationship.

(c) (i) ~~For~~ **Except for** an individual hired as a tow truck operator ~~after June 30~~ **before July 1**, 2017, the department shall deny an individual's authorized towing certification, and the individual may not operate a tow truck in this state, if the individual has been convicted of any felony offense within the previous ~~five~~ **two** years.

(ii) The department may deny or revoke the authorized towing certification of a tow truck motor carrier that employs an individual who fails to comply with the background check required in this section.

~~(2)~~ (4) The department shall make [consumer protection information] available to the public [that may use a tow truck motor carrier] electronically accessible consumer protection information, including a list of all tow truck motor carriers that are currently certified by the department.

(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 operator fails to provide copies of the Utah Consumer Bill of Rights Regarding Towing to vehicle owners, as required under Section 72-9-603.

(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~~ **72-9-603** is ~~enacted~~ **amended** to read:

~~72-9-602.5. Towing from privately owned lot -- Notice requirements.~~

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~~—— (1) Except as provided in Subsection (2), a tow truck operator may not tow a vehicle, vessel, or outboard motor from a privately owned lot without the vehicle, vessel, or outboard motor owner's consent, unless the tow truck operator or tow truck motor carrier has entered into a contract with the private lot owner or the private lot owner's lessee for tow truck services on the lot.~~

~~—— (2) If a private property owner of a privately owned parking lot does not have a physical barricade or signs posted that clearly prohibit public parking in the lot, the owner may only remove an unattended vehicle, vessel, or outboard motor from a parking lot according to the following procedures:~~

~~—— (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 notice to the vehicle, vessel, or outboard motor in a conspicuous place warning the owner of the vehicle, vessel, or outboard motor that if the owner does not remove the vehicle, vessel, or outboard motor from the private property within 24 hours, the vehicle, vessel, or outboard motor will be towed to an impound yard; and~~

~~—— (d) 24 hours after posting the notice as described in Subsection (2)(c), if the owner of the vehicle, vessel, or outboard motor has not removed the vehicle, vessel, or outboard motor from the privately owned lot, the tow truck motor carrier may remove the vehicle, vessel, or outboard motor as described in Section 72-9-603.~~

~~—— 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 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:

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(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;

(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 each party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor obtained from the Motor Vehicle Division or, if the person has actual knowledge of the party's address, to the current address, notifying the party of the:

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

(ii) date, time, and 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 or tow truck motor carrier reports the removal as required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound yard may not:

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

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~~(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): ~~(i)~~

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

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

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

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

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

~~(II)~~ one of the following: ~~(i)~~

~~(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 ~~(i)~~

~~(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. ~~(i)~~

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

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

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

~~(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. ~~(i)~~

(3) The party described in Subsection 41-6a-1406(5)(a) with an interest in 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) (a) The fees under Subsection (3) are a possessory lien on the vehicle, vessel, or outboard motor and any nonlife essential items contained in the vehicle, vessel, or outboard motor that are owned by the owner of the vehicle [~~and securely stored by the tow truck~~

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~~operator~~], vessel, or outboard motor until paid.

(b) The tow truck operator or tow truck motor carrier shall securely store the vehicle, vessel, or outboard motor and items described in Subsection (4)(a) until a party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor:

(i) pays the fees described in Subsection (3); and

(ii) removes the vehicle, vessel, or outboard motor from the secure storage facility.

(5) (a) A vehicle, vessel, or outboard motor shall be considered abandoned if a party described in Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor does not, within 30 days after notice has been sent under Subsection (1)(b):

(i) pay the fees described in Subsection (3); and

(ii) remove the vehicle, vessel, or outboard motor from the secure storage facility.

~~(5)~~ (b) A person may not request a transfer of title to an abandoned vehicle, vessel, or outboard motor 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, a tow truck motor carrier, and an impound yard shall 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).

(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);

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(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 each party described in Subsection 41-6a-1406(5)(a) with an interest in 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

(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) 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 a party described in Subsection 41-6a-1406(5)(a), even if the party satisfies the requirements to release the vehicle, vessel, or outboard motor under Section 41-6a-1406.

(9) In addition to the maximum rates established under Subsection (7) and when receiving payment by credit card, a tow truck operator, a tow truck motor carrier, or an impound yard may charge a credit card processing fee [~~in an amount equal to the lesser of: (a) the actual cost of processing the credit card transaction; or (b)~~] of 3% of the transaction total.

(10) When a tow truck motor carrier or impound lot is in possession of a vehicle, vessel, or outboard motor as a result of a tow service that was performed without the consent of the owner, and that was not ordered by a peace officer or a person acting on behalf of a law

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enforcement agency, the tow truck motor carrier or impound yard shall make personnel available:

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

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

Section ~~6~~5. 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 county or municipal legislative or governing body may enact or enforce any ordinance, regulation, or rule pertaining to a tow truck or tow truck motor carrier that does not conflict with this part.]~~

(1) (a) Notwithstanding any other provision of law, a political subdivision of this state may neither enact nor enforce any ordinance, regulation, or rule pertaining to a tow truck motor carrier, tow truck operator, or tow truck that conflicts with ~~or is preempted by~~:

(i) any provision of this part;

(ii) Section 41-6a-1401;

(iii) Section 41-6a-1407; or

(iv) rules made by the department under this part ~~;~~.

~~(v) rules made by the Department of Public Safety under Sections 41-6a-1401 through 41-6a-1408; or~~

~~(vi) rules made by the State Tax Commission under Title 41, Chapter 1a, Motor Vehicle Act.~~

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

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

(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

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municipality if there is not a business location in the other county or municipality.

(3) A county or municipal legislative or governing body may not require a tow truck motor carrier, tow truck, or tow truck operator that has been issued a current, authorized towing certificate by the department, as described in Section 72-9-602, to obtain an additional towing certificate.

~~[(3)]~~ (4) 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)]~~ (5) A tow truck shall be subject to only one annual safety inspection under Subsection ~~[(3)]~~ (4)(b). A county or municipality that requires the additional annual safety inspection shall accept the same inspection performed by another county or municipality.

Section ~~77~~6. Section **72-9-606** is enacted to read:

72-9-606. Towing Advisory Board created -- Appointment -- Terms -- Meetings -- Per diem and expenses -- Duties.

(1) There is created within the department the Towing Advisory Board consisting of the following ~~nine~~13 members:

- (a) one member of the Senate appointed by the president of the Senate;
- (b) one member of the House of Representatives appointed by the speaker of the House of Representatives;
- (c) the executive director of the department, or the executive director's designee;
- (d) the chair of the State Tax Commission, or the chair's designee;
- (e) the commissioner of the Department of Public Safety, or the commissioner's designee;
- (f) ~~one person~~two individuals appointed by the Utah Association of Counties;
- (g) ~~one person~~two individuals appointed by the Utah League of Cities and Towns;
- (h) ~~one person~~two individuals from the state's towing industry, appointed by the governor; and
- (i) ~~one person~~two individuals representing private property owners in the state, appointed by the governor.

(2) ~~(a)~~ A person appointed to the board as described in Subsections (1)(a), (b), and (f)

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through (i) shall:

~~(f)(i)~~ except as provided in Subsection (2)(b), be appointed to a four-year term; and
~~(f)(ii)~~ serve from the date of appointment until a replacement is appointed.

(b) Each person or organization appointing members as described in Subsections (1)(f) through (i) shall designate one of those members to serve an initial term of two years.

(3) When a vacancy occurs in the appointed membership for any reason, the replacement shall be appointed for the unexpired term beginning the day following the expiration of the preceding term.

(4) The board shall elect a chair and vice chair at the first regular meeting of each calendar year.

(5) The board shall meet at least twice each year and at the discretion of the chair.

(6) Any ~~five~~ seven voting members constitute a quorum for the transaction of business that comes before the board.

(7) A member of the board may not receive compensation, benefits, per diem, or travel expenses for the member's service.

(8) The board shall advise the department, the Department of Public Safety, and the State Tax Commission on interpretation and adoption of rules, and implementation of this chapter and other issues related to tow truck motor carriers, tow trucks, tow truck operators, and impound yards, including advice on developing ~~statewide~~ standards for:

(a) private property towing notice and signage requirements; ~~and~~

(b) due process procedures for contested towing matters~~;~~

~~{~~ (c) towing rotation policies; and

~~—~~ (d) penalties for abandoning a motor vehicle that has been towed and failing to pay all required fees;

~~†~~ (9) The department, the Department of Public Safety, and the State Tax Commission shall provide staff support to the board.

Section ~~{8}~~ 7. **Effective date.**

This bill takes effect on July 1, 2017.

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~~Legislative Review Note~~

~~Office of Legislative Research and General Counsel~~