

SB0116S01 compared with SB0116

~~deleted text~~ shows text that was in SB0116 but was deleted in SB0116S01.

inserted text shows text that was not in SB0116 but was inserted into SB0116S01.

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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

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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:

None

Utah Code Sections Affected:

AMENDS:

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

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

Section 1. 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, 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:

(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) description, including the identification number, license number, or other

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identification number issued by a state agency, of the vehicle, vessel, or outboard motor;

(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 (16)(e).

(2) 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:

(a) collect any fee associated with the removal; or

(b) begin charging storage fees.

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

(i) the owner or a lien holder of the vehicle, vessel, or outboard motor consents to the tow truck service; or

(ii) the property owner erects signage that meets the requirements of:

(A) Subsection (4)(b)(ii); and

(B) Subsection (7) or (8).

(b) Subsections (7) through (9) do not apply to the removal of a vehicle, vessel, or

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outboard motor:

(i) from a location where parking is prohibited by law, including:

(A) a designated fire lane;

(B) within 15 feet of a fire hydrant, unless the vehicle is parked in a marked parking stall or space; or

(C) a marked parking stall or space legally designated for disabled persons;

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

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

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

(B) a parking attendant;

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

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

(vi) pursuant to a legal repossession.

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

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

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

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

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

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

(iii) Where a single parking area includes abutting parcels of property owned by two or

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more private property owners who enforce different parking restrictions under Subsection (7) or (8), each property owner shall, in addition to the requirements under Subsection (7) or (8), erect signage as required by this section:

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

(B) if there is no clearly defined entrance between one property owner's parcel and another property owner's parcel, at intervals of 40 feet or less along the line dividing the property owner's parcel from the other property owner's parcel.

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

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

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

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

- (i) owned by the political subdivision or state agency;
- (ii) located outside of the public right-of-way; and
- (iii) open to public parking; and

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

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

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

- (i) a blue, reflective background with a 1/2 inch white border;
- (ii) two-inch, white letters at the top of the sign with the capitalized words "Lot is

Patrolled";

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

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

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

(i) a top half that is red background with white, reflective letters indicating:

(A) who is authorized to park or restricted from parking at the property; and

(B) any type of vehicle prohibited from parking at the property; and

(ii) a bottom half that has a white, reflective background with red letters indicating:

(A) the name and telephone number of the tow truck motor carrier that the property owner has authorized to patrol the property; and

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

(8) For private property where parking is enforced under Subsection (4)(a)(ii):

(a) a tow truck motor carrier may not:

(i) patrol and monitor the property;

(ii) perform a tow truck service without the written or verbal request of the property owner or the property owner's agent; or

(iii) act as the property owner's agent to request a tow truck service; and

(b) the property owner shall ensure that each entrance to the property has a clearly visible sign located on the property that is 24 inches tall by 18 inches wide with a 1/2 inch white, reflective border, and has:

(i) at the top of the sign, a blue background with a white, reflective towing logo that is at least four inches tall and 16 inches wide that depicts an entire tow truck, a tow hook, and an entire vehicle being towed;

(ii) immediately below the towing logo described in Subsection (8)(b)(i), a blue background with white, reflective letters at least two inches tall with the capitalized words "Towing Enforced";

(iii) in the middle of the sign, a red background with white, reflective letters at least one inch tall indicating:

(A) who is authorized to park or restricted from parking at the property; and

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(B) any type of vehicle prohibited from parking at the property; and

(iv) at the bottom of the sign, a white, reflective background with red letters at least one inch tall indicating:

(A) either:

(I) the name and telephone number of the property owner or the property owner's agent who is authorized to request a tow truck service; or

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

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

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

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

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

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

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

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

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

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

(11) It is an affirmative defense to any claim, based on the lack of notice, that arises from the towing of a vehicle, vessel, or outboard motor from private property that the property

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had signage meeting the requirements of:

- (a) Subsection (4)(b)(ii); and
- (b) Subsection (7) or (8).

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

(13) (a) The fees under Subsection (12) 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, 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 (13)~~(a)~~(d) in an approved state impound yard 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 (12); and
- (ii) removes the vehicle, vessel, or outboard motor from the state impound yard.

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

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

- (i) wallet;
- (ii) purse;
- (iii) laptop, personal computer, or tablet device;
- (iv) mobile phone;
- (v) government issued identification; or
- (vi) prescription medications.

(e) Notwithstanding Subsection (13)(a), subject to Subsection (13)(f), and in lieu of Subsection (13)(c), a tow truck operator or tow truck motor carrier shall waive the fees described in Subsection (12) and shall release the vehicle, vessel, or outboard motor to the

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owner of the vehicle, vessel, or outboard motor, if the owner of the vehicle, vessel, or outboard motor provides a government-issued identification, and also:

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

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

(B) documentation from the Department of Workforce Services indicating that the individual is a present recipient of Medicaid benefits; or

(ii) provides written verification that the person is homeless from:

(A) a homeless shelter, as defined in Section 10-9a-526;

(B) a permanent housing, permanent, supportive, or transitional facility, as defined in Section 35A-5-302;

(C) the Department of Workforce Services; or

(D) a local educational agency liaison for homeless children and youth designated under 42 U.S.C. Sec. 11432(g)(1)(J)(ii).

(f) A tow truck operator or tow truck motor carrier is not required to release items as described in Subsection (13)(c) or release a vehicle as described in Subsection (13)(e) to the same individual more than once within a 365-day period.

(14) (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 (12); and

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

(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).

(15) (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 (16).

(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

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Subsection (1).

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

(a) subject to the restriction in Subsection (17), 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 (16)(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 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.

(17) An impound yard may not charge a fee for the storage of an impounded vehicle,

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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.

(18) (a) (i) A tow truck motor carrier may charge a rate up to the maximum rate set by the department in rules made under Subsection (16).

(ii) In addition to the maximum rates established under Subsection (16) 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 of 3% of the transaction total.

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

(19) 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 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.