

HOUSE BILL NO. 1218

Introduced by

Representative Keiser

1 A BILL for an Act to create and enact chapter 39-35 of the North Dakota Century Code, relating
2 to consumer towing protection; to amend and reenact sections 23.1-15-03, 23.1-15-05,
3 39-26-04, 39-26-06, 39-26-07, and subsection 2 of section 39-26-08 of the North Dakota
4 Century Code, relating to custody of abandoned vehicles, notice to owners of abandoned
5 vehicles, and right to reclaim an abandoned vehicle; to provide a penalty; and to provide an
6 effective date.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 23.1-15-03 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **23.1-15-03. Custody of abandoned vehicle. (Contingent effective date - [See note](#))**

11 ~~Units~~Subject to chapter 39-35, units of government may take into custody and impound an
12 abandoned motor vehicle.

13 **SECTION 2. AMENDMENT.** Section 23.1-15-05 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23.1-15-05. Notice to owner of abandoned vehicle. (Contingent effective date - [See](#)**
16 **[note](#))**

17 1. When an abandoned motor vehicle does not fall within the provisions of section
18 23.1-15-04, the unit of government taking it into custody shall give notice of the taking
19 ~~within ten days. The notice must set forth the date and place of the taking, the year,~~
20 ~~make, model, and serial number of the abandoned motor vehicle, and the place where~~
21 ~~the vehicle is being held, must inform the owner and any lienholders or secured~~
22 ~~parties of their right to reclaim the vehicle under section 23.1-15-06~~in accordance with
23 chapter 39-35, and must state that failure of the owner or lienholders or secured
24 parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all

1 right, title, and interest in the vehicle and a consent to the sale of the vehicle at a
2 public auction pursuant to section 23.1-15-07.

3 2. ~~The notice must be sent by mail to the registered owner, if any, of the abandoned-~~
4 ~~motor vehicle and to all readily identifiable lienholders or secured parties of record.~~ If it
5 is impossible to determine with reasonable certainty the identity and address of the
6 registered owner and all lienholders, the notice must be published once in a
7 newspaper of general circulation in the area where the motor vehicle was abandoned.
8 Published notices may be grouped together for convenience and economy.

9 **SECTION 3. AMENDMENT.** Section 39-26-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **39-26-04. Custody of abandoned vehicle. (Contingent repeal - [See note](#))**

12 Units of government may take into custody and impound an abandoned motor vehicle. If
13 requested by an owner, lessee, tenant, or occupant of private property, and subject to chapter
14 39-35, a commercial towing service may remove and take into custody an abandoned motor
15 vehicle located on the private property.

16 **SECTION 4. AMENDMENT.** Section 39-26-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-26-06. Notice to owner of abandoned vehicle. (Contingent repeal - [See note](#))**

19 1. When an abandoned motor vehicle does not fall within the provisions of section
20 39-26-05, the unit of government or commercial towing service taking it into custody
21 shall give notice of the taking ~~within ten days.~~ ~~The notice must set forth the date and~~
22 ~~place of the taking, the year, make, model, and serial number of the abandoned motor~~
23 ~~vehicle and the place where the vehicle is being held, must inform the owner and any~~
24 ~~lienholders or secured parties of their right to reclaim the vehicle under section~~
25 ~~39-26-07~~ in accordance with chapter 39-35, and must state that failure of the owner or
26 lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a
27 waiver by them of all right, title, and interest in the vehicle and a consent to the
28 disposal of the vehicle pursuant to section 39-26-08.

29 2. ~~The notice must be sent by certified mail, return receipt requested, to the registered-~~
30 ~~owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders-~~
31 ~~or secured parties of record.~~ If it is impossible to determine with reasonable certainty

1 the identity and address of the registered owner and all lienholders, the notice must be
2 published once in a newspaper of general circulation in the area where the motor
3 vehicle was abandoned. Published notices may be grouped together for convenience
4 and economy.

5 **SECTION 5. AMENDMENT.** Section 39-26-07 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **39-26-07. Right of owner to reclaim abandoned vehicle. (Contingent repeal - [See note](#))**

- 8 1. The owner, secured parties, or a lienholder of an abandoned motor vehicle has a right
9 to reclaim such vehicle from the unit of government taking the motor vehicle into
10 custody upon payment of all towing and storage charges resulting from taking the
11 vehicle into custody within thirty days after the date of the notice required by section
12 39-26-06.
- 13 2. The owner, secured parties, or a lienholder of an abandoned motor vehicle has a right
14 to reclaim ~~such~~the vehicle from a commercial towing service taking the motor vehicle
15 into custody ~~upon payment of all towing and storage charges resulting from taking the~~
16 ~~vehicle into custody within thirty days after receipt of the notice required by section~~
17 ~~39-26-06~~in accordance with chapter 39-35.
- 18 3. ~~Storage charges under subsection 2 may not exceed fifty dollars per day for an~~
19 ~~abandoned passenger vehicle, pickup, van, or truck that does not exceed twenty~~
20 ~~thousand registered gross weight pounds [9071.85 kilograms].~~
- 21 4. Nothing in this chapter may be construed to impair any lien of a garagekeeper under
22 the laws of this state or the right of a lienholder or secured parties to foreclose. For the
23 purposes of this section, "garagekeeper" is an operator of a parking place or
24 establishment, an operator of a motor vehicle storage facility, or an operator of an
25 establishment for the servicing, repair, or maintenance of motor vehicles.

26 **SECTION 6. AMENDMENT.** Subsection 2 of section 39-26-08 of the North Dakota Century
27 Code is amended and reenacted as follows:

- 28 2. ~~Subject to chapter 39-35, if~~ a commercial towing service takes custody of an
29 abandoned motor vehicle and the vehicle is not reclaimed under section 39-26-07, the
30 commercial towing service may obtain a release from the department of transportation
31 which is sufficient title to dispose of the vehicle. The release entitles the commercial

1 towing service to register the vehicle and receive a certificate of title, free and clear of
2 all liens and claims of ownership. The license plates displayed on the abandoned
3 vehicle must be removed and destroyed upon receipt of the new title.

4 **SECTION 7.** Chapter 39-35 of the North Dakota Century Code is created and enacted as
5 follows:

6 **39-35-01. Definitions.**

7 As used in this chapter:

- 8 1. "Automobile club" means a legal entity that promises to assist members or subscribers
9 in matters relating to motor travel or the operation, use, or maintenance of a motor
10 vehicle by supplying services for valuable consideration, including towing service,
11 emergency road service, or indemnification service. The term includes a motor vehicle
12 dealer or an insurance company operating as an automobile club.
- 13 2. "Crane service" means a form of towing service that involves moving a motor vehicle
14 by the use of a wheel-lift device, including a lift, crane, hoist, winch, cradle, jack,
15 automobile ambulance, tow dolly, or any other similar device.
- 16 3. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident,
17 mechanical breakdown on public roadway, or other emergency-related incident
18 necessitating vehicle removal for public safety with or without the owner's consent.
- 19 4. "Flat bed service" or "roll-back service" means a towing service that involves moving a
20 motor vehicle by loading the motor vehicle onto a flat-bed platform.
- 21 5. "Government agency towing" means the towing of a government-owned or
22 government-controlled motor vehicle by the government agency that owns or controls
23 the motor vehicle.
- 24 6. "Law enforcement towing" means the towing of a vehicle for law enforcement
25 purposes other than seizure towing. The term includes towing for law enforcement
26 purposes performed by a towing company on behalf of or under a contract with the
27 state, a political subdivision, or a law enforcement agency of the state or political
28 subdivision.
- 29 7. "Motor vehicle" means a vehicle manufactured primarily for use on public streets,
30 roads, and highways and which has at least four wheels. The term does not include a
31 vehicle operated exclusively on a rail or rails.

- 1 8. "Owner" means the person to which a motor vehicle is registered or to which the motor
2 vehicle is leased, if the terms of the lease require the lessee to maintain and repair the
3 vehicle, or a person holding a lien on the motor vehicle. "Owner" means a rental
4 vehicle company for a motor vehicle rented under a rental agreement.
- 5 9. "Owner requested towing" means the request to tow a motor vehicle by the motor
6 vehicle owner or operator.
- 7 10. "Private property towing" means the towing of a motor vehicle, without the owner's
8 consent, from private property where the motor vehicle was illegally parked or for
9 which some exigent circumstance necessitated its removal to another location.
- 10 11. "Rental vehicle company" means a person in the business of renting vehicles to the
11 public.
- 12 12. "Seizure towing" means the towing of a motor vehicle for law enforcement purposes
13 involving the maintenance of the chain of custody of evidence or forfeiture of assets.
- 14 13. "Storage facility" means a lot, facility, or other property used to store motor vehicles
15 removed from another location by a tow truck.
- 16 14. "Tow truck" means a motor vehicle equipped to provide any form of towing service,
17 including crane service or flat bed service.
- 18 15. "Tow truck operator" means an individual who operates a tow truck as an employee or
19 agent of a towing company.
- 20 16. "Towing company" means a service, company, or business that tows or otherwise
21 moves motor vehicles by means of a tow truck or owns or operates a storage facility. A
22 towing business, service, or company does not include an automobile club, car
23 dealership, or insurance company. The term includes a tow truck operator acting on
24 behalf of a towing company when appropriate in the context.

25 **39-35-02. General provisions.**

- 26 1. Except as otherwise provided by subsection 2, this chapter applies to a person
27 engaging in, or offering to engage in, the business of providing towing service in the
28 state.
- 29 2. This chapter does not apply to:
- 30 a. A motor vehicle towed into the state or through the state if the tow originates in
31 another jurisdiction.

- 1 b. The towing of a motor vehicle by or on behalf of an automobile club, car
2 dealership, or insurance company.
3 c. Government agency towing.
4 d. Seizure towing.
5 5. The department has exclusive regulatory jurisdiction over the towing and storage
6 services of towing companies and vehicle storage companies. The department shall
7 establish a complaint mechanism for consumers and insurers.
8 6. A for-hire motor carrier engaged in the towing of a motor vehicle who violates this
9 chapter is guilty of a class B misdemeanor.

10 **39-35-03. Emergency towing.**

- 11 1. Unless directed otherwise by a law enforcement officer, a towing company that
12 engages in, or offers to engage in, emergency towing shall take photographs, video, or
13 other visual documentation before towing a motor vehicle to evidence any vehicle
14 damage, debris, damaged cargo or property, or complications to the recovery process.
15 2. Except as provided in subsection 3, a towing company may not stop, or cause a
16 person to stop, at the scene of an accident or near a disabled motor vehicle:
17 a. If there is an injury as the result of an accident; or
18 b. For the purpose of:
19 (1) Soliciting an engagement for emergency towing services;
20 (2) Moving a motor vehicle from a public street, road, or highway; or
21 (3) Accruing charges in connection with an activity in paragraph 1 or 2.
22 3. A towing company may stop, or cause a person to stop, at the scene of an accident or
23 near a disabled motor vehicle under the circumstances, or for any of the purposes,
24 described in subsection 2 if:
25 a. The towing company is requested to stop or to perform a towing service by a law
26 enforcement officer or by authorized state, county, or municipal personnel;
27 b. The towing company is summoned to the scene or requested to stop by the
28 owner or operator of a disabled motor vehicle; or
29 c. The owner of a disabled motor vehicle previously has provided consent to the
30 towing company to stop or perform a towing service.

- 1 4. Except as provided in subsections 5 and 6, the owner or operator of a disabled motor
2 vehicle, in consultation with law enforcement or with authorized state, county, or
3 municipal personnel, may:
- 4 a. Summon to the location of the disabled motor vehicle the towing company of the
5 owner's or operator's choice, either directly or through an insurance company or
6 automobile club emergency service arrangement; and
- 7 b. Designate the location to which the disabled motor vehicle is to be towed. If the
8 location designated by the owner or operator is not a storage facility owned or
9 operated by the towing company, the owner or operator shall arrange for
10 payment to the towing company at the time the towing company is summoned.
- 11 5. Subsection 4 does not apply:
- 12 a. In the event of a declared emergency; or
- 13 b. If the owner or operator of a disabled motor vehicle:
- 14 (1) Is incapacitated or otherwise unable to summon a towing company; or
- 15 (2) Defers to law enforcement or to authorized state, county, or municipal
16 personnel as to the towing company to be summoned or the location to
17 which the disabled motor vehicle is to be towed.
- 18 6. The authority of an owner or operator of a disabled motor vehicle to summon the
19 towing company of the owner's or operator's choice under subsection 4 is superseded
20 by a law enforcement officer or by authorized state, county, or municipal personnel if
21 the towing company of choice of the owner or operator:
- 22 a. Is unable to respond to the location of the disabled motor vehicle in a timely
23 fashion; and
- 24 b. The disabled motor vehicle is a hazard, impedes the flow of traffic, or may not
25 legally remain in the motor vehicle's location in the opinion of the law
26 enforcement officer or authorized state, county, or municipal personnel.
- 27 7. If a disabled motor vehicle is causing or poses a safety hazard, the towing company
28 may move the disabled motor vehicle to a safe location after being authorized by a law
29 enforcement officer or by authorized state, county, or municipal personnel.

- 1 8. If a towing company is summoned for emergency towing by the owner or operator of a
2 disabled motor vehicle, the towing company shall make a record, to the extent
3 available, consisting of:
- 4 a. The first and last name and telephone number of the individual who summoned
5 the towing company to the scene; and
- 6 b. The make, model year, vehicle identification number, and license plate number of
7 the disabled motor vehicle.
- 8 9. If a towing company is summoned for emergency towing by a law enforcement officer
9 or by authorized state, county, or municipal personnel, the towing company shall make
10 a record, to the extent available, consisting of:
- 11 a. The identity of the law enforcement agency or authorized state, county, or
12 municipal agency requesting the emergency towing; and
- 13 b. The make, model, year, vehicle identification number, and license plate number
14 of the disabled motor vehicle.
- 15 10. A towing company shall maintain a record created under subsections 8 or 9 and
16 provide the record to a law enforcement agency upon request from the time the towing
17 company appears at the location of the disabled motor vehicle until the time the motor
18 vehicle is towed and released to an authorized third party. A towing company shall
19 retain the record created under subsections 8 or 9 for a period of two years from the
20 date the disabled motor vehicle was towed and, throughout the two year period, make
21 the record available for inspection and copying, not later than forty-eight hours after
22 receiving a written request from a law enforcement agency, the attorney general, the
23 disabled motor vehicle's owner, or an authorized agent of the disabled motor vehicle's
24 owner.
- 25 11. A towing company that performs emergency towing under this chapter shall secure a
26 towed motor vehicle properly and take all reasonable efforts to prevent further
27 damage, including weather damage or theft of a towed motor vehicle, including the
28 motor vehicle's cargo and contents.
- 29 **39-35-04. Private property towing.**
- 30 1. Unless directed otherwise by a law enforcement officer, a towing company that
31 engages in, or offers to engage in, private property towing shall take photographs.

1 video, or other visual documentation before towing a motor vehicle to evidence any
2 vehicle damage, debris, damaged cargo or property, or complications to the recovery
3 process. This section does not apply to the towing of a motor vehicle from a tow-away
4 zone not located on private property.

5 2. The owner of private property may establish a tow-away zone on the owner's property.
6 A property owner who establishes a tow-away zone shall post a sign at the location of
7 the tow-away zone which is clearly visible to the public. The sign must include a
8 statement the area is a tow-away zone and a description of any persons authorized to
9 park in the area.

10 3. A towing company that tows a motor vehicle under this section shall ensure the motor
11 vehicle is towed to a storage facility located within twenty-five miles [40.2 kilometers]
12 of the location of the tow-away zone from which the motor vehicle was removed or, if
13 no storage facility is located within twenty-five miles [40.2 kilometers] of the location of
14 the tow-away zone, to the storage facility nearest to the tow-away zone.

15 4. If the owner or operator of a motor vehicle parked in violation of a tow-away zone
16 arrives at the location of the tow-away zone while the motor vehicle is being towed, the
17 towing company shall give the owner or operator either oral or written notification the
18 owner or operator may pay a fee in an amount not greater than half of the amount of
19 the fee the towing company normally charges for the release of a motor vehicle. Upon
20 the owner's or operator's payment of the amount specified, the towing company shall
21 release the motor vehicle to the owner or operator and give the owner or operator a
22 receipt showing the full amount of the fee of the towing company normally charges for
23 the release of a motor vehicle and the amount of the fee paid by the owner or
24 operator.

25 5. A towing company shall provide notice to the law enforcement agency having
26 jurisdiction in the location of the private property not later than two hours after
27 completing a tow of a motor vehicle from private property.

28 6. A towing company that performs private property towing shall secure a towed motor
29 vehicle properly and take all reasonable efforts to prevent further damage, including
30 weather damage or theft of a towed motor vehicle, including the motor vehicle's cargo
31 and contents.

1 7. This section does not affect a private property owner's rights under chapter 39-26 or
2 23.1-15 with respect to abandoned vehicles on the property owner's property.

3 **39-35-05. Estimates and invoices for towing services.**

4 1. If the vehicle owner or operator is present at the time and location of an anticipated
5 tow, the towing company shall furnish the vehicle's owner or operator with a written
6 itemized estimate of all charges and services to be performed before attaching the
7 vehicle to the tow truck. The estimate must include:

8 a. The name, address, telephone number, and motor carrier permit number of the
9 towing company.

10 b. The license plate number of the tow truck performing the tow.

11 c. A rate sheet listing all rates for towing services, including all rates for towing and
12 associated fees, cleanup charges, labor, storage, or any other services provided
13 by the towing company.

14 (1) The towing company must furnish the rate sheet to the motor vehicle
15 owner's motor vehicle before attaching a motor vehicle to a tow truck.

16 (2) Charges in excess of the rates listed may not be authorized without the
17 consent of the motor vehicle owner.

18 (3) In lieu of a rate sheet, before attaching a motor vehicle to a tow truck, the
19 towing company may furnish an itemized description and cost for all
20 services, including charges for labor, special equipment, mileage from
21 dispatch to return, and storage fees expressed as a twenty-four hour rate.

22 2. The requirements of subsection 1 may be completed after the motor vehicle is
23 attached and removed to the nearest safe shoulder or street if done at the request of
24 law enforcement or a public agency or the motor vehicle owner or operator if the
25 estimate is furnished before the removal of the motor vehicle from the nearest safe
26 shoulder or street.

27 3. The tow truck operator shall obtain the written or electronic signature of the owner or
28 operator of the motor vehicle on the itemized estimate and shall furnish a copy to the
29 individual who signed the estimate.

30 4. The towing company shall maintain the records described in this section for three
31 years and shall make the records available for inspection and copying within

- 1 forty-eight hours of a written request from law enforcement, the attorney general, the
2 state's attorney, the city attorney, the motor vehicle owner, or the agent of the motor
3 vehicle owner.
- 4 5. An itemized invoice of actual towing charges assessed by a towing company for a
5 completed tow must be made available to the motor vehicle owner or the owner's
6 authorized agent not later than one business day after the tow is completed or after
7 the towing company has obtained all necessary information to be included on the
8 invoice, including any charges submitted by subcontractors used by the towing
9 company to complete the tow, whichever occurs later.
- 10 6. The itemized invoice required by subsection 5 must include:
- 11 a. The location to which the motor vehicle was towed;
12 b. The name, address, and telephone number of the towing company;
13 c. A description of the towed motor vehicle, including the:
- 14 (1) Make;
15 (2) Model;
16 (3) Year;
17 (4) Vehicle identification number; and
18 (5) Color.
- 19 d. The license plate number and state of registration for the towed motor vehicle;
20 e. The cost of the original towing service;
21 f. The cost of any vehicle storage fees, expressed as a daily rate;
22 g. Other fees, including documentation fees and motor vehicle search fees; and
23 h. The costs for services performed under a warranty or which were otherwise
24 performed at no cost to the owner of the motor vehicle.
- 25 7. Any service or fee in addition to the services or fees described in subsection 1, must
26 be set forth individually as a single line item on the invoice required by subsection 5,
27 with an explanation and the exact charge for the service or the exact amount of the
28 fee.
- 29 8. A copy of each invoice and receipt submitted by a tow truck operator must be retained
30 by the towing company for two years from the date of issuance. During the two-year
31 period, the copy of each invoice and receipt must be made available for inspection and

- 1 copying not later than forty-eight hours after receiving a written request for inspection
2 from:
3 a. A law enforcement agency;
4 b. The attorney general;
5 c. The prosecuting attorney having jurisdiction in the location of any of the towing
6 company's business locations within the state;
7 d. The disabled motor vehicle's owner; or
8 e. The agent of the disabled motor vehicle's owner.

9 **39-35-06. Notice requirements.**

- 10 1. Within twenty-four hours of commencement of towing, the towing company or storage
11 facility shall conduct a search of national data bases, including a data base of vehicle
12 identification numbers, to attempt to obtain the last state of record of the motor vehicle
13 to ascertain the identity of the name and address of the person that owns or holds a
14 lien on the motor vehicle. Storage charges beyond the initial twenty-four hour charge
15 may not accrue until the notice requirement has been met.
16 2. Upon obtaining the name and address of the owner or lienholder of the motor vehicle,
17 the towing service or storage facility shall provide written notice by registered mail
18 within five business days to the owner or lienholder, and to the insurer of the motor
19 vehicle if the motor vehicle is covered by an active policy of insurance. Notice to the
20 owner or insurer must include:
21 a. The date and time the motor vehicle was towed;
22 b. The location from which the motor vehicle was towed;
23 c. The name, address, and telephone number of the place where the motor vehicle
24 will be located;
25 d. The location, address, and phone number where payment and business
26 transactions take place if different from business address;
27 e. The name, address, and phone number of the towing company or storage facility;
28 f. A description of the towed motor vehicle, including the make, model, year, vehicle
29 identification number, and color of the towed motor vehicle;
30 g. The license plate number and state of registration of the towed motor vehicle.

1 3. If the search result under subsection 1 is a corporately owned motor vehicle, the
2 notice under subsection 2 must be sent to the state corporate address listed on the
3 registration. The motor vehicle must be held for up to sixty days to allow the motor
4 vehicle owner to retrieve the towed motor vehicle. The rate charged must be
5 comparative to the standard daily rate. If at any time more than one motor vehicle
6 owned by the same corporation is under the control of a towing company or storage
7 facility, each motor vehicle must be processed under a separate transaction.

8 **39-35-07. Releasing towed motor vehicles.**

- 9 1. Upon payment of all costs incurred against a motor vehicle towed and stored under
10 this chapter, the towing company or storage facility shall release the motor vehicle to:
11 a. A properly identified person that owns or holds a lien on the motor vehicle; or
12 b. A representative of the insurance company insuring the motor vehicle if the
13 vehicle is covered by an active policy of insurance and the insurance
14 representative provides proof of such or if the owner of the motor vehicle
15 approves release of the vehicle to the insurance company representative.
- 16 2. An owner, a lienholder, or an insurance company representative has the right to
17 inspect a motor vehicle before accepting return of the motor vehicle.
- 18 3. A towing service or storage facility shall accept payment made by any of the following
19 means from an individual seeking to release a motor vehicle:
20 a. Cash;
21 b. Insurance check;
22 c. Credit card;
23 d. Debit card;
24 e. Money order; or
25 f. Certified check.
- 26 4. Upon receiving payment of all costs incurred against a motor vehicle, a towing service
27 or storage facility shall provide to the person making payment an itemized receipt in
28 accordance with section 39-35-05 to the extent the information is known or available.
- 29 5. A towing service or storage facility shall be open for business and accessible by
30 telephone during normal business hours. A towing service or storage facility shall
31 provide a telephone number available on a twenty-four hour basis to receive calls and

1 messages from callers, including calls made outside normal business hours. All calls
2 made to a towing service or storage facility must be returned within twenty-four hours
3 from the time received. However, if adverse weather, an emergency situation, or
4 another act over which the towing service or storage facility has no control prevents
5 the towing service or storage facility from returning calls within twenty-four hours, the
6 towing service or storage facility shall return all calls received as quickly as possible.

7 **39-35-08. Fees.**

- 8 1. A towing company may not charge a fee for towing, clean-up services, or storage of a
9 vehicle in excess of the greater of:
- 10 a. The fee that would have been charged for towing, clean-up services, or storage
11 made at the request of a law enforcement agency under an agreement between
12 a towing company and the law enforcement agency that exercises primary
13 jurisdiction in the city in which the motor vehicle was, or was attempted to be,
14 removed, or if not located within a city, the law enforcement agency that
15 exercises primary jurisdiction in the county in which the vehicle was, or was
16 attempted to be, removed.
- 17 b. The fee that would have been charged for towing, clean-up services, or storage
18 under the rate approved for the towing company by the department for the
19 jurisdiction from which the motor vehicle was, or was attempted to be, removed.
- 20 2. A charge may not be in excess of the estimated price without the prior consent of the
21 motor vehicle owner or operator.
- 22 3. All services rendered by a tow company, including warranty or no-cost services, must
23 be recorded on an invoice. The towing company or the owner or operator of a tow
24 truck shall maintain the records for two years and shall make the records available for
25 inspection and copying upon written request from law enforcement.

26 **39-35-09. Certification requirements.**

- 27 1. The department shall approve an application for a towing company certificate or
28 certificate renewal and shall issue or renew a certificate if the applicant submits to the
29 department a completed application on a form prescribed by the department and pays
30 the application fee set by the department.
- 31 2. An application for a certificate or renewal must include proof of:

- 1 a. The applicant's workers' compensation coverage;
- 2 b. The applicant's unemployment compensation coverage; and
- 3 c. The financial responsibility of an applicant relating to liability insurance or bond
- 4 requirements.
- 5 3. The applicant may not have been convicted of fraud or had a civil judgment for fraud
- 6 rendered against the applicant in the past five years. An officer, director, or partner of
- 7 an applicant that is a corporation or partnership may not not have been convicted of
- 8 fraud or have had a civil judgment rendered against the officer, director, or partner
- 9 while associated with the corporation or partnership.

10 **39-35-10. Prohibited acts.**

- 11 1. A towing company may not:
- 12 a. Falsely represent that the towing company represents or is approved by any
- 13 organization that provides emergency road service for disabled motor vehicles.
- 14 b. Require an owner or an operator of a disabled motor vehicle to preauthorize
- 15 more than twenty-four hours of storage or repair work as a condition to providing
- 16 towing service for the disabled vehicle.
- 17 c. Charge more than one towing fee when the owner or operator of a disabled
- 18 motor vehicle requests transport of the motor vehicle to a repair facility owned or
- 19 operated by the towing company.
- 20 d. Tow a motor vehicle to a repair facility, unless either the owner of the motor
- 21 vehicle or the owner's designated representative gives consent and the consent
- 22 is given before the motor vehicle is removed from the location from which the
- 23 motor vehicle is to be towed. This subdivision does not apply to a storage facility
- 24 that has a repair facility on the same site so long as the motor vehicle is not
- 25 moved into the repair facility without consent.
- 26 2. A towing company or a storage facility may not:
- 27 a. Upon payment of all costs incurred against a motor vehicle towed and stored
- 28 under this chapter, refuse to release the motor vehicle to a properly identified
- 29 individual who owns or holds a lien on the motor vehicle or to a representative of
- 30 the insurance company insuring the motor vehicle if the motor vehicle is covered
- 31 by an active policy of insurance. A towing company or storage facility may not

1 release a motor vehicle in any case in which a law enforcement agency has
2 ordered the motor vehicle not to be released or in any case in which a judicial
3 order countermands its release.

4 b. Refuse to permit a properly identified individual who owns or holds a lien on a
5 motor vehicle or a representative of the insurance company insuring the motor
6 vehicle if the motor vehicle is covered by an active policy of insurance to inspect
7 the motor vehicle before all costs incurred against the motor vehicle are paid or
8 the motor vehicle is released.

9 c. Charge a storage fee for a stored motor vehicle with respect to any day on which
10 release of the motor vehicle or inspection of the motor vehicle by the owner,
11 lienholder, or insurance company is not permitted during normal business hours
12 by the towing company or storage facility.

13 **SECTION 8. EFFECTIVE DATE.** Sections 1 and 2 of this Act become effective on August 1,
14 2019, if the legislative council has received certification from the chief of the environmental
15 health section of the state department of health that all authority, powers, and duties from the
16 environmental health section of the state department of health have been transferred to the
17 department of environmental quality. If the certification is not received by August 1, 2019,
18 sections 1 and 2 of this Act become effective on the date certification is received.