

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;
- ▶ amends provisions related to certification of tow truck operators and tow truck 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



26 reimbursement for expenses related to the member's service on the board; and
27 ▶ makes technical changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill provides a special effective date.

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **41-6a-1407**, as last amended by Laws of Utah 2015, Chapter 412

35 **72-9-601**, as last amended by Laws of Utah 2005, Chapter 2

36 **72-9-602**, as last amended by Laws of Utah 2009, Chapter 183

37 **72-9-603**, as last amended by Laws of Utah 2016, Chapters 103 and 148

38 **72-9-604**, as last amended by Laws of Utah 2014, Chapter 249

39 ENACTS:

40 **72-9-606**, Utah Code Annotated 1953



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

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

44 **41-6a-1407. Removal of unattended vehicles prohibited without authorization --**

45 **Penalties.**

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

48 (a) a peace officer;

49 (b) a law enforcement agency;

50 (c) a highway authority having jurisdiction over the highway on which there is an
51 unattended vehicle; or

52 (d) the owner or person in lawful possession or control of the real property.

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

55 (b) The removal of the unattended vehicle shall comply with requirements of Section
56 **41-6a-1406.**

57 (3) The removal of the unattended vehicle authorized under Subsection (1)(d) shall
58 comply with the requirements of Section 72-9-603.

59 (4) A person who violates Subsection (1) or (3) is guilty of an infraction.

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

61 **72-9-601. Tow truck motor carrier requirements -- Authorized towing**
62 **certificates.**

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

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

66 (i) trained to operate tow truck equipment;

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

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

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

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

71 and (3); and

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

73 391.45; and

74 ~~(b)~~ (c) obtain and display a current authorized towing certificate for the tow truck
75 motor carrier, and each tow truck and [~~driver~~] tow truck operator, as required under Section
76 72-9-602.

77 (2) A tow truck motor carrier may only perform a towing service described in Section
78 41-6a-1406, 41-6a-1407, or 72-9-603, with a tow truck and [~~driver~~] tow truck operator that has
79 a current authorized towing certificate under this part.

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

81 **72-9-602. Towing inspections, investigations, and certification -- Equipment**
82 **requirements -- Consumer information.**

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

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

88 (c) (i) The department shall issue an authorized towing certificate for each tow truck
89 motor carrier, tow truck, and [~~driver~~] tow truck operator that complies with this part and rules
90 made by the department in accordance with Subsection (6).

91 (ii) The authorized towing certificate described in this section shall expire two years
92 from the month of issuance.

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

95 (2) (a) To qualify for an authorized towing certificate described in Subsection (1), a
96 tow truck operator shall:

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

99 (ii) obtain and maintain a valid medical examiner's certificate under 49 C.F.R. Sec.
100 391.45.

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

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

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

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

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

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

113 (b) The Bureau of Criminal Identification shall:

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

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

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

119 and

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

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

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

129 ~~[(2)]~~ (4) The department shall make ~~[consumer protection information]~~ available to the
130 public ~~[that may use a tow truck motor carrier]~~ electronically accessible consumer protection
131 information, including a list of all tow truck motor carriers that are currently certified by the
132 department.

133 (5) The department may deny a tow truck motor carrier's certification if the department
134 has evidence that a tow truck motor carrier's tow truck operator fails to provide copies of the
135 Utah Consumer Bill of Rights Regarding Towing to vehicle owners, as required under Section
136 [72-9-603](#).

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

140 Section 4. Section **72-9-603** is amended to read:

141 **72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned**
142 **vehicle title restrictions -- Rules for maximum rates and certification.**

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

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

149 (i) send a report of the removal to the Motor Vehicle Division that complies with the

150 requirements of Subsection 41-6a-1406(4)(b); and

151 (ii) contact the law enforcement agency having jurisdiction over the area where the

152 vehicle, vessel, or outboard motor was picked up and notify the agency of the:

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

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

155 removed;

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

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

158 (E) vehicle, vessel, or outboard motor's description, including its identification number

159 and license number or other identification number issued by a state agency;

160 (b) within two business days of performing the tow truck service under Subsection

161 (1)(a), send a certified letter to the last-known address of each party described in Subsection

162 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor obtained from the

163 Motor Vehicle Division or, if the person has actual knowledge of the party's address, to the

164 current address, notifying the party of the:

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

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

167 removed;

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

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

170 (v) a description, including its identification number and license number or other

171 identification number issued by a state agency; and

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

173 (c) upon initial contact with the owner whose vehicle, vessel, or outboard motor was

174 removed, provide the owner with a copy of the Utah Consumer Bill of Rights Regarding

175 Towing established by the department in Subsection (7)(e).

176 (2) (a) Until the tow truck operator or tow truck motor carrier reports the removal as

177 required under Subsection (1)(a), a tow truck operator, tow truck motor carrier, or impound

178 yard may not:

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

180 (ii) begin charging storage fees.

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

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

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

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

188 (A) where parking is subject to towing; and

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

191 (II) one of the following:

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

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

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

198 (i) that is prohibited by law; or

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

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

203 (3) The party described in Subsection 41-6a-1406(5)(a) with an interest in a vehicle,
204 vessel, or outboard motor lawfully removed is only responsible for paying:

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

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

207 (4) (a) The fees under Subsection (3) are a possessory lien on the vehicle, vessel, or
208 outboard motor and any nonlife essential items contained in the vehicle, vessel, or outboard
209 motor that are owned by the owner of the vehicle [~~and securely stored by the tow truck~~
210 ~~operator~~], vessel, or outboard motor until paid.

211 (b) The tow truck operator or tow truck motor carrier shall securely store the vehicle,

212 vessel, or outboard motor and items described in Subsection (4)(a) until a party described in
213 Subsection 41-6a-1406(5)(a) with an interest in the vehicle, vessel, or outboard motor:

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

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

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

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

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

221 ~~[(5)]~~ (b) A person may not request a transfer of title to an abandoned vehicle, vessel, or
222 outboard motor until at least 30 days after notice has been sent under Subsection (1)(b).

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

226 (b) A tow truck operator, a tow truck motor carrier, and an impound yard shall accept
227 payment by cash and debit or credit card for a tow truck service under Subsection (1) or any
228 service rendered, performed, or supplied in connection with a tow truck service under
229 Subsection (1).

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

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

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

235 (A) a peace officer dispatch call;

236 (B) a motor vehicle division call; and

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

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

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

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

245 (d) set a maximum rate for an administrative fee that a tow truck motor carrier may
246 charge for reporting the removal as required under Subsection (1)(a)(i) and providing notice of
247 the removal to each party described in Subsection 41-6a-1406(5)(a) with an interest in the
248 vehicle, vessel, or outboard motor as required in Subsection (1)(b); and

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

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

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

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

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

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

262 (b) the vehicle, vessel, or outboard motor is not being released to a party described in
263 Subsection 41-6a-1406(5)(a), even if the party satisfies the requirements to release the vehicle,
264 vessel, or outboard motor under Section 41-6a-1406.

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

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

- 274 (a) by phone 24 hours a day, seven days a week; and
- 275 (b) to release the impounded vehicle, vessel, or outboard motor to the owner within
- 276 one hour of when the owner calls the tow truck motor carrier or impound yard.

277 Section 5. Section **72-9-604** is amended to read:

278 **72-9-604. Regulatory powers of local authorities -- Tow trucks.**

279 ~~[(1)(a) Except as provided in Subsection (1)(b), a county or municipal legislative or~~
280 ~~governing body may enact or enforce any ordinance, regulation, or rule pertaining to a tow~~
281 ~~truck or tow truck motor carrier that does not conflict with this part.]~~

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

- 285 (i) any provision of this part;
- 286 (ii) Section [41-6a-1401](#);
- 287 (iii) Section [41-6a-1407](#); or
- 288 (iv) rules made by the department under this part.

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

- 291 (i) is holding the vehicle, vessel, or outboard motor as evidence; and
- 292 (ii) will not release the vehicle, vessel, or outboard motor to the registered owner, lien
293 holder, or the owner's agent even if the registered owner, lien holder, or the owner's agent
294 satisfies the requirements to release the vehicle, vessel, or outboard motor under Section
295 [41-6a-1406](#).

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

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

304 ~~[(3)]~~ (4) A county or municipal legislative body may require an annual tow truck safety

305 inspection in addition to the inspections required under Sections [53-8-205](#) and [72-9-602](#) if:

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

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

308 ~~[(4)]~~ (5) A tow truck shall be subject to only one annual safety inspection under
 309 Subsection ~~[(3)]~~ (4)(b). A county or municipality that requires the additional annual safety
 310 inspection shall accept the same inspection performed by another county or municipality.

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

312 **72-9-606. Towing Advisory Board created -- Appointment -- Terms -- Meetings --**

313 **Per diem and expenses -- Duties.**

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

316 (a) one member of the Senate appointed by the president of the Senate;

317 (b) one member of the House of Representatives appointed by the speaker of the House
 318 of Representatives;

319 (c) the executive director of the department, or the executive director's designee;

320 (d) the chair of the State Tax Commission, or the chair's designee;

321 (e) the commissioner of the Department of Public Safety, or the commissioner's
 322 designee;

323 (f) two individuals appointed by the Utah Association of Counties;

324 (g) two individuals appointed by the Utah League of Cities and Towns;

325 (h) two individuals from the state's towing industry, appointed by the governor; and

326 (i) two individuals representing private property owners in the state, appointed by the
 327 governor.

328 (2) (a) A person appointed to the board as described in Subsections (1)(a), (b), and (f)
 329 through (i) shall:

330 (i) except as provided in Subsection (2)(b), be appointed to a four-year term; and

331 (ii) serve from the date of appointment until a replacement is appointed.

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

334 (3) When a vacancy occurs in the appointed membership for any reason, the
 335 replacement shall be appointed for the unexpired term beginning the day following the

336 expiration of the preceding term.

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

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

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

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

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

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

349 (b) due process procedures for contested towing matters.

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

352 **Section 7. Effective date.**

353 This bill takes effect on July 1, 2017.