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National Conference of Insurance Legislators (NCOIL)

Model Consumer Protecting Towing Act

Sponsored by Rep. Matt Lehman (IN)

DRAFT as of 9.21.16

Table of Contents

Section 1.	Title
Section 2.	Purpose
Section 3.	Definitions
Section 4.	General Provisions
Section 5.	Emergency Towing Requirements
Section 6.	Private Property Towing Requirements
Section 7.	Estimate Requirements
Section 8.	Itemized Invoice Requirements
Section 9.	Notice Requirements
Section 10.	Fees
Section 11.	Release of Vehicle
Section 12.	License Requirements
Section 13.	Prohibited Acts
Section 14.	Penalties And Enforcement

Section 1. Title

This Act shall be known and cited as the [State] Consumer Protection Towing Act.

Section 2. Purpose

The purpose of this Act is to establish minimum standards for towing vendor services and to promote fair and honest practices in the towing service business.

Section 3. Definitions

For purposes of this Act:

“Automobile club” - a legal entity which, in consideration of dues, assessments or periodic payments of money, promises its members or subscribers to assist them in matters relating to motor travel or the operation, use or maintenance of a motor vehicle, including auto dealers and insurance companies, by supplying services, which may include but are not limited to towing service, emergency road service and indemnification service.

“Crane service” - a form of towing service which involves moving vehicles by the use of a wheel-lift device, such as a lift, crane, hoist, winch, cradle, jack, automobile ambulance, tow dolly, or any other similar device.

“Flat bed (Roll-back) service” - a form of towing service which involves moving vehicles by loading them onto a flat-bed platform.

“Owner” - the person or entity to whom a vehicle is registered, or to whom it is leased, if the terms of the lease require the lessee to maintain and repair the vehicle. For the purposes of this Act, a rental vehicle company is the owner of a vehicle rented pursuant to a rental agreement.

“Rental vehicle company” – any person or organization, or any subsidiary or affiliate, including a franchisee, in the business of renting vehicles to the public.

“Towing company” - any service, company or business entity or operation that exists to tow or otherwise move motor vehicles by means of a tow truck, or the ownership or operation of a towing service storage lot. A towing business, service or company shall not include an automobile club, car dealership or insurance company.

“Towing service storage lot” - a property used to store vehicles that have been towed.

“Tow truck” - a motor vehicle equipped to provide any form of towing service.

“Tow truck operator” - a person who operates a motor vehicle that is equipped to provide any form of towing services.

“Emergency towing” – the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway or other emergency related incident necessitating vehicle removal for public safety with or without the owner’s consent.

“Government agency towing” – the towing of government-owned or government controlled vehicles by the government agency that owns or controls them.

“Law enforcement towing” – the towing of a vehicle for law enforcement purposes other than “seizure towing,” including municipality approved preferred towing company vendors.

“Owner requested towing” – the request to tow a vehicle by the vehicle owner or operator.

“Private property towing” – the towing of a vehicle, without the owner’s consent, from private property where it was illegally parked, or for which some exigent circumstance necessitated its removal, to a nearby location.

“Seizure towing” – the taking of a vehicle for law enforcement purposes such as the maintenance of the chain of custody of evidence, or forfeiture of assets.

Section 4. General Provisions

The provisions of this chapter shall be applicable to any entity or person engaging in, or offering to engage in, the business of providing towing service in the State of XXXX. The provisions of this chapter shall not apply to vehicles towed into the State of XXXX or through the State of XXXX if the tow originates in another jurisdiction.

The provisions of this chapter are not applicable to the towing of motor vehicles by or on behalf of an “automobile club”, car dealership or insurance company.

The provisions of this chapter are not applicable to “government agency towing”, the towing of government-owned or government controlled vehicles by the government agency that owns or controls them.

The provisions of this chapter are not applicable to “seizure towing”, the towing of a vehicle for law enforcement purposes.

The provisions of this chapter confer exclusive regulatory jurisdiction to the [regulatory body] in the State of XXXX over the towing and storage services of towing companies and vehicle storage companies. The [regulatory body] shall establish a complaint mechanism for consumers and insurers.

Drafting Note: Legislators should consider establishing rules whereby a [regulatory body] govern licensing, registration, operation and permitting of towing companies and vehicle storage companies in accordance with this act.

In addition to any penalty imposed under Section 14 of this chapter, any for-hire motor carrier engaged in the towing of motor vehicles who violates Section 14 is subject to sanctions imposed by the [regulatory body] in the State of XXXX.

Section 5. Emergency Towing Requirements

- A. It is a misdemeanor for a towing company to stop or cause a person to stop at the scene of an accident or near a disabled vehicle for the purpose of soliciting an engagement for “emergency towing” services, either directly or indirectly, to provide towing services, to move a vehicle from a highway, street, or when there is an injury as the result of an accident, or to accrue charges for services provided under those circumstances, unless requested to perform that service by a law enforcement officer or public agency pursuant to that agency’s procedures, or unless summoned to the scene or requested to stop by the owner or operator of a disabled vehicle.
- B. The owner or operator of the vehicle being towed shall summon to the scene the tow truck operator of the owner’s or operator’s choice, either directly or through an insurer’s emergency service arrangement, in consultation with law enforcement or authorized municipal personnel and designate the location where the vehicle is to be towed
 - a. The provisions of this section shall not apply when the owner or operator is incapacitated, otherwise unable to summon a tow truck operator or defers to law enforcement or authorized municipal personnel.
 - b. The authority provided to the owner or operator in this section may be superseded by the law enforcement officer or authorized municipal personnel if the tow truck operator of choice cannot respond to the scene in a timely fashion and the vehicle is a hazard, impedes the flow of traffic or may not legally remain in its location in the opinion of law enforcement or authorized municipal personnel.
- C. If a towing company is summoned for an “emergency tow” by the owner or operator of a disabled vehicle, the towing company shall record the first name, last name, and working telephone number of the person who summoned it to the scene; and the make, model, year, vehicle identification number (VIN) and license plate.
- D. If a towing company is summoned for an “emergency tow” by a law enforcement officer or designee of a public safety agency with territorial jurisdiction, the towing company shall record the identity of the law enforcement officer or designee of a public safety agency with territorial jurisdiction, the log number, call number, incident number, or dispatch number assigned to the incident by law enforcement or the public agency.

- E. Prior to towing a vehicle under this section, a towing company shall take photographs, video or other visual documentation to evidence the vehicle damages, debris, damaged cargo or property, complications to recovery process.
- F. The towing company shall maintain record of C., D., and E. above, and provide the records to law enforcement, upon request, from the time it appears at the scene until the time the vehicle is towed and released to a third party, and shall retain that information for three years. The towing company or owner or operator of a tow truck shall make records available for inspection and copying within 48 hours of a written request from law enforcement, [regulatory body], vehicle owner, or agent of vehicle owner.
- G. The towing company must properly secure all towed vehicles and make all reasonable efforts to prevent further damage, weather damage or theft to all towed vehicles, including the vehicle's cargo and contents.

Section 6. Private Property Towing Requirements

- A. The owner of private property may establish a private tow-away zone by posting a sign that is at least eighteen inches by twenty-four inches in size, includes a statement that the property is a tow-away zone, and a description of persons authorized to park on the property.
- B. Prior to towing a vehicle under this section, a towing company shall take photographs, video or other visual documentation to evidence that the vehicle is clearly parked on private property in violation of a private tow-away zone. The towing company shall record the time and date of the photographs and retain the records for at least two years after the date on which the vehicle was towed.
- C. A towing company must ensure that a vehicle towed under this section is taken to a location that is located within twenty-five miles (***Drafting note: depending on the population density of a state, legislators may consider increasing this distance.***) of the location of the private tow-away zone.
- D. If the owner or operator of a vehicle is parked in violation of a private tow-away zone, and arrives while their vehicle is being removed, the towing company shall give the vehicle owner or operator oral or written notification that the vehicle owner or operator may pay a fee (in cash, check, credit card, or debit card) of not more than one-half of the fee for the release of the vehicle. Upon payment of that fee, the towing company shall release the vehicle and give the vehicle owner or operator a receipt showing both the full amount normally assessed and the actual amount received.
- E. The towing company shall provide notice of the tow to law enforcement within two hours of removing the vehicle from private property.
- F. The towing company must properly secure all towed vehicles and make all reasonable efforts to prevent further damage, weather damage or theft to all towed vehicles, including the vehicle's cargo and contents.

Section 7. Estimate Requirements

- A. Prior to attaching a vehicle to the tow truck, if the vehicle owner or operator is present at the time and location of the anticipated tow, the towing company shall furnish the vehicle's owner or operator with a written itemized estimate of all charges and services to be performed. The estimate shall include all of the following:
 - a. The name, address, telephone number, and motor carrier permit number of the towing company.

- b. The license plate number of the tow truck performing the tow.
 - c. An itemized description and cost for all services, including, but not limited to, charges for labor, special equipment, mileage from dispatch to return, and storage fees, expressed as a 24-hour rate.
- B. The tow truck operator shall obtain the vehicle owner or operator's signature (written or electronic) on the itemized estimate and shall furnish a copy to the person who signed the estimate.
- a. The requirements in paragraph (A) of this section may be completed after the vehicle is attached and removed to the nearest safe shoulder or street if done at the request of law enforcement or a public agency, provided the estimate is furnished prior to the removal of the vehicle from the nearest safe shoulder or street.
- C. The towing company shall maintain the records described in this subdivision for three years, and shall make the records available for inspection and copying within 48 hours of a written request from law enforcement, attorney general, district attorney, city attorney's office, vehicle owner, or agent of vehicle owner.

Section 8. Itemized Invoice Requirements

- A. Each itemized invoice for towing costs must be available to vehicle owner or his agent within 24 hours of completed tow and shall contain the following:
- a. The location from which the vehicle was towed;
 - b. The storage location of the vehicle
 - c. The name, address and phone number of the tow truck company;
 - d. A description of the vehicle including but not limited to the make, model, year, vehicle identification number (VIN) and color of the towed vehicle;
 - e. The license plate number and state of registration of the towed vehicle;
 - f. The cost of the original tow;
 - g. The daily storage charge and the number of days the vehicle was stored;
 - h. Each additional service must be set forth individually as a single line item with an explanation and the exact charge for the service. Itemized separately for Truck and Cargo or Tractor, Trailer, and Cargo. A copy of each invoice and receipt submitted by a tow truck operator in accordance with the requirements of this section shall be retained by the towing business for two years from the date of issuance.
 - i. Cost of doing business costs, such as fuel, administration fees, equipment maintenance, etc. may only be determined based on actual costs. Not flat fees or based on percentage of overall invoice total.

Section 9. Notice Requirements

- A. Within 24 hours of commencement of towing, the towing company or storage facility must commence a search of the records of the bureau of motor vehicles to ascertain the identity of the owner and any lienholder of the motor vehicle. No storage charges beyond the initial 24-

hour charge will accrue until the notice requirement has been met. Written notice shall be given directly to the owner by registered mail within five business days. Notice to the owner or insurer shall contain the following:

- a. The date and time the vehicle was towed;
- b. The location from which the vehicle was towed;
- c. The location and address where the vehicle will be located;
- d. The location, address and phone number where payment and business transactions take place if different from business address;
- e. The name, address and phone number of the tow truck company;
- f. The name of the tow truck operator;
- g. A description of the towed vehicle including but not limited to the make, model, year, vehicle identification number and color of the towed vehicle;
- h. The license plate number and state of registration of the towed vehicle.

Section 10. Fees

- A. A towing company shall not charge a fee for towing, clean-up services and/or storage of a vehicle in excess of the greater of the following:
 - a. The fee that would have been charged for that towing, clean-up services and/or storage made at the request of a law enforcement agency under an agreement between a towing company and the law enforcement agency that exercises primary jurisdiction in the city in which the vehicle was, or was attempted to be, removed, or if not located within a city, the law enforcement agency that exercises primary jurisdiction in the county in which the vehicle was, or was attempted to be, removed.
 - b. The fee that would have been charged for that towing, clean-up services and/or storage under the rate approved for that towing company by [regulatory body] for the jurisdiction from which the vehicle was, or was attempted to be, removed.
- B. No charge shall be made in excess of the estimated price without the prior consent of the vehicle owner or operator.
- C. All services rendered by a tow company, including any warranty or zero cost services, shall be recorded on an invoice. The towing company or the owner or operator of a tow truck shall maintain the records for two years, and shall make the records available for inspection and copying within 48 hours of a written request from law enforcement, attorney general, district attorney, or city attorney's office.

Section 11. Release of Vehicle

- A. All towing companies and towing service storage lots must release the vehicle to the owner or the insurance company representative upon receipt of payment.
- B. All towing companies and towing service storage lots must release the vehicle to the insurance company representative when:

- a. the owner's insurance company representative presents proof that the vehicle is insured with the company; or
 - b. the vehicle owner approves release of the vehicle to the insurance company representative.
- C. All towing businesses must be open between the hours of 7:00 AM and 6:00 PM Monday through Friday and hold reasonable hours on the weekend and holidays for purposes of payment and release of vehicles.
- D. Acceptable methods of payment must include but are not limited to cash, insurance check, credit card, debit card, certified check or money order.
- E. The owner or the owners' insurance company representative shall have the right to inspect the vehicle before accepting its return.

Section 12. License Requirements

- A. The [regulatory body] shall approve an application for a towing company certificate or certificate renewal, and shall issue or renew a certificate, provided the applicant submits to the [regulatory body] a completed application on a form prescribed by the [regulatory body], and also pays the application fee set by the [regulatory body].
- B. An application shall include:
- a. The applicant's workers' compensation coverage.
 - b. The applicant's unemployment compensation coverage.
 - c. The financial responsibility of an applicant relating to liability insurance or bond requirements according to state XXXX.
- C. The applicant must not have been convicted of fraud or had a civil judgment rendered against it for fraud nor has any officer, director or partner of an applicant that is a corporation or partnership during officer's, director's or partner's tenure.

Section 13. Prohibited Acts

- A. It shall be unlawful for any person or entity conducting a towing company or for any person acting on his/her behalf:
- a. to falsely represent, either expressly or by implication, that the towing business represents or is approved by any private organization which provides emergency road service for disabled motor vehicles.
 - b. to require an owner/operator of a motor vehicle involved in an accident or breakdown, to preauthorize more than 24 hours of storage, tear down and/or repair work as a condition to providing towing service for the vehicle.
 - c. to charge more than one (1) towing fee when the owner/operator of a disabled vehicle requests transport of the vehicle to a repair facility owned or operated by the person or entity conducting the tow.
- B. Tow truck operators shall not tow vehicles to a repair facility unless the owner or the owner's designated representative gives written consent before removal of the vehicle from the scene of the accident.

- C. No towing service storage lot may refuse to release a vehicle to the owner or the owners' insurer upon-tender of full payment along with an itemized receipt for all lawful charges made in connection with the towing and storage of a vehicle.
- D. Prior to payment of fees and release of a vehicle, no towing service provider may refuse the right of physical inspection of the towed vehicle by the owner, or the owners' insurer.
- E. No towing service storage lot may charge storage for any day where release of the stored vehicle or access to the stored vehicle for inspection by the owner or auto insurer is not permitted by the provider.
- F. It shall be a violation of this act for any towing company or towing service storage lot to submit false or fraudulent information to obtain a towing license.

Section 14. Penalties and Enforcement

- A. Drafting Note: Legislators should consider drafting rules that establish rules that allow for the [regulatory body] to be responsible for the administration and enforcement of all towing businesses and towing service storage lots in the state of XXXX.
- B. The [regulatory body] shall have authority for the inspection of all towing businesses.
- C. All suspected violations will be filed with the [regulatory body] who shall investigate such complaint and take all proper and necessary remedial action.
- D. A person who willfully violates the provisions set forth by this act is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.
- E. Any towing company or towing service storage lot that submits false or fraudulent information to obtain a towing license will have their license automatically revoked.