

March 1, 2018

Mr. Chairman and members of the committee,

Thank you for the opportunity to lend NAMIC's comments regarding the Consumer Protection Towing Model Act.

NAMIC is the largest property/casualty insurance trade association in the country, with more than 1,400 member companies representing 39 percent of the total market. NAMIC supports regional and local mutual insurance companies on main streets across America and many of the country's largest national insurers.

NAMIC member companies serve more than 170 million policyholders and write more than \$230 billion in annual premiums. Our members account for 54 percent of homeowners, 43 percent of automobile, and 32 percent of the business insurance markets.

We are very supportive of the Committee's efforts, and especially those of sponsor Rep. Lehman, to find an equitable and meaningful reform measure for consideration in the states.

NAMIC does have concern that the measure's iteration dated 2-12-18 for your consideration today is markedly different from the version contemplated at the last meeting that held wide support. There are important components that have been released from this latest version that we are confident are essential in any measure to be held as the model for states to adopt nationwide.

We have been asked to provide proposed amendments to the Committee to reflect those components as well as language to address concerns raised by some in the towing community about physical time spent on the road. We submit this new language as a step toward a shared goal of safety as well as to promote equity and consumer protection in the market. I have enclosed with this letter a version of the draft with our proposed amendments inserted.

NAMIC asserts that for the NCOIL model to be appropriately reformative for all states it should include these amendments, especially sections on estimates and fee controls as consumer protection measures. For this reason, we ask the Committee to move this model forward only if those protections are included.

Sincerely,



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NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

Consumer Protection Towing Model Act

To be Considered by The NCOIL Property & Casualty Committee on March 2, 2018

Sponsored by Rep. Matt Lehman (IN)

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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, for consideration, promises to assist its members or subscribers in matters relating to motor travel or the operation, use, or maintenance of a motor vehicle, by supplying services, which may include towing service, emergency road service, or

indemnification service. The term includes: a motor vehicle dealer; or an insurance company; operating as an automobile club to provide any of the services described above.

“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.

“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.

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

“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.” The term includes towing for law enforcement purposes that is performed by a towing company under a contract with the State, a local unit, or a law enforcement agency of the State or local unit; or on behalf of the State, a local unit, or a law enforcement agency of the State or local unit.

“Motor vehicle” – any vehicle that is manufactured primarily for use on public streets, roads and highways (not including a vehicle operated exclusively on a rail or rails); and has at least four (4) wheels.

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

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

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

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

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

“Storage facility” – any lot, facility, or other property used to store motor vehicles that have been removed from another location by a tow truck.

“Tow truck” - a motor vehicle equipped to provide any form of towing service, including crane service or flat bed service.

“Tow truck operator” – an individual who operates a tow truck as an employee or agent of a towing company.

“Towing company” - any service, company or business that tows or otherwise moves motor vehicles by means of a tow truck or owns or operates a storage lot. A towing business, service or company shall not include an automobile club, car dealership or insurance company. The term includes a tow truck operator acting on behalf of a towing company when appropriate in the context.

Section 4. General Provisions

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

The provisions of this Act 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.

In addition to any penalty imposed under Section 12 of this Act, any for-hire motor carrier engaged in the towing of motor vehicles who violates this Act is subject to sanctions imposed by the [regulatory body] in the State of XXXX.

Section 5. Emergency Towing

~~A.~~ A. This Section applies to a towing company that engages in, or offers to engage in, emergency towing. 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, and complications to recovery process unless directed not to do so by a law enforcement officer.

B. Except as provided in Section 5(C), a towing company shall not stop, or cause a person to stop, at the scene of an accident or near a disabled motor vehicle:

- (1) if there is an injury as the result of an accident; or
- (2) for the purpose of:
 - (i) soliciting an engagement for emergency towing services;
 - (ii) moving a motor vehicle from a public street, road, or highway; or
 - (iii) accruing charges in connection with an activity in subsection (i) or (ii)

C. A towing company may stop, or cause a person to stop, at the scene of an accident or near a disabled motor vehicle under the circumstances, or for any of the purposes, described in Section 5(B) if:

(1) the towing company is requested to stop or to perform a towing service by a law enforcement officer or by authorized state, county, or municipal personnel;

(2) the towing company is summoned to the scene or requested to stop by the owner or operator of a disabled vehicle; or

(3) the owner of a disabled motor vehicle has previously provided consent to the towing company to stop or perform a towing service.

D. Except as provided in Sections 5(E) and (F), the owner or operator of a disabled motor vehicle may, in consultation with law enforcement or with authorized state, county, or municipal personnel (if appropriate):

(1) summon to the disabled motor vehicle's location the towing company of the owner's or operator's choice, either directly or through an insurance company's or an automobile club's emergency service arrangement; and

(2) designate the location to which the disabled motor vehicle is to be towed. However, if the location designated by the owner or operator is not a storage facility owned or operated by the towing company, the owner or operator must make arrangements for payment to the towing company at the time the towing company is summoned.

E. Section 5(D) does not apply:

(1) in any case in which the owner or operator of a disabled motor vehicle:

(a.) is incapacitated or otherwise unable to summon a towing company; or

(b.) defers to law enforcement or to authorized state, county, or municipal personnel as to:

(i) the towing company to be summoned; or

(ii) the location to which the disabled motor vehicle is to be towed; or

(2) in the event of a declared emergency

F. The authority of an owner or operator of a disabled vehicle to summon the towing company of the owner's or operator's choice under Section 5(D) shall be superseded by a law enforcement officer or by authorized State, county, or municipal personnel if the towing company of choice of the owner or operator:

(1) is unable to respond to the location of the disabled motor vehicle in a timely fashion; and

(2) the disabled motor vehicle is a hazard; impedes the flow of traffic; or may not legally remain in its location in the opinion of the law enforcement officer or authorized state, county, or municipal personnel.

G. If a disabled motor vehicle is causing or poses a safety hazard to any of the parties at the scene of the disabled motor vehicle, the disabled motor vehicle may be moved by a towing company to a safe location after being released by a law enforcement officer or by authorized state, county, or municipal personnel for that purpose.

H. If a towing company is summoned for emergency towing by the owner or operator of a disabled motor vehicle, the towing company shall make a record, to the extent available, consisting of:

(1) the first and last name, and telephone number of the person who summoned the towing company to the scene;

(2) the make, model year, vehicle identification number, and license plate number of the disabled motor vehicle.

I. If a towing company is summoned for emergency towing by a law enforcement officer or by authorized state, county, or municipal personnel, the towing company shall make a record, to the extent available, consisting of:

(1) the identity of the law enforcement agency or authorized state, county, or municipal agency, requesting the emergency towing;

(2) the make, model, year, vehicle identification number, and license plate number of the disabled motor vehicle.

J. A towing company shall maintain a record created under Sections 5(H) or (I) and provide said record to a law enforcement agency upon request from the time the towing company appears at the scene of the disabled motor vehicle until the time the motor vehicle is towed and released to

an authorized third party. A towing company shall also retain a record created under Sections 5(H) or (I) for a period of two (2) years from the date the disabled vehicle was towed from scene and, throughout said two (2) year period, make the record available for inspection and copying, not later than forty-eight (48) hours after receiving a written request from a law enforcement agency, the attorney general, the disabled motor vehicle's owner, or an authorized agent of the disabled motor vehicle's owner.

K. A towing company that performs emergency towing under this Act must properly secure all towed motor vehicles and take all reasonable efforts to prevent further damage (including weather damage) or theft of all towed motor vehicles, including a motor vehicle's cargo and contents.

Section 6. Private Property Towing

~~A.~~ A. This Section applies to a towing company that engages in, or offers to engage in, private property towing. This Section does not apply to the towing of a motor vehicle from a tow-away zone that is not located on private property. 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, and complications to recovery process unless directed not to do so by a law enforcement officer.

B. The owner of private property may establish a tow-away zone on the owner's property. A property owner that establishes a tow-away one under this Section shall post at the location of the tow-away zone a sign that is clearly visible to the public. The sign must include a statement that the area is a tow-away zone, and a description of any persons authorized to park in the area.

C. A towing company that tows a motor vehicle under this Section shall ensure that the motor vehicle is towed to a storage facility that is located within twenty-five (25) miles of the location of the tow-away zone from which the motor vehicle was removed, or, if there is no storage facility located within twenty-five (25) miles of the location of the tow-away zone, to the storage facility nearest to the tow-away zone. ***Drafting Note: Depending on the population density of a State, legislators may consider increasing this distance.***

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

E. Not later than two (2) hours after completing a tow of a motor vehicle from private property, a towing company shall provide notice of the towing to the law enforcement agency having jurisdiction in the location of the private property.

F. A towing company that performs private property towing under this Section shall properly secure all towed motor vehicles, and take all reasonable efforts to prevent further damage

(including weather damage) or theft of all towed motor vehicles, including a motor vehicle's cargo and contents.

G. This Section does not affect a private property owner's rights under [insert State Statute with respect to abandoned motor vehicles] with respect to abandoned vehicles on the property owner's property.

Section 7. Estimates and Invoices for Towing Services

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. Prior to attaching a vehicle to a tow truck, the towing company shall furnish the vehicle owner at the scene of a disabled vehicle a rate sheet listing all rates for towing services including, but not limited to, all rates for towing and associated fees, cleanup charges, labor, storage or any other services provided by the towing company. No charges in excess of what's listed shall be authorized without the consent of the owner.

d. In lieu of section A(c) above, prior to attaching a vehicle to a tow truck, the towing company may furnish 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.

e. 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, the vehicle operator, or tower provided that the estimate is furnished prior to the removal of the vehicle from the nearest safe shoulder or street.

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.

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.

AD. An itemized invoice of actual towing charges assessed by a towing company for a completed tow shall be made available to the owner of the motor vehicle or the owner's authorized agent, which may be an insurance company, not later than one (1) business day after the tow is completed, or the towing company has obtained all necessary information to be included on the invoice, including any charges submitted by subcontractors used by the towing company to complete the tow – whichever occurs later.

BE. The itemized invoice required by this Section must contain the following information:

- a. the location from which the motor vehicle was towed;
- b. the location to which the motor vehicle was towed;
- c. the name, address, and telephone number of the towing company;
- d. a description of the towed motor vehicle, including the:
 - (i) make;
 - (ii) model;
 - (iii) year;
 - (iv) vehicle identification number; and
 - (v) color
- e. the license plate number and state of registration for the towed motor vehicle;
- f. the cost of the original towing service;
- g. the cost of any vehicle storage fees, expressed as a daily rate;

- h. other fees, including documentation fees and motor vehicle search fees;
- i. the costs for services that were performed under a warranty or that were otherwise performed at no cost to the owner of the motor vehicle.

~~CF~~. Any service or fee in addition to the services or fees described in Section 7B, must be set forth individually as a single line item on the invoice required by this section, with an explanation and the exact charge for the service or the exact amount of the fee.

~~DG~~. A copy of each invoice and receipt submitted by a tow truck operator in accordance with Section --- shall be retained by the towing company for a period of two (2) years from the date of issuance. Throughout said two (2) year period, the copy of each invoice and receipt shall be made available for inspection and copying not later than forty-eight (48) hours after receiving a written request for inspection from:

- a. a law enforcement agency;
- b. the attorney general;
- c. the prosecuting attorney or city attorney having jurisdiction in the location of any of the towing company's xxx State business locations;
- d. the disabled motor vehicle's owner; or
- e. the agent of the disabled motor vehicle's owner.

Section 8. Notice Requirements

A. Within 24 hours of commencement of towing, the towing company or storage facility must commence a search of national data bases, including a data base of vehicle identification numbers, to attempt to obtain the last state of record of the vehicle to ascertain the identity of the name and address of the person who owns or holds a lien on the vehicle. No storage charges beyond the initial 24-hour charge will accrue until the notice requirement has been met.

B. Upon obtaining the name and address of the owner or lienholder of the motor vehicle, written notice shall be given directly to the owner or lienholder, and, if known to the towing service or storage facility, the insurer of the vehicle, if the vehicle is covered by an active policy of insurance, 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 name, address, and telephone number 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 towing company or storage facility;

f. A description of the towed vehicle including but not limited to the make, model, year, vehicle identification number and color of the towed vehicle;

g. The license plate number and state of registration of the towed vehicle.

C. If the search result under Section 8(A) is a corporately owned vehicle then the above notice shall be sent to the state corporate address listed on the registration. The vehicle must be held for up to 60 days in order for the vehicle owner to retrieve the towed vehicle. The rate charged must be comparative the standard daily rate. If at any time more than one vehicle owned by the same corporation is under your control each vehicle shall be processed under a separate transaction.

Section 9. Releasing Towed Motor Vehicles

A. This section applies to towing companies that tow and store motor vehicles, and to storage facilities that store motor vehicles towed by a towing company, regardless of whether the towing company and the storage facility are affiliates.

B. Upon payment of all costs incurred against a motor vehicle that is towed and stored under this Act, the towing company or storage facility shall release the motor vehicle to:

a.) a properly identified person who owns or holds a lien on the motor vehicle; or

b.) a representative of the insurance company that insures the motor vehicle, if the vehicle is covered by an active policy of insurance and the insurance representative provides proof of such, or, the owner of the motor vehicle approves release of the vehicle to the insurance company representative.

C. An owner, a lienholder, or an insurance company representative has the right to inspect a motor vehicle before accepting return of the motor vehicle under this Section.

D. A towing service or storage yard must accept payment made by any of the following means from a person seeking to release a motor vehicle under this Section: cash; insurance check; credit card, debit card, money order or certified check.

E. Upon receiving payment of all costs incurred against a motor vehicle, a towing service or storage yard shall provide to the person making payment an itemized receipt that includes the information set forth in Section 7, to the extent the information is known or available.

F. A towing service or storage yard must be open for business and accessible by telephone during normal business hours. A towing service or storage yard must provide a telephone number that is available on a twenty-four (24) hour basis to receive calls and messages from callers, including calls made outside of normal business hours. All calls made to a towing service or storage yard must be

returned within twenty-four (24) hours from the time received. However, if adverse weather, an act of God, an emergency situation, or another act over which

the towing service or storage yard has no control prevents the towing service or storage yard from returning calls within twenty-four (24) hours, the towing service or storage yard shall return all calls received as quickly as possible.

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 upon written request from law enforcement.

Section ~~10~~11. Certification Requirements

Drafting Note: States that already have a towing certification process in place may wish to supplement its relevant insurance code or regulations with this Section.

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. If applicable by state law, 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, in the past 5 years, 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 ~~112~~. Prohibited Acts

A. A towing company shall not do any of the following: a. falsely represent, either expressly or by implication, that the towing company represents or is approved by any organization which provides emergency road service for disabled motor vehicles.

b. require an owner/operator of a disabled motor vehicle, to preauthorize more than 24 hours of storage, or repair work as a condition to providing towing service for the disabled vehicle.

c. charge more than one (1) towing fee when the owner/operator of a disabled vehicle requests transport of the vehicle be towed to a repair facility owned or operated by the towing company

d. tow a motor vehicle to a repair facility, unless either the owner of the motor vehicle or the owner's designated representative gives consent, and, the consent is given before the motor vehicle is removed from the location from which it is to be towed. ~~However,~~

~~the prohibition set forth in this subsection does not apply in any case in which a towing company tows a motor vehicle to a storage facility that includes a repair facility on the same site. This prohibition does not apply to a storage yard that has a repair facility on the same site so long as the vehicle is not moved into the repair facility without consent as stated above.~~

B. A towing company or a storage facility shall not do any of the following:

a. upon payment of all costs incurred against a motor vehicle that is towed and stored under this Act, refuse to release the motor vehicle to a properly identified person who owns or holds a lien on the motor vehicle, or a representative of the insurance company that insures the motor vehicle, if the vehicle is covered by an active policy of insurance.

(i) However, a towing company or storage facility shall not release a motor vehicle in any case in which a law enforcement agency has ordered the motor vehicle not to be released, or in any case in which ~~the motor vehicle cannot be released because of pending litigation~~ a judicial order countermands its release.

b. refuse to permit a properly identified person who owns or holds a lien on a motor vehicle, or a representative of the insurance company that insures the motor vehicle, if the vehicle is covered by an active policy of insurance, to inspect the motor vehicle before all costs incurred against the motor vehicle are paid or the motor vehicle is released.

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

Section 12. Penalties and Enforcement

Drafting Note: Legislators should consider provisions that establish rules that allow for the [regulatory body] to be responsible for the administration and enforcement, including inspections, investigations, penalties, and license revocations, of all towing businesses and towing service storage lots in the state of XXXX.

Drafting Note: Legislators should further consider provisions allowing for an independent cause of action for insurers to recover a motor vehicle that has been towed and subject to an unreasonable billing by the tower for any excessive towing/storage charges.