

The Voice of America's Towing Industry

# TOWING & RECOVERY ASSOCIATION OF AMERICA, INC.®

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June 25, 2018

Via Electronic Delivery

The Honorable Matt Lehman  
NCOIL  
Property-Casualty Insurance Committee  
2317 Route 34, Suite 2B  
Manasquan, New Jersey 08736

Re: NCOIL Model Consumer Protecting Towing Act

Dear Representative Lehman:

Thank you for the recent opportunity to meet with you and other NCOIL and NAMIC representatives to discuss the towing industry's concerns with the draft Consumer Protection Towing Model Act. We were encouraged by the open dialog and frank discussions during the meeting. When attempting to impose any regulation on a given industry it is vital that you first understand that industry and be cognizant of the resulting effects. TRAA truly appreciates your time and consideration as we have worked through the process over the past year.

We recently received the revised draft of the model, and in reviewing the document, we have a few comments and concerns. Please see our comments below:

## **Section 5. Emergency Towing**

A. "This Section applies to a towing company that engages in, or offers to engage in, emergency towing. Prior to removing a vehicle from a tow truck 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."

### **TRA's Comments**

The requirement to take photos, video or other visual documentation on scene is unsafe and in direct contradiction with the U.S. Department of Transportation's National Traffic Incident Management (TIM) protocols and procedures. The safety of all first responders on scene, not just the tow operator, and would be compromised by this requirement.

### **Recommended Action**

To balance the desired outcome with these safety concerns, we strongly request that the wording be changed to: ~~Prior to removing a vehicle from a tow truck~~ "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 **on scene if it can be done safely. If the scene does not allow, then photographs, video or other visual documentation shall be taken upon arrival at the tow facility, tow destination or once the vehicle is moved to a safe location.**"

## **Section 6. Private Property Towing**

### **TRA's Comments**

There needs to be a distinction between residential private property and commercial private property towing. Each has its own variants that need to be taken into consideration.

### Recommended Action

To better reflect the applicable services, we recommend correcting the section title to:  
"Section 6. **Commercial** Private Property Towing"

### Section 6. **Commercial** Private Property Towing

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 removing a vehicle from a tow truck 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."

### TRAA's Comments

As with Section 5, TRAA is opposed the photographic, video or other visual documentation at the scene. Private property towing can be dangerous. Often times the tow operator can encounter a hostile and aggressive vehicle owner.

### Recommended Action

To balance the desired outcome with these safety concerns, we strongly request that the wording be changed to:  
"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 removing a vehicle from a tow truck~~ 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 **on scene if it can be done safely. If the scene does not allow, then photographs, video or other visual documentation shall be taken upon arrival at the tow facility, tow destination or once the vehicle is moved to a safe location.**"

### Section 6. **Commercial** Private Property Towing

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."

### TRAA's Comments

There needs to be clarification for the posting of signs. This makes sense and TRAA would recommend proper signage for commercial locations. The sign requirement should include the property owner management and contact information. In the case of private property, the sign requirement would be impractical.

### Recommended Action

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, **pertinent contact information**, and a description of any persons authorized to park in the area."

### Section 7 – Estimates and Invoices for Towing Services

A. "Prior to attaching a vehicle to a tow truck, the towing company shall furnish the vehicle owner, if the owner is present at the scene of a disabled vehicle, a rate sheet listing all rates for towing services included but not limited to, all rates for towing and associated fees, cleanup charges, labor, storage, and any other services provided by the towing company. A charge in excess of what is reflected on the rate sheet for any service shall be deemed excessive as described in Section 10A. The rate sheet shall also be posted at the towing company's place of business and be made available upon request to consumers."

### **TRAA's Comments**

Continued safety concerns from sections 5 and 6. It was also our understanding that this section is meant to apply to emergency non-consensual towing. This needs to be clarified.

### **Recommended Action**

To balance the desired outcome with these safety concerns, we strongly request that the wording be changed to: "Prior to attaching a vehicle to a tow truck **in an emergency non-consensual situation, if it can be done safely**, the towing company shall furnish the vehicle owner, if the owner is present at the scene of a disabled vehicle, a rate sheet listing all rates for towing services included but not limited to, all rates for towing and associated fees, cleanup charges, labor, storage, and any other services provided by the towing company. A charge in excess of what is reflected on the rate sheet for any service shall be deemed excessive as described in Section 10A. The rate sheet shall also be posted at the towing company's place of business and be made available upon request to consumers."

### **Section 8 – Notice Requirements**

#### **TRAA's Comments**

Tow companies do not have direct access to the National Motor Vehicle Title Information System (NMVTIS). All search requests must be performed by an authorized third-party company. There are also states that do not provide this information electronically. In those instances, the tow company may be required to submit a written request to that state. This cannot be accomplished within the time frame proposed. Furthermore, many states already have a notice requirement timeline in place. Each state should set the number of days required for the notice requirement.

Additionally, there is no provision for the tow company to obtain the insurance company information in Section 8, A. If required, this needs to be included in Section 8, B.

There also needs to be a provision for vehicles that have no reportable owner information or if the tow company has made a reasonable effort and is unable to obtain this information.

#### **Recommended Action**

A. Within two (2) business days of commencement of towing, the towing company or storage facility must commence a search of the National Motor Vehicle Title Information Systems data bases, to obtain the last state of record of the vehicle, **if a record is available**, and then obtain the most current name and address of the person who owns ~~or~~ **and** holds a lien, **if applicable**, from the State's agency responsible for maintaining motor vehicle title data or an authorized vendor providing real time access to that state database, by electronic means, if available. No storage charges beyond the initial two (2) business days charge will accrue until the notice requirement has been met, **unless the ownership information could not reasonably be obtained within that time. If a state does not have a mechanism to provide the above requested information, the tow company will make all reasonable efforts, within its means, to obtain the vehicle owner and lienholder information.**

B. Upon obtaining the name and address of the owner and lienholder of the motor vehicle, written notice shall be given directly to the owner and lienholder, and, if known to the towing service or storage facility, the insurer of the vehicle, by certified mail with delivery confirmation within five (5) business days, unless the ownership information could not reasonably be obtained within that time. Notice to the owner or insurer shall contain the following:

### **Section 9 – Releasing Towed Motor Vehicles**

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."

#### **TRAA's Comments**

We are opposed to the credit card, debit card, money order payment acceptance requirement. The majority of non-consensual towing is a result of an incident that may not be the vehicle operator's fault, and/or he/she may be uninsured, unlicensed, or the vehicle may have been towed due to criminal activity. This results in a higher non-payment rate for non-consensual services. Credit card and debit card charges can be disputed by a disgruntled vehicle owner even when the tow company charges are legitimate. There is also a considerable cost to the tow company in credit card processing fees, etc. that are not factored into the original tow invoice. Note, many states already have towing regulations in place that address the release of vehicles. Any additional legislation would need to be compared to existing laws to prevent conflicts.

#### **Recommended Action**

We strongly request that the wording be changed to:

"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."

#### **Section 40 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.

#### **TRAA's Comments**

The use of the word certification is confusing. Certification within the towing industry refers to job related knowledge-based certification. Please refer to the National Driver Certification Program® for more information (<http://traaonline.com/certification/>).

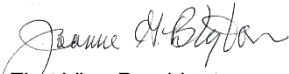
#### **Recommended Action**

We recommend that the title be changed to: **Certification Tow Company Certificate Requirements**

In closing, we are hopeful that we can come to a mutually agreeable model that will address our safety and other concerns on behalf of the towing industry. Please feel free to contact the TRAA Office with any questions.

Sincerely,

  
President

  
First Vice-President

TRAA Legislative Advocacy Network Chairperson

cc: William Melofchik- Legislative Director