

## Amendment No. 411

Senate Amendment to Senate Bill No. 428

(BDR 58-1074)

**Proposed by:** Senate Committee on Transportation**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

DLJ/WLK



Date: 4/16/2013

S.B. No. 428—Revises provisions relating to tow cars. (BDR 58-1074)



## SENATE BILL NO. 428—COMMITTEE ON TRANSPORTATION

MARCH 25, 2013

Referred to Committee on Transportation

SUMMARY—Revises provisions relating to tow cars. (BDR 58-1074)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to tow cars; requiring operators of tow cars to accept certain forms of payment; ~~authorizing the Nevada Transportation Authority to investigate, suspend, revise or revoke certain rates relating to nonconsensual towing;~~ and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law governs the authority of the Nevada Transportation Authority to set the rate for services provided by operators of tow cars. (NRS 706.445-706.451) **Section 2** of this bill provides that operators of tow cars are required to accept cash, money order, credit card or debit card or any other electronic transfer of money as payment for towing services. **Section 3** of this bill authorizes an operator of a tow car to enter into a contract with an issuer of credit cards or debit cards to provide for the acceptance of such cards by the operator of a tow car for the payment of rates, taxes and charges. **Section 3** also authorizes the Authority to prescribe by regulation or order the maximum fee that an operator of a tow car may charge a customer for using a credit card or debit card to make payment.

~~Existing law limits the power of the Authority to investigate, suspend, revise or revoke any rate that is subject to the approval of the Authority. (NRS 706.322) Section 6 of this bill provides that such limitations do not apply to any rate for towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle.~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 706 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** *An operator of a tow car shall accept cash, money order, credit card or debit card or any other electronic transfer of money as payment for towing services. As used in this section "electronic transfer of money" has the meaning ascribed to it in NRS 463.01473.*

1       **Sec. 3. 1. An operator of a tow car may enter into a contract with an**  
2 **issuer of credit cards or debit cards to provide for the acceptance of credit cards**  
3 **or debit cards by the operator of a tow car for the payment of rates, fares and**  
4 **charges owed to the operator of a tow car.**

5       **2. The Authority may prescribe by regulation or order the maximum fee**  
6 **that an operator of a tow car may charge a customer for the convenience of using**  
7 **a credit card or debit card to make payment to the operator of a tow car. In**  
8 **prescribing such fees, the Authority may consider the expenses incurred by the**  
9 **operator of a tow car in accepting payment by a credit card or debit card,**  
10 **including, without limitation:**

11       **(a) Costs of required equipment and its installation;**

12       **(b) Administrative costs of processing credit card or debit card transactions;**  
13 **and**

14       **(c) Fees paid to issuers of credit cards or debit cards.**

15       **3. An issuer shall not, by contract or otherwise:**

16       **(a) Prohibit an operator of a tow car from charging and collecting a fee**  
17 **authorized pursuant to subsection 2; or**

18       **(b) Require an operator of a tow car to waive the right to charge and collect**  
19 **a fee authorized pursuant to subsection 2.**

20       **4. As used in this section, "issuer" means a business organization, financial**  
21 **institution or a duly authorized agency of a business organization or financial**  
22 **institution which:**

23       **(a) Issues a credit card or debit card; or**

24       **(b) Enters into a contract with an operator of a tow car or other person to**  
25 **enable or facilitate the acceptance of a credit card or debit card.**

26       **Sec. 4. NRS 706.011 is hereby amended to read as follows:**

27       706.011 As used in NRS 706.011 to 706.791, inclusive, **and sections 2 and 3**  
28 **of this act**, unless the context otherwise requires, the words and terms defined in  
29 NRS 706.013 to 706.146, inclusive, have the meanings ascribed to them in those  
30 sections.

31       **Sec. 5. NRS 706.286 is hereby amended to read as follows:**

32       706.286 1. When a complaint is made against any fully regulated carrier or  
33 operator of a tow car by any person, that:

34       (a) Any of the rates, tolls, charges or schedules, or any joint rate or rates  
35 assessed by any fully regulated carrier or by any operator of a tow car for towing  
36 services performed without the prior consent of the owner of the vehicle or the  
37 person authorized by the owner to operate the vehicle are in any respect  
38 unreasonable or unjustly discriminatory;

39       (b) Any of the provisions of NRS 706.445 to 706.453, inclusive, **and sections**  
40 **2 and 3 of this act** have been violated;

41       (c) Any regulation, measurement, practice or act directly relating to the  
42 transportation of persons or property, including the handling and storage of that  
43 property, is, in any respect, unreasonable, insufficient or unjustly discriminatory; or

44       (d) Any service is inadequate,  
45       ➤ the Authority shall investigate the complaint. After receiving the complaint, the  
46 Authority shall give a copy of it to the carrier or operator of a tow car against whom  
47 the complaint is made. Within a reasonable time thereafter, the carrier or operator  
48 of a tow car shall provide the Authority with its written response to the complaint  
49 according to the regulations of the Authority.

50       2. If the Authority determines that probable cause exists for the complaint, it  
51 shall order a hearing thereof, give notice of the hearing and conduct the hearing as  
52 it would any other hearing.

3. No order affecting a rate, toll, charge, schedule, regulation, measurement, practice or act complained of may be entered without a formal hearing unless the hearing is dispensed with as provided in NRS 706.2865.

**Sec. 6.** ~~NRS 706.323 is hereby amended to read as follows:~~

~~706.323 1. Except as otherwise provided in subsection 2, the Authority may not investigate, suspend, revise or revoke any rate that is subject to the approval of the Authority pursuant to NRS 706.221 and proposed by a common motor carrier or contract motor carrier because the rate is too high or too low and therefore unreasonable if:~~

~~(a) The motor carrier notifies the Authority that it wishes to have the rate reviewed by the Authority pursuant to this subsection; and~~

~~(b) The rate resulting from all increases or decreases within 1 year is not more than 10 percent above or 10 percent below the rate in effect 1 year before the effective date of the proposed rate.~~

~~2. This section does not limit the authority of the Authority to investigate, suspend, revise or revoke a proposed rate if the rate would [violate]:~~

~~(a) Violate the provisions of NRS 706.151 [ ] ; or~~

~~(b) Increase the rates charged or to be charged for towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle. (Deleted by amendment.)~~

**Sec. 7.** NRS 706.4463 is hereby amended to read as follows:

706.4463 1. In addition to the other requirements of this chapter, each operator of a tow car shall, to protect the health, safety and welfare of the public:

(a) Obtain a certificate of public convenience and necessity from the Authority before the operator provides any services other than those services which the operator provides as a private motor carrier of property pursuant to the provisions of this chapter;

(b) Use a tow car of sufficient size and weight which is appropriately equipped to transport safely the vehicle which is being towed; and

(c) Comply with the provisions of NRS 706.011 to 706.791, inclusive **H, and sections 2 and 3 of this act.**

2. A person who wishes to obtain a certificate of public convenience and necessity to operate a tow car must file an application with the Authority.

3. The Authority shall issue a certificate of public convenience and necessity to an operator of a tow car if it determines that the applicant:

(a) Complies with the requirements of paragraphs (b) and (c) of subsection 1;

(b) Complies with the requirements of the regulations adopted by the Authority pursuant to the provisions of this chapter;

(c) Has provided evidence that the applicant has filed with the Authority a liability insurance policy, a certificate of insurance or a bond of a surety and bonding company or other surety required for every operator of a tow car pursuant to the provisions of NRS 706.291; and

(d) Has provided evidence that the applicant has filed with the Authority schedules and tariffs pursuant to subsection 2 of NRS 706.321.

4. An applicant for a certificate has the burden of proving to the Authority that the proposed operation will meet the requirements of subsection 3.

5. The Authority may hold a hearing to determine whether an applicant is entitled to a certificate only if:

(a) Upon the expiration of the time fixed in the notice that an application for a certificate of public convenience and necessity is pending, a petition to intervene has been granted by the Authority; or

(b) The Authority finds that after reviewing the information provided by the applicant and inspecting the operations of the applicant, it cannot make a

determination as to whether the applicant has complied with the requirements of subsection 3.

**Sec. 7.5. NRS 706.4479 is hereby amended to read as follows:**

706.4479 1. If a motor vehicle is towed at the request of someone other than the owner, or authorized agent of the owner, of the motor vehicle, the operator of the tow car shall, in addition to the requirements set forth in the provisions of chapter 108 of NRS:

(a) Notify the registered and legal owner of the motor vehicle by certified mail not later than 21 days after placing the motor vehicle in storage if the motor vehicle was towed at the request of a law enforcement officer following an accident involving the motor vehicle or not later than 15 days after placing any other vehicle in storage:

(1) Of the location where the motor vehicle is being stored;

(2) Whether the storage is inside a locked building, in a secured, fenced area or in an unsecured, open area;

(3) Of the charge for towing and storage;

(4) Of the date and time the vehicle was placed in storage;

(5) Of the actions that the registered and legal owner of the vehicle may take to recover the vehicle while incurring the lowest possible liability in accrued assessments, fees, penalties or other charges; and

(6) Of the opportunity to rebut the presumptions set forth in NRS 487.220 and 706.4477.

(b) If the identity of the registered and legal owner is not known or readily available, make every reasonable attempt and use all resources reasonably necessary, as evidenced by written documentation, to obtain the identity of the owner and any other necessary information from the agency charged with the registration of the motor vehicle in this State or any other state within:

(1) Twenty-one days after placing the motor vehicle in storage if the motor vehicle was towed at the request of a law enforcement officer following an accident involving the motor vehicle; or

(2) Fifteen days after placing any other motor vehicle in storage.

➤ The operator shall attempt to notify the owner of the vehicle by certified mail as soon as possible, but in no case later than 15 days after identification of the owner is obtained for any motor vehicle.

2. If an operator includes in the operator's tariff a fee to be charged to the registered and legal owner of a vehicle for the towing and storage of the vehicle, the fee may not be charged:

(a) For more than 21 days after placing the motor vehicle in storage if the motor vehicle was towed at the request of a law enforcement officer following an accident involving the motor vehicle; or

(b) For more than 15 days after placing any other vehicle in storage,

➤ unless the operator complies with the requirements set forth in subsection 1.

3. If a motor vehicle that is placed in storage was towed at the request of a law enforcement officer following an accident involving the motor vehicle ~~or~~ after having been stolen and subsequently recovered, the operator shall not:

(a) Satisfy any lien or impose any administrative fee or processing fee with respect to the motor vehicle for the period ending 4 business days after the date on which the motor vehicle was placed in storage; or

(b) Impose any fee relating to the auction of the motor vehicle until after the operator complies with the notice requirements set forth in NRS 108.265 to 108.367, inclusive.

1       **Sec. 8.** NRS 706.4483 is hereby amended to read as follows:

2       706.4483 1. The Authority shall act upon complaints regarding the failure  
3 of an operator of a tow car to comply with the provisions of NRS 706.011 to  
4 706.791, inclusive, **H**, and sections 2 and 3 of this act.

5       2. In addition to any other remedies that may be available to the Authority to  
6 act upon complaints, the Authority may order the release of towed motor vehicles,  
7 cargo or personal property upon such terms and conditions as the Authority  
8 determines to be appropriate.

9       **Sec. 9.** NRS 706.453 is hereby amended to read as follows:

10       706.453 The provisions of NRS 706.445 to 706.451, inclusive, and sections 2  
11 and 3 of this act do not apply to automobile wreckers who are licensed pursuant to  
12 chapter 487 of NRS.

13       **Sec. 10.** NRS 706.736 is hereby amended to read as follows:

14       706.736 1. Except as otherwise provided in subsection 2, the provisions of  
15 NRS 706.011 to 706.791, inclusive, and sections 2 and 3 of this act do not apply  
16 to:

17       (a) The transportation by a contractor licensed by the State Contractors' Board  
18 of the contractor's own equipment in the contractor's own vehicles from job to job.

19       (b) Any person engaged in transporting the person's own personal effects in  
20 the person's own vehicle, but the provisions of this subsection do not apply to any  
21 person engaged in transportation by vehicle of property sold or to be sold, or used  
22 by the person in the furtherance of any commercial enterprise other than as  
23 provided in paragraph (d), or to the carriage of any property for compensation.

24       (c) Special mobile equipment.

25       (d) The vehicle of any person, when that vehicle is being used in the  
26 production of motion pictures, including films to be shown in theaters and on  
27 television, industrial training and educational films, commercials for television and  
28 video discs and tapes.

29       (e) A private motor carrier of property which is used for any convention, show,  
30 exhibition, sporting event, carnival, circus or organized recreational activity.

31       (f) A private motor carrier of property which is used to attend livestock shows  
32 and sales.

33       (g) The transportation by a private school of persons or property in connection  
34 with the operation of the school or related school activities, so long as the vehicle  
35 that is used to transport the persons or property does not have a gross vehicle  
36 weight rating of 26,001 pounds or more and is not registered pursuant to NRS  
37 706.801 to 706.861, inclusive.

38       2. Unless exempted by a specific state statute or a specific federal statute,  
39 regulation or rule, any person referred to in subsection 1 is subject to:

40       (a) The provisions of paragraph (d) of subsection 1 of NRS 706.171 and NRS  
41 706.235 to 706.256, inclusive, 706.281, 706.457 and 706.458.

42       (b) All rules and regulations adopted by reference pursuant to paragraph (b) of  
43 subsection 1 of NRS 706.171 concerning the safety of drivers and vehicles.

44       (c) All standards adopted by regulation pursuant to NRS 706.173.

45       3. The provisions of NRS 706.311 to 706.453, inclusive, 706.471, 706.473,  
46 706.475 and 706.6411 which authorize the Authority to issue:

47       (a) Except as otherwise provided in paragraph (b), certificates of public  
48 convenience and necessity and contract carriers' permits and to regulate rates,  
49 routes and services apply only to fully regulated carriers.

50       (b) Certificates of public convenience and necessity to operators of tow cars  
51 and to regulate rates for towing services performed without the prior consent of the  
52 owner of the vehicle or the person authorized by the owner to operate the vehicle  
53 apply to operators of tow cars.

4. Any person who operates pursuant to a claim of an exemption provided by this section but who is found to be operating in a manner not covered by any of those exemptions immediately becomes liable, in addition to any other penalties provided in this chapter, for the fee appropriate to the person's actual operation as prescribed in this chapter, computed from the date when that operation began.

5. As used in this section, "private school" means a nonprofit private elementary or secondary educational institution that is licensed in this State.

**Sec. 11.** NRS 706.756 is hereby amended to read as follows:

706.756 1. Except as otherwise provided in subsection 2, any person who:

(a) Operates a vehicle or causes it to be operated in any carriage to which the provisions of NRS 706.011 to 706.861, inclusive, *and sections 2 and 3 of this act* apply without first obtaining a certificate, permit or license, or in violation of the terms thereof;

(b) Fails to make any return or report required by the provisions of NRS 706.011 to 706.861, inclusive, *and sections 2 and 3 of this act* or by the Authority or the Department pursuant to the provisions of NRS 706.011 to 706.861, inclusive ~~§~~, *and sections 2 and 3 of this act*;

(c) Violates, or procures, aids or abets the violating of, any provision of NRS 706.011 to 706.861, inclusive ~~§~~, *and sections 2 and 3 of this act*;

(d) Fails to obey any order, decision or regulation of the Authority or the Department;

(e) Procures, aids or abets any person in the failure to obey such an order, decision or regulation of the Authority or the Department;

(f) Advertises, solicits, proffers bids or otherwise is held out to perform transportation as a common or contract carrier in violation of any of the provisions of NRS 706.011 to 706.861, inclusive ~~§~~, *and sections 2 and 3 of this act*;

(g) Advertises as providing:

(1) The services of a fully regulated carrier; or

(2) Towing services,

➤ without including the number of the person's certificate of public convenience and necessity or contract carrier's permit in each advertisement;

(h) Knowingly offers, gives, solicits or accepts any rebate, concession or discrimination in violation of the provisions of this chapter;

(i) Knowingly, willfully and fraudulently seeks to evade or defeat the purposes of this chapter;

(j) Operates or causes to be operated a vehicle which does not have the proper identifying device;

(k) Displays or causes or permits to be displayed a certificate, permit, license or identifying device, knowing it to be fictitious or to have been cancelled, revoked, suspended or altered;

(l) Lends or knowingly permits the use of by one not entitled thereto any certificate, permit, license or identifying device issued to the person so lending or permitting the use thereof; or

(m) Refuses or fails to surrender to the Authority or Department any certificate, permit, license or identifying device which has been suspended, cancelled or revoked pursuant to the provisions of this chapter,

➤ is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment.

2. Any person who, in violation of the provisions of NRS 706.386, operates as a fully regulated common motor carrier without first obtaining a certificate of public convenience and necessity or any person who, in violation of the provisions

1 of NRS 706.421, operates as a contract motor carrier without first obtaining a  
2 permit is guilty of a misdemeanor and shall be punished:

3 (a) For a first offense within a period of 12 consecutive months, by a fine of  
4 not less than \$500 nor more than \$1,000. In addition to the fine, the person may be  
5 punished by imprisonment in the county jail for not more than 6 months.

6 (b) For a second offense within a period of 12 consecutive months and for each  
7 subsequent offense that is committed within a period of 12 consecutive months of  
8 any prior offense under this subsection, by a fine of \$1,000. In addition to the fine,  
9 the person may be punished by imprisonment in the county jail for not more than 6  
10 months.

11 3. Any person who, in violation of the provisions of NRS 706.386, operates  
12 or permits the operation of a vehicle in passenger service without first obtaining a  
13 certificate of public convenience and necessity is guilty of a gross misdemeanor.

14 4. If a law enforcement officer witnesses a violation of any provision of  
15 subsection 2 or 3, the law enforcement officer may cause the vehicle to be towed  
16 immediately from the scene and impounded in accordance with NRS 706.476.

17 5. The fines provided in this section are mandatory and must not be reduced  
18 under any circumstances by the court.

19 6. Any bail allowed must not be less than the appropriate fine provided for by  
20 this section.

21 **Sec. 12.** NRS 706.781 is hereby amended to read as follows:

22 706.781 In addition to all the other remedies provided by NRS 706.011 to  
23 706.861, inclusive, *and sections 2 and 3 of this act* for the prevention and  
24 punishment of any violation of the provisions thereof and of all orders of the  
25 Authority or the Department, the Authority or the Department may compel  
26 compliance with the provisions of NRS 706.011 to 706.861, inclusive, *and sections*  
27 *2 and 3 of this act* and with the orders of the Authority or the Department by  
28 proceedings in mandamus, injunction or by other civil remedies.

29 **Sec. 13.** NRS 706.791 is hereby amended to read as follows:

30 706.791 1. If the Department is not satisfied with the records or statements  
31 of, or with the amount of fees paid by, any person pursuant to the provisions of  
32 NRS 706.011 to 706.861, inclusive, *and sections 2 and 3 of this act*, it may make  
33 an additional or estimated assessment of fees due from that person based upon any  
34 information available to it.

35 2. Every additional or estimated assessment bears interest at the rate of 1  
36 percent per month, or fraction thereof, from the date the fees were due until they are  
37 paid.

38 3. If an assessment is imposed, a penalty of 10 percent of the amount of the  
39 assessment must be added thereto. If any part of the deficiency is found to be  
40 caused by fraud or an intent to evade the provisions of this chapter or the  
41 regulations adopted pursuant to this chapter, a penalty of 25 percent of the amount  
42 of the assessment must be added thereto.

43 4. The Department shall give the person written notice of the assessment. The  
44 notice may be served personally or by mail in the manner prescribed by Rule 5 of  
45 the Nevada Rules of Civil Procedure addressed to the person at the person's address  
46 as it appears in the records of the Department. Every notice of assessment must be  
47 served within 36 months after the end of the registration year for which the  
48 additional assessment is imposed.

49 5. If any person refuses or fails to make available to the Department, upon  
50 request, such records, reports or other information as determined by the Department  
51 to be necessary to enable it to determine that the amount of taxes and fees paid by  
52 that person is correct, the assessment made pursuant to the provisions of this section



1 is presumed to be correct and the burden is upon the person challenging the  
2 assessment to establish that it is erroneous.

3 6. Any person against whom an assessment has been made pursuant to the  
4 provisions of this section may petition the Department in writing for a  
5 redetermination within 30 days after service of the notice. If a petition is not filed  
6 with the Department within that period, the assessment becomes final.

7 7. If a petition for redetermination is filed within 30 days, the Department  
8 shall reconsider the assessment and send the petitioner, by certified mail, notice of  
9 its decision and the reasons therefor. A petitioner aggrieved by the Department's  
10 decision may appeal the decision by submitting a written request to the Department  
11 for a hearing not later than 30 days after notice of the decision was mailed by the  
12 Department. The Department shall schedule an administrative hearing and provide  
13 the petitioner with 10 days' notice of the time and place of the hearing. The  
14 Department may continue the hearing as may be necessary.

15 8. The order of the Department upon a petition becomes final 30 days after  
16 service of notice thereof. If an assessment is not paid on or before the date it  
17 becomes final, there must be added thereto in addition to any other penalty  
18 provided for in this chapter a penalty of 10 percent of the amount of the assessment.

19 9. Every remittance in payment of an assessment is payable to the  
20 Department.