

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 706.323) **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.



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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.*

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

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

(a) Costs of required equipment and its installation;

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

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

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

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

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

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

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

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

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

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



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

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

(a) Any of the rates, tolls, charges or schedules, or any joint rate or rates assessed by any fully regulated carrier or by any operator of a tow car 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 are in any respect unreasonable or unjustly discriminatory;

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

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

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

2. If the Authority determines that probable cause exists for the complaint, it shall order a hearing thereof, give notice of the hearing and conduct the hearing as 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 706.321 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~~:



- 1 (a) *Violate* the provisions of NRS 706.151 ~~H~~; or
2 (b) *Increase the rates charged or to be charged for towing*
3 *services performed without the prior consent of the owner of the*
4 *vehicle or the person authorized by the owner to operate the*
5 *vehicle.*

6 **Sec. 7.** NRS 706.4463 is hereby amended to read as follows:
7 706.4463 1. In addition to the other requirements of this
8 chapter, each operator of a tow car shall, to protect the health, safety
9 and welfare of the public:

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

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

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

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

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

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

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

29 (c) Has provided evidence that the applicant has filed with the
30 Authority a liability insurance policy, a certificate of insurance or a
31 bond of a surety and bonding company or other surety required for
32 every operator of a tow car pursuant to the provisions of NRS
33 706.291; and

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

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

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

42 (a) Upon the expiration of the time fixed in the notice that an
43 application for a certificate of public convenience and necessity is
44 pending, a petition to intervene has been granted by the Authority;
45 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. 8. NRS 706.4483 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

(c) Special mobile equipment.

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

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

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

(g) The transportation by a private school of persons or property in connection with the operation of the school or related school activities, so long as the vehicle that is used to transport the persons



1 or property does not have a gross vehicle weight rating of 26,001
2 pounds or more and is not registered pursuant to NRS 706.801 to
3 706.861, inclusive.

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

7 (a) The provisions of paragraph (d) of subsection 1 of NRS
8 706.171 and NRS 706.235 to 706.256, inclusive, 706.281, 706.457
9 and 706.458.

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

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

15 3. The provisions of NRS 706.311 to 706.453, inclusive,
16 706.471, 706.473, 706.475 and 706.6411 which authorize the
17 Authority to issue:

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

22 (b) Certificates of public convenience and necessity to operators
23 of tow cars and to regulate rates for towing services performed
24 without the prior consent of the owner of the vehicle or the person
25 authorized by the owner to operate the vehicle apply to operators of
26 tow cars.

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

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

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

38 706.756 1. Except as otherwise provided in subsection 2, any
39 person who:

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

44 (b) Fails to make any return or report required by the provisions
45 of NRS 706.011 to 706.861, inclusive, *and sections 2 and 3 of this*



1 *act* or by the Authority or the Department pursuant to the provisions
2 of NRS 706.011 to 706.861, inclusive ~~H~~, *and sections 2 and 3 of*
3 *this act;*

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

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

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

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

15 (g) Advertises as providing:

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

17 (2) Towing services,

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

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

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

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

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

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

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

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

42 2. Any person who, in violation of the provisions of NRS
43 706.386, operates as a fully regulated common motor carrier without
44 first obtaining a certificate of public convenience and necessity or
45 any person who, in violation of the provisions of NRS 706.421,



operates as a contract motor carrier without first obtaining a permit is guilty of a misdemeanor and shall be punished:

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

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

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

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

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

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

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

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

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

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

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



1 3. If an assessment is imposed, a penalty of 10 percent of the
2 amount of the assessment must be added thereto. If any part of
3 the deficiency is found to be caused by fraud or an intent to evade
4 the provisions of this chapter or the regulations adopted pursuant to
5 this chapter, a penalty of 25 percent of the amount of the assessment
6 must be added thereto.

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

14 5. If any person refuses or fails to make available to the
15 Department, upon request, such records, reports or other information
16 as determined by the Department to be necessary to enable it to
17 determine that the amount of taxes and fees paid by that person is
18 correct, the assessment made pursuant to the provisions of this
19 section is presumed to be correct and the burden is upon the person
20 challenging the assessment to establish that it is erroneous.

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

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

36 8. The order of the Department upon a petition becomes final
37 30 days after service of notice thereof. If an assessment is not paid
38 on or before the date it becomes final, there must be added thereto in
39 addition to any other penalty provided for in this chapter a penalty
40 of 10 percent of the amount of the assessment.

41 9. Every remittance in payment of an assessment is payable to
42 the Department.

