

**REPORT OF THE  
VIRGINIA BOARD OF  
COMMERCE ON THE**

# **Regulation of the Towing, Recovery and Storage Industry**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



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**VIRGINIA BOARD OF COMMERCE  
REPORT ON THE REGULATION OF  
THE TOWING, RECOVERY AND STORAGE INDUSTRY**

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I. EXECUTIVE SUMMARY

A. Study Overview

B. Key Findings

C. Conclusions

D. Recommendations

## I. Executive Summary

### A. Study Overview

This study attempts to determine the most appropriate level of regulation for the towing, recovery and storage industry. "Unauthorized" or "non-consent" towing has been identified as a unique commercial enterprise in which there is no opportunity for the buyer and seller to negotiate the price of the service to be rendered.

The nature, frequency and severity of business practice abuses by tow truck operators were examined in detail. The regulation of the towing industry by other states and localities in Virginia was also examined. The level of regulation recommended for the towing industry is based on an extensive analysis of this information.

### B. Key Findings

1. An extensive complaint search has revealed some limited evidence of complaints and abuses. Consumer Affairs Agencies and Better Business Bureaus perceive problems as being frequent. Although some localities in Virginia have experienced severe problems, the majority of state and local law enforcement officials report problems as being MINOR. The complaint research did reveal that the majority of the problems occurring were in situations of non-consent towing.
2. The most frequently reported complaint against towers proved to be EXCESSIVE TOWING and/or STORAGE CHARGES. The next most frequently cited complaint was VEHICLE DAMAGE due to improper towing or an incompetent operator.
3. The private property towing statutes state only that a vehicle cannot be removed from private property without the written consent of the property owner. Also, the local law enforcement agency must be notified of such towings. The statute does not require that signs be posted notifying vehicle owners that trespassing vehicles will be towed at the owner's expense.
4. State statutes provide local governing bodies with the authority to regulate either through a contract or local ordinance the towing services provided to local law enforcement agencies in the removal of abandoned, unattended or immobile vehicles. Research revealed that relatively few localities have chosen to do so or have seen the need to enact such ordinances. Based upon the survey results, some localities have provided regulation as a response to problems and complaints being reported in that locality.
5. The procedures for the disposition of abandoned vehicles are unclear and pose problems for both consumers and towers. The disposition procedures under the mechanic's lien statutes differ greatly from the procedures required under Section 46.1-3 relating to the disposition of abandoned, unattended or immobile vehicles.

## C. Conclusions

Four major conclusions have been reached as a result of this study.

1. Documented cases of towing operators causing damage to vehicles or contributing to third party accidents due to the incompetent operation of the equipment were not frequent enough to justify the imposition of a complex regulatory scheme.
2. The imposition of a complex regulatory structure would not be an effective or desirable means of regulating the rates for non-consent towing.
3. The current State Corporation Commission registration and insurance requirements have not prevented "gypsy towers" from operating without the proper insurance. We therefore question the enforcement effectiveness of establishing a complex regulatory scheme.
4. Without certain amendments to existing statutes, a complex regulatory structure would do little to address the problems and complaints which were cited in the research.

## D. Recommendations

It is recommended that the following statutory changes be pursued during the 1987 session of the General Assembly:

1. Enact legislation that would require all towing businesses who provide non-consent towing services to prominently display at their main place of business a comprehensive list of their fees for all towing, recovery and storage services.
2. Amend Section 46.1-3.2 (the statute relating to private property towing) to provide for the following:
  - a. Requirements that signs be posted which give notice that trespassing vehicles will be towed at the owner's expense;
  - b. The sign requirement should also include provisions that the name and phone number of the towing company providing the towing be posted and, that the towing companies providing non-consensual towing from private property be available for vehicle redemption for some stated time after the towing is performed and during reasonable business hours.
3. With respect to Section 43-32 through Section 43-34 (the mechanic's and storage lien statutes), the Board feels that several valid issues were raised and many weaknesses in the statutes were cited.

Because the mechanic's and storage lien statutes are not applied exclusively to the towing industry, the Board recommends that these

statutes be further examined by the Division of Legislative Services to determine the overall impact of amendments to the lien laws. Some consideration should be given to the model possessory lien statute that the towing industry has submitted.

4. The Board further recommends that Section 46.1-3 relating to the disposition of abandoned, immobile, or unattended vehicles be amended to make the notification and disposition procedures consistent with the current lien statutes.

5. The Board also makes the following recommendations to be accomplished through administrative procedures:

- a. Ask the Director of the State Department of Consumer Affairs to publish a brochure informing consumers of the current laws and requirements that apply to the towing industry and what their rights are when their vehicles have been towed without their consent.
- b. Also, ask the Director of the Department of Motor Vehicles to include the above information in their driver manuals.



## II. INTRODUCTION

A. General Introduction

B. Purpose of Report

C. Methodology

D. Analytic Procedures

E. Limitations of Study

## II. INTRODUCTION

### A. General Introduction

Occupational regulation in the United States began in Virginia with the regulation of the practice of medicine in 1639. There are currently twenty-nine regulatory or advisory boards regulating professions in Virginia. The Department of Commerce oversees the operations of twenty-two of these boards.

The regulation of an occupational group is a matter that merits considerable discussion and investigation prior to the establishment of any regulatory scheme. The hidden add-on costs of this type of regulation have been conservatively estimated by the United States Department of Justice and the Federal Trade Commission as being around three to five percent. The total add-on cost to consumers due to occupational regulation in Virginia is conservatively in the millions of dollars each year.

In 1974 the Virginia General Assembly established the Commission for Professional and Occupational Regulation. This Commission became the Board of Commerce in 1977. It is the legislatively mandated duty of this Board to evaluate the need for additional regulation of occupations and make recommendations to the General Assembly.

The guidelines for evaluating the need for this type of regulation were established by the General Assembly and are stated in Section 54-1.26 of the Code of Virginia. The levels of regulation and the order in which they are to be considered is as follows: (1) Private civil action and criminal prosecution, (2) Inspection, (3) Registration, (4) Certification, and (5) Licensure.

According to a recent JLARC report (1982 Senate Document 29) "Statute requires that the degrees of regulation be considered in the above order. The implication of this provision is that the least restrictive form of regulation necessary to protect the public should be employed when it is deemed appropriate to regulate an occupation."

During the 1986 session of the General Assembly, Senator Charles L. Waddell of Loudoun County and Delegate Franklin P. Hall of Richmond were approached by several members of the Virginia Association of Towing and Recovery Operators (VATRO), and asked to sponsor legislation which would bring about regulation of the towing, recovery and storage industry in the area of "unauthorized" or "non-consent" towing. "Non-consent" or "unauthorized" towing is defined as removal, towing and storage of a vehicle without the owner's prior request or permission. The members of VATRO assisted Senator Waddell and Delegate Hall in drafting Senate Joint Resolution 51 which requests a joint subcommittee to study the industry. The resolution was later amended and the request for a legislative study was changed to a request for an agency study through the Board of Commerce, (See Appendix A for Senate Joint Resolution 51).

## B. Purpose of Report

Senate Joint Resolution 51 (SJR 51), as it was passed by the 1986 session of the General Assembly, requests the Board of Commerce to study the motor vehicle towing, recovery and storage industry. The Departments of Highways and Transportation, Motor Vehicles and State Police, as well as the Association of Chiefs of Police were requested to assist the Board as required.

The Board was directed to conduct a study of the occupation of towing, recovery and storage, the study to address the issues raised by the eleven "whereas" clauses. The purpose of this report after considering the findings is to determine the most appropriate level of regulation, if any, necessary for this occupation.

## C. Methodology

This report relies upon the data obtained by the Board of Commerce from various sources. Most of this data was obtained from research, from public hearings, and from written comments which were submitted from various sources.

A search for complaints against towing and recovery operators was undertaken by the Board of Commerce. Surveys were sent to Virginia Consumer Affairs agencies, Better Business Bureaus, all Commonwealth's Attorneys, all local Sheriffs, Chiefs of Police, Campus police, and State Police officers. In addition, two public hearings were held June 30, 1986 in Richmond and July 1, 1986 in Arlington.

In addition to complaint data, the research also included several other information gathering surveys. The Secretaries of State in the United States were surveyed in order to obtain information about the types of licensure or regulation of towing and recovery operators being conducted in other states.

A survey of all city and county attorneys in Virginia was distributed to determine the existence and nature of local ordinances governing towing and recovery operators.

An initial "problem identifying" survey was distributed to about seventy members of the Virginia Association of Towing and Recovery Operators (VATRO) at their 6th Annual Rodeo and Trade Show Banquet.

## D. Analytic Procedures

1. An analysis of complaints was made through various complaint information gathering sources. The types of abuses, frequency and severity of abuses, as well as the dollar amount of complaints were also examined. The complaint data was evaluated by congressional district to determine whether any existing problems were statewide or regional.
2. Other states' towing and recovery operator licensure and regulatory programs were examined in detail.

3. Current Virginia statutes dealing with all aspects of the towing, recovery, and storage industry were examined. The involvement of other state agencies was also evaluated.
4. Local ordinances dealing with towing, recovery and storage services were examined in detail.
5. Case law dealing with the requirements of one in legal possession of the property of another for hire was researched.

E. Limitations of Study

Due to current registration requirements by both the State Corporation Commission and the Department of Motor Vehicles, it was not possible to obtain a list of the registered and insured for-hire tow truck operators in the state. Currently, neither the SCC nor the DMV have a registration category to identify wreckers or their operators specifically.

### III. KEY ISSUES

- A. Senate Joint Resolution 51
- B. Non-consent Towing
- C. Private Property Towing Procedures
- D. Liens and Disposition Procedures
- E. Rate Regulation

### III. KEY ISSUES

#### A. Senate Joint Resolution 51

Senate Joint Resolution 51 identifies the following eight areas of concern in the "WHEREAS" clauses:

1. That incompetent tow truck operators pose a threat to public health, safety and welfare;
2. That the Public has a right to know the name, address, telephone number, and ownership of businesses which operate tow trucks for hire;
3. That tow truck operators should have adequate insurance;
4. That law enforcement officials have a responsibility to authorize and select towing companies who are competent to safely perform towing services and protect public health, safety and welfare;
5. That towers need to have possessory liens on vehicles towed without the owner's consent;
6. That a possessory lien should provide protection of the owner's right to due process when vehicles are towed and stored without the owner's consent;
7. That private property towing procedures need to be established in order to protect consumers; and
8. That regulation of non-consent towing is needed to assure competent service at reasonable rates.

#### B. Non-Consent Towing

A major concern voiced by the towing industry in Virginia is that non-consent towing is the only commercial enterprise in which the buyer (vehicle owner) and the seller (towing company) cannot negotiate as to quality and price before the service is rendered and a debt is incurred. The buyer does not know who the seller is, and likewise the seller must render his services on credit. The buyer must assume that the seller is competent and the seller must assume that the buyer will pay him for his services.

VATRO has proposed that a Board of Towing be created which would regulate only the segment of the industry which engages in "non-consent" towing at the request of law enforcement officials or written request of a private property owner. AAA has opposed this proposal by maintaining that this regulation would open the door to regulation of the entire industry.

The complaint research bears out that non-consent towing is an area of concern for the motoring public, law enforcement agencies and the towing industry.

Several states have recognized the need to provide some form of regulation of "non-consent" towing that is performed at the request of law enforcement agencies.

The towing industry maintains that the fact that the vehicle owner did not request the towing should not prevent the tower from being compensated for his services, provided he has exerted the "reasonable care" required by common law not to damage the vehicle; notified the local law enforcement agency if he has been made responsible for such action by the property owner; and is in compliance with registration, insurance, for-hire license requirements.

### C. Private Property Towing Procedures

The motoring public can be adversely affected by non-consent towing from private property in the following situations:

1. The private property owner enforces towing of unauthorized vehicles at owner's expense, but does not post signs on the property stating such.
2. The private property owner has a written agreement giving a towing company blanket authorization to remove any illegally parked vehicle; therefore, he has delegated his responsibility to contact police and has given towers a great deal of freedom to "cruise" the property.
3. The private property owner has no real incentive to contract with a towing company that will provide competent service at reasonable prices; therefore, the vehicle owner potentially may face exorbitant fees and vehicle damage.

Va. Code Section 46.1-3.2 (1950) grants localities the authority to enact ordinances governing private property towing procedures. The research of local ordinances shows that very few localities have enacted any such ordinances.

The state statutes do not require the posting of signs, or specify whether the private property owner may delegate his responsibility to contact local police in the event of such "non-consent" towing. Any statutory changes in this area should be addressed at a state level to protect consumers in all localities in Virginia.

Law enforcement officials would also be in a better position to enforce the requirements if state statute mandated compliance. The towing industry would be provided with more specific guidelines and procedures for handling non-consent towing from private property.

### D. Liens and Disposition of Abandoned Vehicles

#### 1. Liens

Enforcement of the mechanic's or garage keeper's lien has been cited by many sources, both from the towing industry and others as creating problems due to the unclear language.

It has been maintained by the towing industry that mechanic's and garage keeper's liens are inadequate to protect the owner's right to due process in situations of non-consent or unauthorized towing. Consent or request for services by the vehicle owner is specified in Va. Code Section 43-33 (1950) which defines the mechanic's lien. The owner's consent is implied in the garage keeper's lien statute, Va. Code Section 43-32 (1950).

The towing industry maintains that a unique situation exists when the owner of the property does not consent to the services being furnished. This includes requests from law enforcement for towing without owner's knowledge or consent, or from owner of private property upon which a vehicle is parked in trespass circumstances and can also apply to "abandonment" cases.

A properly drafted possessory lien statute would ensure that the owner's right to due process will not be violated. The model law that the National Towing Association (Towing and Recovery Operators of America) has drafted provides protection of the vehicle owner by giving him reasonable notice and assuring him an early and inexpensive hearing on the merits of the taking and withholding.

Under the current statute, the owner of personal property held by another under a mechanic's lien may regain immediate possession of the property:

- a) By making the mechanic a defendant in a general district court proceeding to obtain possession of the property, and;
- b) By posting a bond with the court in the amount of the lien (charges claimed by the mechanic), plus court costs.

## 2. Weaknesses in Lien Statutes

Weaknesses in Va. Code Section 43-34 (1950) regarding the enforcement of a mechanic's or garage keeper's lien have also been cited in the written comments that were submitted during the public comment period.

- a) Attempt to notify owner of location of towed vehicle -  
This section requires only that the Virginia Department of Motor Vehicles be contacted in order to determine legal ownership of the vehicle.

In localities such as Northern Virginia and Tidewater that border on neighboring states, out-of-state vehicles are sometimes towed.

The section could be amended to require more exhaustive attempts on the part of the tower or garage owner to locate the car's owner. On the other hand, if the vehicle is not registered in Virginia, it can become a



costly and time consuming process to contact the Departments of Motor Vehicles in several states. The privacy protection laws in some states, like Virginia, do not allow ownership information to be transmitted by phone; they generally require that special vehicle information request forms be submitted. These often take several weeks to be processed. The tags are often removed from abandoned vehicles, making it very difficult to contact the owner.

- b) Conflict between mechanic's lien and security interest lien - Again, the mechanic is not required by this statute to give notice of public sale to any out-of-state lien holders. Clarification is needed because in First Virginia Bank v. Westlawn Towing, the Fairfax Circuit Court recently held that despite wording of the statute a garageman was charged with the duty of obtaining lien information from the licensing state of the vehicle.
- c) Notice to owner - The Department of Motor Vehicles requires that the notice to the vehicle owner be sent by certified mail. It does not require restricted delivery only for the owner which would prevent the owner from arguing that notice was not received because a spouse or child signed for the letter. Va. Code Section 43-34 (1950) states that "any notice required by this section may be served in the mode prescribed by Va. Code Section 8.01-296 (1950); however, certified mail is not listed in Section 8.01-296 as an approved means of service notice. The section could be revised to permit personal delivery by a deputy sheriff or legal process service or to require restricted delivery and only the owner's signature.
- d) Ten day notice before advertising the sale of property - Va. Code Section 43-34 states that if the bill for towing, storage (and/or other repairs) has not been paid within ten days after it is due and the property has a value of less than \$3,000, it may be sold at public auction. The statute does not specify when the ten-day notice period begins. The Department of Motor Vehicles will accept either the date the letter is mailed or the date the letter is received. The ten-day period should begin when the owner receives notice of the impending sale. However, if the letter is returned, unclaimed or refused, there is a problem because the certified letter must give a deadline for the bill to be paid and indicate a date and time of the public sale.

The Virginia Citizens Consumer Council questions whether the ten-day notification period is sufficient for the vehicle owner to arrange for payment of the debt. It is conceivable that the ten-day period could fall in between pay checks for the owner, and they may be unable to pay the debt despite their intention to do so. Perhaps a 15

calendar day notification period could help alleviate this problem. The VCCC would like the Study Committee to consider extending the notification period from ten days to fifteen days from the date that notice is received by the owner.

- e) Public Auction - The statute does not require the participation of a certified or licensed auctioneer, however, it has been maintained that this requirement would constitute an added expense for the towers selling the vehicle. The law is not clear about whether the garage owner should have a right to bid in order to protect his lien. The garage owners often conduct the sale and also bid on the property being sold.
- f) Notice of public auction - The statute does not specify how and where the sale is to be conducted, how and where it is to be advertised or what terms of sale need to be placed in the advertisement.

It has been suggested that the statute should require that the sale be advertised in the newspaper with the largest circulation in the area where the vehicle is stored or where the auction will be held. Further, it has been suggested that the advertisements should run for three consecutive weeks before the property is sold and that the advertisement should be placed in the classified section of the paper, rather than with the Public or Legal Notices. The Virginia Citizens Consumer Council also feels that the advertisement should be required to indicate the date, time and location of the auction; the reason for the sale; describe the property to be sold; include information on liens; stipulate an inspection period; specify the acceptable forms of payment; and give the name, phone number, and registration number of the auctioneer.

- g) Appraised value of vehicles - The statute currently allows the sale to be conducted without judicial approval if the value of the vehicle involved is less than \$3,000. If the value is greater than \$3,000 but less than \$5,000, the tower holding the lien, after giving notice as provided may apply by petition to any general district court of the city or county for sale of the property. If the value is greater than \$5,000, the application is made to the circuit court for the sale. If the court rules that the property should be sold, the sale is made by the Sheriff.

Currently, there is no provision in the statute for the appraisal of the property by an independent third party. The Department of Motor Vehicles will issue the certificate of title upon a statement signed by the lienholder or tower that the vehicle's value is under \$3,000.

It has been suggested that the \$3,000 and \$5,000 requirements for judicial approval need to be increased to more realistic figures. It has further been suggested that the \$3,000 and \$5,000 property values requiring judicial approval just further complicate the enforcement of the lien process and should be completely left out.

- h) Deficiency judgments - The VCCC asserts that there are numerous examples of involuntary sales where there was no attempt to secure a fair market price for the property, and in fact it was sold for a price that did not even cover the costs for towing, repairs, etc., and that consumers have been doubly punished by having to relinquish their property plus having to pay debts on property they no longer use or own. They request that the Study Committee consider prohibiting deficiency judgments when property is sold involuntarily.
- i) Prior lienholders - Va. Code Sections 43-32 and 43-33 (1950) allow that in cases where the vehicle is subject to a prior lien, the towor shall have a \$150.00 maximum lien for storage and a \$500.00 maximum lien for repairs (if applicable). This has been criticized as being unfair to the public, as well as the towing companies, and should be eliminated.
- j) Possible unconstitutionality of the mechanic's and storage lien statute in Virginia - Many people have provided comments on the problems with Va. Code Sections 43-32 through 43-34 and it has been suggested that the mechanic's/storage lien statutes may be unconstitutional.

Under existing Virginia law a person's personal property (motor vehicle) can be sold without his knowledge in order to satisfy a debt. The U.S. Constitution provides certain protections of an individual's personal property -- "due process." It has been suggested that if the questions of due process with respect to Va. Code Section 43-34 were tested in Federal Court, Virginia and the garage owner would lose.

#### E. Rate Regulation

The number one complaint reported by consumers to Better Business Bureaus, Consumer Affairs agencies, and local and state law enforcement officials was EXCESSIVE or UNREASONABLE TOWING and/or STORAGE RATES, however, the survey responses regarding this type of complaint may be distorted. A spot check of all towing-related complaint files at the Virginia Office of Consumer Affairs revealed that several of the complaints which would be classified as rate-related were not valid complaints because the rates charged were not necessarily unreasonable in comparison to the rates being charged throughout that area.

VATRO does not advocate the regulation of rates and gave examples of states, WEST VIRGINIA and NEVADA, where rate regulation has worked to the detriment of providing consumer service. AAA opposes the VATRO proposal and rate regulation of any form.

Localities have the authority to negotiate rates through the bidding of contracts with towers who desire to provide service to law enforcement agencies; however, very few have regulated rates to be charged consumers when their vehicles are towed in non-consent situations. Localities such as Virginia Beach and Newport News specify the rates to be charged only in non-consent towing from private property.

The State Corporation Commission as a public service commission could be given the authority to regulate the rates for towing service, or could be given the authority to require that a list of all towing rates and charges be filed with the application for registration and proof of insurance.

IV. TOWING, RECOVERY AND STORAGE INDUSTRY ANALYSIS

- A. Profile of Industry
- B. Analysis of Survey
- C. Towing Businesses and Services Provided
- D. Entry Requirements
- E. VATRO Position Statement
- F. AAA Position Statement

#### IV. INDUSTRY ANALYSIS

##### A. Profile of Industry

Currently, tow trucks are registered with the State Corporation Commission as contract motor carriers and with the Division of Motor Vehicles mostly as "for-hire" motor vehicles thus making it impossible to identify only the tow truck operators. The State Police Survey asked respondents to estimate the number of tow truck operators in their county and, according to the responses from the State Police, the estimated number of operators in the Commonwealth is between 2,000 and 2,500.

The Virginia Association of Towing and Recovery Operators is a statewide organization for professional towers with chapters in Northern Virginia, Prince William County, Fredericksburg, Richmond, Newport News, Lexington and Roanoke. VATRO has about 178 members and is the professional group seeking regulation.

Other associations whose members could be affected by regulation are the Virginia Gasoline and Automotive Repair Association, Inc., the Virginia Service Station Dealers Association, and Virginia's ~~local~~ affiliates of the American Automobile Association (AAA).

The Virginia Gasoline and Automobile Repair Association, Inc.'s membership is comprised of service station dealers, many of whom do towing. VGARA has approximately 700 members and it is estimated that about 3/4 or 600 locations operate tow trucks as part of their business activities.

General counsel for the Virginia Gasoline and Automobile Repair Association testified at the public hearing held in Richmond and expressed their support for "the basic thrust of the resolution and the study" and that their members believe that there ought to be some minimum standards established at least for the equipment that towers ought to have."

The Virginia Service Station Dealers Association has 375 members and it was difficult to estimate how many members also provide towing services. Although no representative of VSSDA testified at the hearings or have submitted any written comments, they are aware of the VATRO proposal and have not expressed any objection or concerns.

The service providers for the state and local affiliates of AAA would only be affected by regulation of the entire towing industry, and would not be affected if "non-consent" towing services were regulated.

AAA Potomac locally provides tow truck driver training and requires liability insurance and equipment standards for each of their independently operated local contract tow trucks before they are allowed to operate on AAA's behalf. In 1985, AAA Potomac's road service department dispatched service 388,000 times and their ratio of complaints was only 1/10 of 1%. AAA negotiates fees with a contractor and that contractor agrees to provide service to AAA

members at the negotiated rate. AAA Clubs provide emergency road service to members, but do not on behalf of AAA provide "non-consent" towing services to law enforcement agencies. Representatives of AAA affiliated clubs testified at the public hearings to express opposition to certain aspects of the resolution.

#### B. Analysis of Problem-Identifying Survey

Approximately 60 members of the Virginia Association of Towing and Recovery Operators were surveyed in May, 1986 at the 6th Annual Rodeo and Trade Show in Alexandria, Virginia. The survey was distributed to allow the towing and recovery operators to express their perceptions of the problems facing their industry. (See Appendix B for VATRO Problem-Identifying Survey).

The majority (67.7%) of the respondents indicated that their businesses consisted of towing, recovery and repair work, and 32.3% of the respondents indicated that their businesses were restricted to towing and recovery work only. 25.8% indicated that their gasoline and/or service station business also offered towing services.

Almost 90% of the respondents were on the police towing service rotation list in their locality. However, only 21% claimed to be AAA (Automobile Association of America) service providers.

VATRO provides a program for its members consisting of four safety and training schools held around the State which are designed to improve drivers' skills. The schools teach small wrecker recovery and operation, large wrecker recovery and operation, heavy duty rigging, as well as hazardous materials training (not how to handle them, but when to stay away from them). Experienced VATRO members who are willing to share their skills and knowledge teach the schools. There are no written guidelines governing relative skills, experience or training for these instructors. A little over 1/2 of the respondents had attended at least one of the training schools.

The VATRO members most frequently listed the following as the major problems facing the towing industry:

1. 44.2% of the respondents mentioned the general lack of comprehensive towing laws, the unclear storage and mechanic's lien statutes, and abandoned vehicle disposal procedures as contributing to problems for both consumers and towers.
2. 30.8% of the respondents complained about incompetent, unqualified, "fly-by-night" operators with substandard equipment who give the legitimate businesses a bad name.
3. 15.4% mentioned that relationships between towers and state and local police needed to be strengthened.

All of the VATRO members surveyed favored increased regulation, including licensure.

When asked how much of their business involved non-consent towing, 63.3% of the respondents estimated that less than 1/4 of their business activity was non-consent. 24.5% estimated non-consent towing to comprise 1/4 to 1/2 of their business. 6.1% estimated non-consent towing to comprise 1/2 to 3/4 of their business; and 4.1% reported that non-consent towing accounted for more than 3/4 of their business.

### C. Types of Towing Businesses and Services Provided

The following is a description of several types of towing companies operating in Virginia:

- 1) Professional recovery-towing-storage firms which specialize in towing-recovery-storage and tend to have large investments in wreckers of various types and sizes such as wheel-lifts, roll-backs and flatbeds. They are generally equipped to handle recovery of tractor-trailers and other large vehicles. Their sole source of income is from towing-storage-recovery work and they handle many service requests from state and local police.
- 2) Towing-recovery-storage and repair businesses may have various sizes and types of wreckers, but also have repair facility. Towing is generally subsidiary to repair as an income source.
- 3) Gasoline/service stations with tow trucks usually have less than five trucks, and often just one truck. Generally they provide towing service for their customers and may respond to police requests. The main business enterprise is running a garage.
- 4) Car dealerships which probably have less than three wreckers and provide service for their customers, generally do not engage in "for-hire" towing. They are considered to be private trucks and are not required to register with the State Corporation Commission.
- 5) The "fly-by-night" operators have been described as also operating in Virginia. They are described as being uninsured, unregistered operators who may have homemade rigs and do not have proper or secure storage lots. The study found no independent confirmation of these reports.

The following are many situations in which a commercial towing company may be called upon to provide either consent or non-consent service:

- 1) Wrecked or disabled vehicle which may or may not create emergency or hazard or obstruct traffic flow (non-consent and consent).
- 2) Trespassing vehicles parked on private property which are not abandoned (non-consent).



- 3) Abandoned, immobile or unattended vehicles on private or public property, roadways (non-consent).
- 4) Vehicles impounded by law enforcement order (non-consent).
- 5) Vehicle owner requests a specific towing firm to provide service. This would include AAA members requesting service from AAA's contractor, and involves consent towing only.

D. Current Entry Requirements

Currently, there are no minimum requirements for entry into the occupation of recovery, towing and storage, except to register with the State Corporation Commission and provide proof of liability insurance coverage, and apply for a "for-hire" license to display on the truck. These requirements do not apply for privately operated tow trucks and operators. No minimum training is required to operate a tow "truck for-hire" in the Commonwealth of Virginia.

E. VATRO Position Statement

VATRO submitted a position statement at the public hearings which outlined four points for the Board of Commerce to consider. They feel that all towing and recovery companies engaged in non-consent towing should be licensed. In addition, a licensed tower should meet minimum safety standards and towing companies should have competent people operating the equipment.

Secondly, they propose that a Board of Towing and Recovery Operators be established to promulgate rules and regulations and issue licenses. The licensing and rules and regulations should replace all existing requirements for towers. VATRO suggests that the Towing Board be composed of representatives of the public, state and local police, Division of Motor Vehicles and that at least one-half of the members of the Board be licensed towers.

Thirdly, a possessory lien for non-consent towing, storage and recovery should be established by law. A clear and efficient procedure for disposing of abandoned property is needed.

And lastly, a due process procedure is needed for the owner of a vehicle that is towed without the consent of the owner. There should be a simple, clear procedure which requires the cooperation of the towing company, the police and appropriate state and local agencies. VATRO also maintains that the owner should have a right to challenge any unauthorized towing and that the tower has a right to be paid for the services.

F. AAA Position Statement

E. Wallace Timmons of the Tidewater Automobile Association, the AAA affiliated club of the Eastern part of Virginia, and Mr. Ronald Kosh of AAA Potomac, the AAA affiliated club serving thirteen Northern Virginia counties, the City of Alexandria and the Metropolitan

Washington area, testified at the public hearings, and raised several concerns about the intent of the resolution.

The Tidewater Automobile Association representative advocated "more local [regulation] rather than State regulation" and pointed to the City of Virginia Beach as an example of how local ordinances and local regulations have adequately addressed the problems and abuses which were once prevalent.

AAA Potomac seriously questioned the need for further regulation of the towing industry even in situations of non-consent towing and asserted that "several provisions of Section 46 of the Motor Vehicle Code address in considerable detail most of the areas covered by the resolution including towing vehicles obstructing traffic or from private property."

AAA had specific concerns about the intent of the final part of Senate Joint Resolution 51: "whereas, the assurance of competent service at reasonable rates is a more important public policy concern than the maintenance of competition by price." AAA strongly opposes rate regulation through government intervention.

Both Mr. Timmons and Mr. Kosh used the states of West Virginia and New Mexico as examples of failure in the towing industry where towing businesses and rates have long been regulated.

AAA Potomac does not interpret SJR 51 as solely pertaining to "non-consent" towing, but as encompassing all aspects of the towing and recovery business.

AAA Potomac recommends that the Board of Commerce propose legislation which would clearly define the role of businessmen engaged in the towing and recovery occupation. Further, AAA feels that the creation of a Board of Towing as proposed by VATRO, would "be self-serving and promote a union atmosphere within the towing business."

V. COMPLAINTS AND RESEARCH

- A. Methodology
- B. Problem Statement
- C. Consumer Affairs & Better Business Bureaus
- D. Commonwealth's Attorneys
- E. State Police
- F. Local Law Enforcement
- G. Public Hearings
- H. Written Comments
- I. Summary

## V. COMPLAINT RESEARCH

### A. Methodology

As stated previously, there are very high direct and indirect costs inherent in regulation. Therefore, it was necessary to conduct an extensive search and analysis of complaints and abuses to ensure that any problems are properly addressed at minimal cost and in the most efficient and effective manner possible.

Numerous problems relating to towings and the towing industry have been identified. In an effort to examine the severity and validity of the problems and ascertain what the appropriate level of regulation may be, an in-depth study of towing-related complaints was undertaken by the Department of Commerce. Three types of surveys were utilized to determine the frequency and nature of complaints against the towing industry.

The three surveys were developed in order to contact sources of complaint data. One survey was sent to Better Business Bureaus and Consumer Affairs agencies. Another was sent to all Commonwealth's Attorneys. The largest group surveyed was state and local law enforcement officers. The "Local Law Enforcement Survey" was sent to all Chiefs of Police, Sheriffs and Campus Police Departments across the Commonwealth. The Department of State Police distributed a law enforcement survey to State Police and organized their responses by county. Also, an initial "problem identifying" questionnaire was distributed to approximately 70 members of VATRO at the 6th Annual Rodeo and Trade Show.

### B. Problem Statement

The towing industry has set out to the Board of Commerce the following problem areas:

#### 1. GETTING "STUCK" WITH VEHICLES

These problems for towing operators are generally attributed to:

- a. Lack of clarity in state statutes dealing with mechanic's and storage liens, Sections 43-32 through 43-36;
- b. Lack of clarity in state statutes dealing with the disposition of abandoned, unattended or immobile vehicles, Sections 46.1-2, 46.1-3 and 46.1-3.2; and
- c. Inability to give timely notice to the vehicle owner due to amount of time it takes to obtain last registered owner and lienholder information from DMV.

#### 2. LACK OF REGULATION OF OPERATORS:

Inadequate regulation leads to the many abuses which give entire industry a bad reputation and endanger public health, safety and welfare:

- a. Lack of inspection or equipment standards leads to the use of inadequate or "homemade" rigs which create hazardous conditions and accidents;
- b. Lack of adequate enforcement authority to prevent the practice of "running wrecks" in order to solicit business at accident scene;
- c. Lack of minimum entry requirements and licensing results in uninsured or inadequately insured operators and vehicles; and
- d. Lack of vehicle classification determined by towing capacity leads to unsafe, inefficient towing procedures.

C. Consumer Affairs and Better Business Bureaus Surveys

There are nine Consumer Affairs Agencies and four Better Business Bureaus in Virginia. Each of them was surveyed and asked to describe the severity and frequency of problems with towing operators in their locality. Ten of the thirteen responded. Eight of the ten who responded felt that there were significant problems with abuses by towing and recovery operators in their area. From the analysis of the estimated number of complaints against towers that were reported, it appears that an average of 60-70% of the complaints were related to non-consent situations. (See Appendix C for Agency Survey).

Nature of complaints: The most frequently reported complaint was excessive or unfair fee policies. All ten agencies who responded listed this as the number one complaint received. The next most frequently cited complaints were related to incompetent operators who did damage to the vehicles. The third most frequently mentioned complaint was unprofesional behavior. The average dollar value of the reported complaints was \$140.00.

D. Commonwealth's Attorney Survey

Commonwealth's Attorneys in Virginia were also surveyed during this study. Seventy-five of 121 Commonwealth's Attorneys responded to the survey. Generally, they were not able to provide a great deal of the information requested because records of complaints were not easily accessible or did not exist. The results were evaluated by Congressional district, however, no real trends in problems were noted. (See Appendix D for Commonwealth's Attorney survey).

Thirty-five or 46.6% of the Commonwealth's Attorneys responding described problems in their locality as being NON-EXISTENT and occurring NEVER; thirty-four or 45.3% described problems as being MINOR, occurring RARELY; and four or 5.3% reported MODERATE problems occurring OCCASIONALLY. Only two Commonwealth's Attorney's (from

Newport News and Richmond) described their problems as being SEVERE and occurring REGULARLY.

The Newport News Commonwealth's Attorney reported that approximately twelve complaints per year are reported to his office, and Richmond's Commonwealth's Attorney reported that his office has received in excess of 400 complaints against towing firms or operators during the last five years. No other Commonwealth's Attorney reported that his or her office had received more than twenty-five complaints during the past five years.

Richmond's Commonwealth's Attorney also reported one indictment and conviction which was the result of complaints against a towing firm. 215 individuals were reimbursed for towing charges. No other convictions or indictments were reported from any other locality.

Since the Commonwealth's Attorneys lacked information regarding the nature of complaints made against towing companies, it was difficult to make any meaningful assessment of the types of complaints and the average dollar value of those complaints. The complaints that were cited most often were "EXCESSIVE OR UNREASONABLE TOWING AND/OR STORAGE CHARGES," and "UNPROFESSIONAL BEHAVIOR."

Four Commonwealth's Attorneys commented that they had occasionally received complaints from towers alleging unfair selection procedures by law enforcement officials. (See Appendix E for Commonwealth's Attorney Survey Results).

#### E. State Police Survey

The Department of State Police assisted the Department of Commerce in surveying state troopers across the state and organizing their responses by county. The responses were then analyzed by congressional district (in order to be consistent with analyses conducted on other complaint data from local law enforcement officials). 104 responses were received. (See Appendix F for State Police Survey).

State Police in 70.2% of the localities perceived their problems with towing and recovery operators to be MINOR, occurring RARELY. 14.4% reported NON-EXISTENT problems occurring NEVER. 12.5% reported their problems to be MODERATE, occurring OCCASIONALLY.

However, State Police in three localities, Stafford County, Spotsylvania County and Frederick County (all in the 7th Congressional District), reported their problems as being SEVERE and occurring REGULARLY. They described particular problems with towing operators "RUNNING WRECKS," i.e. responding to crash scenes without being called. The comments stated that the Department of State Police had "asked each wrecker concerned not to respond to a crash scene or the scene of a disabled vehicle unless called by the Department or the owner or operator of a vehicle. Because [the wrecker operators] know [the State Police] have no way to legally enforce this request, they ignore it and continue to run to crash scenes to solicit business."

Only .57% of the towings requested by state police resulted in complaints being reported. The most frequent reasons for the state police to request towing were in EMERGENCY SITUATIONS and when DISABLED or ABANDONED VEHICLES were reported. The survey results show that approximately 38.5% of the vehicles ordered towed by the state police were in EMERGENCY SITUATIONS, which would include both consent and non-consent situations. 23.6% of state police-requested towings were in response to DISABLED VEHICLES and includes both consent and non-consent towing. In cases of disabled vehicles or emergency situations where vehicle owners are present, police will encourage the owner to name the wrecker to be called. These situations become non-consent when the owner is absent from the scene or unable to make a selection.

22.3% were in response to ABANDONED VEHICLES, which are almost always "non-consent" towing. OWNER ARREST constitutes 11.3% of state police requested-towing.

EXCESS TOWING and/or STORAGE CHARGES was the number one type of complaint reported to state police in all ten congressional districts (67.2%). The average dollar value of this type of complaint was \$130.50.

VEHICLE DAMAGE was the second most commonly reported complaint (10.7%) and the average dollar value was \$187.50; UNPROFESSIONAL BEHAVIOR comprised 9.8% of the complaints while PROPERTY STOLEN FROM STORED VEHICLE comprised 6.9% of the complaints with an average dollar value of \$120. (See Appendix G for State Police Survey Results).

In their comments regarding additional problem areas with towing and recovery operators that should be addressed by regulation, 12.4% state policemen across the state cited their inability to prevent the practice of running wrecks. Other areas cited were the need for towing rate regulation when state police requested service, the need for equipment requirements, i.e., brooms, shovels, etc.), the need for examination and/or training requirements for tow truck operators. 60.3% of the state police who responded felt that these problem areas should be addressed through regulation.

#### F. Local Law Enforcement

Local law enforcement officials in Virginia were surveyed in order to gather additional complaint data and to assess local police contact with the towing industry. Those surveyed included Chiefs of Police, Sheriffs and Campus Police departments. 168 of 278 responded and the results were analyzed by congressional district to determine whether any geographic patterns of towing abuses existed (See Appendix H for Local Law Enforcement Survey).

The survey asked local law enforcement officials to assess the seriousness and frequency of towing-related problems in their localities. 51.2% of the respondents described their problems as being MINOR, occurring RARELY. 29.8% reported problems as being NON-EXISTENT," occurring NEVER; and 14.3% of the respondents described

their problems as being MODERATE, occurring OCCASIONALLY. Only eight respondents indicated serious towing-related problems in their localities. Law enforcement officials in the town of Clarksville, Buchanan County, Caroline County, Spotsylvania County, Chesterfield County and the City of Salem described their problems as being SEVERE and occurring REGULARLY. Russell County and Norfolk City officials rated their problems as VERY SEVERE, occurring CONTINUOUSLY.

1.5% of the tows requested by local law enforcement officials during calendar year 1985 resulted in complaints being reported to their offices. Again, the most frequently cited reason for local law enforcement officers to request towing was for EMERGENCY SITUATIONS (30.3%). ABANDONED and DISABLED vehicles respectively constituted 10.4% and 10.3% of the reasons for police requested-towing. OWNER ARREST accounted for 11.6% of police requested-towing.

EXCESSIVE TOWING and/or STORAGE CHARGES was again the chief complaint reported to local law enforcement officials in all ten congressional districts (63%). The average dollar value of that type of complaint was \$400.

VEHICLE DAMAGE was the second most common type of complaint reported (7.6%), and the average dollar value was \$80.00; UNPROFESSIONAL BEHAVIOR comprised 3.5% of the complaints, while PROPERTY STOLEN FROM STORED VEHICLES comprised 2.9% of the complaints with an average dollar value of \$485.00. (See Appendix I for Local Law Enforcement Survey Results.)

In their comments regarding additional problem areas with towing and recovery operators that should be addressed by regulation, local law enforcement officials most often indicated that some regulation of towing and storage fees was needed. They also felt that training requirements, licensure or certification for operators and regular equipment inspections were needed. Local law enforcement also felt that the practice of running wrecks creates additional hazards at an accident scene and that specific requirements for storage lot security were needed.

#### G. Public Hearings

Two public hearings were held in order to gather information detailing the nature and degree of complaints relating to the towing industry. The hearings were held June 30, 1986 in Richmond, and July 1, 1986 in Arlington.

Of the twenty-nine people who testified at the two hearings, eighteen were associated with VATRO, and three were towing operators who were not members of VATRO. Individuals presenting testimony included two consumers relating personal experiences; one neighborhood association member; two AAA-affiliated representatives; one law enforcement official from Virginia Beach; and the General Counsel for the Virginia Gasoline and Automobile Repair Association, Inc.

Everyone who testified at the hearings except Mr. Timmons from Tidewater Automobile Association, and Mr. Kost from AAA Potomac,



supported the need for increased regulation either through creating a licensing authority or drafting a more comprehensive set of state laws governing towing.

The members of VATRO who testified were supportive of the four points expressed in the VATRO Position Statement. Their testimony re-emphasized that many of the problems being experienced by law enforcement, consumers and towers could be addressed through regulation. However, one towing operator who was not a member of VATRO suggested that a bonding requirement would eliminate "fly-by-night" operators.

The representative from the Fan District Neighborhood Association urged the Board of Commerce to be sensitive to the concerns of property owners in residential areas (other than apartment projects), who need to have trespassing vehicles removed from their driveways, etc. He expressed concern that regulations could be imposed which would make it either too time consuming or too costly for some towing firms to afford to tow trespassing vehicles from private or commercial property.

One of the two consumers who testified came to the hearing seeking help. She related a personal experience in order to make a case for the need to have some regulation for consumer protection. She testified that after her car was towed from an apartment complex lot, she encountered storage lot attendants who were unprofessional, her car was vandalized, the transmission was damaged and the tower refused to accept responsibility. (See Appendix J for Cumulative List of Public Hearing Testimony).

#### H. Written Comments

Twenty-seven written comments were submitted for the purpose of being placed in the official records of the two public fact-finding hearings. (See Appendix K for Cumulative List of Written Comments). The written comments were analyzed based upon subject matter.

##### 1. LAW ENFORCEMENT COMMENTS:

Four responses were submitted from the chiefs of police and a sheriff in Abingdon, Dayton, Salem and Winchester, who generally favored some form of regulation which addressed competence, reasonable charges for service, increased insurance coverage, protection of vehicles in tower's possession, wrecker service logs to be kept by all local police departments. Specific Virginia Code Sections were cited as needing clarification: Va. Code Section 18.2-324 (1950) relating to the person responsible for removing glass or other injurious substances at accident site, and Va. Code Sections 43-32 and 43-34 relating to the mechanic's and storage liens.

##### 2. CONSUMER COMMENTS:

Ten written responses were submitted which described various types of consumer complaints. Five consumers complained of

being charged unreasonable rates for towing and storage; two consumers complained about their vehicles being damaged as a result of towing; two consumers complained about being towed from private property which did not post signs that towing of unauthorized vehicles was enforced; and four consumers complained of towing operators behaving in an unprofessional manner and of towing company policies of not accepting anything but cash for payment of towing charges.

3. COMMENTS RELATING TO LIEN AND DISPOSITION OF ABANDONED VEHICLES STATUTES:

Five of the written comments, including one from the President of the Virginia Citizens Consumer Council in Arlington, questioned the clarity of Va. Code Sections 43-32 and 43-34 (1950). Deficiencies in the Code were noted in the following areas:

- a) Determining ownership of the vehicle
- b) Notice to the owner
- c) Ten-day notice
- d) Public auction
- e) Notice of public auction
- f) Appraised value

4. VATRO AND AAA COMMENTS

VATRO and AAA Potomac placed their position statements into the permanent records of the hearings and then submitted additional comments further expanding upon their opposing positions.

I. Summary

1. Seriousness and Frequency of Complaints

Although they were unable to give specific numbers of complaints, 80% of the Better Business Bureaus and Consumer Affairs agencies who responded to the survey agreed that there were significant problems with abuses by towing and recovery operators.

The majority of state and local law enforcement officials and the Commonwealth's Attorneys, however, considered problems to be MINOR or NON-EXISTENT, occurring NEVER to RARELY (84.4%). 11.8% felt that the problems were MODERATE, occurring OCCASIONALLY. Only 3.7% of state and local law enforcement officials and the Commonwealth's Attorneys felt that their problems were SEVERE or VERY SEVERE, occurring REGULARLY to CONTINUOUSLY. Of the estimated state and local law enforcement-requested towing, only about 1.2% resulted in complaints being filed.

Despite their assessment of the seriousness and frequency of the complaints against the towing industry as being MINOR and occurring RARELY, the majority of state and local law

enforcement agencies favored some form of regulation. Due to the wording of the state and local law enforcement surveys, it was not possible to determine the percent of complaints which were reported in non-consent towing situations.

## 2. Nature and Average Dollar Value of Complaints

The number one complaint identified by all of the surveys was EXCESSIVE TOWING and/or STORAGE CHARGES (65.1% of the total complaints). Overall, very few respondents estimated the dollar amount of the complaints; therefore, the average dollar value amounts which were determined for the applicable types of complaints may not be particularly meaningful. The average dollar value of these complaints was \$265.00.

A fairly wide gap existed between the number one complaint and the next most frequently cited complaint, which was VEHICLE DAMAGE due to improper towing and incompetent operator (9.2%). The average dollar value was \$135.00.

UNPROFESSIONAL BEHAVIOR accounted for 6.7% of the total complaints and PROPERTY STOLEN FROM STORED VEHICLE accounted for 4.9% with an average dollar value of \$300.00. Various other complaints comprised the remaining 14.1%.

## 3. Towing Industry Complaints

The initial "Problem Identifying Survey" of VATRO members, the public hearing testimony and written comments provided complaint information from the towing industry. The following is a summary of the problems identified by the towing industry:

- a) Lack of clarity in current state statutes dealing with disposition of abandoned vehicles, the enforcement of the mechanic's and storage liens, and private property towing procedures.
- b) The general lack of regulation of the segment of the industry which performs non-consent towing, thus allowing for potential harm to the public health, safety and welfare. The enforcement of current regulation does not provide adequate protection for the public. Most of the complaints filed occurred in non-consent towing situations.

The hearing testimony, the written comments, and the state and local law enforcement, Commonwealth's Attorneys and Agency Surveys reflected widespread support for the need for regulation of the industry. AAA was the only group which opposed regulation of the towing industry.

VI. CURRENT VIRGINIA LAW

- A. Case Law
- B. Liens and Disposition Procedures
- C. State Corporation Commission
- D. Department of Motor Vehicles
- E. Department of State Police
- F. Summary

## VI. CURRENT VIRGINIA LAW

### A. Case Law

The fourth clause in Senate Joint Resolution 51 specifies that when motorists delegate to law enforcement personnel the selection of a towing and storage company, they have a right to expect that the company will be equipped to meet the requirements imposed by the common law on one in legal possession of the property of another for hire, that is a "bailee-for-hire."

See Appendix L for a Legal Memorandum from the Office of the Attorney General which explains the present status of bailment law in Virginia as it relates to duties and obligations of a "bailee-for-hire." A towing and storage company must exercise the reasonable amount of care that a person in similar circumstances would use toward his own property. Further, he is liable only for the loss or damage caused by his own negligence.

### B. Liens and Disposition Procedures

The following Sections of the Code of Virginia deal with liens as they apply to the towing industry:

1. Va. Code Section 43-32, Lien of keeper of a garage
2. Va. Code Section 43-33, Lien of mechanic for repairs
3. Va. Code Section 43-34, Enforcement of liens (garage-keepers and mechanics) and of bailees for hire
4. Va. Code Section 43-35, How and when validity of lienor claim of other persons to property is tried

Under current Virginia law, the mechanic's lien applies when a tower acts as a bailee in possession of the property of another, i.e. the unclaimed vehicle.

Va. Code Section 43.34 outlines certain procedures to be followed in order to enforce a mechanic's lien. Those procedures are as follows:

1. If debt is not paid within ten days after it is due, the tower may sell the vehicle by public auction and apply the proceeds toward the satisfaction of the debt, provided the value of the vehicle does not exceed \$3,000.
2. Before making sale, the time, place and terms shall be advertised in such a manner as to give publicity.
3. Before sale, the lienholder shall ascertain from the Division of Motor Vehicles if the certificate of title shows any lien, and if so, shall notify the lienholder of record by certified mail of time and place of proposed sale ten days prior to the sale.

Whenever a vehicle is sold, DMV shall issue the certificate of title and registration to purchaser upon his application containing the serial or motor number of the vehicle purchased, together with an affidavit of the lienholder that he has complied with the provisions, or by sheriff conducting sale that he has complied with the order.

Any garage keeper to whom a vehicle has been delivered pursuant to Va. Code Sections 46.1-2, 46.1-3 or 46.1-3.2 may after ninety days from the date of delivery proceed under this section for the sale of the motor vehicle.

#### C. State Corporation Commission

Currently, the State Corporation Commission (SCC) provides a degree of economic regulation of the towing industry. Registration as a bulk contract carrier, as well as proof of liability insurance coverage - a minimum of \$350,000 (\$300,000 for total liability and \$50,000 for property damage). There is no insurance requirement to cover the vehicle being towed or its contents, nor garage-keeper insurance.

See Appendix M for a letter from William S. Fulcher, Director of the Motor Carrier Division of the SCC, which explains the SCC's regulatory authority governing the towing and recovery industry.

#### D. Department of Motor Vehicles

Under current law, most tow trucks are classified as "for-hire" vehicles. Va. Code Section 46.1-1 (35) defines "for hire" as "meaning any owner or operator of any motor vehicle, trailer, or semitrailer operating over the highways of Virginia who accepts or receives compensation for service directly or indirectly."

Upon completion of the appropriate application and the payment of a fee for the applicable "for hire" license (the fee is determined according to the weight of the tow truck), the Division of Motor Vehicles issues the operator "for hire" license plates which must be displayed on the vehicle.

Under Va. Code Section 46.1-373, the Division of Motor Vehicles will issue a driver's license with an "H-endorsement" to "any person who operates a vehicle-for-hire having three or more axles with a licensed gross weight in excess of 40,000 pounds," which includes tow truck operators. Every applicant intending to operate such vehicle, "when applying for a driver's license shall state in his application, if applicable, that he has driven at least 500 miles in the vehicle of the classification which he intends to operate or the person shall submit to and pass the driving test provided for in Va. Code Section 46.1-369, using the type of vehicle for which he seeks to be licensed." This is the only type of regulation that DMV imposes upon tow truck operators, and it does not apply to private, not-for-hire operators.

DMV also becomes involved in the activities of the towing industry when an operator seeks to enforce the mechanic's lien. The tower sends a Request for Vehicle Information form (IRD 3) to DMV in order to determine whether the title shows any liens pursuant to Va. Code Section 43.34. The Request for Information generally takes DMV two to three days to process and return to the tower who needs the information in order to notify the vehicle owner. See Appendix N for a memorandum from Mr. Frank Sencindiver, Deputy Commissioner of the Department of Motor Vehicles relating to this process.

After the sale of the vehicle, the tower would submit an affidavit of compliance with Va. Code Section 43-34 for enforcement of a mechanics' or storage lien, (VSA 35 form), along with the following:

1. A copy of the DMV Form IRD 3
2. The receipts for registered or certified mail indicating that the owner(s) and lienholder(s) were notified 10 days in advance as to the time and place of sale, if the vehicle is registered in Virginia. If the vehicle is not registered in Virginia, no receipts for registered mail are required
3. A bill of sale, with full description of the vehicle, to the purchaser from the person actually conducting the auction
4. A statement indicating that the impending sale was advertised, giving the time, date, place and terms thereof
5. An itemized repair and/or storage bill for which the lien was created
6. DMV Form VSA 19 executed by purchaser along with the respective title fee and Sales and Use Tax

E. Department of State Police

The Department of State Police has issued General Order No. 28 relating to wreckers and ambulances and the impoundment of vehicles which establishes procedures for selecting wrecker service. General Order No. 28 provides for the following:

1. Wrecker selection by the vehicle owner, if possible;
2. That the nearest wrecker be called in the event of a definite traffic hazard;
3. That the nearest place of business providing wrecker service capable of performing the needed service be called if the vehicle owner is not present or not able to select wrecker service, or in situations of abandoned vehicles;
4. An equitable distribution of calls from wreckers in localities where there are several wrecker service businesses;

5. Permanent written records to be kept when a wrecker is called by State Police;
6. Procedures to investigate complaints lodged against towers, and the removal of towing operators from the list; and
7. An appeal process for a tower who has been removed from the list by the Department of State Police.

Towing companies must make application in order to be placed on the State Police call list. The application questions the security of the storage lot; the type of vehicles the tower is equipped to handle; and types of insurance held; as well as other vital information. The application form specifies that towers are requested not to come to the scene of a crash unless called by a police officer.

See Appendix O for a letter from Lt. Col. C.M. Robinson, Director of the Bureau of Field Operations which responds to comments made about the Virginia Department of State Police at the public hearings.

House Bill 666 was passed by the 1986 General Assembly, which gave the Superintendent of State Police the authority to promulgate rules and regulations pertaining to commercial motor vehicle safety pursuant to the U.S. Motor Carrier Act of 1984. These rules and regulations are to set forth criteria relating to driver, vehicle and cargo safety inspections with which motor carriers and transport vehicles shall comply.

The Federal Motor Safety Carrier Safety Regulations which apply to tow truck operators are as follows:

1. Section 391.41, Subpart E and Sections 391.43 and 391.45 relating to physical qualifications for drivers and the requirement of a medical examination.
2. Section 395.3 relating to the hours of service of drivers and the maximum driving on-duty time.
3. Section 395.8. The owner of towing businesses are required to keep records of every driver's duty status.

Effective July 8, 1988, the following Federal Motor Carrier Safety Regulations will apply to tow truck operators:

1. Subpart B - Qualification and Disqualification of Drivers  
Section 391.11, Paragraph 10 (Driver's Road Test)  
Section 391.11, Paragraph 11 (Driver's Written Examination)  
Section 391.11, Paragraph 12 (Driver's Application for Employment)



2. Subpart C - Background and Character
  - Section 391.21, Application for employment
  - Section 391.23, Investigation and inquiries
3. Subpart D - Examinations and Tests
  - Section 391.31, Road test
  - Section 391.35, Written examination
4. Subpart F - Files and Records
  - Section 391.51, Driver qualification files

F. Summary

Current Virginia statutes provide for the registration of tow trucks as bulk contract carriers with the State Corporation Commission. Operators must provide proof of liability and property damage insurance. Cargo and garagekeepers' insurance are not required by law.

"For-hire" licenses must be obtained from the Department of Motor Vehicles and displayed on all tow trucks that provide service for which they are compensated. Additionally, "for-hire" truck operators should have an "H-designation" on their drivers' licenses.

State statutes provide local governing bodies with the authority to regulate either through a contract or local ordinance, the towing services provided to local law enforcement agencies in the removal of abandoned, unattended or immobile vehicles.

The private property towing statutes only provide that a vehicle cannot be removed from private property without the written consent of the property owner. Also, the local law enforcement agency must be notified of such towings. No signs are required to be posted on private property.

The mechanics and storage lien statutes provide recourse for towers to collect for unpaid towing and storage bills.

VII. LOCAL ORDINANCES

- A. Background
- B. Ordinance Analysis
- C. Results of Survey
- D. Private Property Towing Ordinances
- E. Summary

## VII. LOCAL ORDINANCES

### A. Background

Several Sections of the Code of Virginia address regulation of towing services both when the police request towing of abandoned, immobile or unattended vehicles, and also when private property owners or their designated agents request the removal of trespassing vehicles from their property. It is important that these Code Sections be understood in order to assess the regulatory framework that is currently in existence, and thus determine if additional regulation is necessary to protect the public health, safety and welfare.

Va. Code Section 46.1-3 authorizes the governing body of any county, city or town to provide by ordinance for the removal and disposition of unattended, abandoned or immobile vehicles, pursuant to police requests. An amendment in 1985 to Va. Code Section 46.1-3 also provided the governing body of any county, city or town with the authority to regulate services rendered pursuant to police towing requests by any business engaged in the towing or storage of unattended, abandoned or immobile vehicles. The regulation may include the following:

1. Delineation of service areas;
2. Limitations of the number of persons engaged in such service areas; and
3. Specification of equipment to be used to provide such services.

Further, the governing body of any county, city or town may contract for services rendered pursuant to police towing requests for towing, and storage of unattended, immobile or abandoned vehicles. The contract may specify the following:

1. Fees or charges to be paid by the owner of the towed vehicle;
2. The geographical area to be served; and
3. Eligibility criteria to enter into such contracts.

Va. Code Section 46.1-3 also addresses the issue of towing from private property by stating that no abandoned, immobile or unattended vehicle may be removed from private property without the written request of the property owner. The ordinance may also provide that the property owner at whose request the trespassing vehicle is removed shall indemnify the city, county or town against any loss or expense incurred by reason of the removal, storage or sale. The vehicle owner is responsible for paying to the parties entitled all reasonable costs incidental to the removal, storage, locating and notification of the vehicle owner. Each removal shall be reported immediately to a central office to be designated in the ordinance and notice shall be given to the vehicle owner as promptly as possible.

Va. Code Section 46.1-551 deals with the ticketing, removal or immobilization of trespassing vehicles. It is lawful for any owner, operator or lessee of any parking lot, parking area or space to have trespassing vehicles removed without the vehicle owner's consent provided notice is given prior to or simultaneously to at least one local law enforcement official. In the event of such removal and storage, the owner of the vehicle involved shall be charged with paying the costs and the vehicle may be held for a reasonable charge for its removal and storage.

Va. Code Section 46.1-551 does not require that signs be posted on the premises to give notice that unauthorized parking will result in towing at the owner's expense. The statute does not clearly specify whether the tower or the property owner is responsible for contacting the law enforcement official. Both statutes specify that no vehicle may be removed without the property owner's permission, but does not specify whether the property owner can delegate that responsibility by granting the tower a blanket authorization to remove any illegally parked vehicle.

The property owner also has the choice between having the vehicle towed or calling upon law enforcement officials to issue a notice of violation.

#### B. Survey Analysis

A survey was sent to all city and county attorneys in Virginia requesting that they send a copy of any ordinances that their locality had enacted pursuant to Va. Code Section 46.1-3. 87 of the ninety-eight city and county attorneys who were surveyed responded. (See Appendix P for City/County Attorney Survey.)

Many localities have enacted ordinances giving them the authority to provide for the removal and disposition of unattended, abandoned or immobile vehicles from public or privately owned property (provided there is written consent from the private property owner), however, relatively few localities have enacted ordinances as specified in the fourth paragraph of Va. Code Section 46.1-3 which would regulate services rendered pursuant to police towing requests by any business engaged in the towing and storage of unattended, abandoned or immobile vehicles.

In evaluating and categorizing the local ordinances which were collected, it is important to understand that evidence of an existing regulatory framework was being examined. The regulation often is in the form of police policy governing wrecker service lists or is set forth via a locality's contract with a towing firm(s) to provide service.

In order to evaluate the survey, the ordinances were categorized based upon the furnished information with respect to the type of regulation. The following is a brief explanation of each category:

1. NO REGULATION - The locality may have enacted an ordinance pursuant to Va. Code Section 46.1-3, but it does not include the provision that allows for the regulation of towing services provided at the request of the police.
2. REGULATION - POLICE REQUEST TOWING/ORDINANCE OR CONTRACT - Towing services are regulated with respect to equipment, specifications, etc., and includes contractual agreements with commercial towing service.
3. REGULATION OF POLICE REQUEST/POLICE DEPARTMENT ADMINISTRATIVE POLICY - Regulation is accomplished through an administrative policy which directs the police department to develop forms, requirements, etc. so that towing operators may make application to provide service and be put on police towing call list.
4. PRIVATE PROPERTY TOWING REGULATION--Regulations are in effect which govern the procedures that towing businesses and operators must follow when removing trespassing vehicles from private property at the property owner's request. (See Appendix Q Local Regulation Chart)

C. Results of Survey

The majority of the localities (66) in Virginia do not regulate the towing services for police-requested removal of abandoned vehicles. Local regulation of police-requested towing services is most often accomplished either through the administrative policies of the local law enforcement agency (10), or through contracts or local ordinances (9). Only five of the responding localities in the Commonwealth have enacted comprehensive private property towing regulations which include sign requirements and specifications.

D. Private Property Ordinances

The governing bodies of Arlington County and the Cities of Virginia Beach and Norfolk have enacted ordinances dealing with the removal of trespassing vehicles from private property. Additionally, Staunton and Newport News police departments have established detailed policies governing private property towing.

Arlington County is the only one of the three localities which specifies that only the owner or his designated agent may request the removal of trespassing vehicles in order to address the problem of so-called "bounty hunting " in apartment project parking lots. This practice occurs when a towing company has a written agreement with the property owner to tow any unauthorized vehicle before any trespass occurs, thus the towing operator may patrol the parking lot in order to tow as many vehicles as possible. This practice has been criticized by many consumers as being subject to abuse. However, the ordinance does make exceptions for the removal of unauthorized vehicles from apartment projects between the hours of 11:00 p.m. and

4:00 a.m. The owner shall first give notice of the towing to the Arlington County Police Department. The owner cannot delegate this authority to the towing operator except during the above specified hours (Section 14.104.2, Arlington County Code).

The Code of the City of Norfolk, Sections 25-300 through 25-307, also requires the property owner's written consent, but does allow for a written agreement between the towing company or operator and the property owner to remove any unauthorized vehicles. However, if a written agreement exists, it is the responsibility of the towing operator or business to post notice of this arrangement and to contact the police prior to the towing. In addition to notifying police, Norfolk ordinances require the towing firm to submit a written report to the department of police containing extensive information about the vehicle towed. The Code of Virginia Beach does not address this issue, but does require that the police be notified prior to the removal of any vehicle from private property.

The ordinances of all of these localities (except Staunton) also specify that it shall be unlawful to remove trespassing vehicles unless legible, visible signs are posted that state that all unauthorized vehicles will be removed at the owner's expense. The Virginia Beach, Newport News and Norfolk police departments also require that the name and phone number of the towing firm be on the sign. However, in Arlington County, the sign requirement does not apply to any parcel of property used for a single-family residence or (1) two-family residence.

Virginia Beach, Newport News and Norfolk require that towing and storage rates be prominently displayed at the main business office and at the storage yard. All three localities require the maintenance of Tow Truck Service Operator's log which can be inspected by police officers during regular business hours.

General Order No. 3-28 of the Staunton Police Department requires that all private property towing be done only at the express request of the property owner, that the towing be reported to the local law enforcement offices and be recorded on the Citizen Wrecker Request Log.

Virginia Beach and Newport News also regulate the towing and storage rates for private property towing: \$30.00/day and \$40.00/night and \$4.00/day for storage in Virginia Beach; and \$30.00/day or night, \$10.00 for dolly and \$5.00/day for storage in Newport News. A receipt is to be given to the vehicle owner and no fee is to be charged for mileage. Rate regulation applies to non-consent towing situations only.

The private property towing regulations in these three localities were enacted in response to specific problems which were reported in the specific localities.

## E. Summary

Local governing bodies have been given the authority to enact ordinances which would provide regulation of towing services for police requested towing, as well as for towing from privately-owned property. But as evidenced by the survey results, most have not chosen to do so, or have not seen the need to do so. It appears from the survey results that localities have provided regulation as a result of problems and complaints being reported in the locality.

VIII. OTHER STATES

- A. Survey of Secretaries of State
- B. Results of Survey
- C. Comprehensive Towing Laws
- D. Model Legislation
- E. Summary



## VIII. OTHER STATES

### A. Survey of Secretaries of State

In order to gather information about the ways in which other states regulate the towing industry, a survey was sent to the Secretaries of State around the country. Each Secretary of State was asked to provide the Department of Commerce with the name(s) of the agency(s) in their state which regulate any aspects of the towing industry. Forty-six states responded.

Regulations and regulatory authority varied from state to state, however, some similarities were detected. The regulations of other states were evaluated with respect to how some of the problems identified in Virginia were dealt with in other states. The following areas were evaluated:

1. The type of agency or agencies which possessed the regulatory authority, if any, i.e., Public Service or Utility Commissions, or Motor Vehicles, State Police, Transportation and/or Public Safety Departments.
2. The extensiveness of the regulation, i.e., rate regulation, inspection, wrecker classification based upon towing capacity; regulation of private property towing, as well as police requested towing; insurance requirements.

### B. Results of Survey

The following types of regulation were in effect in other states:

#### 1. PUBLIC UTILITY/SERVICE COMMISSION REGULATION:

These commissions have the power, and are charged with the duty, of supervising, regulating and controlling all public service companies doing business in the state. Public service companies and corporations include gas, pipeline, electric light, heat, power, and water supply companies, sewer companies, telephone companies, telegraph, and all persons authorized to transport passengers or property as common carriers.

This type of regulation included provisions for registration of towing companies with the commission, insurance coverage limits, as established by the commission, and the filing or approval of rates or tariffs with the commission.

#### 2. LICENSURE

An occupational license is required for all persons engaged in the business of towing, removal, and storage of vehicles.

### 3. LAW ENFORCEMENT SERVICE REGULATION

Regulations are promulgated by a designated agency and apply only to those towing businesses and operators who wish to provide towing services to law enforcement agencies. This type of regulation provides for the establishment of equipment specifications and inspections, wrecker classifications and operator qualifications.

### 4. MOTOR VEHICLE REGISTRATION-TYPE REGULATION

This type of regulation involves only the registration of the tow truck with the state's Department or Division of Motor Vehicles and may require a special license plate and the enforcement of certain safety provisions.

## SURVEY RESULTS

The towing industry in twenty states is regulated by a "Public Utility/Service Commission" and the filing of rates and tariffs is required in five of these states. The regulations for common motor carriers were applied to tow trucks in many states; however six states exempted wreckers from the regulations. This type of regulation involves registration of tow trucks with the commission, providing proof of the established minimum insurance coverage required by the commission, and in some state rates were either filed with or approved by the Commission. Registration with a public utility/service commission is a form of economic regulation of the segment of the towing industry which is compensated for their services (almost all towing businesses).

The Departments or Divisions of Motor Vehicles or the Departments of Public Safety or Transportation provide the only regulation of the towing industry in ten states. Registration of tow trucks as a "for-hire" vehicle or "wrecker" and the display of a special license plate is generally all that is required by this type of regulation. The state's motor vehicle code may also provide for the use of emergency lights on wreckers, the enforcement of certain safety standards, and special designation on tow truck driver operator's permit or license.

Arizona is the only responding state that regulates all tow trucks within the state. Section 28-1007 of the Code of Arizona states that "no person may operate a tow truck for the purposes of towing vehicles without first registering with the Director of the Department of Public Safety and obtaining a permit pursuant to the rules and regulations governing tow trucks promulgated by the Department of Public Safety."

The towing regulation in six states applies only to businesses and operators who provide towing-recovery-storage services at the request of state police or other law enforcement officials. The administrative rules and regulations do not interfere with a vehicle owner's request for utilization of a specific wrecker.

These regulations generally provide for inspection of equipment and storage facility, operator standards of conduct, classification of wrecks based upon towing capacity.

Five states did not respond to the survey and eight states indicated that neither their state statute nor any agency's administrative rules and regulations provided regulation of any aspects of the towing industry. (See Appendix R for Regulation of the Towing Industry in Other States Chart).

### C. Comprehensive Towing Regulations

The most comprehensive towing regulations are found in the following states: Arizona, Delaware, Florida, and Washington. Regulations in Nevada, West Virginia and Oklahoma heavily emphasize approval of rates and the filing of tariffs with the Public Service Commission. (See Appendix S for graph showing extensiveness of the regulations.)

1. Washington State's Department of Licensing issues a publication called "The Law Relating to Tow Truck Operators" which includes a registered tow truck operator manual. The manual outlines changes in state law, includes the applicable state statutes and the Washington State Patrol Administrative Code which governs only towing businesses which provide service to law enforcement agencies. Washington also has a complaint procedure. Washington's Commission on Equipment has the authority to promulgate rules and regulations governing the selection of towing vendors to provide service to the Washington State Patrol. The Department of Licensing handles registration and insurance requirements and has provisions for private property towing, processing of vehicles and procedures for auctions.
2. Delaware's Department of Public Safety has the authority to promulgate rules and regulations governing the selection of towing vendors by State Police officers. Delaware's rules and regulations are very similar to the model statute which is discussed in this report.
3. The Arizona Department of Public Safety has the authority to promulgate rules and regulations governing all tow trucks in the state, and has published a regulations manual.
4. The Florida Department of Highway Safety and Motor Vehicles has the authority to promulgate rules and regulations governing the towing vendor selection for law enforcement service.

### D. Model Legislation

Mr. John Hawkins, an attorney, is Senior Editor of Tow Times magazine, the monthly international communications medium to the towing and recovery industry. In 1977, he formed the Florida Association in the towing industry and, in 1979, the National Association (Towing and Recovery Association of America). Mr. Hawkins indicates that he has written a great deal about law and the

economics of the recovery-towing-storage industry, including model legislation for states and municipalities, and testified at the public hearing in Richmond.

A copy of his model legislation is included in this report's appendices for reference. The model legislation features an Enabling Statute which grants authority to a regulatory body to enact rules and regulations governing the qualifications for eligibility of commercial recovery-towing-storage companies to perform services at the request of law enforcement agencies. Private garages who do not engage in this type of activity would be exempt. The statute allows for the owner's choice so long as it does not create a traffic hazard. (See Appendix T for entire model statute).

The model statute also contains provisions so that the rules and regulations promulgated by the designated authority may be amended by a political subdivision of the state to meet local conditions, provided the amendments shall not run contrary to the general concepts provided in the statute. It also allows political subdivisions to enter into contracts with commercial towing firms to furnish service to law enforcement.

The model statute contains provisions for the reporting of unclaimed motor vehicles which include the following steps:

1. Towing firm contacts the appropriate law enforcement agency immediately upon the towing of a vehicle
2. Law enforcement contacts the Division of Motor Vehicles within twenty-four hours via electronic communication in order to obtain owner information
3. The Division of Motor Vehicles returns requested information to law enforcement in seventy-two hours
4. Thus, the towing company agent receives information within five days from the date of storage, and notifies the owner and all lienholders by certified mail of the location of the vehicle, and of the fact that it is unclaimed
5. If a vehicle is registered out of state, the towing agent shall make a good faith effort to notify owner and any lienholders, and notice shall be given within a reasonable period of time from the date of storage

The model licensing statute features the following:

1. Requirement of a valid permit issued by a designated authority in order to operate a towing business.
2. Application for permit would include:
  - a) Fee for permit
  - b) Full disclosure of persons having financial interest

- c) Proof of insurance to provide the following coverage:
    - i. Liability - \$500,000
    - ii. Garage-keepers legal with coverage of the property and its contents to be transported
  - d) Ability to meet minimum safety standards established by the designated authority
3. Distinctive stickers or medallions to be issued and to be displayed on vehicles to show that all fees have been paid and permit issued, different medallions or stickers for different classes of vehicles
  4. Renewals of permits
  5. Authority to deny, suspend or revoke, refuse to issue or renew permit for certain reasons or violations
  6. Prevention of any political subdivision requiring additional registration, license, permit, etc.

The model possessory lien statute includes the following features:

1. Impoundment lot specifications
2. Application of lien
  - a) Private property owner requested towing and storage
  - b) Law enforcement agency or officer, including abandonment cases
3. Perfection of lien by uninterrupted possession of vehicle
4. Notice and lien procedure:
  - a) Within five working days of time of possession, notification of owner by certified mail
  - b) Police department to furnish last known registered owner information to tow within twenty-four hours
  - c) Owner can secure possession of vehicle through administrative hearing
5. Administrative hearing to be conducted by law enforcement agency which ordered the tow; procedures outlined
6. Foreclosure and sale of salvage procedures:
  - a) If vehicle not redeemed within thirty days, may be sold at non-judicial sale or at public auction

7. Notice of sale sent to registered owner and lienholders by certified mail
8. Notice sale published in newspapers of general circulation at least ten days prior to sale and in post office nearest lienor's premises
9. Proceeds of sale

The model private trespass statute provides the following features:

1. Makes it lawful for private property owner to order towing of trespassing vehicles.
2. Vehicle must be stored in enclosed secure storage lot and site must be open during business hours.
3. The person or towing firm removing the vehicle shall within thirty minutes of completion notify municipal police or sheriff.
4. If owner of vehicle arrives at scene prior to towing, the vehicle shall be disconnected upon payment of reasonable service fee.
5. Signs with certain information required on private property upon which towing will be enforced. Single family dwellings are exempt from sign regulation.
6. Any towing firm intending to perform private property trespass towing shall file and keep on record with local law enforcement agency a complete copy of current rates.
7. No person or towing firm shall engage in private property trespass towing without filing a notice of his intent to do so.
8. No removal of vehicles from private property to be done except upon express instruction of private property owner. Such instruction for removal shall not be given in advance of trespass or by blanket authorization.
9. Disposal of any unclaimed vehicle may be pursuant to possessory lien foreclosure statute after thirty days.

#### E. Summary

The most comprehensive towing regulations are found in states which grant a designated state agency the authority to promulgate rules and regulations governing towing service. Washington, Arizona, Delaware, and Florida have rules and regulations which address most of the problems with towing identified in Virginia.

If the recommendation to create a regulatory authority for the towing industry is made, the rules and regulations in place in the states of Washington, Arizona, Delaware and Florida as well as the model statute provided could serve as models in drafting enabling legislation.

IX. SUMMARY

A. Findings

B. Conclusions



IX. SUMMARY

A. Findings

Virginia law states that it is the policy of the Commonwealth to regulate certain professions only when the public interest is clearly at stake and only if certain conditions are met.

In determining the proper degree of regulation, if any, Va. Code Section 54-1.26(B.1-10) directs the Board of Commerce to determine the following:

1. Whether the tow truck operator performs a service for individuals involving a hazard to the public health, safety and welfare, if unregulated:

From the research data, it was determined that tow truck operators do provide a service which is potentially dangerous and a hazard to public health, safety and welfare, since they provide services involving special equipment which requires knowledge and skill to operate. However, relatively few cases of vehicles being damaged as a result of being towed have been reported and documented by law enforcement officials.

2. The view of a substantial portion of the people who do not practice the particular profession, trade or occupation:

The public hearings and written comments provided the Board with information regarding the views of consumers, and state and local law enforcement officials who generally support the need for some form of regulation of the segment of the towing industry that engages in "non-consent" towing.

3. The number of states which have regulatory provisions similar to those proposed:

The VATRO proposal provides for the creation of a Board of Towing which would establish minimum qualifications to obtain a license to engage in the occupation of non-consent towing. The Board would enforce standards of conduct and discipline their licensees. No other state has such a regulatory scheme.

The State of Arizona regulates and licenses all tow truck operators, and six states provide regulation of non-consent towing services provided at the request of law enforcement agencies.

4. Whether there is sufficient demand for the service for which there is no substitute not likewise regulated and this service is required by a substantial portion of the population:

The research of the industry supports that there is sufficient demand for towing service and that there are no substitute services which are already regulated. The "non-consent"

services performed by tow truck operators are required by all law enforcement officials, private property owners, and many consumers.

5. Whether the profession, trade or occupation requires high standards of public responsibility, character and performance of each individual engaged in the profession, trade or occupation, as evidenced by established and published codes of ethics:

VATRO does have a published code of ethics, however, their association has a fairly small statewide membership. VATRO has established training schools for their members, however, the schools are not mandatory and there are no established certifications for the instructors of the schools.

6. Whether the profession, trade or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that he has met minimum qualifications:

In situations of "non-consent" towing, the public does not have the opportunity to select a competent operator or negotiate a fair price. The consumer has no choice but to assume that the operator will take "reasonable care" not to damage the vehicle and will charge a fair price. Currently, there are no requirements which would assure the consumer that the operator towing his vehicle knows how to operate the equipment properly and safely.

7. Whether the professional, trade or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession, trade or occupation:

It does not appear that the trade association is large enough to adequately protect the public from incompetent, unscrupulous or irresponsible members of the occupations.

8. Whether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate:

The research of current Virginia law and local ordinances has revealed some inadequacies in the state statutes which currently govern the economic activities of the towing industry:

- a. The mechanic's/storage lien statutes, Va. Code Sections 43-32 through 43-34.
- b. The private property towing statutes, Va. Code Section 46.1-3.2
- c. Disposition of abandoned or unattended vehicles, Va. Code Sections 46.1-3.

Many of the complaints and problems discussed in the research could be addressed by amendments to the above mentioned laws.

9. Whether the characteristics of the profession, trade or occupation make it impractical or impossible to prohibit those practices of the profession, trade or occupation which are detrimental to the public health, safety and welfare:

Enforcement would be the key to eliminating many of the problems identified by the complaint research. If the current State Corporation Commission registration and insurance requirements have not prevented "gypsy towers" from operating without the proper insurance, there is some doubt as to whether the establishment of a complex regulatory scheme could be enforced any more effectively than the current requirements.

10. Whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner:

Law enforcement officials must rely on the towing industry to provide certain services to protect the public and the incompetent operator could potentially cause additional hazards at the scene of an accident. However, actual and documented cases of this nature were not found to be frequent.

## B. Conclusions

After evaluating the research, the following conclusions can be made with regard to the regulation of the towing industry:

1. A majority of the complaints against the towing industry are occurring in "non-consent" situations.
2. "Non-consent" towing from private property is subject to abuses due to weaknesses in the current statute. Many of these problems could be alleviated if private property owners were required to post signs indicating that trespassing vehicles will be removed at owner's expense. Single family dwellings and residences should be exempt from this requirement.
3. The procedures for the disposition of abandoned vehicles are unclear and pose problems for consumers and towers. The mechanic's and storage lien statutes could be amended to establish clearer guidelines.
4. The most frequently cited complaints are related to excessive or unreasonable storage charges.
5. State and local law enforcement officials reported their problems as being minor; the ratio of problems to total towings requested was small. However, the majority of law

enforcement officials supported some form of additional regulation.

6. Consumer Affairs agencies, Better Business Bureaus, individual consumers, as well as members of the towing industry reported their problems to be substantive. These groups supported the need for additional regulation.
7. Relatively few localities have enacted comprehensive towing regulations and those that have, have done so in response to the seriousness of their problems.

X. RECOMMENDATIONS AND ALTERNATIVES

- A. General Considerations
- B. Statutory Change
- C. Certification
- D. Licensure
- E. Board of Commerce Recommendations

## RECOMMENDATIONS AND ALTERNATIVES

### A. General Considerations

In many cases, regulation can be an effective means of dealing with problems in the marketplace. The concept implied behind a regulatory scheme is that regulation will be more effective than the free market systems and civil remedies in weeding out incompetent and dishonest practitioners.

In order for regulation to be effective, occurrences of abuses have to be recognizable, of a significant magnitude, and occur often enough for the regulation to have any impact.

The following are the degrees of regulation in the order in which they must be considered as specified by Title 54, Va. Code Section 1.26:

1. Private civil actions and criminal prosecutions - Whenever the Board finds that existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, it may first consider the recommendation of statutory change to provide more strict causes for civil action and criminal prosecution.
2. Inspection and injunction - Whenever the Board finds that current inspection and injunction procedures are not sufficient to eradicate existing harm, it may promulgate rules consistent with the intent of this chapter to impose more adequate inspection procedures and to specify procedures whereby the appropriate regulatory board may enjoin an activity which is detrimental to the public well-being, it may consider recommending to an appropriate agency of the Commonwealth that such procedure be strengthened or it may recommend statutory changes in order to grant to an appropriate state agency the power to impose sufficient inspection and injunction procedure.
3. Registration - Whenever the Board finds it necessary to determine the impact sustained by the public from the operation of a profession or occupation, it may implement a system of registration.
4. Certification - Whenever the public interest might well be protected by the Board's granting a designation of professional competence in order that persons may have a substantial basis for relying on the services of a practitioner, then it may implement a system of certification.
5. Licensing - Whenever it is apparent to the Board that adequate regulation cannot be achieved by other means than licensing, it may establish licensing procedures for any particular profession or occupation.

The alternatives set forth herein are provided to assist the Board of Commerce in determining the appropriate level of regulation for the towing and recovery industry in Virginia.

B. Statutory Changes

Statutory changes are recommended in order to provide more strict causes for civil action and criminal prosecution. All or a combination of the following statutory changes could be recommended in order to address existing problems:

1. Enact legislation that would require all towing businesses who provide non-consent towing services to prominently display at their main place of business a comprehensive list of their fees for all towing, recovery and storage services.
2. Amend Va. Code Section 46.1-3.2 (the statute relating to private property towing) to provide for the following:
  - a. Requirements that signs be posted which give notice that trespassing vehicles will be towed at the owner's expense;
  - b. The sign requirement should also include provisions that the name and phone number of the towing company providing the towing be posted and, that the towing companies providing non-consensual towing from private property be available for vehicle redemption for some stated time after the towing is performed and during reasonable business hours.
3. Amend Va. Code Sections 43-32 through 43-34 (the mechanic's and storage lien statutes) in order to address the problem areas set forth in this report's Key Findings (see pages 9 and 10, section III. D.)
4. Amend Va. Code Section 46.1-3 relating to the disposition of abandoned, immobile or unattended vehicles to provide for clearer procedures for the disposition of such vehicles. The notification and disposition procedures should be made consistent with the current lien statutes.

**PROS:**

1. This would be the least restrictive and least expensive form of regulation.
2. This alternative would allow individual localities to continue to regulate non-consent towing services rendered at the request of police based upon the needs of each locality.

3. This alternative would provide a greater degree of consumer protection in situations of non-consent towing from private property.

**CONS:**

1. This approach would not create a comprehensive set of towing laws.
2. This alternative would not provide a central clearinghouse for consumer complaints.

C. Certification

A recommendation to implement a system of certification would allow the Board of Commerce to grant a designation of professional competence in order that consumers may have a substantial basis for relying on the services of practitioners.

**PROS:**

1. This is a less restrictive method of regulation than licensure.
2. This alternative would provide consumers with a substantial basis for relying upon the services of a particular towing and recovery operator.

**CONS:**

1. This alternative provides no uniform standards or regulations to govern practitioners.
2. This alternative does not assure a minimum level of competence by practitioners.

D. Licensure

A recommendation for licensure would establish a Board of Towing pursuant to Title 54 of the Code of Virginia, which would operate under the authority and direction of the Title. The enabling legislation should grant the Board of Towing the authority to order restitution and damages.

**PROS:**

1. This alternative would provide a uniform set of comprehensive towing laws.
2. This alternative would provide a mechanism for enforcement which would include a centralized clearinghouse for consumer complaints.



3. This alternative would be the only regulatory mechanism available to implement the ordering of restitution and damages.

**CONS:**

1. This alternative would be the most expensive and most restrictive form of regulation.
  2. An increased expense to the practitioner (and to the consumer of the service) would be inherent in this alternative.
- E. Board of Commerce Recommendations

The Board of Commerce recognizes that consumers and towors in some areas of the state are experiencing very severe problems. However, it is the conclusion of the Board that documented cases of tow truck operators causing damage to vehicles or contributing to third party accidents due to incompetent operation of the equipment are not frequent enough to justify the imposition of the most restrictive form of occupational regulation.

The most frequently cited consumer complaint was related to excessive or unfair charges for towing service. The Board concluded that the imposition of a complex regulatory structure would not be a desirable means of regulating the rates for non-consent towing.

The Board of Commerce further concludes that without certain amendments to existing statutes, the most restrictive form of occupational regulation would not effectively address the problems and complaints which were brought out in the research.

Therefore, the Board of Commerce recommends that a less restrictive form of regulation be implemented for towing operators. The Board recommends the following statutory changes:

1. Enact legislation that would require all towing businesses who provide non-consent towing services to prominently display at their main place of business a comprehensive list of their fees for all towing, recovery and storage services.
2. Amend Va. Code Section 46.1-3.2 (the statute relating to private property towing) to provide for the following:
  - a. Requirements that signs be posted which give notice that trespassing vehicles will be towed at the owner's expense;

b. The sign requirement should also include provisions that the name and phone number of the towing company providing the towing be posted and, that the towing companies providing non-consensual towing from private property be available for vehicle redemption for some stated time after the towing is performed and during reasonable business hours.

3. With respect to Va. Code Section 43-32 through Section 43-34 (the mechanic's and storage lien statutes), the Board feels that several valid issues were raised and many weaknesses in the statutes were cited.

Because the mechanic's and storage lien statutes are not applied exclusively to the towing industry, the Board recommends that these statutes be further examined by the Division of Legislative Services to determine the overall impact of amendments to the lien laws. Some consideration should be given to the model possessory lien statute that the towing industry has submitted.

4. The Board further recommends that Va. Code Section 46.1-3 relating to the disposition of abandoned, immobile, or unattended vehicles be amended to make the notification and disposition procedures consistent with the current lien statutes.
5. The Board also makes the following recommendations to be accomplished through administrative procedures:

- a. Ask the Director of the State Department of Consumer Affairs to publish a brochure informing consumers of the current laws and requirements that apply to the towing industry and what their rights are when their vehicles have been towed without their consent.

- b. Also, ask the Director of the Department of Motor Vehicles to include the above information in their driver manuals.

SENATE JOINT RESOLUTION NO. 51

*Requesting the Board of Commerce to study the motor vehicle towing, recovery, and storage industry.*

Agreed to by the Senate, March 7, 1986

Agreed to by the House of Delegates, March 7, 1986

WHEREAS, tow trucks operated by incompetent persons are dangerous; and

WHEREAS, the public has a right to know the name, address, telephone number, and ownership of businesses which operate tow trucks for hire; and

WHEREAS, tow truck operators should be adequately insured, since operation of a tow truck with a vehicle in tow can be dangerous to pedestrians and other motorists; and

WHEREAS, when motorists delegate to law-enforcement personnel the selection of a towing and storage company, they have the right to expect that the company's employees will not be incompetent, that charges for services will be reasonable, that the company is equipped to meet the requirements imposed by the common law on one in legal possession of the property of another for hire; and

WHEREAS, because of the nature of the towing and recovery business, service must be rendered on credit, with no opportunity to verify credit in advance, and, consequently, towing companies must have possessory liens on towed vehicles and their contents to assure payment of proper charges for recovery, towing, storage, and administrative costs; and

WHEREAS, it is necessary, whenever vehicles are towed and stored without their owners' consent, to ensure that the owners' rights to due process of law are not violated; and

WHEREAS, owners of private property have a right to be free from trespass by vehicles and to have trespassing vehicles removed at their owners' expense; and

WHEREAS, those who act properly in removing trespassing vehicles from private property have a right to possessory liens for reasonable charges for their services; and

WHEREAS, law-enforcement personnel have the power and responsibility to remove from the highways abandoned vehicles, illegally parked vehicles, vehicles creating traffic hazards, and vehicles under the control of persons arrested for criminal offenses; and

WHEREAS, selection of tow truck operators for law-enforcement work is unusual in that, though law-enforcement personnel have the power to order the towing, the responsibility to pay costs and charges connected wherewith remains with the vehicle owner, and is not subject to bidding requirements; and

WHEREAS, the assurance of competent service at reasonable rates is a more important public policy concern than maintenance of competition by price; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Board of Commerce is requested to study the occupation of motor vehicle towing, recovery, and storage, as provided in § 54-1.25 A 6 of the Code of Virginia, for consideration of whether such occupation should be regulated and, if so, the degree of regulation that should be imposed.

The Department of Highways and Transportation, the Department of Motor Vehicles, the Department of State Police and the state Police Chiefs' Association are requested to assist the Board in this study as may be required.

The Board shall complete its work prior to November 15, 1986, and report its findings soon thereafter.

TOWING AND RECOVERY OPERATORS STUDY QUESTIONNAIRE  
All Responses Will Be Kept Confidential

Please return to: Virginia Department of Commerce  
3600 West Broad Street -- Travelers Bldg.  
Richmond, VA 2320-4917  
ATTN: Cathy Walker

If you have any questions, please call (804) 257-8564

Name and Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of Towing Business with which you are associated:

1. Do you own a towing and recovery or other related business?

\_\_\_\_\_ yes \_\_\_\_\_ no  
If no, please explain your involvement in the towing industry?

2. How would you classify or describe the towing work your business does?

- \_\_\_\_\_ Towing and Recovery Work Only
- \_\_\_\_\_ Towing/Recovery and Repair Work
- \_\_\_\_\_ Gasoline/Service Station
- \_\_\_\_\_ Other (please explain or define)

3. How many drivers do you employ (if applicable)?

4. How many towing and recovery vehicles do you or your employer own?

5. Are you on the police towing list in your locality?

6. Do you or your business participate in AAA towing service?

7. Have you attended any of the VATRO training schools? If so, please list which ones and comment on their effectiveness?

8. What do you perceive to be the major problems facing the towing industry in Virginia?

9. What kinds of law or regulation do you feel would help the towing industry solve these problems?

10. What percentage of the towing work done by your company would you estimate to be "non-consent" or towing authorized by someone other than the owner?

Code \_\_\_\_\_

Return to: Director's Office  
Virginia Department of Commerce  
3600 West Broad Street  
Richmond, VA 23230  
(804) 257-8564

**AGENCY SURVEY**

1. How would you describe problems with towing and recovery operators in your area?  
(Circle the appropriate number)

1	2	3	4	5
Non-existent	Minor	Moderate	Severe	Very Severe

2. How would you describe the frequency of problems with towing and recovery operators? (Circle the appropriate number)

1	2	3	4	5
Never	Rarely	Occasionally	Regularly	Continuously

3. Do you feel that there is a problem with abuses by towing and recovery operators in your area?

\_\_\_\_\_ Yes          \_\_\_\_\_ No

4. Estimated total number of all types of complaints your agency handles each year:

\_\_\_\_\_

5. Total number of complaints against towing and recovery operators last year:

\_\_\_\_\_

6. Of the total number of complaints against towing and recovery operators, how many occurred in cases of non-consent or unauthorized towing?

\_\_\_\_\_

7. Please describe the most common type of complaints made against towing and recovery operators.

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_

8. What is the approximate average dollar value of these complaints?

\_\_\_\_\_

PLEASE RETURN THIS SURVEY IN THE ENCLOSED RETURN ENVELOPE

Code \_\_\_\_\_

Return to: Catherine M. Walker  
Director's Office  
Virginia Department of Commerce  
3600 West Broad Street  
Richmond, VA 23230  
(804) 257-8564

Name of Commonwealth's Attorney \_\_\_\_\_

County/City \_\_\_\_\_

COMMONWEALTH'S ATTORNEY SURVEY

1. How would you describe problems with towing and recovery operators? (Circle the appropriate number)

1	2	3	4	5
Non-existent	Minor	Moderate	Severe	Very Severe

2. How would you describe the frequency of problems with towing and recovery operators? (Circle the appropriate number)

1	2	3	4	5
Never	Rarely	Occasionally	Regularly	Continuously

3. Approximate number of complaints against towing and recovery operators over the past five (5) years. \_\_\_\_\_

4. Check the types of complaints received:

	<u>Number of Complaints</u>	<u>Average Dollar Value</u>
_____ Vehicle damaged due to incompetent towing	_____	_____
_____ Excessive or unreasonable towing and/or storage charges	_____	_____
_____ Unprofessional behavior	_____	_____
_____ Business policy of not accepting checks or credit cards or other	_____	_____
_____ Property stolen from vehicle that has been towed and stored	_____	_____
_____ Other (Describe)	_____	_____

5. The number of indictments as a result of complaints. \_\_\_\_\_

6. The number of convictions as a result of complaints. \_\_\_\_\_

7. Are there any other problem areas with towing and recovery operators that should be addressed through regulation?

\_\_\_\_\_

APPENDIX E

COMMONWEALTH'S ATTORNEY SURVEY RESULTS  
(75 Total Respondents)

Seriousness and Frequency of Problems

<u>Problems</u>	<u>Percentage</u>
NON-EXISTENT Occurring NEVER	46.6
MINOR Occurring RARELY	45.3
MODERATE Occurring OCCASIONALLY	5.3
SEVERE Occurring REGULARLY	2.7

Types of Complaints  
(In Order of Frequency)

1. EXCESSIVE OR UNREASONABLE TOWING AND/OR STORAGE CHARGES
2. UNPROFESSIONAL BEHAVIOR

County Code \_\_\_\_\_

Return to: Director's Office  
Virginia Department of Commerce  
3600 West Broad Street  
Richmond, VA 23230  
(804) 257-8564

LAW ENFORCEMENT SURVEY - STATE POLICE

(By County)

1. How would you describe the seriousness of problems with towing and recovery operators? (Circle the appropriate number)

1	2	3	4	5
Non-existent	Minor	Moderate	Severe	Very Severe

2. How would you describe the frequency of problems with towing and recovery operators? (Circle the appropriate number)

1	2	3	4	5
Never	Rarely	Occasionally	Regularly	Continuously

3. Approximate number of complaints against towing and recovery operators in your county over the past five (5) years.

\_\_\_\_\_

4. Approximately how many vehicles did state police officers in your county of jurisdiction authorize to be towed during the 1985 calendar year?

\_\_\_\_\_

5. Of the above (4) total, approximately how many of requested towings were performed in the following situations?

_____ Abandoned or unattended vehicles	Other (please explain) _____
_____ Disabled vehicles	_____
_____ Emergency situation	_____
_____ Owner arrest	_____

6. Check the types of complaints received:

	<u>Number of Complaints</u>	<u>Average Dollar Value</u>
_____ Vehicle damaged due to incompetent towing	_____	_____
_____ Excessive or unreasonable towing and/or storage charges	_____	_____



	<u>Number of Complaints</u>	<u>Average Dollar Value</u>
_____ Unprofessional behavior	_____	_____
_____ Business policy of not accepting checks or credit cards or other	_____	_____
_____ Property stolen from vehicle that has been towed and stored	_____	_____
_____ Other (Describe)	_____	_____

7. Approximately how many wrecker services or businesses (including service stations with wreckers) are located in your county?

\_\_\_\_\_

8. What is the number of towing operators currently on the towing list for your county?

\_\_\_\_\_

9. Are there any other problem areas with towing and recovery operators that should be addressed through regulations?

\_\_\_\_\_  
\_\_\_\_\_

APPENDIX G

STATE POLICE SURVEY RESULTS  
(104 Total Respondents)

Seriousness And Frequency of Problems

<u>Problems</u>	<u>Percentage</u>
MINOR Occurring RARELY	70.2
NON-EXISTENT Occurring NEVER	14.4
MODERATE Occurring OCCASIONALLY	12.5
SEVERE Occurring REGULARLY	2.9

<u>Type of Complaint</u>	<u>Percentage of Total Complaints</u>	<u>Average Dollar Value</u>
1. EXCESSIVE TOWING and/or STORAGE CHARGES	67.2	\$ 130.50
2. VEHICLE DAMAGE	10.7	187.50
3. UNPROFESSIONAL BEHAVIOR	9.8	N/A
4. PROPERTY STOLEN FROM STORED VEHICLE	6.9	120.00

Code \_\_\_\_\_

Name of Law Enforcement Official \_\_\_\_\_

City/County \_\_\_\_\_

Return to: Catherine M. Walker  
Director's Office  
Virginia Department of Commerce  
3600 West Broad Street  
Richmond, VA 23230  
(804) 257-8564

LAW ENFORCEMENT SURVEY

1. How would you describe the seriousness of problems with towing and recovery operators? (Circle the appropriate number)

1                      2                      3                      4                      5  
-----  
Non-existent      Minor              Moderate              Severe              Very Severe

2. How would you describe the frequency of problems with towing and recovery operators? (Circle the appropriate number)

1                      2                      3                      4                      5  
-----  
Never              Rarely              Occasionally              Regularly              Continuously

3. Approximate number of complaints against towing and recovery operators in your city/county over the past five (5) years.

\_\_\_\_\_

4. Approximately how many vehicles did local police officers in your city/county authorize to be towed during the 1985 calendar year?

\_\_\_\_\_

5. Of the above (4) total, approximately how many of requested towings were performed in the following situations?

_____	Abandoned or unattended vehicles	Other (please explain) _____
_____	Disabled vehicles	_____
_____	Emergency situation	_____
_____	Owner arrest	_____

6. Check the types of complaints received:

	<u>Number of Complaints</u>	<u>Average Dollar Value</u>
_____ Vehicle damaged due to incompetent towing	_____	_____

APPENDIX H (CONT.)

-2-

	<u>Number of Complaints</u>	<u>Average Dollar Value</u>
_____ Excessive or unreasonable towing and/or storage charges	_____	_____
_____ Unprofessional behavior	_____	_____
_____ Business policy of not accepting checks or credit cards or other	_____	_____
_____ Property stolen from vehicle that has been towed and stored	_____	_____
_____ Other (Describe)	_____	_____

- \_\_\_\_\_
7. Approximately how many wrecker services or businesses (including service stations with wreckers) are located in your city/county?
- \_\_\_\_\_
8. What is the number of towing operators currently on the police towing list for your city/county (if applicable)?
- \_\_\_\_\_
9. Are there any other problem areas with towing and recovery operators that should be addressed through regulations?
- \_\_\_\_\_
- \_\_\_\_\_

APPENDIX I

LOCAL LAW ENFORCEMENT SURVEY RESULTS  
(168 Total Respondents)

<u>Problems</u>	<u>Percentage</u>
MINOR Occurring RARELY	51.2
NON-EXISTENT Occurring NEVER	29.8
MODERATE Occurring OCCASIONALLY	14.3
SEVERE Occurring REGULARLY	3.6
VERY SEVERE Occurring CONTINUOUSLY	1.2

<u>Type of Complaint</u>	<u>Complaints</u>	
	<u>Percentage of Total Complaints</u>	<u>Average Dollar Value</u>
EXCESSIVE TOWING and/or STORAGE CHARGES	63	\$ 400.00
VEHICLE DAMAGE	7.6	80.00
UNPROFESSIONAL BEHAVIOR	3.5	N/A
PROPERTY STOLEN FROM STORED VEHICLE	2.9	485.00

WRITTEN COMMENTS SUBMITTED  
IN RESPONSE TO PUBLIC HEARINGS  
(Grouped by Subject Matter)

Law Enforcement Comments

<u>Name</u>		<u>Nature of Comments</u>
Mr. William S. Phillips	Chief of Police Abingdon	Recommendation for regulation
Mr. Raleigh H. Crist, Jr.	Chief of Police Dayton	Editorial from <u>News Gazette</u>
Mr. Allen Barley	Chief of Police Winchester	Cited problem with Section 18.2-324
Mr. O. S. Foster	Sheriff, Salem	Offered suggestions relating to regulations

Consumer Comments

Senator Clive Duval, 2d	Senator from Northern Virginia	Constituent reports of outrageous fees
Ms. Debra Rae Karnes	Investigator Prince William Co. Office of Consumer Affairs	Consumer complaints about excessive towing and storage fees
Ms. Nancy J. Corley	Secretary Virginia Beach Consumer Protection Division	Consumer complaint when towing company would not accept responsibility for damaged caused by their towing of a vehicle
Ms. Joyce S. Meyers	Concerned citizen Roanoke	Negative experience with towing Fee related
Mr. Stuart Ashby	State Office of Consumer Affairs Richmond	Private property towing Consumer complaint
Mr. Hugh Simmons	Towing operator Troutville	<u>Roanoke Times and World News</u> Article on June 25, 1986 Consumer problems related to unprofessional behavior or business practice

APPENDIX J (CONT.)

<u>Name</u>		<u>Nature of Comments</u>
Mr. P. Dale Bennett	Assistant to Vice President VA Trucking Ass'n Richmond	Complaints received from truckers relating to exorbitant fees and unprofessional behavior; business policy of not accepting credit cards
Mr. Richard Nargiz	State Farm Mutual Auto Insurance Co. Vienna Property Damage Superintendent	Complaint of unprofessional behavior
Ms. Joanne Bedeaux	Concerned consumer Virginia Beach	Private property towing - No signs
Mr. Tom Moran	Trucker, Estes Express Lines Richmond	Complaint about exorbitant fees and business policy of not accepting checks

Liens/Disposition of Abandoned Vehicles

Mr. Tom Reid	President Tom Reid, Inc. Lien and Title Service Falls Church	Section 43-32, Mechanics Lien Statute deficiencies
Mr. Stephen J. Annino	Attorney, Vienna (Referred by Auctioneers Board)	Section 43-34, Enforcement of mechanics lien should be repealed and amended
Mr. Ronald I. Tull	Tull Realty and Auction Co. Annandale	Section 43-34, Involuntary auction sale procedures
Mr. Gary Reese	Attorney, Fairfax (Referred through Del. James Almond)	Section 43-32, Contacting out-of-state lienholders and owners
Ms. Helen Savage	President, VA Citizens Consumer Council, Arlington	Sections 43-32 and 43-34, Enforcement of liens and consumer protection

Towing Industry Comments

Mr. Ken Megill	Executive Director, VATRO Alexandria	<sup>1</sup> VATRO position paper <sup>2</sup> Follow-up comments on AAA hearing testimony
----------------	--	--

APPENDIX J (CONT.)

<u>Name</u>	<u>Nature of Comments</u>
Mr. John L. Hawkins	Senior Editor, <u>Tow Times</u> magazine
	Follow-up to hearing testimony

Opposition Comments

Mr. J. T. Timmons	Managing Director, Tidewater Auto Ass'n Norfolk (Referred from Secretary Bagley)	Expressed interest and concerns with study and rate regulation
Mr. Ronald W. Kosh	General Manager, AAA Potomac Fairfax Co.	AAA Potomac position Testimony at public hearing and two addendums
Mr. John Kimball	AAA Member Arlington	Does not favor towing regulation



THE FOLLOWING PEOPLE TESTIFIED AT THE PUBLIC FACT-FINDING HEARING HELD  
ON JUNE 30, 1986 IN RICHMOND

Speaker

*Mr. Ken Megill	Alexandria	VATRO, Executive Director
*Mr. Mel Johnson	Manassas	VATRO, President
Mr. Hugh Simmons	Troutville, VA	VATRO Member
Mr. Jimmy Mathews	Stony Creek	VATRO Member
Ms. Barbara Rose	Highland Springs	VATRO Member
Mr. Bruce Hecox	Alexandria	VATRO Member
Mr. Woody Herring	Fairfax	VATRO Member
*Mr. Jeff Clark	Reston	VATRO Legislative Chair
Mr. John L. Hawkins	Longwood, FL	Senior Editor, <u>Tow Times</u> magazine; Founder of National Towing Association
Mr. E. Wallace Timmons	Norfolk	Tidewater Automobile Association (AAA Affiliated Club of Eastern VA)
Mr. Frank W. Martin	Roanoke	Consumer Whose Vehicle was Towed
Mr. David M. Wilder	Norfolk	Target Towing (Not VATRO Member)
Lt. Dennis C. Watson	Virginia Beach	Police Department
Mr. Richard Granger	Richmond	Fan District Association
Ms. Yvette Fisher	Chesapeake	Consumer Whose Vehicle was Towed
Mr. Ronald J. Jean	Norfolk	Target Towing
Mr. Richard Bing	Richmond	General Counsel for Virginia Gasoline and Repair Association
Mr. William Somms	Norfolk	Tidewater Towing

\*Indicates testimony at both hearings

APPENDIX K (CONT.)

THE FOLLOWING PEOPLE TESTIFIED AT THE PUBLIC FACT-FINDING HEARING HELD  
ON JULY 1, 1986 IN ARLINGTON

Speaker

Mr. Ronald W. Kosh	Fairfax Co.	AAA Potomac, General Manager
*Mr. Ken Megill	Alexandria	VATRO Executive Director
*Mr. Mel Johnson	Manassas	VATRO, President - Battlefield Service Center
Mr. Tom Reid	Falls Church	Tom Reid Inc., Lien and Title Service
Mr. Nelson Pemberton	Arlington/Alexandria	VATRO Treasurer - B&P Towing
Mr. John G. Beaver	Luray	VATRO - Johnny's Auto Service
Mr. Joe Anderson	Arlington Co.	VATRO - Anderson Sunoco
Mr. Robert Buttery		VATRO - Double B Towing
Mr. Alton G. Adcock		VATRO - Alban Towing
Mr. Howard Wright	Fairfax	VATRO - Wright's Towing
Mr. David Arndt	Harrisonburg	VATRO - Harrisonburg Towing
Mr. Bo Lunceford	Annandale	VATRO - Beltway Mobil
Mr. Danny Strouth		VATRO - Fairfax City Shell
*Mr. Jeff Clark	Reston	VATRO, Legislative Chair C&S Towing

\*Indicates testimony at both hearings



## COMMONWEALTH of VIRGINIA

## Office of the Attorney General

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Attorney General

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Chief Deputy Attorney General

Francis C. Lee  
Counsel to the Attorney General

M E M O R A N D U M

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Human & Natural Resources Division

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Judicial Affairs Division

Walter A. McFarlane  
Deputy Attorney General  
Finance & Transportation Division

Stephen D. Rosenthal  
Deputy Attorney General  
Criminal Law Enforcement Division

Marian W. Schutrumpf  
Director of Administration

**TO:** CATHERINE M. WALKER  
Policy Analyst  
Department of Commerce

**FROM:** RICHARD B. ZORN *RZ*  
Senior Assistant Attorney General

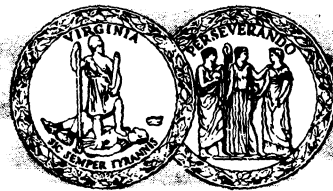
**DATE:** August 8, 1986

**RE:** Towing and Recovery Regulation

This is in response to your July 22, 1986 request for information regarding the status of Virginia law on the subject of bailments in Virginia as that relates to duties and obligations of a "bailee-for-hire."

Through the years, bailment relationships have evolved so that the results, legally speaking, of a bailment are varied for different types of bailment arrangements. For example, a bailment-for-hire is contemplated as "A contract in which the bailor agrees to compensate the bailee." Black's Law Dictionary 129 (5th ed. 1979). A bailment for mutual benefit, on the other hand, is "one in which the parties contemplate some price or compensation in return for benefits flowing from the bailment, necessarily involving an express or implied agreement or undertaking to that effect for example, delivery of an automobile to one who, for a consideration undertakes to repair it." *Id.* If in fact, the situation you are describing is a bailment for hire, it appears that the current Virginia law is that a towing and storage company (the "bailee for hire") must exercise ordinary care, that is an amount of care a reasonably prudent person in the same or similar circumstances would use toward their own property. See 2C Mich. Jur., Bailments, § 10 It seems equally clear in Virginia that a bailee cannot be held accountable for bailed property if it is lost or damaged without his fault. *Id.* In short, he contracts to take ordinary care of the property and is liable only for loss occasion by his negligence. *Id.* citing Tidewater Stevedore Co. v. Lindsay, 136 Va. 88, 116 S.E. 377 (1923).

# COMMONWEALTH OF VIRGINIA



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DEPUTY DIRECTOR  
RATES & TARIFFS  
(804) 786-3683

August 22, 1986

Ms. Catherine M. Walker  
Policy Analyst  
Department of Commerce  
3600 West Broad Street  
Richmond, VA 23230

Re: State Corporation Commission Comments Relative to the Towing  
and Recovery Industry in the Commonwealth

Dear Cathy:

Please find attached for your study, comments from the Motor Carrier Division of the State Corporation Commission, relative to the towing and recovery industry. These comments are, in part, responsive to various statements expressed in the two public hearings held on the subject.

If there is anything we can do at the Commission to assist you in your study, or should you have questions concerning these comments, please let me know.

Sincerely,

William S. Fulcher, Director  
Motor Carrier Division

WSF:bh

Attachment

COMMENTS OF THE STATE CORPORATION COMMISSION  
ON SENATE JOINT RESOLUTION 51

Senate Joint Resolution 51 instructs the Board of Commerce to study the motor vehicle towing, recovery and storage industry and consider the degree to which this occupation should be regulated. Following are the comments of the State Corporation Commission's Motor Carrier Division on the two days of public hearing held by the Board pursuant to Resolution 51:

Under current law, tow truck operators are subject to a degree of economic regulation by the State Corporation Commission. Since they transport "property by motor vehicle for compensation," tow truck operators are required to obtain contract carrier bulk authority from the Commission. Va. Code §56-273(f); see also, Va. Code §§56-288 et seq.

Upon completion of the appropriate application, payment of a \$50 filing fee and proof of liability insurance coverage of at least \$350,000, the operator is issued a contract carrier permit and a decal which must be displayed on the side of the vehicle. The Commission maintains current records of insurance coverage and, should coverage lapse or be cancelled, the contract carrier authority is revoked and the decal seized.

Additionally, the Motor Carrier Division's data base contains a record of all information pertaining to an operator's account, including but not limited to: 1) the address of the operator's main office; 2) if the operator is a corporation, the name and address of its registered agent; 3) the types of operating

APPENDIX M (CONT.)

authority held; 4) a record of all Commission and State Police summonses issued against the operator; and 5) information (if applicable) regarding the operator's motor fuel road tax account.

Moreover, since the great majority of tow trucks are operated for compensation, they must display "for hire" license plates issued by the Department of Motor Vehicles. Va. Code §46.1-99. "For hire" motor vehicles weighing over 10,000 lbs. (virtually all tow trucks) must clearly display the name and address of the owner on both sides of the vehicle. Va. Code §46.1-64(f). Contract carrier decals must be renewed annually, and before being placed on the State Police's list of authorized towers, an operator must hold a current contract carrier permit.

The two days of public hearing held in Richmond and Arlington point out that the problems facing the industry and the public center around "non-consent" towing. Indeed, the Commission's Motor Carrier Division receives about 20 complaints annually concerning such operations. The problems confronting the towing industry seem similar to those that, in the Commission's experience, are faced by the trucking industry as a whole: illegal competition from unpermitted, uninsured "gypsy" operators.

The Commission's Motor Carrier Enforcement Division maintains a Staff of 30 field investigators, stationed throughout the Commonwealth, who are responsible for enforcing the laws and regulations governing motor carriers. These investigators have police powers and can issue summonses against illegal operators which are heard either in local general district court or before the Commission. Legitimate tow truck operators are in the best position to know of their illegal competition, and we suggest

that they contact their local SCC investigator so that appropriate action may be taken. A list of motor carrier investigators (with addresses) is attached as Appendix A.


Having detailed the current regulatory state of affairs, the Commission's Motor Carrier Division is of the opinion, based upon the two days of public testimony, that some additional regulation is in the public interest. Certainly, additional attention should be given to enforcement of laws and regulations currently governing the industry.

Proposals that have been advanced for a "State Board" to govern the industry seem somewhat sketchy and undefined. The Motor Carrier Division is of the opinion that any sort of rate regulation for the industry is probably unworkable. The expenses and corresponding fair rate of return for a tow truck operator in Galax are simply not comparable to those for an operator in Alexandria.

More than anything else, the two days of hearing point out the possible need for a central "clearinghouse" to handle requests for information and complaints concerning the towing industry.

The State Corporation Commission's Motor Carrier Division is willing to do whatever it can to promote the public's interest in a safe, competent and efficient towing and recovery industry in Virginia.

August 22, 1986

  
\_\_\_\_\_  
William S. Fulcher  
Director, Motor Carrier Division  
State Corporation Commission

APPENDIX A

STATE CORPORATION COMMISSION  
MOTOR CARRIER ENFORCEMENT

FULCHER, W. S.  
1901 Prince Edward Road  
Richmond, VA 23225  
Telephone: 232-4272

ELMORE, J. L.  
P.O. Box 323  
Ashland, VA 23005  
Telephone: 798-6915

BUCHANAN, C. R.  
P.O. Box 416  
Appomattox, VA 24522  
Telephone: 352-7531

BUTLER, T. B., JR.  
9003 Lydell Drive  
Richmond, VA 23228  
Telephone: 266-3895

CASTEEN, C. E.  
P.O. Box 1955  
Chesapeake, VA 23320  
Telephone: 421-3336

CORRELL, J. W.  
Route 4, Box 289  
Wytheville, VA 24382  
Telephone: (703) 686-4994

CUMBO, J. C.  
675 Oakhill Drive  
Bristol, VA 24210  
Telephone: (703) 628-6418

DILLOW, J. C., JR.  
P.O. Box 1015  
South Boston, VA 24592  
Telephone: 575-7072

DYE, I. B.  
P.O. Box 367  
Lebanon, VA 24266  
Telephone: (703) 889-3037

EVANS, J. B.  
P.O. Box 41  
Catharpin, VA 22018  
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FIELDS, D. R.  
Cedar Box Farm  
229 Mount Hermon Road  
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Telephone: 798-5746

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HODGES, D. C.  
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Chesapeake, VA 23320  
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HUBBARD, F. J.  
5007 Devonshire Drive  
Aylett, VA 23009  
Telephone: 769-4722

JONES, T. N.  
404 Ayrlee Avenue  
Leesburg, VA 22075  
Telephone: (703) 777-6522

LANAHAN, H. C.  
P.O. Box 214  
Charlottesville, VA 22902  
Telephone: 296-4915

LEAP, C. P.  
1578 Heritage Hill Drive  
Richmond, VA 23233  
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PUGH, R. E., JR.  
388 S. Summit Avenue  
Woodstock, VA 22664  
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REID, J. H.  
P.O. Box 1713  
Walnut Hill Station  
Petersburg, VA 23805  
Telephone: 732-8199



APPENDIX M (CONT.)

ROBERTS, L. A.  
P.O. Box 134  
Cloverdale, VA 24077-0134  
Telephone: (703) 992-4780

WORLEY, R. L.  
P.O. Box 533  
Waynesboro, VA 22980  
Telephone: (703) 337-3746

ROOP, G. A.  
P.O. Box 486  
Dublin, VA 24084  
Telephone: (703) 674-5826

SANDERS, T. F. III  
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SMITH, H. L., JR.  
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P.O. Box 6531  
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SNYDER, H. A.  
41 Dunnshire Terrace  
Hampton, VA 23666  
Telephone: 827-0168

SWITZER, G. E.  
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WALLER, C. L.  
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Telephone: (703) 786-3820

WHITLOW, C. W. JR.  
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Emporia, VA 23847  
Telephone: 848-4579

DONALD E. WILLIAMS  
COMMISSIONER



FRANK W. SENCINDIVER  
DEPUTY COMMISSIONER

# COMMONWEALTH of VIRGINIA

*Department of Motor Vehicles  
2300 West Broad Street*

MAIL ADDRESS  
P. O. BOX 27412  
RICHMOND, VIRGINIA 23269

August 19, 1986

## MEMORANDUM

TO: Ms. Cathy Walker  
Department of Commerce

FROM: Frank W. Sencindiver *F. Sencindiver*

SUBJECT: **HEARING ON TOWING VEHICLES**

During the hearing held on June 30, 1986, Mr. Hecox made certain allegations that he was having trouble getting work back from DMV.

After the hearing, I talked with Mr. Hecox in an effort to learn more about his problem and resolve it.

Mr. Hecox asked if I would call his daughter who handles all his paper work. I did call her and checked on all the paper work that she had sent to our Headquarters office for processing.

I found that there were no transactions pending and further determined that we have always turned the work around in an acceptable time frame.

On occasion, Mr. Hecox has sent paper work to us on out-of-state registrations and this does take more time as we are at the mercy of the state from whom we are requesting the information.

FWS:ew



# COMMONWEALTH of VIRGINIA

COLONEL R.L. SUTHARD  
SUPERINTENDENT

## DEPARTMENT OF STATE POLICE

P. O. Box 27472, Richmond, Virginia 23261-7472

September 11, 1986

Ms. Catherine M. Walker  
Policy Analyst  
Department of Commerce  
3600 West Broad Street  
Richmond, Virginia 23230

Dear Cathy:

With reference to the two public hearings held regarding House Joint Resolution 51, we have attached our comments with reference to statements made during the hearings. While our comments in the attachment will address individual statements, it appears that those persons representing the towing industry are generally misinformed as to our role. The State Police do not attempt to regulate towing operations by maintaining wrecker lists or "zoning" of wrecker calls in the various division headquarters. The purpose of the lists is to call all operators who are capable of responding to a particular incident on a fair and equitable basis. Another purpose is to lessen the possibility of too many wreckers arriving on the scene and creating confusion and possibly an additional hazard.

We hope the attached responses will aid you in your study, and should you have further questions, please let me know.

Sincerely,

C. M. Robinson, Lieutenant Colonel  
Director, Bureau of Field Operations

mmp

Attachment

HJR-51  
Fact Finding Hearings  
June 30 - July 1, 1986

June 30 Meeting

Pages 8-9

"In checking around through different departments, the State Police were not the people to do this study because they don't want to make rules and regulations and then have to enforce them."

The State Police do not generally make rules and regulations; however, given the legislative authority, we would have no problem with enforcement.

Page 19

With reference to statements that all a person has to do is be registered with State Police in order to tow cars off I-81, the following is submitted:

There is a requirement that a tow operator be registered with the State Police for purposes of towing disabled vehicles from any location. Should the operator receive a call from a citizen or another police agency for service, the operator may certainly respond to that situation without authority from us.

Our purpose for maintaining a wrecker list and "zoning" is to call operators on an equitable basis. This system is only used if the owner/operator does not state a choice of wreckers, is injured at the scene and cannot make a decision, or is not at the scene. In these instances and to relieve the trooper from deciding which wrecker to call next, the wrecker list and zoning was established. This system, of course, would also apply to disabled or unattended vehicles. A towing operator is only required to call the State Police if he wishes to be called by us if we have a need for service.

To simply state that a telephone call is all that is needed in order to be placed on the wrecker list is not true. Once a call is received from an operator that he wishes to be placed on the wrecker list, he is then personally contacted by a supervisor to determine the size and capability of the equipment, to orient the operator on the requirements for license, and discuss department policy on calling wreckers. Records are kept regarding these contacts.

Page 30 - Providing Owner (Lien) Information to Operators

This would place a demand upon our communication centers that we cannot accommodate. With available personnel and equipment, we now find it difficult to provide all the support necessary for our present operation.

Code \_\_\_\_\_

Name \_\_\_\_\_  
City/County \_\_\_\_\_  
Phone Number \_\_\_\_\_

Return to: Director's Office  
Virginia Department of Commerce  
3600 West Broad Street  
Richmond, VA 23230  
(804) 257-8564

**CITY/COUNTY ATTORNEY SURVEY**

1. Does your locality have a towing ordinance?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No
  
2. Does the ordinance provide for a police request towing list?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No
  
3. Does the ordinance address eligibility requirements, i.e., equipment inspection, verification of proper insurance, to perform towing services for local police or to be put on the towing list?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No
  
4. Does the police towing list have different classifications of wreckers, such as a small wrecker list, large wrecker list, very large wrecker list?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No
  
5. Does the ordinance provide the means to remove an operator or a company from the towing list?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No
  
6. Does the ordinance provide for negotiation of rates charged to the owner of the towed vehicle?  
\_\_\_\_\_ Yes                      \_\_\_\_\_ No

Additional Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE RETURN THIS SURVEY WITH A COPY OF YOUR LOCAL ORDINANCE IN THE ENCLOSED ENVELOPE.

LOCAL REGULATION OF TOWING SERVICES

<u>Regulation of Police Request Towing/Ordinance or Contract (9)</u>	<u>Regulation of Police Request/ P.D. Adminis. Policy (10)</u>	<u>Regulation/Private Property Towing (5)</u>
City of Richmond	City of Newport News	City of Newport News
City of Emporia	Chesterfield Co.	City of Norfolk
City of Franklin	Henrico Co.	City of Virginia Beach
City of Petersburg	City of Portsmouth	City of Staunton
Rockingham Co.	City of Danville	Arlington Co.
City of Galax	City of Staunton	
Fairfax Co.	City of Abingdon	
City of Norfolk	Albemarle Co.	
City of Virginia Beach	City of Manassas	
	Prince William Co.	

APPENDIX R

REGULATION OF TOWING INDUSTRY IN OTHER STATES

<u>Unregulated States (8)</u>	<u>Motor Vehicle Registration (11)</u>	<u>Law Enforcement Services Registration (6)</u>
Georgia	Alaska	Delaware
Hawaii	California	Florida
Minnesota	Connecticut	Idaho
Tennessee	Indiana	South Carolina
Nebraska	Maryland	Utah
New Hampshire	Missouri	Washington
North Dakota	New Jersey	
Vermont	Pennsylvania	
	North Carolina	
	South Dakota	
	Wisconsin	
 <u>Licensure (1)</u>	 <u>Public Utility/Service Commission Regulation (19)</u>	
Arizona	Illinois	Colorado
	++ Iowa	*Maine
	Kansas	*Mississippi
	Louisiana	*New Mexico
	Massachusetts	*Oregon
	*Michigan	++ Rhode Island
	*Montana	Texas
	++ Nevada	Virginia
	++ Oklahoma	
	++ West Virginia	
	Wyoming	

\*Wreckers exempt from most or all economic regulation  
 ++Tariff or rate filing required

APPENDIX S

STATE	REGULATING AGENCIES	TYPE OF REGULATION	EXTENSIVENESS OF REGULATIONS													
			Storage & Towing Charges Regulated	Operator Qualifications	Insurance Requirements	Inspection Required	Accessory Equipment Specifications	Truck Classification Based on Towing Capacity	Storage Lot Security	Private Property Towing--Including Trespassing Abandonment	Service Area/Zoning	Disposition of Abandoned Vehicle Procedures	Complaint Handling Procedures			
Arizona	Dept. of Public Safety*	Regulates all wreckers through licensure		X		X	X	X								
Delaware	1) Dept. of Public Safety* 2) Div. of State Police	Regulation of towers under state police contract only	X <sup>1</sup>	X	X	X	X	X	X			X				
Florida	1) Dept. of Hwy. Safety & Motor Vehicles* 2) Div. of Florida Hwy. Patrol	Regulation of towers on hyw. patrol rotation system only		X	X	X	X	X				X				
Washington	Joint Operation: 1) Div. of Licensing 2) Washington State Patrol 3) Comm. on Equipment*	Regulation of towers on state police service list	X <sup>2</sup>	X	X	X	X	X	X	X	X	X	X		X	

\*Authority to Promulgate Rules & Regulations

<sup>1</sup>Subject to police Approval

<sup>2</sup>List of towing & storage rates to be filed with Dept.



The following fifteen pages comprise a number of separate proposed statutes relating to a full coverage treatment of legislation specifically dedicated to the recovery-towing-storage industry.

Here-to-fore the only laws relating to this industry have come indirectly from other industries. Only recently has the uniqueness of this industry come to light. Federal Courts have differentiated it, recognizing the non-consent aspects of law enforcement instigated work. The recent Boulder Case brings in the new concept that a City can be subject to anti-trust prosecution if it oversteps its authority. Other developments in modern times are creating new legal problems and it is said that hard cases make bad law.

It is time to write a Chapter in State Statute books dealing with this new vibrant industry. The following is offered by JOHN L. HAWKINS II and is his concept alone. Some may disagree; some changes might have to be made to fit into the style of some states. However, every single substantive issue has been arrived at after years of study and consideration by many legal and economics scholars. Here is the table of contents.

Page 1    Position Paper

This is a recitation of the facts concerning the industry which illustrate why legislation is required.

Page 2    Definition

Standardization of this vital subject is a necessity.

Page 3    Enabling Statute

There are two sovereigns in the United States (Boulder Case): the Federal and State Governments. Cities and Counties and Authorities cannot create legislation or rules and regulations without State Legislature authorization. I recognize the State of Delaware for the basis of this draft: it's the best I've ever seen.

Page 5    Reporting of Unclaimed Vehicles

This is a place to start and I'm obligated to Florida for this draft.

Page 6    Licensing

Licensing or registration is a must; this is NOT "regulation".

Page 7    Possessory Lien

Having set the stage by the foregoing provisions we're now ready for this vital law. We're grateful to Florida here; this one has some improvements on it, however. THERE IS NOT ONE PROVISION IN THIS WHICH IS NOT BELIEVED ESSENTIAL.

Page 10    Foreclosure and Sale

Florida makes a great contribution here. Without a good foreclosure procedure, a lien is an empty thing.

Page 11    Private Trespass Towing

Again help from Florida here, but there are many refinements. Thanks too to the Mansours of Ft. Lauderdale for problems to provide against.

I hope that this summary will assist each State in evaluating its present situation and what it might like to do about the status quo.

JOHN L. HAWKINS II  
259 Crown Oaks Way  
Longwood, FL 32779  
(305) 671-8015

POSITION PAPER

The Towing and Recovery Industry hereby recites certain facts which are prevalent in the day to day operations of this public service function which distinguish it from ordinary commerce and thus require special legislative considerations. The Industry cannot function properly or perform its public duties in an efficient manner, if it is merely tossed into a cauldron of ordinary business regulations; it requires special consideration. Here are the reasons why that is so:

A. a tow truck in the hands of an incompetent operator is a dangerous instrumentality; and

B. the public has an inherent right to ready access to the name, location, telephone number, and full ownership of any person who owns a tow truck and purports to use the same for hire on the public highways; and

C. the operation of a tow truck on the public highways with a vehicle in tow is a dangerous instrumentality exposing others on or about the highway to loss or damage, which must be covered by adequate insurance; and

D. the motoring public has a right when delegating to law enforcement the selection of some operator in the towing-storage business, to expect that the operator selected and responding will not be incompetent; and

E. the motoring public has a right when delegating to law enforcement the selection of some operator in the towing-storage business, to expect that the charges for the services to be rendered will be reasonable and compensatory, and that the said operator is physically equipped in his business to function properly as a bailee-for-hire and to meet the common law requirements thereof for one in legal possession of the property of another for hire; and

F. the towing-storage operator, the nature of the business being that the service must be done on credit with no chance

to verify credit in advance, must have a possessory lien on the vehicle and its contents to assure payment of just charges for recovery, towing, storage and administrative costs; and

G. the towing and storage of a vehicle without the owner's consent, as is the case in many police instigated tows, starts in motion procedures to assure such owner that his right of due process of law are not violated; and

H. that the private owner of real estate has a right to be free from trespass by vehicle on the same; and to have any such trespassing vehicle removed at owner's expense; and

I. any agency, acting properly in removing such a trespassing vehicle has a right to a possessory lien for reasonable charges; and

J. the police powers delegated by the legislature of the state include the power of the police, even without owner's consent, to have public ways cleared of conditions which, in the opinion of the pertinent officer, creates a hazardous condition to the motoring public; and which power includes the power to define "abandonment" of a vehicle and to have removed "abandoned" vehicles; and which power includes the power to have removed and/or relocated vehicles in violation of parking ordinances; and which power includes the power to have removed under bailee-for-hire conditions any vehicle under control of any person arrested for any criminal offense; and

K. that the process of selection of tow truck operators for police work is unique in that law enforcement, though having the legal duty to order work, has no legal duty to pay costs and charges connected therewith, the same being the duty of the vehicle owner, and thus is not subject to purchasing department procedures of awarding to low bidders only; and that the assurance of competent service at reasonable rates is superior in public policy to the state's interest in maintaining competition by price.

#### DEFINITIONS

These articles contain the standard definitions arrived at after much consideration by industry leaders with a view toward having them adopted wherever any document seeks to deal with the use of towing, recovery and storage in any public connection.

A. "Tow Truck" or "Wrecker" or "Recovery Vehicle" means any motor vehicle equipped with booms, winches, wheelift apparatus, or similar equipment designed for recov and towing of vehicles, trailers, motor homes, and other objects which cannot operate under their own power or for some other reason must be transported in the tow or control of another vehicle.

B. "Car Carrier" means any motor vehicle equipped with a winch and hydraulically operated bed which slides and tilts to accommodate loading, and is designed for towing and/or transporting of vehicles, trailers, motor homes, and other objects which cannot operate under their own power or for some other reason must be transported in the tow, carriage and control of another vehicle.

C. "Impoundment" means any real property owned or leased by Operator which has the following specifications:

1. contiguous to Operator's place of business, adequate to store 25 or more vehicles; except that a secondary lot can be located elsewhere to accept overflow; and
2. completely encircled by a secure fence, not less than six feet (6') high; and
3. with at least one gate for ingress and egress which shall be kept locked at all times except when in use; and
4. adequate inside storage facilities to protect "police hold" vehicles.

D. "Department" or "Agency" means (proper name of the saw enforcement agency or department thereof or Licensing and Inspection).

#### ENABLING STATUTE

##### A. GENERAL PURPOSE

WHEREAS: the Legislature finds that a significant safety problem arises when motor vehicles are disabled, abandoned and otherwise left on the highways of this State; and

WHEREAS: the Legislature finds that police officers need to be able to call upon commercial recovery-towing-storage operators to provide prompt and reliable recovery and removal of such vehicles at all hours and under a variety of circumstances, and to care safely for the same until properly

redeemed by the owner; and

WHEREAS: the Legislature finds that the peace, public order and safety of this State are best served by providing for an orderly selection of qualified operators to provide the necessary recovery and towing equipment and storage facilities; and

WHEREAS: the Legislature finds that the interest of the State in such orderly selection is Superior to the State's interest in maintaining competition for towing services, and that law enforcement agencies may assign exclusive franchise contracts at negotiated compensatory rates to assure continuity of competent service.

NOW THEREFORE:

Be it enacted by the Legislature of this State:

B. In effecting the recovery and removal and storage of such vehicles every law enforcement agency in this State shall be and hereby is empowered to select commercial recovery-towing-storage companies, who shall be compensated at the expense of the owner or operator of the property handled. Such selection shall be pursuant to Rules and Regulations issued by the \_\_\_\_\_ of this State, and shall prescribe qualifications for eligibility of such companies to perform such service at law enforcement instigati

C. Such Rules and Regulations shall not contain provisions in the selection procedure which are anti-competitive or result in anti-competitive practices in the towing or in any automotive repair service; Provided, however, that exclusive franchise contracts at negotiated, compensatory rates are affirmatively expressed as authorized.

D. Such Rules and Regulations shall not contain provisions interfering with owner's choice so long as the same does not create a hazard.

E. Such Rules and Regulations promulgated by the \_\_\_\_\_ may be amended by any political subdivision of this State to meet local conditions, provided, that such amendments shall not run contrary to the general concepts provided in this Statute.

F. Political Subdivisions are specifically authorized to enter into contracts with commercial towing firms for the furnishing of recovery-towing-storage service required by

law enforcement; PROVIDED, however, that such contracts shall be reviewed by the General Services Agency of the State at least annually to determine that such contracts are consistent with this enabling statute and do not result in pricing that is below cost. It is the intent of this statute that the authorization contained herein clearly articulates and affirmatively expresses the legislative intent to extend state action immunity to the political subdivision entering into such contracts.

REPORTING OF UNCLAIMED MOTOR VEHICLES

A. Whenever any garage, repair shop, automotive service, storage or parking place notifies the law enforcement agency of possession of a vehicle which is in its possession, or came into its possession, without the consent of the owner or the owner's agent, the applicable law enforcement agency shall contact the Department of Highway Safety and Motor Vehicles within 24 hours via electronic communications giving the full description of the vehicle. Upon receipt of the full description of the vehicle, the department shall search its files to determine the owner's name and if any person has filed a lien upon the vehicle as provided by \_\_\_\_\_ and notify the applicable law enforcement agency within 72 hours. The person in charge of the garage or repair shop or automotive service, storage or parking place shall obtain such information from the applicable law enforcement agency within 5 days from the date of storage and shall, by certified mail, notify the owner and all lienholders of the location of the vehicle of the fact that it is unclaimed. Such notice shall be given within 5 days from the date of storage and shall be complete upon mailing; provided, however, that if the vehicle is registered outside the state, the person in charge of the garage or repair shop, or automotive service, storage or parking place shall make a good faith best effort in so notifying the owner and any lienholders, and such notice shall be given within a reasonable period of time from the date of storage.

B. Failure to make good faith best efforts to comply with the notice requirements of this section shall preclude the imposition of any storage charges against such vehicle.

LICENSING STATUTE

SECTION I. No person shall operate a business or recovery or towing vehicles and other property by means of a tow truck or car carrier unless such person possesses a valid permit issued pursuant to this Chapter by the DIVISION OF MOTOR VEHICLES.

SECTION II. An applicant for such permit shall make application upon a form provided by the D.M.V., accompanied by a fee of \$100 for such permit. The D.M.V. shall issue such permit to all applicants meeting these requirements:

- a. full disclosure of all persons having any financial interest in such applicant;
- b. existence of insurance policies endorsed to show that D.M.V. shall be notified of any changes in the same or cancellation thereof, such policies to provide the following coverage:
  - (1) liability \$500,000
  - (2) garage keepers legal with coverage of the property and its contents to be transported.
- c. that all vehicles to be used pursuant to said permit to meet minimum safety standards established by the D.M.V. by rule, which such rule the D.M.V. shall establish by the effective date of this act.

SECTION III The D.M.V. shall by rule provide for distinctive medallions for vehicles used in such business.

SECTION IV Permit holders shall receive such medallions for each vehicle to be used in such business upon paying fees as follows, and no governmental agency shall assess any fees against such vehicle other than the vehicle license and these medallions

- a. CLASS A (including one-car carriers)  
FIFTY (\$50) DOLLARS per vehicle
- b. CLASS B (including two or three car carriers)  
SEVENTY-FIVE (\$75) DOLLARS per vehicle
- c. CLASS C  
ONE HUNDRED (\$100) DOLLARS per vehicle.

SECTION V Persons issued Permits under this Chapter shall display such medallions on all vehicles used in such business, and such plates shall not be moved from one vehicle to another.

SECTION VI (1) A person possesses a valid permit when the D.M.V. issues a permit certificate.

(2) Such permit and medallion shall expire on the last day of the month, twelve months hence, of the date of issuance.

(3) Renewals of Permits and medallions shall be at the same rates and pursuant to such Rule as the D.M.V. shall promulgate.

(4) Any vehicle sold or taken from service shall have its medallion surrendered to the D.M.V. and is not reuseable. Any additions to the fleet shall be licensed for the ensuing twelve months.

SECTION VII The D.M.V. may deny, suspend, or revoke or refuse to issue or renew a permit or any vehicle registration upon proof that the person

- a. used fraud or deception in securing a permit or medallion
- b. receives in any manner or by any device any rebate or other additional fee for towing or recovery from a person who performs repair on a vehicle who does not also own the vehicle. This section does not prohibit the payment of the towing fee by a person who performs repairs on a vehicle if the fee is included in the charges by that person for the repairs of the vehicle
- c. violates any provision of this Chapter; or
- d. uses vehicles in such business which do not meet the minimum safety standards set by D.M.V. rules.

SECTION VIII The provisions of this Article are exclusive and no city, county or other political subdivision shall regulate or require or issue any registration, licenses, permits, or surety bonds or charge any fee for the regulatory or surety registration of any person required to obtain a permit from the D.M.V. This Section does not:

(1) prevent imposition of an occupational license by any municipality of the domicile of the permit holder, except that such occupational license shall not be based upon the number of vehicles in use.

POSSESSORY LIEN  
TOWING, STORAGE, AND LIEN LAW

SECTION I DEFINITIONS

- a. "VEHICLE OR MOTOR VEHICLE" means any mobile item usually moved on wheels, motorized or not.
- b. "WRECKER OR TOW TRUCK" means any motor vehicle equipped with booms, winches or similar equipment designed for recover



and towing of vehicles, trailers, motor homes, and other objects which cannot operate under their own power for some reason must be transported in the tow of another vehicle.

c. "CAR CARRIER" means any motor vehicle equipped with a winch and hydraulically operated bed which slides and tilts to accommodate loading, and is designed for towing and/or transporting of vehicles, trailers, motor homes, and other objects which cannot operate under their own power or for some reason must be transported in the tow, carriage, and control of another vehicle.

d. "IMPOUNDMENT LOT" means real property owned or leased by a person regularly engaged in the towing-storage business having these specifications:

- (1) Contiguous to said person's place of business; except that a secondary lot can be located elsewhere;
- (2) Completely encircled by a secure fence not less than 6' high;
- (3) At least one gate for egress and ingress which shall be kept locked at all times except when in use;
- (4) Adequate facilities to protect against weather and outside agencies on all "police-hold" vehicles.

e. "REGULARLY ENGAGED" means one owning towing equipment and storage facilities and using them as a profit center or intended profit center, in the transportation by tow truck or car carrier of vehicles and the storing thereof.

## SECTION II APPLICATION OF LIEN

Whenever a person regularly engaged in the business of transporting vehicles by tow truck or car carrier, and storing same in an impoundment lot, recovers, removes and stores a vehicle upon instruction from:

- a. The owner thereof, or the owner's agent; or
- b. Any duly authorized law enforcement agency, or officer, including cases of "abandonment".

Such person shall be deemed to be in lawful possession of said vehicle and shall have a POSSESSORY LIEN upon said vehicle and the contents thereof for all costs of recovery, towing, storage and any administrative expenses incurred in perfecting the lien and in fore-closing the same.

## SECTION III PERFECTING THE LIEN

Such lien referred to in Section II shall be perfected by:

- a. Uninterrupted possession of such vehicle and contents by such person.

SECTION IV NOTICE AND LIEN PROCEDURE

a. Every towing-storage agency which claims a lien as set forth in Section II shall, within five (5) working days of the time of possession, mail to the last known registered owner of said vehicle, by certified or registered mail, a written notice which shall contain the following data:

1. description of the vehicle;
2. where it is being stored;
3. that a lien for towing and storage and expenses connected with the same is claimed against the vehicle and contents;
4. that the lien is enforceable at law;
5. that the owner has a right to an administrative hearing to determine the validity of the initial taking;
6. that a claim of such right to a hearing may be made at the office of the law enforcement agency ordering the tow, the address being contained in the notice;
7. that such claim must be made within 48 hours, non-working days excluded, or receiving the registered or certified mailing;
8. that such administrative hearing will be conducted by an officer appointed by the head of the law enforcement department instigating the tow for which there is a fee.

b. The police department instigating the tow which is the subject of said notice, shall, within 24 hours of a request by such towing-storage agency, furnish to such agency the name and address of the last known registered owner of said vehicle.

c. No owner shall be required to post bond, to secure possession of the vehicle. He shall be entitled to such possession as follows:

1. Within 24 hours after filing of a valid claim for such administrative hearing, upon giving 24 hours notice to personnel of the impoundment firm, upon submitting a written confirmation of such claim for hearing executed by the law enforcement agency which instigated the tow, and upon payment of all charges for recovery and towing work, but not for storage, and upon execution to such impoundment firm of a receipt for the vehicle and contents. Claimant

shall have opportunity to examine the vehicle and contents. The impoundment firm shall thereupon be absolved of all claims of loss and damage unless the same are noted upon such receipt.

SECTION V ADMINISTRATIVE HEARING

a. Any governmental agency authorized by law to order the removal of any abandoned property or property deemed to be a hazard on the public way shall establish procedures to effectuate the intent of this chapter. This shall include the naming of persons to conduct administrative hearings for claimants referred to in Section IV above. Such hearings persons shall not be the officer ordering the tow or his superior in command.

b. Rules of evidence shall be waived at such hearing so that the vehicle owner may be able to appear pro se, although such claimants may be represented by counsel.

c. Should the vehicle owner waive the hearing by not claiming the same as provided above, the impoundment firm may retain its lien and enforce the same as hereinafter provided.

d. Should the hearing officer rule that the taking was unlawful and that the impoundment charges are not allowed, claimant shall be discharged of any obligation for further charges.

e. Should the hearing officer rule the taking to have been legal and the lien valid, the claimant thereupon shall become obligated to the impoundment firm for all reasonable charges for storage of the vehicle and contents.

FORECLOSURE AND SALE OF SALVAGE

SECTION 1

a. Any vehicle and/or contents subject to a possessory lien, whether or not such lien is perfected, not redeemed within 30 days by its owner or lienholder by payment of all charges and taking possession, may be sold at non-judicial sale by the lienor, at public auction for cash.

b. Notice of such sales shall be sent at least 15 days before the date of such sale, by registered or certified mail, no return receipt required, to the said registered owner and

lienholder(s), if any, as hereinafter described.

c. In addition to said notice by mail, notice of such sale shall be

- (1) published in a newspaper of general circulation in the county at least once, at least 10 days prior to said sale; or
- (2) posted in the lienor's place of business, and
  - (a) in the County Courthouse or
  - (b) in the post office nearest to the lienor's premises.

SECTION 2    PROCEEDS OF SALE

a. Should the auction sale produce more funds than the sum of all charges, including costs of the sale and including a reasonable charge for processing the paperwork, such excess shall be paid to the Clerk of the \_\_\_\_\_ Court to the account of the person legally entitled thereto subject to a 5% fee to said Clerk.

b. Should the sale produce the same or less than said sum of all charges:

- (1) the ownership of said vehicle shall thereupon, free of all liens of any nature vest in the said lienor, and
- (2) said lienor shall have a valid claim against the said owner for the full amount of such charges less the salvage value of said vehicle on such date; such salvage value must be substantiated by a written statement by an established salvage dealer in the vicinity.

c. Upon presentation to the Division of Motor Vehicle of documentation to the effect that the foreclosure procedure has been complied with, protecting the rights of the owner or lienholder(s), the successful bidder at said auction sale shall be entitled to receive a new title to said vehicle upon meeting other administrative requirements of salvage law and motor vehicle department rules (if any).

VEHICLES WRONGFULLY PARKED OR ABANDONED  
ON PRIVATE REAL PROPERTY

a. The owner or lessor of privately owned real property, or any person authorized by such owner or lessor, or any law enforcement agency in the case of publicly owned real property.

may cause any motor vehicle parked or abandoned on such property without permission, to be removed by a person regularly engaged in the business of towing motor vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation or storage, under any of the following circumstances.

b. The towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person in control of the vehicle is subject to strict compliance with the following conditions and restrictions:

1. Any towed or removed vehicle must be stored at the site of the towing company's business in an enclosed and secured storage lot. The site must be open during business hours, and for the purpose of redemption of vehicles, during the time that the person or firm towing said vehicle is open for towing purposes.

2. The person or firm towing or removing the vehicle shall, within 30 minutes of completion of such towing or removal, notify the municipal police department, or, in an unincorporated area, the sheriff, of such towing or removal, the storage site, and time it was towed or removed, and the make, model, color, and license plate number of that vehicle, and shall obtain the name of the person at the department to whom such information was reported and note that name on the trip record.

3. If the registered owner or legally authorized person in control of the vehicle shall arrive at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removing apparatus and that person shall be allowed to remove the vehicle without interference, upon the payment of a reasonable service fee of not more than one-half of the posted rate of such towing service as provided in subparagraph 6, for which a receipt shall be given, unless said person refuses to remove the vehicle which is otherwise unlawfully parked.

4. The rebate of payment of money or any other valuable consideration from the individual or firm towing or removing vehicles to the owners or operators of the premises from which the vehicles are towed or removed, for the privilege of removing or towing those vehicles, is prohibited, and hereby declared a misdemeanor.

5. Except for property appurtenant to and obviously a part of a single family residence, and except for instances where notice is personally given to the owner or other legally authorized person in control of the vehicle that the area in which that vehicle is parked is reserved or otherwise unavailable for unauthorized vehicles and subject to being removed at the owner's or operator's expense, any property owner or lessor or person authorized by the property owner or lessor, prior to towing or removing any vehicle from private property without the consent of the owner or other legally authorized person in control of that vehicle, must post a notice meeting the following requirements:

(a) The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the sign must be posted not less than one sign each 25 feet of lot frontage.

(b) The notice must indicate clearly, in not less than 2 inch high light-reflective letters on a contrasting background that unauthorized vehicles will be towed away at the owner's expense. The words "TOW AWAY ZONE" must be included on the sign in not less than 2 inch letters.

(c) The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicle, if the property owner, lessor or person in control of the property has a written contract with the towing company.

(d) The sign structure containing the required notices must be permanently installed with the bottom of the sign not less than 4 feet above ground level, and must be continuously maintained on the property for not less than 24 hours prior to the towing or removing of any vehicle.

(e) The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles being authorized.

(f) Any person or firm that tows or removes vehicles and proposes to require the owner, operator, or person in control of the vehicle to pay the costs of towing and storage prior to redemption of the

vehicle must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services, and post at the storage sites an identical rate schedule and any written contracts with property owners, lessors, or persons in control of property which authorizes them to remove vehicles as provided in this section.

(g) No person shall engage in the removal of vehicles from private property as described in this section without filing a notice of his intent so to do in each community where he intends to do such removal, and said notice shall be filed at least 60 days before commencing such towing. Any person regularly engaged in the towing business in a community for one year shall file the notice as provided above but may be excused from the 60 day requirement.

(h) No removal of a vehicle from private property shall be done except upon express instruction of the owner or person in charge of the private property upon which vehicle is said to be trespassing. Such instruction for removal shall not be given in advance of the trespass or by blanket authorization.

(i) Vehicle entry for the purpose of removal shall be allowed with reasonable care on the part of the person or firm towing the vehicle. Said person or firm shall be liable for any damages occasioned to the vehicle if such entry is not in accordance with the standards of reasonable care.

(j) When a vehicle has been towed or removed pursuant to this section, it must be released to its owner or custodian within one half hour after requested, if such a request is made during business hours. Any vehicle owner, or custodian, or agent, shall have the right to inspect the vehicle before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle owner, custodian or agent as a condition of release of the vehicle to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle must be

given to the person paying towing and/or storage charges at the time of payment, whether requested or not.

c. This section shall not apply to law enforcement, fire-fighting, rescue squads, ambulance, or other emergency vehicles which are marked as such or to property owned by any governmental entity.

d. When a person improperly causes a motor vehicle to be removed, such person shall be liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation or storage of the vehicle; attorney's fees, and court costs.

e. A person regularly engaged in the business of transporting vehicles by tow truck or car carrier, for at least one year in the same law enforcement jurisdiction, and storing same in an impoundment lot, shall have a lien on said vehicle and the contents thereof for services performed in compliance with this section, as set forth in the possessory lien statute of this State.

f. Disposal of any vehicle in possession of the towing-storage company, not claimed within 30 days after possession, may be effectuated by compliance with the possessory lien foreclosure statute of this State.





