

1 HOUSE BILL NO. 523

2 INTRODUCED BY E. ARNTZEN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA PROFESSIONAL TOW
5 TRUCK ACT; REQUIRING A LETTER OF APPOINTMENT TO PARTICIPATE IN THE LAW ENFORCEMENT
6 ROTATION SYSTEM; PROVIDING REQUIREMENTS FOR A TOW TRUCK OPERATOR TO RECEIVE A
7 LETTER OF APPOINTMENT; REVISING EXISTING DEPARTMENT RULEMAKING AUTHORITY; AND
8 AMENDING SECTIONS 61-8-903, 61-8-904, AND 61-8-908, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 NEW SECTION. **Section 1. Letter of appointment -- requirements.** (1) A commercial tow truck
13 operator may not participate in the law enforcement rotation system provided for in 61-8-908 without a letter of
14 appointment from the department.

15 (2) The department may assign a letter of appointment to a commercial tow truck operator if the operator
16 meets the following requirements:

17 (a) Each towing business must be operated independently. One company cannot be dependent on
18 another for any required operation.

19 (b) If the operator owns more than one towing business, each business must have a different identifiable
20 name, address, and telephone number that is answered at the business location during normal business hours.
21 An after-hours central dispatch center may receive calls for multiple businesses if the dispatch center is capable
22 of acknowledging each individual call by the applicable company name.

23 (c) The operator shall provide adequate staffing for each business with personnel who are present at
24 the business location to answer all incoming calls and who are able to release impounded vehicles from 8 a.m.
25 to 5 p.m., Monday through Friday, except for state-recognized holidays. In addition, each business location must
26 be staffed by a sufficient number of drivers for a 24-hour a day operation.

27 (d) There must be adequate equipment for each company to operate independently. Tow trucks may
28 only be used for the company for which they are registered and within the rotation area for which they are
29 approved by the department unless otherwise specifically provided for by the department.

30 (e) The operator must have a business location with its own outside entrance, or if a building has one

1 main entrance, the location must have doors clearly marking and separating each business with a sign at the front
2 door and a sign plainly visible from the street indicating the company's name, telephone number, and office hours.
3 Separate businesses in the same rotation area may be housed in one building, but there must be a solid wall from
4 floor to ceiling to separate each business.

5 (f) Each company shall maintain its own set of required records and books, including but not limited to
6 a vehicle transaction file and billing invoices at its business location. If there is a corporate accountant or
7 bookkeeper for more than one company, all records and files for each company that are required to be
8 maintained at the business location must be maintained separately.

9 (g) The operator must have impound and storage areas at the business location and in the operator's
10 assigned rotation area that meet the requirements of 61-8-906(3).

11 (h) The operator shall maintain at least one truck meeting the minimum classification standards set out
12 in 61-8-905.

13 (3) A qualified tow truck operator may have only one letter of appointment for a business location in a
14 single rotation area. A request for an additional letter of appointment must be for a complete and separate
15 business location that is capable of operating independently within the same or another rotation area and that
16 meets the requirements of subsection (2).

17 (4) Each letter of appointment must specify the rotation area to which the qualified tow truck operator
18 is assigned.

19 (5) A commercial tow truck operator may petition the department in writing for a waiver of one or more
20 of the requirements of subsection (2). Except as provided in subsection (6), the department may grant a waiver
21 if it finds that:

22 (a) the towing service otherwise available within the rotation area is inadequate to meet the needs of the
23 public;

24 (b) the request has the highway patrol district commander's approval; and

25 (c) the petition is otherwise reasonable.

26 (6) In the event a commercial tow truck operator meets all the requirements of this section and receives
27 a letter of appointment in the same rotation area as a qualified tow truck operator that had earlier been granted
28 a waiver pursuant to subsection (5), the department shall rescind the waiver.

29 (7) A letter of appointment must be issued in the name of the applicant and is not transferable to any
30 other person or business.

1 (8) A letter of appointment is valid until suspended, superseded, or revoked by the department.

2

3 **Section 2.** Section 61-8-903, MCA, is amended to read:

4 **"61-8-903. Definitions.** As used in this part, the following definitions apply:

5 (1) "Boom" means an engineered structure that is either mechanically or hydraulically operated and that
6 is capable of lifting and supporting an overhead, vertical load.

7 (2) "Commercial tow truck operator" or "operator" means ~~a person, firm, an individual, partnership,~~
8 corporation, or other business entity that owns or operates a commercial tow truck as defined in 61-9-416.

9 (3) "Department" means the department of justice provided for in 2-15-2001.

10 (4) "Letter of appointment" means a letter granted by the department pursuant to [section 1] that
11 authorizes the holder to participate in the law enforcement rotation system provided for in 61-8-908.

12 ~~(4)(5)~~ "Local government" means a county, a municipality, or other local board or body that has authority
13 to enact laws relating to traffic.

14 ~~(5)(6)~~ (a) "Qualified tow truck operator" means a commercial tow truck operator:

15 (i) that has equipment that:

16 (A) meets the requirements of 61-8-906, 61-8-907, and 61-9-416; and

17 (B) has been classified in accordance with 61-8-905;

18 (ii) that participates in the law enforcement rotation system provided for in 61-8-908; ~~and~~

19 (iii) that meets the requirements of subsection ~~(5)(b)~~ (6)(b); and

20 (iv) that has been issued a letter of appointment pursuant to [section 1].

21 (b) (i) If the operator is a firm or other entity, at least 75% of the employees who operate a tow truck must
22 hold a certification from a nationally recognized certification program for tow truck operators or have a minimum
23 of 1 year of experience in the towing business for hire in Montana.

24 (ii) If the operator is an individual, the individual must hold a certification from a nationally recognized
25 certification program for tow truck operators or have a minimum of 1 year of experience in the towing business
26 for hire in Montana.

27 ~~(6)(7)~~ "Rotation area" means the base area where a qualified tow truck operator is dispatched and
28 operates. For class C tow truck operators, a rotation area includes at least the entire county in which the
29 operation is located but may be expanded to other counties.

30 ~~(7) "Satellite operation" means a second or subsequent operation in another rotation area."~~

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2 **Section 3.** Section 61-8-904, MCA, is amended to read:

3 **"61-8-904. Prohibition -- exception.** (1) A commercial tow truck operator may not operate for
4 compensation upon the public roadways of this state unless the operator complies with the provisions of
5 61-8-906(1) and 61-8-907.

6 (2) A commercial tow truck operator may not participate in the law enforcement rotation system provided
7 for in 61-8-908 unless the operator complies with the provisions of this part.

8 (3) Sections 61-8-901 through 61-8-908, ~~and 61-8-910,~~ and [section 1] do not apply to a commercial tow
9 truck operator that does not operate for compensation."

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11 **Section 4.** Section 61-8-908, MCA, is amended to read:

12 **"61-8-908. State law enforcement rotation system -- letter of appointment -- local government**
13 **rotation system.** (1) The department shall establish and maintain an equitable rotation system among qualified
14 tow truck operators that apply to the department in writing to be placed on the system and receive a letter of
15 appointment under [section 1]. The rotation system:

16 (a) must be administered by the highway patrol in a manner that will give priority to public safety;

17 (b) must be based on the classification of equipment as provided in 61-8-905; and

18 (c) may include only qualified tow truck operators.

19 (2) Each qualified tow truck operator participating in the rotation system shall have available and show
20 upon the request of a law enforcement officer:

21 (a) all Montana motor vehicle identification numbers or department of transportation numbers for the
22 operator's tow trucks operating in the rotation system;

23 (b) the operator's federal tax identification number; ~~and~~

24 (c) the operator's company phone number and street address; and

25 (d) the operator's letter of appointment as issued under [section 1].

26 (3) The operator shall display on both sides of each tow truck the operator's business name, location,
27 and the numbers required by subsection (2)(a). The information required by this subsection must be plainly seen
28 and able to be read at all times.

29 ~~(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility~~
30 ~~applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee~~

1 established in 61-8-912 information regarding each operator's individual accounting system, the information
 2 required in subsection (2), and proof that each operator has the insurance required in 61-8-906:

3 ~~—— (b) Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution~~
 4 ~~committee shall, upon written request, verify that operators using a single storage or impoundment facility~~
 5 ~~applying to be placed on the rotation system have individual accounting systems, adequate identification~~
 6 ~~information, and individual insurance policies.~~

7 ~~—— (4) Only one qualified tow truck operation for each owner may be included on a rotation area list.~~

8 ~~(5) (a) An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation~~
 9 ~~area separate from the rotation area where the owner is participating in the rotation system may establish a~~
 10 ~~satellite operation to be included on a rotation area list if:~~

11 ~~—— (i) the owner has a business office in the second rotation area;~~

12 ~~—— (ii) the business office is open and accessible from 8 a.m. to 5 p.m. Monday through Friday;~~

13 ~~—— (iii) the facilities have a secure yard as provided in 61-8-906(3)(e); and~~

14 ~~—— (iv) the tow truck operation has a local 24-hour phone number.~~

15 ~~—— (b) Any charges for towing service from the satellite operation must be calculated from the satellite~~
 16 ~~operation area and not the area of the owner's base operation.~~

17 (4) Any charges for towing service must be calculated from the operator's business location, as it is
 18 assigned on the operator's letter of appointment.

19 ~~(6)(5) The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle~~
 20 ~~obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator~~
 21 ~~meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in~~
 22 ~~61-8-907.~~

23 ~~(7)(6) (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck~~
 24 ~~operator that is next on the rotation list if:~~

25 ~~(A) a request for a tow truck is not made by the owner or driver;~~

26 ~~(B) the requested tow truck cannot respond in a timely manner; or~~

27 ~~(C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked~~
 28 ~~or disabled vehicle.~~

29 ~~(ii) If the qualified tow truck operator is not classified to handle the wrecked or disabled vehicle, the officer~~
 30 ~~shall call the qualified tow truck operator next on the rotation list that is classified to handle the wrecked or~~

1 disabled vehicle.

2 (b) If a qualified tow truck operator classified to handle the wrecked or disabled vehicle is not reasonably
3 available, the law enforcement officer may request other equipment to remove the hazard.

4 ~~(8)(7)~~ The department shall administer the state law enforcement rotation system. A qualified tow truck
5 operator may examine the rotation system schedule established by the department in order to determine if the
6 system is being administered in an equitable manner.

7 ~~(9)(8)~~ A qualified tow truck operator gives implied consent to a reasonable inspection during normal
8 business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or
9 a local government to ensure compliance with this part.

10 ~~(10)(9)~~ A local law enforcement agency may adopt and administer a local law enforcement rotation
11 system that complies with the provisions of this part. A tow truck operator desiring to be placed on the local law
12 enforcement rotation system must be a qualified tow truck operator as provided in this part.

13 ~~(11)(10)~~ The highway patrol or local law enforcement shall provide upon request a record of rotation
14 system calls for all classes of tow trucks.

15 ~~(12)(11)~~ Complaints about the rotation system must be referred in writing to the complaint resolution
16 committee established in 61-8-912."

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18 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 1].

20 - END -