

HOUSE BILL NO. 636
INTRODUCED BY G. FORRESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING TOW TRUCKS AND THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; ESTABLISHING CERTIFICATION REQUIREMENTS FOR TOW TRUCK OPERATORS TO QUALIFY FOR PARTICIPATION IN THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM; PROVIDING DEFINITIONS; IDENTIFYING MANUFACTURER'S BOOM RATINGS FOR TOW TRUCK CLASSIFICATION; REQUIRING THE ESTABLISHMENT OF THE TOW TRUCK LAW ENFORCEMENT ROTATION SYSTEM COMPLAINT RESOLUTION COMMITTEE AND ASSIGNING RESPONSIBILITIES TO THE COMMITTEE; SPECIFYING THE AMOUNT OF INSURANCE A COMMERCIAL TOW TRUCK OPERATOR MUST CARRY; REQUIRING THAT PROOF OF INSURANCE BE SENT TO THE PUBLIC SERVICE COMMISSION; ESTABLISHING REQUIREMENTS FOR A TOW TRUCK OPERATOR'S FENCED LOT; ALLOWING THE HIGHWAY PATROL TO CHARGE A FEE FOR THE INSPECTION DECAL; SPECIFYING THE KIND OF INFORMATION THAT QUALIFIED TOW TRUCK OPERATORS MUST PROVIDE; ESTABLISHING THE PROCEDURE FOR MULTIPLE TOW TRUCK OPERATORS TO BE ON A ROTATION LIST FROM A SINGLE STORAGE OR IMPOUNDMENT FACILITY; ALLOWING ONLY ONE TOW TRUCK OPERATION FOR EACH OWNER TO BE PLACED ON A ROTATION LIST; ESTABLISHING REQUIREMENTS FOR SATELLITE TOW TRUCK OPERATIONS; REQUIRING LOCAL LAW ENFORCEMENT AGENCIES TO COMPLY WITH THE ROTATION SYSTEM PROVISIONS; REQUIRING THAT LISTS OF ROTATION SYSTEM CALLS BE MADE AVAILABLE; AND AMENDING SECTIONS 61-8-903, 61-8-904, 61-8-905, 61-8-906, 61-8-907, 61-8-908, 61-8-910, AND 69-12-102, MCA."

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

Section 1. Section 61-8-903, MCA, is amended to read:

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

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

~~(4)~~(2) "Commercial tow truck operator" or "operator" means a person, firm, or other entity that owns or operates a commercial tow truck as defined in 61-9-416.

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

~~(3)~~(4) "Local government" means a county, a municipality, or other local board or body that has authority to enact laws relating to traffic.

~~(4)~~(5) (a) "Qualified tow truck operator" means a commercial tow truck operator:

~~(a)~~(i) that has equipment that:

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

~~(ii)~~(B) has been classified in accordance with 61-8-905; ~~and~~

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

(iii) that meets the requirements of subsection (5)(b).

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

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

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

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

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

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

(2) A commercial tow truck operator may not participate in the law enforcement rotation system provided for in 61-8-908 unless the operator complies with the provisions of ~~61-8-905 through 61-8-907~~ this part.

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

Section 3. Section 61-8-905, MCA, is amended to read:

"61-8-905. Classification standards. (1) Commercial tow trucks are divided into the following five classes based on the manufacturer's rating:

(a) Class A tow truck equipment must have a minimum manufacturer's boom or combined boom rating of 4 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 10,000 pounds gross vehicle weight.

(b) Class B tow truck equipment must have a minimum manufacturer's boom or combined boom rating of 8 tons and must be mounted on a truck chassis with a minimum manufacturer's rating of 18,000 pounds gross vehicle weight.

(c) Class C tow truck equipment must have a minimum manufacturer's boom or combined boom rating of 16 tons and must be mounted on a chassis that has a minimum manufacturer's rating of 32,000 pounds gross vehicle weight.

(d) Class D ~~is class A, B, or C~~ tow truck equipment ~~that~~ includes manufactured rollbacks and car carriers with manufacturer's gross vehicle ratings ~~ranging from~~ of 10,000 pounds ~~to 30,000 pounds~~ and over. The rollbacks and car carriers must be mounted on a truck-trailer chassis that, at a minimum, is equal to the minimum gross weight of the rollback or car carrier. Class D also includes any piece of towing equipment without a boom.

(e) Class E includes two or more tow trucks working together with a combined manufacturer's rating of a minimum of 80,000 pounds with access to supportive equipment, such as forklifts, banders, and air bags, for the recovery of rollovers and wrecked, disabled, and abandoned vehicles whose cargo requires special handling. Class E refers to tow truck companies and not to tow truck equipment.

(2) ~~(a)~~ An operator of noncommercially manufactured or modified tow truck equipment in use on October 1, 1995, that wishes to participate in the law enforcement rotation system must have its equipment classified by the department within a time period set by the department. Once the equipment is classified, further modifications may not be made.

~~(b) (i) The department shall establish a committee composed of members selected from the:~~

~~_____ (A) tow truck industry;~~

~~_____ (B) the motor carrier services division of the department of transportation; and~~

~~_____ (C) the highway patrol.~~

~~_____ (ii) The committee is responsible for hearing disputes that may arise regarding the classification of noncommercially manufactured or modified tow truck equipment.~~

~~_____ (iii) The department shall establish by rule a procedure for hearing a dispute.~~

~~_____ (c) After October 1, 1995, an~~

(3) An operator of new noncommercially manufactured or modified tow truck equipment must have its equipment independently certified before participating in the law enforcement rotation system. Once the

equipment is classified, further modifications to the equipment must be recertified."

NEW SECTION. Section 4. Tow truck law enforcement rotation system complaint resolution committee -- membership -- responsibilities. (1) The department shall establish a tow truck law enforcement rotation system complaint resolution committee, and the attorney general shall appoint the members. Committee members serve 3-year terms, may serve more than one term, and must include:

(a) two representatives of the tow truck industry, one from the eastern half of the state and one from the western half of the state;

(b) a representative of the commercial motor carrier industry;

(c) a member of the public;

(d) a representative of the insurance industry; and

(e) a representative of the highway patrol.

(2) The committee shall meet as often as necessary, either in person or by teleconference, to review and resolve complaints about the tow truck law enforcement rotation system that are submitted in writing to a committee member and to review information submitted to it as provided in 61-8-908(3).

(3) The department shall establish rules to govern the committee's procedure for reviewing and resolving complaints.

Section 5. Section 61-8-906, MCA, is amended to read:

"61-8-906. Liability insurance -- storage requirements. (1) Notwithstanding the provisions of 61-6-301, a commercial tow truck operator shall continuously provide:

(a) insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property caused by the maintenance or use of a commercial tow truck, as defined in 61-9-416, or occurring on the business premises of a commercial tow truck operator in an amount not less than:

(i) \$300,000 for class A tow trucks;

(ii) \$500,000 for class B tow trucks; and

(iii) \$750,000 for class C tow trucks;

(b) insurance in an amount not less than \$20,000 to cover the damage to cargo or other property entrusted to the care of the commercial tow truck operator; and

(c) garage keepers or on-hook legal liability insurance in an amount not less than \$50,000.

(2) A commercial tow truck operator shall provide proof of the insurance required in subsection (1) to

the public service commission.

~~(2)~~(3) A qualified tow truck operator shall provide a storage facility, either a fenced lot or a building, that is:

- (a) adequate for the secure storage and safekeeping of stored vehicles;
- (b) located in a place that is reasonably convenient for public access;
- (c) available to public access between 8 a.m. and 5 p.m., Monday through Friday, excluding legal holidays; ~~and~~
- (d) large enough to store all the vehicles towed for law enforcement agencies; and
- (e) if a fenced lot, constructed of chain link at least 6 feet high or constructed of materials and in a manner sufficient to deter trespassing or vandalism."

Section 6. Section 61-8-907, MCA, is amended to read:

"61-8-907. Inspection -- fees -- decal. (1) The tow truck equipment of a commercial tow truck operator must have an annual safety inspection. A highway patrol officer, an employee of the department of transportation appointed as a peace officer in accordance with 61-12-201, or an inspector certified by the department shall conduct the inspection and require the commercial tow truck operator to provide proof of compliance with the provisions of 61-8-906.

(2) (a) Upon satisfactory completion of the inspection and verification of the insurance requirements, a decal showing the last inspection date and the expiration date of the insurance coverage must be affixed in a prominent place on the tow truck.

(b) If the commercial tow truck operator is participating in the law enforcement rotation system, the decal must also show the classification of the operator's tow truck equipment.

(3) The department may establish ~~an inspection and decal fee fees~~ an inspection and decal fee fees that may not exceed the actual costs of the inspection and the decal. The fees for the inspection and decal must be deposited in the state highway account in the state special revenue fund."

Section 7. Section 61-8-908, MCA, is amended to read:

"61-8-908. State law enforcement rotation system -- local government rotation system. (1) The department shall establish and maintain an equitable rotation system among qualified tow truck operators that apply to the department in writing to be placed on the system. The rotation system:

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

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

(c) may include only qualified tow truck operators.

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

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

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

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

(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in [section 4] information regarding each operator's individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.

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

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

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

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

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

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

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

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

~~(2)(6)~~ The rotation system is not applicable when the owner or driver of a wrecked or disabled vehicle obstructing a public roadway requests a tow truck operator of the owner's or driver's choice and the operator meets the insurance requirements provided in 61-8-906 and the safety inspection requirements provided in 61-8-907.

~~(3)(7)~~ (a) (i) The law enforcement officer at the scene of the wreck shall call the qualified tow truck

operator that is next on the rotation list if:

- (A) a request for a tow truck is not made by the owner or driver;
- (B) the requested tow truck cannot respond in a timely manner; or
- (C) the law enforcement officer determines that the requested tow truck is unable to handle the wrecked or disabled vehicle.

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

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

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

~~(5)~~(9) A qualified tow truck operator gives implied consent to a reasonable inspection during normal business hours of its premises, vehicles, and equipment by the department of transportation, highway patrol, or a local government to ensure compliance with ~~61-8-905 through 61-8-907~~ this part.

~~(6)~~(10) A local law enforcement agency may adopt and administer a local law enforcement rotation system that complies with the provisions of this part. A tow truck operator desiring to be placed on the local law enforcement rotation system must be a qualified tow truck operator as provided in this part.

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

(12) Complaints about the rotation system must be referred in writing to the complaint resolution committee established in [section 4]."

Section 8. Section 61-8-910, MCA, is amended to read:

"61-8-910. Violation -- penalty. A commercial tow truck operator that violates a provision of ~~61-8-906~~ or 61-8-907 this part is guilty of a misdemeanor and is subject to the penalty provided in 61-8-711."

Section 9. Section 69-12-102, MCA, is amended to read:

"69-12-102. Scope of chapter -- exemptions. (1) This chapter does not affect:

- (a) the operation of school buses that are used in conveying pupils or other students enrolled in classes

to and from district or other schools or in transportation movements related to school activities that are sponsored or supervised by school authorities;

(b) the transportation by means of motor vehicles in the regular course of business of employees by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees in construction and production is concerned;

(c) the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village, as determined by the commission;

(d) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(e) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(f) ambulances;

(g) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also going to or from the driver's place of employment;

(h) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(i) armored motor vehicles used for the transportation of valuable paintings and other items of unusual value requiring special handling and security;

(j) the transportation of household goods or garbage under an agreement between a motor carrier and an office or agency of the United States government; or

(k) the transportation of disabled or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) "disabled" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This Except for the identification of ownership requirements provided in 69-12-408, this chapter does

not affect commercial tow trucks designed and exclusively used in towing wrecked, disabled, or abandoned vehicles or while these tow trucks are rendering assistance to wrecked, disabled, or abandoned vehicles. However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906.

(3) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

NEW SECTION. Section 10. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 61, chapter 8, part 9, and the provisions of Title 61, chapter 8, part 9, apply to [section 4].

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