

SECOND REGULAR SESSION

SENATE BILL NO. 1460

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNELTING.

5335S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 303.190 and 304.156, RSMo, and to enact in lieu thereof two new sections relating to towing.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 303.190 and 304.156, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 303.190 and 304.156, to read as follows:

303.190. 1. A "motor vehicle liability policy" as
2 said term is used in this chapter shall mean an owner's or
3 an operator's policy of liability insurance, certified as
4 provided in section 303.170 or section 303.180 as proof of
5 financial responsibility, and issued, except as otherwise
6 provided in section 303.180 by an insurance carrier duly
7 authorized to transact business in this state, to or for the
8 benefit of the person named therein as insured.

9 2. Such owner's policy of liability insurance:

10 (1) Shall designate by explicit description or by
11 appropriate reference all motor vehicles with respect to
12 which coverage is thereby to be granted;

13 (2) Shall insure the person named therein and any
14 other person, as insured, using any such motor vehicle or
15 motor vehicles with the express or implied permission of
16 such named insured, against loss from the liability imposed
17 by law for damages arising out of the ownership, maintenance

18 or use of such motor vehicle or motor vehicles within the
19 United States of America or the Dominion of Canada, subject
20 to limits, exclusive of interest and costs, with respect to
21 each such motor vehicle, as follows: twenty-five thousand
22 dollars because of bodily injury to or death of one person
23 in any one accident and, subject to said limit for one
24 person, fifty thousand dollars because of bodily injury to
25 or death of two or more persons in any one accident, and
26 twenty-five thousand dollars because of injury to or
27 destruction of property of others in any one accident; and

28 (3) May exclude coverage against loss from liability
29 imposed by law for damages arising out of the use of such
30 motor vehicles by a member of the named insured's household
31 who is a specifically excluded driver in the policy.

32 3. Such operator's policy of liability insurance shall
33 insure the person named as insured therein against loss from
34 the liability imposed upon him or her by law for damages
35 arising out of the use by him or her of any motor vehicle
36 not owned by him or her, within the said territorial limits
37 and subject to the same limits of liability as are set forth
38 above with respect to any owner's policy of liability
39 insurance.

40 4. Such motor vehicle liability policy shall state the
41 name and address of the named insured, the coverage afforded
42 by the policy, the premium charged therefor, the policy
43 period and the limits of liability, and shall contain an
44 agreement or be endorsed that insurance is provided
45 thereunder in accordance with the coverage defined in this
46 chapter as respects bodily injury and death or property
47 damage, or both, and is subject to all the provisions of
48 this chapter.

49 5. Such motor vehicle liability policy need not insure
50 any liability pursuant to any workers' compensation law nor
51 any liability on account of bodily injury to or death of an
52 employee of the insured while engaged in the employment,
53 other than domestic, of the insured, or while engaged in the
54 operation, maintenance or repair of any such motor vehicle
55 nor any liability for damage to property owned by, rented
56 to, in charge of or transported by the insured.

57 6. Every motor vehicle liability policy shall be
58 subject to the following provisions which need not be
59 contained therein:

60 (1) The liability of the insurance carrier with
61 respect to the insurance required by this chapter shall
62 become absolute whenever injury or damage covered by said
63 motor vehicle liability policy occurs; said policy may not
64 be cancelled or annulled as to such liability by any
65 agreement between the insurance carrier and the insured
66 after the occurrence of the injury or damage; no statement
67 made by the insured or on his or her behalf and no violation
68 of said policy shall defeat or void said policy;

69 (2) The satisfaction by the insured of a judgment for
70 such injury or damage shall not be a condition precedent to
71 the right or duty of the insurance carrier to make payment
72 on account of such injury or damage;

73 (3) The insurance carrier shall have the right to
74 settle any claim covered by the policy, and if such
75 settlement is made in good faith, the amount thereof shall
76 be deductible from the limits of liability specified in
77 subdivision (2) of subsection 2 of this section;

78 (4) The policy, the written application thereof, if
79 any, and any rider or endorsement which does not conflict

with the provisions of this chapter shall constitute the entire contract between the parties.

7. Any policy which grants the coverage required for a motor vehicle liability policy may also grant any lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy and such excess or additional coverage shall not be subject to the provisions of this chapter. With respect to a policy which grants such excess or additional coverage the term "motor vehicle liability policy" shall apply only to that part of the coverage which is required by this section.

8. Any motor vehicle liability policy may provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for the provisions of this chapter.

9. Any motor vehicle liability policy may provide for the prorating of the insurance thereunder with other valid and collectible insurance.

10. The requirements of a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.

11. Any binder issued pending the issuance of a motor vehicle liability policy shall be deemed to fulfill the requirement for such a policy.

12. Any motor vehicle liability policy for a commercial motor vehicle, as defined in section 301.010, with a gross vehicle rating of more than twenty-six thousand pounds shall provide coverage for towing, winching, vehicle recovery, and emergency roadside labor in an amount of at least one hundred thousand dollars. Proof of such insurance

112 **shall be maintained in the vehicle and submitted to the**
113 **department upon request.**

304.156. 1. Within five working days of receipt of
2 the crime inquiry and inspection report under section
3 304.155 or the abandoned property report under section
4 304.157, the director of revenue shall search the records of
5 the department of revenue, or initiate an inquiry with
6 another state, if the evidence presented indicated the
7 abandoned property was registered or titled in another
8 state, to determine the name and address of the owner and
9 lienholder, if any. After ascertaining the name and address
10 of the owner and lienholder, if any, the department shall,
11 within fifteen working days, notify the towing company. Any
12 towing company which comes into possession of abandoned
13 property pursuant to section 304.155 or 304.157 and who
14 claims a lien for recovering, towing or storing abandoned
15 property shall give notice to the title owner and to all
16 persons claiming a lien thereon, as disclosed by the records
17 of the department of revenue or of a corresponding agency in
18 any other state. The towing company shall notify the owner
19 and any lienholder within ten business days of the date of
20 mailing indicated on the notice sent by the department of
21 revenue, by certified mail, return receipt requested. The
22 notice shall contain the following:

- 23 (1) The name, address and telephone number of the
24 storage facility;
- 25 (2) The date, reason and place from which the
26 abandoned property was removed;
- 27 (3) A statement that the amount of the accrued towing,
28 storage and administrative costs are the responsibility of
29 the owner, and that storage and/or administrative costs will

30 continue to accrue as a legal liability of the owner until
31 the abandoned property is redeemed;

32 (4) A statement that the storage firm claims a
33 possessory lien for all such charges;

34 (5) A statement that the owner or holder of a valid
35 security interest of record may retake possession of the
36 abandoned property at any time during business hours by
37 proving ownership or rights to a secured interest and paying
38 all towing and storage charges;

39 (6) A statement that, should the owner consider that
40 the towing or removal was improper or not legally justified,
41 the owner has a right to request a hearing as provided in
42 this section to contest the propriety of such towing or
43 removal;

44 (7) A statement that if the abandoned property remains
45 unclaimed for thirty days from the date of mailing the
46 notice, title to the abandoned property will be transferred
47 to the person or firm in possession of the abandoned
48 property free of all prior liens; and

49 (8) A statement that any charges in excess of the
50 value of the abandoned property at the time of such transfer
51 shall remain a liability of the owner.

52 2. A towing company may only assess reasonable storage
53 charges for abandoned property towed without the consent of
54 the owner. Reasonable storage charges shall not exceed the
55 charges for vehicles which have been towed with the consent
56 of the owner on a negotiated basis. Storage charges may be
57 assessed only for the time in which the towing company
58 complies with the procedural requirements of sections
59 304.155 to 304.158.

60 3. In the event that the records of the department of
61 revenue fail to disclose the name of the owner or any

lienholder of record, the department shall notify the towing company which shall attempt to locate documents or other evidence of ownership on or within the abandoned property itself. The towing company must certify that a physical search of the abandoned property disclosed that no ownership documents were found and a good faith effort has been made. For purposes of this section, "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and title:

(1) Check of the abandoned property for any type of license plates, license plate record, temporary permit, inspection sticker, decal or other evidence which may indicate a state of possible registration and title;

(2) Check the law enforcement report for a license plate number or registration number if the abandoned property was towed at the request of a law enforcement agency;

(3) Check the tow ticket/report of the tow truck operator to see if a license plate was on the abandoned property at the beginning of the tow, if a private tow; and

(4) If there is no address of the owner on the impound report, check the law enforcement report to see if an out-of-state address is indicated on the driver license information.

4. If no ownership information is discovered, the director of revenue shall be notified in writing and title obtained in accordance with subsection 7 of this section.

5. (1) The owner of the abandoned property removed pursuant to the provisions of section 304.155 or 304.157 or any person claiming a lien, other than the towing company, within ten days after the receipt of notification from the towing company pursuant to subsection 1 of this section may file a petition in the associate circuit court in the county

94 where the abandoned property is stored to determine if the
95 abandoned property was wrongfully taken or withheld from the
96 owner. The petition shall name the towing company among the
97 defendants. The petition may also name the agency ordering
98 the tow or the owner, lessee or agent of the real property
99 from which the abandoned property was removed. The director
100 of revenue shall not be a party to such petition but a copy
101 of the petition shall be served on the director of revenue
102 who shall not issue title to such abandoned property
103 pursuant to this section until the petition is finally
104 decided.

105 (2) Upon filing of a petition in the associate circuit
106 court, the owner or lienholder may have the abandoned
107 property released upon posting with the court a cash or
108 surety bond or other adequate security equal to the amount
109 of the charges for towing and storage to ensure the payment
110 of such charges in the event he does not prevail. Upon the
111 posting of the bond and the payment of the applicable fees,
112 the court shall issue an order notifying the towing company
113 of the posting of the bond and directing the towing company
114 to release the abandoned property. At the time of such
115 release, after reasonable inspection, the owner or
116 lienholder shall give a receipt to the towing company
117 reciting any claims for loss or damage to the abandoned
118 property or the contents thereof.

119 (3) Upon determining the respective rights of the
120 parties, the final order of the court shall provide for
121 immediate payment in full of recovery, towing, and storage
122 fees by the abandoned property owner or lienholder or the
123 owner, lessee, or agent thereof of the real property from
124 which the abandoned property was removed.

125 **(4) The provisions of this subsection shall only apply**
126 **to abandoned property removed pursuant to the provisions of**
127 **section 304.155 or 304.157 with costs charged by the towing**
128 **company that do not exceed fifteen thousand dollars.**

129 6. A towing and storage lien shall be enforced as
130 provided in subsection 7 of this section.

131 7. Thirty days after the notification form has been
132 mailed to the abandoned property owner and holder of a
133 security agreement and the property is unredeemed and no
134 satisfactory arrangement has been made with the lienholder
135 in possession for continued storage, and the owner or holder
136 of a security agreement has not requested a hearing as
137 provided in subsection 5 of this section, the lienholder in
138 possession may apply to the director of revenue for a
139 certificate. The application for title shall be accompanied
140 by:

141 (1) An affidavit from the lienholder in possession
142 that he has been in possession of the abandoned property for
143 at least thirty days and the owner of the abandoned property
144 or holder of a security agreement has not made arrangements
145 for payment of towing and storage charges;

146 (2) An affidavit that the lienholder in possession has
147 not been notified of any application for hearing as provided
148 in this section;

149 (3) A copy of the abandoned property report or crime
150 inquiry and inspection report;

151 (4) A copy of the thirty-day notice given by certified
152 mail to any owner and person holding a valid security
153 interest and a copy of the certified mail receipt indicating
154 that the owner and lienholder of record was sent a notice as
155 required in this section; and

156 (5) A copy of the envelope or mailing container
157 showing the address and postal markings indicating that the
158 notice was "not forwardable" or "address unknown".

159 8. If notice to the owner and holder of a security
160 agreement has been returned marked "not forwardable" or
161 "addressee unknown", the lienholder in possession shall
162 comply with subsection 3 of this section.

163 9. Any municipality or county may adopt an ordinance
164 regulating the removal and sale of abandoned property
165 provided such ordinance is consistent with sections 304.155
166 to 304.158, and, for a home rule city with more than four
167 hundred thousand inhabitants and located in more than one
168 county, includes the following provisions:

169 (1) That the department of revenue records must be
170 searched to determine the registered owner or lienholder of
171 the abandoned property;

172 (2) That if a registered owner or lienholder is
173 disclosed in the records, that the owner and lienholder or
174 owner or lienholder are mailed a notice by the local
175 governmental agency, by U.S. mail, advising of the towing
176 and impoundment;

177 (3) That if the vehicle is older than six years and
178 more than fifty percent damaged by collision, fire, or
179 decay, and has a fair market value of less than two hundred
180 dollars as determined by using any nationally recognized
181 appraisal book or method, it must be held no less than ten
182 days after the notice is sent pursuant to this section
183 before being sold to a licensed salvage or scrap business;
184 provided however where a title is required under this
185 chapter an affidavit from a certified appraiser attesting
186 that the value of the vehicle is less than two hundred
187 dollars;

188 (4) That all other vehicles must be held no less than
189 thirty days after the notice is sent pursuant to this
190 subsection before they may be sold.

191 10. Any municipality or county which has physical
192 possession of the abandoned property and which sells
193 abandoned property in accordance with a local ordinance may
194 transfer ownership by means of a bill of sale signed by the
195 municipal or county clerk or deputy and sealed with the
196 official municipal or county seal. Such bill of sale shall
197 contain the make and model of the abandoned property, the
198 complete abandoned property identification number and the
199 odometer reading of the abandoned property if available and
200 shall be lawful proof of ownership for any dealer registered
201 under the provisions of section 301.218, or section 301.560,
202 or for any other person. Any dealer or other person
203 purchasing such property from a municipality or county shall
204 apply within thirty days of purchase for a certificate.
205 Anyone convicted of a violation of this section shall be
206 guilty of an infraction.

207 11. Any persons who have towed abandoned property
208 prior to August 28, 1996, may, until January 1, 2000, apply
209 to the department of revenue for a certificate. The
210 application shall be accompanied by:

211 (1) A notarized affidavit explaining the circumstances
212 by which the abandoned property came into their possession,
213 including the name of the owner or possessor of real
214 property from which the abandoned property was removed;

215 (2) The date of the removal;

216 (3) The current location of the abandoned property;

217 (4) An inspection of the abandoned property as
218 prescribed by the director; and

(5) A copy of the thirty-day notice given by certified mail to any owner and person holding a valid security interest of record and a copy of the certified mail receipt.

12. If the director is satisfied with the genuineness of the application and supporting documents submitted pursuant to this section, the director shall issue one of the following:

(1) An original certificate of title if the vehicle owner has obtained a vehicle examination certificate as provided in section 301.190 which indicates that the vehicle was not previously in a salvaged condition or rebuilt;

(2) An original certificate of title designated as prior salvage if the vehicle examination certificate as provided in section 301.190 indicates the vehicle was previously in a salvage condition or rebuilt;

(3) A salvage certificate of title designated with the words "salvage/abandoned property" or junking certificate based on the condition of the abandoned property as stated in the abandoned property report or crime inquiry and inspection report;

(4) Notwithstanding the provisions of section 301.573 to the contrary, if satisfied with the genuineness of the application and supporting documents, the director shall issue an original title to abandoned property previously issued a salvage title as provided in this section, if the vehicle examination certificate as provided in section 301.190 does not indicate the abandoned property was previously in a salvage condition or rebuilt.

13. If abandoned property is insured and the insurer of property regards the property as a total loss and the insurer satisfies a claim by the owner for the property, then the insurer or lienholder shall claim and remove the

property from the storage facility or make arrangements to transfer the title, and such transfer of title subject to agreement shall be in complete satisfaction of all claims for towing and storage, to the towing company or storage facility. The owner of the abandoned vehicle, lienholder or insurer, to the extent the vehicle owner's insurance policy covers towing and storage charges, shall pay reasonable fees assessed by the towing company and storage facility. The property shall be claimed and removed or title transferred to the towing company or storage facility within thirty days of the date that the insurer paid a claim for the total loss of the property or is notified as to the location of the abandoned property, whichever is the later event. Upon request, the insurer of the property shall supply the towing company and storage facility with the name, address and phone number of the insurance company and of the insured and with a statement regarding which party is responsible for the payment of towing and storage charges under the insurance policy.

14. (1) Notwithstanding the provisions of subsection 5 of this section to the contrary, for any property removed pursuant to the provisions of section 304.155 or 304.157 with a gross vehicle rating of more than twenty-six thousand pounds and with costs charged by the towing company exceeding fifteen thousand dollars, the owner of such property may, within seven days after the receipt of notification from the towing company pursuant to subsection 1 of this section, file a petition in a court of competent jurisdiction in the county where the abandoned property is stored if there is a dispute arising over costs charged by the towing company. The petition shall name the towing company among the defendants.

283 (2) Upon filing the petition, the property owner shall
284 pay to the towing company fifty percent of all costs charged
285 by the towing company as of the date of filing, and the
286 remaining fifty percent of all costs shall be deposited with
287 the court. If the court finds in favor of the towing
288 company, the property owner shall pay the remainder of the
289 costs to the towing company along with interest accrued from
290 the date of filing at the rate determined by section 32.065.

291 (3) Within five business days of depositing fifty
292 percent of the costs charged by the towing company with the
293 court, the property owner shall remove the truck, trailer,
294 cargo, and any debris associated with such items from the
295 premises of the towing company. Failure to remove such
296 property shall result in the property owner forfeiting the
297 moneys deposited with the court to the towing company.

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