

Invited Testimony on SB 1569 Oregon Tow Board
By Sean Aaron Cruz
Senate Government and Emergency Preparedness Committee
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Exhibits:

SB 431 (2007)

SB 116 (2007)

City of Portland Administrative Rule 7.24-13-1

Chair Riley, Members of the Committee:

For the record, my name is Sean Aaron Cruz. I am a resident of Senate District 23 in NE Portland, and I thank you for the invitation to speak in support of SB 1569, on the need for a State Board of Towing in Oregon.

I began work in the state legislature as Senator Avel Gordly's legislative staff in January of 2003 and served in that capacity for her last 6 years in office, through the 2003, '05, '07 and '08 legislative sessions

Midway through the 2005 legislative session, we became aware of certain predatory practices taking place in the largely unregulated towing industry in Oregon in the area of Private Property Impounds (PPI), where certain companies specializing in patrolling multifamily housing complexes were towing tenant vehicles unfairly and often unlawfully, as they continue to do today.

Senator Gordly tasked me with researching the issue in 2005 and during the 2006 interim, and we filed several legislative concepts at the beginning of the 2007 session, working with the Attorney General's office, which was looking at fraudulent and predatory towing practices in the industry more broadly.

I would like to touch on several sections of those bills briefly, noting at the outset that the predatory towing consumer protection laws enacted in 2007 are very poorly enforced to the present day. I would also like to brief you on the predatory towing consumer protection legislative concepts that Senator Gordly filed but that were not enacted, and then answer any questions the Committee may have.

Several of Senator Gordly's concepts were added to the Attorney General's predatory towing bill, SB 116, and the others became SB 431, which passed on unanimous votes in both House and Senate. I led Senator Gordly's workgroup on SB 431 and participated in the Attorney General's workgroup on SB 116.

State Representative Donna Nelson (R) of McMinnville carried SB 431 on the House floor, describing abuses suffered by her constituents as well as remembering a time

when she was a single mom struggling to get by and her car was wrongfully towed twice in the same day.

One of the first issues that we had to address in 2007 was the federal pre-emption on interstate commerce in 49 U.S.C. 14501, which had presumably deterred work on these issues in the past.

We found a predatory patrol towing case arising out of California that reached the U.S. District Court of Appeals, which found that involuntary towing often stranded drivers, their families and other passengers in unsafe places at unsafe times or required them to travel to unsafe places at unsafe times to recover their vehicles. Involuntary towing could also separate the person from prescription medications, eyeglasses, oxygen, wheelchairs or other property of an emergency nature, putting them hours away at best.

The Court saw involuntary towing by patrol towers as a public safety issue that therefore could be regulated by state and local governments. The predatory towing practices that we were working on here in Oregon were illegal in California, Washington and other states.

We referenced the U.S. District Court's decision on the federal pre-emption in Section 1 of SB 116, adding this statement of legislative intent in paragraph 2(a):

"The Legislative Assembly declares that ...Statutes that assist members of the public in avoiding involuntary loss of use of motor vehicles and in expediting recovery of motor vehicles and the personal property in the motor vehicles promote the safety and welfare of members of the public."

A well-informed public is key to avoiding and expediting involuntary towing incidents. However, it is a fact that even today, there is still no place where an Oregon citizen can look to find a clear, concise and complete description of a citizen's rights regarding involuntary towing. There are only the rights the towers tell you that you have.

Even the towing section of the Attorney General's Consumer Protection website fails to provide that information, reflecting little of what was accomplished in 2007 or the laws enacted since.

Unlawful Trade Practices

For example, the AG's Towing site fails to mention the predatory towing practices that SB 116 put into Section 646.608 Unlawful Trade Practices of the ORS in 2007, which I am very happy to see is Section 12 of SB 1569 and within the purview of the Oregon Tow Board:

SECTION 18. ORS 646.608 is amended to read:

(1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation does any of the following:

(fff) *Violates Section 3 or 5 of this 2007 Act or a rule adopted under section 8 of this 2007 act.*

The City of Portland also fails to provide this and other useful information to its citizens and has backed off completely from enforcing either state law or key provisions of the City's own rules where Private Property Impound towing is concerned. Citizens with wrongful towing complaints have nowhere to go but to Small Claims court, and none would know if this law or any other protection might apply to them.

On a side note, the Portland PPI model operates in part because where there are legal disputes, they are fought out over amounts that put the cases into Small Claims courtrooms, under the radar, where there are no lawyers, where people are angry, pay fines and move on. It's in the business plan. A Small Claims case will take three days of a person's life. In a wrongful towing case in Portland, you will arrive with no real sense of the strength of your case in Oregon statutes, and you will face towers who are professional defendants, who are paid to be in court.

The patrol towers are in Small Claims frequently, which points to the additional issue of how Portland's PPI towing system creates burdens on public resources. We found that PPI incidents also placed a burden on Portland Police Bureau and EMT services, who are called to the scene of confrontations between patrol towing drivers and vehicle owners.

This is how Sections 3 and 5 of this 2007 Act came about: In these Release-At-Scene situations, tow drivers were handing vehicle owners invoices with cost numbers written in and no printed rate sheet to compare prices or check for errors. At the scene, there are only the numbers that this commission-paid driver with a bad attitude has written in the invoice and the total he is demanding with a ticking clock, or he is taking the car. How much money is in your pocket?

The Prices the Towers Charge for Goods and Services

Senator Gordly resolved to do something about that also, the fact that these patrol towers provide no printed rate sheets identifying what the tower charges for goods and services, only invoices with dollar amounts scribbled in, coupled with the fact that patrol towers offer their goods and services for free to multifamily housing complex owners and managers in exchange for the privilege of towing vehicles from the facility. It is the foundation of the Portland patrol towing business model.

We addressed those issues in SB 116, but to the best of my knowledge there has been no compliance from the industry to date and the City of Portland has allowed the practice of hand-written invoices and no printed rate sheets detailing the prices the tower charges for goods and services to continue, clear violations of Sections 3 and 4.

SECTION 3. A tower may not:

- (1) Tow a motor vehicle without providing to the owner or operator of the motor vehicle the information required under section 4 of this 2007 Act in the manner required under section 4 of this 2007 Act.
- (2) Charge more than a price disclosed under section 4 of this 2007 Act.

SECTION 4. (1) A tower shall disclose to the owner or operator of a motor vehicle in a conspicuous written statement of at least 10-point boldface type:

- (a) The prices the tower charges for goods and services.

The prices the tower charges for all the goods and services that the tower offers;

- (2) If the owner or operator is present at the time of the tow, the tower shall provide the information required under subsection (1) of this section to the owner or operator of the motor vehicle before towing the motor vehicle.

Additional unlawful trade practices in Section 3 of Senate Bill 116:

SECTION 3. *A tower may not:*

(5)(a) *Provide consideration to obtain the privilege of towing motor vehicles from a parking facility.*

(b) Provision of

(A) Signs by a tower under section 7 of this 2007 Act does not constitute consideration.

(B) *Good or services by a tower below fair market value constitutes consideration.*

Yet, in the Portland patrol towing business model, the towers are providing their goods and services to multifamily property owners and managers for free.

Fair Market Value of a Tower's Goods and Services

What is the fair market value of a patrol tower's goods and services? Is it the amount that they charge their multifamily housing customers? Free? Is it the amount that they charge municipalities and other government entities? Is it the amount that the City allows them to force on the unwilling buyer? Is it the amount that guarantees a tower a profit? Who pays fair market value in this business model?

City of Portland regulations concerning Private Property Impound PPI towing under Administrative Rule 7.24-13-1 reads:

2. Gratuities

Except for providing signs as required by this code, it is unlawful for a PPI tower to pay a private property owner/operator or staff any gratuity *or provide any goods or services below market value in order to secure towing privileges.*

Violation of this prohibition may result in suspension or revocation of the PPI permit.

The City of Portland has held that since the patrol towers all charge the same amount to these customers – zero – the fair market value of their goods and services is zero and thus there is no violation of either City regulations or state law.

If the fair market value of patrol towing goods and services in Portland is zero, then why does the City pay substantially more for its own towing needs, and why does the City allow these towers to charge people living in low-income housing higher rates than any one else that they are doing business with? Who is paying fair market value?

We found that in Portland, the PPI system thrived on the public's ignorance of their rights and a lack of regulatory oversight, and was powered by the fact that towers worked on commission, strongly incentivized to find reasons or excuses or opportunities to tow cars, and these towers were enabled by certain property owners and managers who gave these certain towers broad and in some ways contrived permissions to tow vehicles from their facilities for free, which is a violation of both the ORS and Portland City code.

Additional unlawful trade practices in Section 3 of Senate Bill 116:

Agreements not to dispute the tow

SECTION 3. A tower may not:

(6) Require, as a condition of towing a motor vehicle or releasing a motor vehicle or personal property in the motor vehicle, that the owner or operator of the motor vehicle agree not to dispute:

- (a) The reason for the tow;
- (b) The validity or amount of charges;
- (c) The responsibility of the tower for the condition of the motor vehicle or personal property in the motor vehicle.

I have seen multifamily housing leases where the tenant must agree not to dispute the tows.

In 2005, once it became known that Senator Gordly's office was looking at predatory towing practices, we were contacted by citizens with complaints from throughout the state, including some of the Members and staff here in the Capitol, and my research included my own personal experience and predatory practices that I personally witnessed in Portland.

We collected data that showed that certain multi-family complexes housing low-income, largely minority and immigrant populations, many with limited or no English language skills, were generating monthly PPI tow numbers that made no sense. It looked like

vehicle-harvesting farms were operating in those locations. I interviewed residents whose vehicles had been towed for specious reasons and looked at apartment leases where the tenants were in effect agreeing to forego any rights they might have to contest the towing, authorizing the towing of their vehicle in advance and without further notice, without ever knowing what those rights might be.

Release at Scene (RAS) Incidents and Fees

Although apartment managers and towers knew the costs in advance, in no circumstance were tenants informed of the actual dollar amounts they could be charged if towed from the facility, or the amount they would need to have available at all times to satisfy a tow truck driver should a tower demand immediate payment of a Release At Scene (RAS) fee, likely in the dead of night, or face the potential loss of their vehicle if they could not pay the fees.

They were – and are – left to learn those facts the hard way.

The City of Portland currently allows PPI towers to charge a citizen a RAS fee of \$ 254 for a Class A passenger vehicle that they do not tow. This fee includes a \$ 20 charge for the signage the tower may or may not have placed at the facility, an allowance for the towers' "cost of sales" (whatever that means), and a profit margin negotiated at 8.0% along with cost-of-living increases. This is a sweet deal for not towing a vehicle. Long after those signs are paid for, the towers are still collecting signage fees.

Portland patrol towers tacked the signage fee on to tow fees after the 2007 bills (which required towers to post signs) passed, and in recent years the City of Portland has allowed patrol towers to institute "No Back-In Parking" rules in multi-family housing complexes. This rule allows patrol towers to remove vehicles that are otherwise lawfully and according-to-facility-rules parked simply because the tenant has backed into the parking space. Maybe it's more convenient to load or unload the vehicle that way.

The "No Back-In Parking" rules exist solely as an excuse to tow vehicles and as a convenience to the patrol tower, who wants to see all the parking permits lined up as he drives through the lot and doesn't want to drive through a lot without finding a reason to tow somebody's vehicle. That is the only way that the patrol driver will be paid.

We found that – apart from any particular transgressions committed by individual tow truck drivers patrolling multifamily housing – the Portland patrol towing industry was dominated by a few companies who had created systems where the abuse was built into the system, where the public had little effective recourse, and certain towers operated with impunity, for example, adding an "anger fee" to your bill if you complained too loudly or in words they didn't want to hear. They had your car. You had to pay them or lose it.

In Closing

I want to note for the record that the Portland PPI towers make no special provision for the owners/operators of vehicles bearing disability placards. In the Portland PPI system, a person in a wheelchair or on an oxygen tank has the same amount of time to find transportation to get to the tow yard without incurring storage or other additional tow fees as a person without the handicap.

I want to note also that the predatory patrol towing practices we were targeting were being performed by some bad actors in the industry and not reflective of the majority of towers in Oregon. Some of the towers who participated in the 2007 workgroups felt that patrol towers were giving the entire industry a black eye.

I hope that among its first orders of business, the Oregon Tow Board will take a close look at Portland's PPI program and determine if any violations of ORS 646.608 paragraph (1)(fff) Unlawful Trade Practices have taken place or are taking place and sanction violators according to the law, including the provisions found in Section 8 of SB1569, Para (2)(i) where the violator "(i) Acts or has acted in a manner creating a serious danger to the public health or safety;"

It is my belief that patrol towing contracts based on illegal consideration are void and unenforceable, and that every involuntary tow taking place under those contracts is illegal. It is my belief that every person who has suffered an involuntary tow under these contracts is due their money back, and perhaps more.

I fully support Senate Bill 1569 and am in agreement with Section 16. Effective date:

SECTION 16. Effective date. This 2020 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect on its passage