

Enrolled
Senate Bill 300

Sponsored by Senators RILEY, THOMSEN, Representative SMITH G; Representative HOLVEY
(Presession filed.)

CHAPTER

AN ACT

Relating to towing; creating new provisions; amending ORS 646.608 and 822.215; repealing ORS 98.864; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. State Board of Towing; membership; term; compensation and expenses. (1) The State Board of Towing is established within the Department of Transportation.

(2) The State Board of Towing consists of nine members appointed by the Governor as follows:

- (a) One tower who holds a towing business certificate issued under ORS 822.205 and who represents a city in Oregon with a population of 100,000 or more;**
- (b) One tower who holds a towing business certificate issued under ORS 822.205 and who represents a city in Oregon with a population of less than 100,000;**
- (c) One tower who holds a towing business certificate issued under ORS 822.205 and who has specialized knowledge in towing equipment and vehicles with a gross vehicle weight rating of more than 44,000 pounds;**
- (d) One tower who holds a towing business certificate issued under ORS 822.205 and who has specialized knowledge in towing vehicles with a gross vehicle weight rating of 26,000 pounds or less;**
- (e) One member who represents the insurance industry;**
- (f) One member from a tow program within the Department of State Police;**
- (g) One member who is a chief of police;**
- (h) One member who is a member of the public; and**
- (i) One member who is a consumer advocate.**

(3) All members of the board must be residents of Oregon.
(4) The term of office of each member of the board is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(5) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

SECTION 2. Initial terms of office. Notwithstanding the term of office specified by section 1 of this 2021 Act, of the members first appointed to the State Board of Towing:

- (1) Two shall serve for a term ending July 1, 2022.**

- (2) Two shall serve for a term ending July 1, 2023.
- (3) Two shall serve for a term ending July 1, 2024.
- (4) Three shall serve for a term ending July 1, 2025.

SECTION 3. Officers; quorum; meetings. (1) The State Board of Towing shall select one of its members as chairperson and another as vice chairperson, for terms and with duties and powers necessary for the performance of the functions of the offices as the board determines.

(2) Except as provided in subsection (3) of this section, a majority of the members of the board constitutes a quorum for the transaction of business.

(3) When the board is deliberating or voting on a matter before it, four members of the board constitute a quorum.

(4) No more than two members who are towers may vote on any matter. The chairperson shall assign a rotation of voting members who are towers. If an assigned member who is a tower has an actual or potential conflict of interest in a matter before the board, the chairperson shall designate a different member who is a tower and who does not have an actual or potential conflict of interest in the matter before the board to deliberate and vote on that matter.

(5) The board shall meet at least once a quarter at a time and place determined by the board. The board shall also meet at such other times and places as are specified by the call of the chairperson, vice chairperson or administrative officer.

SECTION 4. Administrative officer for board; other employees. (1) The State Board of Towing shall appoint an administrative officer to serve at the pleasure of the Governor. The determination of qualifications of the administrative officer and appointment of the administrative officer shall be made by the board after consulting with the Governor.

(2) The administrative officer may not be a member of the board.

(3) The designation of the administrative officer must be by written order, filed with the Secretary of State.

(4) The administrative officer is in the unclassified service under ORS chapter 240, and the board shall fix the salary of the administrative officer in accordance with the applicable provisions of ORS chapter 240.

(5) Subject to any applicable provisions of ORS chapter 240, the administrative officer shall appoint all subordinate officers and employees of the board, prescribe their duties and fix their compensation.

SECTION 5. Rulemaking authority; board seal. (1) In accordance with applicable provisions of ORS chapter 183, the State Board of Towing may adopt rules:

(a) Necessary for the administration of the laws that the board is charged with administering.

(b) To implement ORS 98.853 to 98.862.

(2) The board may adopt a seal.

SECTION 6. State Board of Towing Account. (1) The State Board of Towing Account is established in the State Treasury, separate and distinct from the General Fund.

(2) The account consists of the following:

(a) Moneys collected from fees imposed under section 9 of this 2021 Act.

(b) Moneys appropriated to the account by the Legislative Assembly.

(c) Moneys from any other source.

(3) Moneys in the account are continuously appropriated to the Department of Transportation to carry out the provisions of sections 1 to 11 of this 2021 Act.

SECTION 7. Administration of oaths; obtaining and taking evidence at board proceedings; effect of failure to obey board subpoena. The State Board of Towing, acting through its chairperson or vice chairperson, may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of documents or other written information necessary to carry out the provisions of sections 1 to 11 of this 2021 Act. If any

person fails to comply with a subpoena issued under this section or refuses to testify on matters on which the person lawfully may be interrogated, the procedure set out in ORS 183.440 shall be followed to compel obedience.

SECTION 8. Denial, suspension, revocation or refusal of towing business certificate. (1) As used in this section:

(a) "Person" includes individuals, public bodies as defined in ORS 174.109, corporations, firms, associations, partnerships, limited liability companies, joint stock companies or any other business entity created under law.

(b) "Relative" means an individual related within the third degree as determined by the common law, a spouse, an individual related to a spouse within the third degree as determined by the common law or an individual in an adoptive relationship within the third degree as determined by the common law.

(2) In addition to any other penalty provided under ORS 822.215 and subject to ORS chapter 183, the State Board of Towing may order the Department of Transportation to deny, suspend, revoke or refuse to renew a towing business certificate issued under ORS 822.205, if the person holding or applying for the certificate:

(a) Fails to comply with any rule adopted by the board;

(b) Violates any provision of, or rules or ordinances adopted under, ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605;

(c) Fails to comply with an order of the board, including but not limited to the failure to pay a civil penalty as ordered by the board;

(d) Has performed work as a tower without the appropriate certification or letter of appointment to participate on the rotational list of towing businesses established under ORS 181A.350, or has employed individuals to perform work as towers without appropriate certification or letter of appointment;

(e) Has advertised or otherwise held themselves out as being a certified towing business without holding the appropriate certification;

(f) As a, or as a relative of a, partner, officer, member or employee of a towing business, advertises or holds themselves out as a towing business that is certified if the towing business does not possess the appropriate certification;

(g) Has engaged in towing or recovering by any means, as part of any business operation of the person, vehicles that are wrecked, damaged, disabled or abandoned or replacement vehicles;

(h) Fails to meet any condition or requirement to obtain a certificate or letter of appointment;

(i) Acts or has acted in a manner creating a serious danger to the public health or safety; or

(j) Has been subject to a revocation, cancellation or suspension order or to other disciplinary action related to towing or the towing industry by any other public body, as defined in ORS 174.109, or has failed to pay a civil penalty imposed by the public body.

(3) A violation described in subsection (2) of this section for which the board orders that the department deny, suspend, revoke or refuse to renew a certificate to perform work or conduct business may be treated as a failure to be in conformance with sections 1 to 11 of this 2021 Act.

(4) A person subject to discipline under this section is entitled to a contested case hearing in accordance with ORS chapter 183.

(5) The board is the agency responsible for providing notice and contested case hearing rights under ORS chapter 183 to a person subject to discipline under this section.

SECTION 9. Additional powers of the board. (1) In carrying out its investigative and enforcement duties, functions and powers, and notwithstanding any other provision of law, the State Board of Towing may procure services and award a contract for the personal services of a subject matter expert, on a case-by-case basis, in any manner deemed practical

or convenient. The price of such contracts, including any amendments, may not exceed \$25,000.

(2) If the board has reason to believe that any person has been engaged or is engaging in any violation of ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605 or sections 1 to 11 of this 2021 Act or any rule adopted under those statutes, or any order issued by the board, the board may, without bond, bring suit in the name and on behalf of the State of Oregon in the circuit court of any county of this state to enjoin the acts or practices and to enforce compliance with ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605 or sections 1 to 11 of this 2021 Act or any rule adopted under those statutes, or any order issued by the board. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted.

(3) The board, by rule, may impose a fee on any person holding or applying for a towing business certificate. The amount of the fee shall be established to recover expenses incurred by the board in carrying out sections 1 to 11 of this 2021 Act. Any fees collected under this subsection shall be deposited into the State Board of Towing Account established under section 6 of this 2021 Act.

SECTION 10. Participation in the Department of State Police tow rotation. (1) As used in this section:

(a) "Person" includes individuals, public bodies as defined in ORS 174.109, corporations, firms, associations, partnerships, limited liability companies, joint stock companies or any other business entity created under law.

(b) "Relative" means an individual related within the third degree as determined by the common law, a spouse, an individual related to a spouse within the third degree as determined by the common law or an individual in an adoptive relationship within the third degree as determined by the common law.

(2) Subject to ORS chapter 183, the State Board of Towing may order the Department of State Police to deny, suspend, condition or revoke a letter of appointment to participate on the rotational list of towing businesses established under ORS 181A.350, if the person holding or applying for the letter of appointment:

(a) Fails to comply with any rule adopted by the board;

(b) Violates any provision of, or rules or ordinances adopted under, ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605;

(c) Fails to comply with an order of the board, including but not limited to the failure to pay a civil penalty as ordered by the board;

(d) Has performed work as a tower without the appropriate certification or letter of appointment or has employed individuals to perform work as towers without appropriate certification or letter of appointment;

(e) Has advertised or otherwise held themselves out as being a certified tower without holding the appropriate certification;

(f) As a, or as a relative of a, partner, officer, member or employee of a towing business, advertises or holds themselves out as a towing business that is certified if the towing business does not possess the appropriate certification;

(g) Has engaged in towing or recovering by any means, as part of any business operation of the person, vehicles that are wrecked, damaged, disabled or abandoned or replacement vehicles;

(h) Fails to meet any condition or requirement to obtain a certificate or letter of appointment;

(i) Acts or has acted in a manner creating a serious danger to the public health or safety;

or

(j) Has been subject to a revocation, cancellation or suspension order or to other disciplinary action related to towing or the towing industry by any other public body, as defined in ORS 174.109, or has failed to pay a civil penalty imposed by the public body.

(3) A violation described in subsection (2) of this section for which the board orders the department to deny, suspend, condition or revoke a letter of appointment to participate on the rotational list of towing business established under ORS 181A.350 may be treated as a failure to be in conformance with sections 1 to 11 of this 2021 Act.

(4) A person subject to discipline under this section is entitled to a contested case hearing in accordance with ORS chapter 183.

(5) The board is the agency responsible for providing notice and contested case hearing rights under ORS chapter 183 to a person subject to discipline under this section.

SECTION 11. Civil penalties; factors; rules. (1) In addition to any other penalty provided by law, any person who violates any provision of ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605 or any rule adopted by the State Board of Towing is subject to payment of a civil penalty to the board.

(2) The board may adopt rules establishing a schedule of civil penalties that may be imposed under this section. Civil penalties imposed under this section may not exceed \$25,000 for each violation.

(3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(4) In imposing a penalty pursuant to the schedule adopted under subsection (2) of this section, the board shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations by the person incurring the penalty of statutes, rules or orders pertaining to facilities.

(c) The economic and financial conditions of the person incurring the penalty.

(d) The immediacy and extent to which a violation threatens the public health or safety.

SECTION 12. ORS 646.608 is amended to read:

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

(a) Passes off real estate, goods or services as the real estate, goods or services of another.

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

(d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

(f) Represents that real estate or goods are original or new if the real estate or goods are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

(g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if the real estate, goods or services are of another.

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide the real estate, goods or services as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

(j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

(L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

(m) Performs service on or dismantles any goods or real estate if the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon an event occurring after the time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver the real estate, goods or services as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers, consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.

- (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- (jj) Violates ORS 646.563.
- (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
- (mm) Violates ORS 646A.210 or 646A.214.
- (nn) Violates any provision of ORS 646A.124 to 646A.134.
- (oo) Violates ORS 646A.095.
- (pp) Violates ORS 822.046.
- (qq) Violates ORS 128.001.
- (rr) Violates ORS 646A.800 (2) to (4).
- (ss) Violates ORS 646A.090 (2) to (5).
- (tt) Violates ORS 87.686.
- (uu) Violates ORS 646A.803.
- (vv) Violates ORS 646A.362.
- (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- (xx) Violates ORS 180.440 (1) or 180.486 (1).
- (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- (zz) Violates ORS 87.007 (2) or (3).
- (aaa) Violates ORS 92.405 (1), (2) or (3).
- (bbb) Engages in an unlawful practice under ORS 646.648.
- (ccc) Violates ORS 646A.365.
- (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 [*or a rule adopted under ORS 98.864*].
- (eee) Sells a gift card in violation of ORS 646A.276.
- (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- (ggg) Violates ORS 646A.430 to 646A.450.
- (hhh) Violates a provision of ORS 744.318 to 744.384.
- (iii) Violates a provision of ORS 646A.702 to 646A.720.
- (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
- (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. 3901 et seq., as in effect on January 1, 2010.
- (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- (nnn) Violates ORS 646A.082.
- (ooo) Violates ORS 646.647.
- (ppp) Violates ORS 646A.115.
- (qqq) Violates a provision of ORS 646A.405.
- (rrr) Violates ORS 646A.092.
- (sss) Violates a provision of ORS 646.644.
- (ttt) Violates a provision of ORS 646A.295.
- (uuu) Violates ORS 646A.564.
- (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.
- (www) Violates ORS 702.012, 702.029 or 702.054.
- (xxx) Violates ORS 646A.806.
- (yyy) Violates ORS 646A.810 (2).
- (zzz) Violates ORS 443.376.
- (aaaa) Violates a provision of ORS 646A.770 to 646A.787.

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 13. ORS 822.215 is amended to read:

822.215. (1) The Department of Transportation may deny or refuse to issue any towing business certificate under ORS 822.205 or may suspend, revoke or refuse to renew any towing business certificate issued upon proof that the applicant for or holder of the certificate has done any of the following:

[1] (a) Used fraud or deception in securing the certificate.

[2] (b) Received in any manner or by any device any rebate or other additional fee for towing or recovery from a person who performs repairs on a vehicle who does not also own the vehicle. This [subsection] **paragraph** 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 repairs on the vehicle.

[3] (c) Used vehicles for the purposes of towing or recovering services that did not meet the minimum safety standards established by the department.

[4] (d) Failed to display special towing business registration plates, stickers or indicia or identification devices for proportionally registered tow vehicles authorized under ORS 805.200 on each vehicle used to tow or recover vehicles.

[5] (e) Failed to maintain the amounts and types of insurance required to qualify for issuance of a towing business certificate under ORS 822.205.

[6] (f) Failed to obtain any permits or authority required under any provision of ORS chapter 825 or rules adopted thereunder.

[7] (g) Violated any provision of ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under [ORS 98.864] **section 5 of this 2021 Act.**

(2) After receiving an order from the State Board of Towing under section 8 of this 2021 Act, the department shall impose the disciplinary action requested by the board.

SECTION 14. ORS 98.864 is repealed.

SECTION 15. Section captions. The section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

SECTION 16. Operative date. (1) Sections 1 to 11 of this 2021 Act, the amendments to ORS 646.608 and 822.215 by sections 12 and 13 of this 2021 Act and the repeal of ORS 98.864 by section 14 of this 2021 Act become operative on January 1, 2022.

(2) The members of the State Board of Towing may be appointed before the operative date specified in subsection (1) of this section, and the board and the Department of Transportation may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board and the department to exercise, on and after the operative date specified in subsection (1) of this section, the duties, functions and powers of the board and the department pursuant to sections 1 to 11 of this 2021 Act, the amendments to ORS 646.608 and 822.215 by sections 12 and 13 of this 2021 Act and the repeal of ORS 98.864 by section 14 of this 2021 Act.

SECTION 17. Effective date. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate June 16, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 22, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

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Shemia Fagan, Secretary of State