

LEGISLATION ITEMS FOR DIRECTORY

A3812 Predatory Towing Prevention Act

CHAPTER 39

AN ACT concerning towing and towing operators and amending and repealing various parts of statutory law.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P.L.2007, c.193 (C.56:13-9) is amended to read as follows:

C.56:13-9 Definitions relative to towing, towing operators.

3. As used in this act:

"Basic towing service" means towing as defined in this section and other ancillary services as may be specified by the director by regulation.

"Consumer" means a natural person.

"Decoupling fee" means a charge by a towing company for releasing a motor vehicle to its owner or operator when the vehicle has been, or is about to be, hooked or lifted by a tower, but prior to the vehicle actually having been moved or removed from the property.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Director" means the Director of the Division of Consumer Affairs.

"Motor vehicle" includes all vehicles propelled otherwise than by muscular power, excepting such vehicles as run only upon rails or tracks and motorized bicycles, motorized scooters, motorized wheelchairs and motorized skateboards.

"Non-consensual towing" means the towing of a motor vehicle without the consent of the owner or operator of the vehicle.

"Person" means an individual, a sole proprietorship, partnership, corporation, limited liability company or any other business entity.

"Private property owner" means the owner or lessee of private property, or an agent of such owner or lessee, but shall not include a private property towing company acting as an agent of such owner or lessee.

"Private property towing" means the non-consensual towing from private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is parked illegally, parked during a time at which such parking is not permitted, or otherwise parked without authorization, or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. This term shall not include the towing of a motor vehicle that has been abandoned on private property in violation of section 1 of P.L.1967, c.305 (C.39:4-56.5), provided that the abandoned vehicle is reported to the appropriate law enforcement agency prior to removal and the vehicle is removed in accordance with section 1 of P.L.1973, c.137 (C.39:4-56.6).

"Private property towing company" means a person offering or performing private property towing services.

"Towing" means the moving or removing from public or private property or from a storage facility by a motor vehicle of a consumer's motor vehicle that is damaged as a result of an accident or otherwise disabled, is recovered after being stolen, or is parked illegally or otherwise without authorization, parked during a time at which such parking is not permitted, or otherwise parked without authorization, or the immobilization of or preparation for moving or removing of such motor vehicle, for which a service charge is made, either directly or indirectly. Dues or other charges of clubs or associations which provide towing services to club or association members shall not be considered a service charge for purposes of this definition.

"Vehicle" means any device in, upon or by which a person or property is or may be transported upon a highway.

2. Section 6 of P.L.2007, c.193 (C.56:13-12) is amended to read as follows:

C.56:13-12 Maintenance of liability insurance by towing company.

6. a. A towing company shall maintain liability insurance which meets or exceeds the requirements of this section, or such other amounts as the director may determine by regulation, including in the case of each light-medium duty tow truck, motor vehicle liability insurance coverage for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of at least \$750,000 single limit, and in the case of each heavy-duty tow truck, motor vehicle liability insurance coverage for the death of or injury to persons and damage to property for each accident or occurrence in the amount of at least \$1,000,000 single limit.

b. (Deleted by amendment, P.L.2009, c.39)

c. Nothing in this section shall preclude a State agency or political subdivision, or the independent authorities or instrumentalities thereof, from requiring additional or higher liability insurance coverage or amounts with respect to contracts for towing and storage services awarded under the authority of such agency, subdivision, authority or instrumentality.

3. Section 7 of P.L.2007, c.193 (C.56:13-13) is amended to read as follows:

C.56:13-13 Consent required for towing from privately owned property.

7. a. No person shall tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any privately owned parking lot, from other private property or from any common driveway without the consent of the motor vehicle owner or operator, unless:

(1) the person shall have entered into a contract for private property towing with the owner of the property;

(2) there is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:

(a) the purpose or purposes for which parking is authorized and the times during which such parking is permitted;

(b) that unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;

(c) the name, address, and telephone number of the towing company that will perform the towing;

(d) the charges for the towing and storage of towed motor vehicles;

(e) the street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed; and

(f) such contact information for the Division of Consumer Affairs as may be required by regulation;

(3) the property owner has authorized the person to remove the particular motor vehicle; and

(4) the person tows the motor vehicle to a secure storage facility that is located within a reasonable distance of the property from which the vehicle was towed.

b. No private property owner shall authorize the towing of any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from the private property owner's property without the consent of the motor vehicle owner or operator, unless:

(1) the private property owner has contracted with a private property towing company for removal of vehicles parked on the property without authorization; and

(2) a sign that conforms to the requirements of paragraph (2) of subsection a. of this section is posted on the property.

c. (Deleted by amendment, P.L.2009, c.39)

d. This section shall not apply to a motor vehicle parked on a lot or parcel on which is situated a single-family unit or an owner occupied multi-unit structure of not more than six units or in front of any driveway or garage entrance where the motor vehicle is blocking access to that driveway or garage entrance.

e. The requirements of paragraph (2) of subsection a. of this section shall not apply to a residential community in which parking spaces are specifically assigned to community residents, provided that:

(1) the assigned spaces are clearly marked as such;

(2) there is specific documented approval by the property owner authorizing the removal of the particular vehicle; and

(3) a sign, which can easily be seen by the public, is posted in a conspicuous place at all vehicular entrances to the residential community property, stating that unauthorized parking in an assigned space is prohibited and unauthorized motor vehicles will be towed at the owner's expense, and providing information or a telephone number enabling the vehicle owner or operator to immediately obtain information as to the location of the towed vehicle. The exemption in this subsection shall not apply to any private parking lot or parcel owned or assigned to a commercial or other nonresidential entity located in such residential communities.

4. Section 8 of P.L.2007, c.193 (C.56:13-14) is amended to read as follows:

C.56:13-14 Schedule of services eligible for charging a fee; reasonable fees.

8. a. The director by regulation shall establish a schedule of private property and other non-consensual towing and related storage services for which a towing company may charge a service fee, and shall specify services that are ancillary to and included as part of basic private property or other non-consensual towing services for which no fees in addition to the basic towing service fee may be charged.

b. All fees charged for private property or other non-consensual towing services and related storage services shall be reasonable and not excessive. Such fees shall be presumptively unreasonable and excessive if they exceed by more than 25 percent, or a different percentage established by the director by regulation, the usual and customary fee charged by the towing company or storage facility for such services when provided with the consent of the owner or operator of the vehicle, or if they exceed by more than 50 percent, or a different percentage established by the director by regulation, the usual and customary fee charged for such nonconsensual towing or related storage service by other towing companies or storage facilities operating in the municipality from which the vehicle was towed. Notwithstanding the foregoing, such fees may not exceed the maximum amounts that may be charged for such services in accordance with any applicable schedule of fees by municipal ordinance adopted pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49).

(1) (Deleted by amendment, P.L.2009, c.39)

(2) (Deleted by amendment, P.L.2009, c.39)

(3) (Deleted by amendment, P.L.2009, c.39)

- c. (Deleted by amendment, P.L.2009, c.39)
- d. (Deleted by amendment, P.L.2009, c.39)

5. Section 9 of P.L.2007, c.193 (C.56:13-15) is amended to read as follows:

C.56:13-15 Requirements for storage facility used by towing company.

9. a. No person shall tow a motor vehicle pursuant to section 7 of P.L.2007, c.193 (C.56:13-13) to a storage facility or store such vehicle at a storage facility unless the storage facility:

(1) has a business office open to the public between 8 a.m. and 6 p.m. at least five (5) days a week, excluding holidays; and

(2) is secured and, if it is an outdoor storage facility, lighted from dusk to dawn.

b. A towing company shall provide reasonable accommodations for after-hours release of stored motor vehicles.

6. Section 10 of P.L.2007, c.193 (C.56:13-16) is amended to read as follows:

C.56:13-16 Unlawful practices for towing company.

10. It shall be an unlawful practice for any private property towing company or for any other towing company that provides non-consensual towing services:

a. (Deleted by amendment, P.L.2009, c.39)

b. (Deleted by amendment, P.L.2009, c.39)

c. (Deleted by amendment, P.L.2009, c.39)

d. To give any benefit or advantage, including a pecuniary benefit, to any person for providing information about motor vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with private property towing of motor vehicles parked without authorization or during a time at which such parking is not permitted;

e. To fail, when so requested by the owner or operator of a vehicle subject to nonconsensual towing, to release a vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the vehicle owner or operator returns to the vehicle, or to charge the owner or operator requesting release of the vehicle an unreasonable or excessive decoupling fee. Such a fee shall be presumptively unreasonable and excessive if it exceeds by more than 25 percent, or a different percentage established by the director by regulation, the usual and customary decoupling fee charged by the towing company for a vehicle subject to consensual towing, or if it exceeds by more than 50%, or a different percentage established by the director by regulation, the usual and customary decoupling fee charged for vehicles subject to nonconsensual towing by other private property towing companies operating in the municipality in which the vehicle was subjected to non-consensual towing;

f. (1) To charge a fee for a private property or other non-consensual towing or related storage service not listed on the schedule of services for which a fee may be charged as established by the director except as may be permitted by the director by regulation; or (2) To charge an unreasonable or excessive fee;

g. To refuse to accept for payment in lieu of cash or an insurance company check for towing or storage services a debit card, charge card or credit card if the operator ordinarily accepts such card at his place of business, unless such refusal is authorized in accordance with section 4 of P.L.2002, c.67 (C.56:13-4) as amended by section 21 of P.L.2007, c.193; or

h. To monitor, patrol, or otherwise surveil a private property for the purposes of identifying vehicles parked for unauthorized purposes and towing a motor vehicle parked for an unauthorized purpose from such private property without having been specifically requested to tow such vehicle by the owner of the property.

7. Section 11 of P.L.2007, c.193 (C.56:13-17) is amended to read as follows:

C.56:13-17 Availability of records.

11. Every towing company that performs private property or other non-consensual towing shall retain and make available for inspection by the division for a period of three years, invoices, job orders, logs, claims for reimbursement from insurance companies and other documentation relating to all consensual and non-consensual towing services performed and rates charged for the services.

8. Section 13 of P.L.2007, c.193 (C.56:13-19) is amended to read as follows:

C.56:13-19 Rules, regulations.

13. a. The director, pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), may promulgate rules and regulations to effectuate the purposes of this act.

b. (Deleted by amendment, P.L.2009, c.39)

9. Section 14 of P.L.2007, c.193 (C.56:13-20) is amended to read as follows:

C.56:13-20 Effect of act on local government, toll road authority powers. 14. a. The provisions of P.L.2007, c.193 (C.56:13-7 et seq.) shall not preempt any political subdivision from requiring or issuing any registration or license of any towing company.

(1) (Deleted by amendment, P.L.2009, c.39)

(2) (Deleted by amendment, P.L.2009, c.39)

b. The provisions of this act shall not be deemed to limit the authority of the New Jersey Turnpike Authority or the South Jersey Transportation Authority to establish rules and regulations governing the provision of towing and storage services on the roadways and properties under each entity's respective control.

10. Section 15 of P.L.2007, c.193 (C.56:13-21) is amended to read as follows:

C.56:13-21 Unlawful practice, violation.

15. a. It is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to violate any provision of this act.

b. In addition to any penalties or other remedies provided in P.L.1960, c.39 (C.56:8-1 et seq.), the director may order a towing company that has billed a consumer for any nonconsensual towing or related storage an amount determined by the director to be unreasonable to reimburse the consumer for the excess cost with interest.

11. Section 2 of P.L.2002, c.77 (C.27:23-6.2) is amended to read as follows:

C.27:23-6.2 Registration of towing operators with New Jersey Turnpike Authority.

2. a. An operator awarded a contract for towing and storage services by the New Jersey Turnpike Authority shall register with the authority. Upon issuance of the registration, the authority shall provide the operator with two decals and accompanying notices for each tow truck owned or leased by that operator and to be used under the terms of the contract. The decals and the accompanying notices, which shall be of a distinctive design and color, shall be conspicuously displayed on the exterior of each such tow truck in a manner and location prescribed by the authority.

The decals shall set forth a specific registration number for each registered tow truck. The notices shall include a statement indicating substantially the following: "This tow truck is registered with the New Jersey Highway Authority. The driver is required to provide you with a written schedule of the fees charged for towing and storage services before providing that service to you, including those services for which there is no fee. If the fee charged is in excess of the fee listed on the schedule, please notify the authority or the New Jersey Division of Consumer Affairs." An operator shall file a copy of the schedule of fees with the authority. Upon request of the Division of Consumer Affairs in the Department of Law and Public Safety, the authority shall provide a list of the registered tow trucks to the division, in addition to a copy of the schedule of fees.

b. Prior to providing any towing services, a driver of a tow truck shall provide the person whose vehicle is to be towed a written schedule of fees and shall recite the information contained in the notice.

c. An operator who fails to display the decals and notices required by subsection a. of this section or the driver of a tow truck who fails to provide a person to be towed the written schedule of fees or recite the information contained in the notice prior to providing a towing service as required by subsection b. of this section shall be subject to a fine of \$300 for the first offense. For the second and any subsequent offense the operator or the driver, as the case may be, shall be subject to a fine of \$600.

d. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to charge a fee in excess of the fee listed in the written schedule of fees provided pursuant to subsection a. of this section.

e. If an operator or the driver of an operator's tow truck is convicted a third time for violation of any provisions of this section, the authority may, in its discretion, terminate the operator's contract for towing and storage services with the authority.

12. Section 3 of P.L.2002, c.77 (C.27:25A-8.1) is amended to read as follows:

C.27:25A-8.1 Registration of towing operators with South Jersey Transportation Authority. 3. a. An operator awarded a contract for towing and storage services by the South Jersey Transportation Authority shall register with the authority. Upon issuance of the registration, the authority shall provide the operator with two decals and accompanying notices for each tow truck owned or leased by that operator and to be used under the terms of the contract. The decals and the accompanying notices, which shall be of a distinctive design and color, shall be conspicuously displayed on the exterior of each such tow truck in a manner and location prescribed by the authority.

The decals shall set forth a specific registration number for each registered tow truck. The notices shall include a statement indicating substantially the following: "This tow truck is registered with the New Jersey Highway Authority. The driver is required to provide you with a written schedule of the fees charged for towing and storage services before providing that service to you, including those services for which there is no fee. If the fee charged is in excess of the fee listed on the schedule, please notify the authority or the New Jersey Division of Consumer Affairs." An operator shall file a copy of the schedule of fees with the authority. Upon request of the Division of Consumer Affairs in the Department of Law and Public Safety, the authority shall provide a list of the registered tow trucks to the division, in addition to a copy of the schedule of fees.

b. Prior to providing any towing services, a driver of a tow truck shall provide the person whose vehicle is to be towed a written schedule of fees and shall recite the information contained in the notice.

c. An operator who fails to display the decals and notices required by subsection a. of this section or the driver of a tow truck who fails to provide a person to be towed the written schedule of fees or recite the information contained in the notice prior to providing a towing service as required by subsection b. of this section shall be subject to a fine of \$300 for the first offense. For the second and any subsequent offense the operator or the driver, as the case may be, shall be subject to a fine of \$600.

d. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to charge a fee in excess of the fee listed in the written schedule of fees provided pursuant to subsection a. of this section.

e. If an operator or the driver of an operator's tow truck is found to have been convicted a third time for violation of any provisions of this section, the authority may, in its discretion, terminate the operator's contract for towing and storage services with the authority.

13. Section 3 of P.L.1999, c.396 (C.39:3-84.8) is amended to read as follows:

C.39:3-84.8 Information contained in application for tow truck registration.

3. a. An application for tow truck registration shall contain the following information:

- (1) The name and address of the towing company's principal owner or owners;
- (2) The address of the principal business office of the towing company;
- (3) The location of any garage, parking lot, or other storage area, where motor vehicles or

other objects moved by the towing company may be stored or placed;

(4) A valid certificate of insurance and a schedule of insured vehicles that are to be utilized by the towing company from an insurer authorized to do business in the State, including the amounts of the garage keeper's legal liability coverage and any "on hook" coverage as an endorsement or contained in a separate schedule, and liability insurance coverage, including in the case of each light-medium duty tow truck, motor vehicle liability insurance coverage for the death of, or injury to persons and damage to property for each accident or occurrence in the amount of at least \$750,000 single limit, and in the case of each heavy-duty tow truck, motor vehicle liability insurance coverage for the death of, or injury to, persons and damage to property for each accident or occurrence in the amount of at least \$1,000,000 single limit; and

(5) Documentation of the manufacturer's gross vehicle weight rating for each tow truck. Except as otherwise provided in this act, the registration for these vehicles shall be issued

and renewed pursuant to the provisions of this Title.

Repealer.

14. The following sections are repealed:

Section 4 of P.L.2007, c.193 (C.56:13-10); and

Section 5 of P.L.2007, c.193 (C.56:13-11).

15. This act shall take effect immediately, except that section 4 shall remain inoperative for 90 days following the effective date, but the director may take such anticipatory action as may be necessary to effectuate those provisions of this act.

Approved April 15, 2009.

Note: At the printing of this directory, the regulations were under review by the Division of Consumer Affairs and had not been finalized as of this date.

TITLE XXX: DRIVER'S PRIVACY PROTECTION ACT OF 1994

Section 300001.

Short Title of title XXX of Pub. L. 103-322 provided that: "This title [enacting this chapter] may be cited as the 'Driver's Privacy Protection Act of 1994'."

CHAPTER 123 – PROHIBITION ON RELEASE AND USE OF CERTAIN PERSONAL INFORMATION FROM STATE MOTOR VEHICLE RECORDS

Sec. 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) In General. – A State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity:

(1) personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record, except as provided in subsection (b) of this section; or

(2) highly restricted personal information, as defined in 18 U.S.C. 2725(4), about any individual obtained by the department in connection with a motor vehicle record, without the express consent of the person to whom such information applies, except uses permitted in subsections (b)(1), (b)(4), (b)(6), and (b)(9): Provided, That subsection (a) (2) shall not in any way affect the use of organ donation information on an individual's driver's license or affect the administration of organ donation initiatives in the States.

(b) Permissible Uses. – Personal information referred to in subsection (a) shall be disclosed for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and chapters 301, 305, and 321-331 of title 49, and, subject to subsection (a)(2), may be disclosed as follows:

(1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

(2) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.

(3) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only –

(A) to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) if such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.

(5) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.

(7) For use in providing notice to the owners of towed or impounded vehicles.

(8) For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49.

(10) For use in connection with the operation of private toll transportation facilities.

(11) For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

(12) For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.

(13) For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.

(14) For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

(c) Resale or Redisclosure. – An authorized recipient of personal information (except a recipient under subsection (b)(11) or (12)) may resell or redisclose the information only for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or (12)). An authorized recipient under subsection (b)(11) may resell or redisclose personal information for any purpose. An authorized recipient under subsection (b)(12) may resell or redisclose personal information pursuant to subsection (b)(12). Any authorized recipient (except a recipient under subsection (b)(11)) that resells or rediscloses personal information covered by this chapter must keep for a period of 5 years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request.

(d) Waiver Procedures. – A State motor vehicle department may establish and carry out procedures under which the department or its agents, upon receiving a request for personal information that does not fall within one of the exceptions in subsection (b), may mail a copy of the request to the individual about whom the information was requested, informing such individual of the request, together with a statement to the effect that the information will not be released unless the individual waives such individual's right to privacy under this section.

(e) Prohibition on Conditions. – No State may condition or burden in any way the issuance of an individual's motor vehicle record as defined in 18

U.S.C. 2725(1) to obtain express consent. Nothing in this paragraph shall be construed to prohibit a State from charging an administrative fee for issuance of a motor vehicle record.

Sec. 2722. Additional unlawful acts

(a) Procurement for Unlawful Purpose. – It shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under section 2721 (b) of this title.

(b) False Representation.– It shall be unlawful for any person to make false representation to obtain any personal information from an individual's motor vehicle record.

Sec. 2723. Penalties

(a) Criminal Fine. – A person who knowingly violates this chapter shall be fined under this title.

(b) Violations by State Department of Motor Vehicles. – Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than \$5,000 a day for each day of substantial noncompliance.

Sec. 2724. Civil action

(a) Cause of Action. – A person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) Remedies. – The court may award –

- (1) actual damages, but not less than liquidated damages in the amount of \$2,500;
- (2) punitive damages upon proof of willful or reckless disregard of the law;
- (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
- (4) such other preliminary and equitable relief as the court determines to be appropriate.

Sec. 2725. Definitions

In this chapter –

(1) “motor vehicle record” means any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles;

(2) “person” means an individual, organization or entity, but does not include a State or agency thereof;

(3) “personal information” means information that identifies an individual, including an individual’s photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver’s status.

(4) “highly restricted personal information” means an individual’s photograph or image, social security number, medical or disability information; and

(5) “express consent” means consent in writing, including consent conveyed electronically that bears an electronic signature as defined in section 106(5) of Public Law 106–229.

Section 30003.

Section 30003 of Pub. L. 103-322 provided that: “The amendments made by section 30002 [enacting this chapter] shall become effective on the date that is 3 years after the date of enactment of this Act [Sept. 13, 1994]. After the effective date, if a State has implemented a procedure under section 2721(b)(11) and (12) of title 18, United States Code, as added by section 2902 [probably should be section “30002(a)”], for prohibiting disclosures or uses of personal information, and the procedure otherwise meets the requirements of subsection (b)(11) and (12), the State shall be in compliance with subsection (b)(11) and (12) even if the procedure is not available to individuals until they renew their license, title, registration or identification card, so long as the State provides some other procedure for individuals to contact the State on their own initiative to prohibit such uses or disclosures. Prior to the effective date, personal information covered by the amendment made by section 30002 may be released consistent with State law or practice.”

DIESEL EMISSIONS INSPECTIONS

State of New Jersey
Department of Law & Public Safety
Division of State Police

West Trenton, New Jersey 08625

Traffic Enforcement Bulletin [Bulleting Number: 98-10]

Beginning July 1, 1998, all New Jersey registered diesel-powered motor vehicles, with a gross vehicle weight rating of 18,000 pounds or more, must be tested for smoke capacity at a licensed Diesel Emission Inspection Center within 90 days of their month of registration renewal.

EXAMPLE: A vehicle with a renewed registration expiring in July 1998 has until October 31, 1998 to comply with the smoke capacity test requirement and would not be in violation of N.J.S.A. 39:8-64 until November 1, 1998.

Vehicles which successfully pass the smoke test will display a special approval sticker in the lower right corner (passenger side) of the windshield.

A photocopy of the yellow 1999 sticker, which will be issued this year, is attached for your information. The year 2000 sticker, which will be used beginning January 1999, will be orange.

The following vehicles are exempt from the smoke capacity test: contractor equipment in-transit, farm vehicles, vehicles operated by a county, municipality, fire district, or duly incorporated non-profit organization and need for first aid, emergency, ambulances, rescue, or fire fighter purposes.

These exemptions apply to both New Jersey and out-of-state registered vehicles.

This program is being phased in beginning July 1, 1998. Vehicles with registrations renewed from January through June 1998 will not be subject to enforcement of this-inspection until those registrations expire in 1999.

The citation for this violation is N.J.S.A. 39:6-64.
C. Richard Kamin, Director
Division of Motor Vehicles
Traffic enforcement bulletin dated July 1, 1998.
Copy and original document on file in the GSTA office.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Control and Prohibition of Air Pollution from Diesel-Powered Motor Vehicles

7:27-14.2 Applicability

(a) Except as provided in (b) and (c) below, this subchapter applies to all diesel-powered motor vehicles.

(b) This subchapter does not apply to a diesel-powered motor vehicle with a GVWR equal to or greater than 18,000 pounds that is designed or used for the transporting of property on any public road, street or highway, on any public property, or on any quasi-public roadway in this State, and is owned and operated by a county, municipality, fire district, or duly incorporated non-profit organization for first aid, emergency, ambulance, rescue, or fire-fighting purposes.

(c) N.J.A.C. 7:27-14.5 and 14.6 do not apply to light-duty diesel vehicles.

7:27-14.3 General prohibitions

(a) No person shall cause, suffer, allow, or permit the engine of a diesel-powered motor vehicle to idle for more than three consecutive minutes if the vehicle is not in motion, except:

1. A motor vehicle at the vehicle operator's place of business where the motor vehicle is permanently assigned may idle for 30 consecutive minutes; or

2. A motor vehicle may idle for 15 consecutive minutes when the vehicle engine has been stopped for three or more hours.

(b) The provisions of (a) above shall not apply to:

1. A diesel bus while it is discharging or picking up passengers;

2. A motor vehicle stopped in a line of traffic;

3. A motor vehicle whose primary power source is utilized in whole or in part for necessary and definitively prescribed mechanical operation other than propulsion, passenger compartment heating or passenger compartment air conditioning;

4. A motor vehicle being or waiting to be examined by a State or Federal motor vehicle inspector;

5. An emergency motor vehicle in an emergency situation;

6. A motor vehicle while it is being repaired;

7. A motor vehicle while it is engaged in the process of connection or detachment of a trailer or of exchange of trailers; or

8. A motor vehicle, manufactured with a sleeper berth, while it is being used, in a non-residentially zoned area, by the vehicle's operator for sleeping or resting, unless the vehicle is equipped with a functional auxiliary power system designed in whole or in part to maintain cabin or sleeper berth comfort or to mitigate cold weather start-up difficulties.

(c) No person shall cause, suffer, allow or permit any emission control apparatus or element of design installed on any diesel-powered motor vehicle or diesel engine to be disconnected, detached, deactivated, or in any other way rendered inoperable or less effective, in respect to limiting or controlling emissions than it was designed to be by the original equipment or vehicle manufacturer, except for the purposes of diagnostics, maintenance, repair or replacement and only for the duration of such operations.

(d) (Reserved.)

ITEMS TO BE CONSIDERED WHEN DRAFTING ORDINANCE FOR TOWING AND STORAGE SERVICES

Note: N.J.S.A. 40:48-2.49 requires the ordinance to set forth non-discriminatory and non-exclusionary regulations governing towing and storage services.

I. Introductory Statements

Generally summarize the legal basis and purposes for enactment of the ordinance.

II. Definitions

1. Define basic terms encompassed within the ordinance
2. It may be advisable to utilize the terminology contained within Department of Insurance rules, N.J.A.C. 11:38.1 et seq.

III. Towing List

1. Establishment of towing list i.e. license requirement
2. License fee or application fee, if any
3. Fee limited to specific administrative expenses

IV. Application Process

1. Applicants limited by response time and not by geographic location.
2. Applications submitted to selected municipal official.
3. Basis for Application Review
 - a. Minimum standards of operator performance, including, but not limited to, standards concerning the adequacy of equipment and facilities, availability and response time, and the security of vehicles towed or stored. Note: These items are mandated by N.J.S.A. 40:48-2.49 [1] (b).
 - b. The following provide additional items for review or provide further detail on the statutory minimum requirements.
 - (1) Background check by municipal police department
 - (2) Disqualification for critical convictions unless waived for cause
 - (3) Accuracy of application information
 - (4) Satisfactory Better Business Service Bureau report
 - (5) Experience of Contractor-references
 - (6) Available personnel
 - (7) Proper business/trade licenses
 - (8) Type, condition and design of available equipment

(9) Tow trucks having two-way radio capability with a dispatching center on 24-hour basis

(10) Number of Tow trucks required. Suggest a minimum of two trucks. Proof of ownership or lease

(11) Service on 24-hour basis, seven days a week

(12) Storage

(a) Capacity

(b) Contractor responsible for safe storage

(c) Area location to facilitate reasonable towing distances

(d) Area enclosed by a sturdy fence with minimum height

(e) Area to be lighted from dusk till dawn

(f) Area legally zoned for such use

(g) Proof of ownership or lease of storage area

(h) Facility available 24 hours a day, 365 days per year and open to the public on weekdays during normal business hours and limited hours on Saturdays and Sundays

(i) Area having an employee on duty at all times

(j) No release fees charged for releasing vehicles after normal business hours

4. Recommendation of approval or disapproval by selected official to the governing body.

V. License/Inclusion on List

1. Issuance on placement

a. Approval or disapproval of governing body

b. Payment of fees, if applicable

c. Non-transferable

2. Duration

3. Termination

a. Fraudulent or inaccurate application information

b. Violation of municipal regulations

c. Unsatisfactory service

d. Violation of Department of Insurance rules

VI. Insurance

1. Liability limits must be examined by each municipality in accordance with needs

2. Types of insurance to consider and suggested minimum policy limits are as follows:

- (a) Automobile Liability in an amount not less than \$1,000,000 combined single limits
- (b) Workers' compensation as required by statute
- (c) Garage keepers liability in an amount not less than \$60,000 per location
- (d) Garage Liability in an amount not less than \$1,000,000 combined single limit
- (e) Miscellaneous coverage to provide complete protection to the municipality against any and all risks of loss or liability including comprehensive General Liability.

- 3. Policies endorsed to provide collision coverage for vehicles in Tow
- 4. Municipality as additional insured
- 5. Proof of coverage
- 6. Identification of Municipality
- 7. Qualifications of insurance company, i.e. authorized to do business in New Jersey, acceptable to municipality and rating
- 8. Provision requiring municipal notification regarding any policy cancellation, revision, etc.
- 9. Interruption of coverage
- 10. Coverage for entire term of contract

VII. Operation of Towing List

- 1. Process for request to accident

VIII. Miscellaneous Rules

- 1. Appointment of a municipal officer or agency to enforce provisions of ordinance in accordance with due process of law. Required by N.J.S.A. 40:48-2.49(c)
- 2. Regulations of ordinance and fee schedules shall be made available to the public during normal business hours of municipality as required by N.J.S.A. 40:48-2.49(d)
- 3. Municipal approval of facilities and equipment
- 4. Scope of work, i.e. site clean up etc.
- 5. Periodic inspections of personnel by municipality
- 6. Employees of contractor deemed not to represent or be employed by the municipality
- 7. Contractor responsibility for conduct of employees
- 8. Procedure for complaints received by municipality regarding the licenses such as excessive charges, damage to vehicles, etc.
- 9. Employment non-discrimination statement from licensee

10. Licensee to comply with all State and Federal laws and regulations concerning wages, hours and terms of employment
11. Procedures for identification of vehicle owners regarding storage fees and removal of vehicles
12. Procedures concerning vehicles involved in suspected crimes
13. Municipality not liable for any of the services performed by the contractor unless those services are performed for municipal vehicles. The contractor shall proceed directly against the consumer
14. Use of satellite yards and the fees for towing vehicles to such secondary yards
15. Separate storage space for exclusive use of the police department
16. Disclosure of fees through use of a notice on the front or top page of all invoices and receipts
17. If #16 is not utilized, adequate public posting of charges at storage area should be a minimum requirement
18. Prohibition against piling of vehicles or parking on public street or sidewalks
19. Maintenance of records by licensee of all vehicles towed, stored and released and of all services rendered
20. Records maintained at one central station and retained a specified number of years
21. Use of computerized record systems

IX. Towing and Storage Fees

1. Fees for private passenger vehicles, damaged in an accident or recovered after being stolen, may not exceed the fees established by the Department of Insurance
2. Fees for other types of vehicles

X. Violations and Penalties

DEPARTMENT OF COMMUNITY AFFAIRS' TOWING AND STORAGE SERVICES MEMO

To: County & Municipal Purchasing Agents/Municipal Clerks, Clerks to the Board of Chosen Freeholders/
Municipal Attorneys/County Counsels/Municipal Finance Officers

From: Barry Skokowski, Sr.
Director, Division of Local Government Services

Subject: Towing and Storage Services

Many municipalities are currently attempting to implement Chapter 142, P.L. 1991, which concerns local towing and storage services. The enclosed list of ordinance considerations* is intended to assist local units which decide to implement towing and storage services by ordinance.

The enclosure is not an ordinance. Each municipality should review the list and determine which points are applicable to the particular needs of its community. Subsequently, ordinance language detailing community requirements must be developed.

The list is not a substitute for professional advice. The municipality should continue to consult with appropriate professionals for guidance in this complex area.

Lastly, many diverse individuals are involved in the municipal contract process. It would be appreciated if this correspondence is distributed to all concerned individuals in your community.

Your cooperation is, as always, greatly appreciated.

GS;dm

Enclosure

**See "Items to be Considered when Drafting Ordinance for Towing and Storage Services."*

*Memo from Department of Community Affairs, dated November, 1991.
Original or copy of memo on file in the GSTA office.*

VEHICLE TOWING/STORAGE ACT

S1785 – An act concerning motor vehicle towing and storage charges, and revising parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1979, c.101 (C.40:48-2.49) is amended to read as follows:

C.40:48-2.49 Regulation of operators engaged in removal of motor vehicles.

Notwithstanding the provisions of section 1 of P.L.1973, c.137 (C.39:4-56.6) or any other law, a municipality may regulate, by ordinance, the removal of motor vehicles from private or public property by operators engaged in such practice, including, but not limited to, the fees charged for storage following removal in accordance with section 3 of P.L.1987, c.127 (C.40:48-2.50), fees charged for such removal, notice requirements therefor, and the mercantile licensing of such operators.

The ordinance shall set forth non-discriminatory and non-exclusionary regulations governing operators engaged in the business of removing and storing motor vehicles. The regulations shall include, but not be limited to:

a. A schedule of fees or other charges which an operator may charge vehicle owners

for towing services, storage services or both;

- b. Minimum standards of operator performance, including but not limited to standards concerning the adequacy of equipment and facilities, availability and response time, and the security of vehicles towed or stored;
- c. The designation of a municipal officer or agency to enforce the provisions of the ordinance in accordance with due process of law;
- d. The requirement that such regulations and fee schedules of individual towers shall be made available to the public during normal business hours of the municipality.

2. Section 5 of P.L.1971, c.198 (C.40A:11-5) is amended to read as follows:

C.40A:11-5 Exceptions.

5. Exceptions. Any purchase, contract or agreement of the character described in section 4 of P.L.1971, c.198 (C.40A:11-4) may be made, negotiated or awarded by the governing body without public advertising for bids and bidding therefor if:

(1) The subject matter thereof consists of:

(a) (i) Professional services. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed once, in a newspaper authorized by law to publish its legal advertisements, a brief notice stating the nature, duration, service and amount of the contract, and that the resolution and contract are on file and available for public inspection in the office of the clerk of the county or municipality, or, in the case of a contracting unit created by more than one county or municipality, of the counties or municipalities creating such contracting unit; or (ii) Extraordinary unspecifiable services. The application of this exception shall be construed narrowly in favor of open competitive bidding, where possible, and the Division of Local Government Services is authorized to adopt and promulgate rules and regulations limiting the use of this exception in accordance with the intention herein expressed. The governing body shall in each instance state supporting reasons for its action in the resolution awarding each contract and shall forthwith cause to be printed, in the manner set forth in subsection (1) (a) (i) of this section, a brief notice of the award of such contract;

(b) The doing of any work by employees of the contracting unit;

(c) The printing of legal briefs, records and appendices to be used in any legal proceeding in which the contracting party may be a party;

(d) The furnishing of a tax map or maps for the contracting party;

(e) The purchase of perishable foods as a subsistence supply;

(f) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities or the Federal Energy Regulatory Commission or its successor, in accordance with tariffs and schedules of charges made, charged or exacted, filed with the board or commission;

(g) The acquisition, subject to prior approval of the Attorney General, of special equipment for confidential investigation;

- (h) The printing of bonds and documents necessary to the issuance and sale thereof by a contracting unit;
- (i) Equipment repair service if in the nature of an extraordinary unspecifiable service and necessary parts furnished in connection with such service, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- (j) The publishing of legal notices in newspapers as required by law;
- (k) The acquisition of artifacts or other items of unique intrinsic, artistic or historical character;
- (l) Election expenses;
- (m) Insurance, including the purchase of insurance coverage and consultant services, which exception shall be in accordance with the requirements for extraordinary unspecifiable services;
- (n) The doing of any work by handicapped persons employed by a sheltered workshop;
- (o) The provision of any service or the furnishing of materials including those of a commercial nature, attendant upon the operation of a restaurant by any nonprofit, duly incorporated, historical society at or on any historical preservation site;
- (p) Homemaker—home health services performed by voluntary, nonprofit agencies;
- (q) The purchase of materials and services for a law library established pursuant to R.S.40:33-14, including books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, copyright and patent materials, maps, charts, globes, sound recordings, slides, films, film scripts, video and magnetic tapes, and other audiovisual, printed, or published material of a similar nature; necessary binding or rebinding of law library materials; and specialized library services;
- (r) On-site inspections undertaken by private agencies pursuant to the “State Uniform Construction Code Act,” P.L.1975, c.217 (C.52:27D-119 et seq.) and the regulations adopted pursuant thereto;
- (s) The marketing of recyclable materials recovered through a recycling program, or the marketing of any product intentionally produced or derived from solid waste received at a resource recovery facility or recovered through a resource recovery program, including, but not limited to, refuse-derived fuel, compost materials, methane gas, and other similar products;
- (t) Emergency medical services provided by a hospital to the residents of a municipality or county, provided that: (a) such exception be allowed only after the governing body determines that the emergency services are available only from one provider; and (b) if the contract is awarded without advertising for bids or bidding the governing body shall in each instance state supporting reasons for its action in a resolution awarding the contract and cause to be printed once in a newspaper authorized by law to publish its legal advertisements a brief notice stating the nature, duration, service, and

amount of the contract; and (c) the contract shall be kept on file for public inspection in the office of the clerk of the municipality;

- (u) Contracting unit towing and storage contracts, provided that all such contracts shall be pursuant to reasonable non-exclusionary and non-discriminatory terms and conditions, which may include the provision of such services on a rotating basis, at the rates and charges set by the municipality pursuant to section 1 of P.L.1979, c.101 (C.40:48-2.49). All contracting unit towing and storage contracts for services to be provided at rates and charges other than those established pursuant to the terms of this paragraph shall only be awarded to the lowest responsible bidder in accordance with the provisions of the "Local Public Contracts Law" and without regard for the value of the contract therefor;
- (v) The purchase of steam or electricity from, or the rendering of services directly related to the purchase of such steam or electricity from a qualifying small power production facility or a qualifying cogeneration facility as defined pursuant to 16 U.S.C.s.796;
- (w) The purchase of electricity or administrative or dispatching services directly related to the transmission of such purchased electricity by a contracting unit engaged in the generation of electricity;
- (x) The printing of municipal ordinances or other services necessarily incurred in connection with the revision and codification of municipal ordinances;
- (y) An agreement for the purchase of an equitable interest in a water supply facility or for the provision of water supply services entered into pursuant to section 2 of P.L.1993, c.381 (C.58:28-2), or an agreement entered into pursuant to P.L.1989, c.109 (N.J.S.40A:31-1 et al.), so long as such agreement is entered into no later than six months after the effective date of P.L.1993, c.381;
- (z) A contract for the provision of water supply services entered into pursuant to P.L.1995, c.101 (C.58:26-19 et al.);
- (aa) The cooperative marketing of recyclable materials recovered through a recycling program; or
- (bb) A contract for the provision of wastewater treatment services entered into pursuant to P.L.1995, c.216 (C.58:27-19 et al.).

(2) It is to be made or entered into with the United States of America, the State of New Jersey, county or municipality or any board, body, officer, agency or authority thereof and any other state or subdivision thereof.

(3) The contracting agent has advertised for bids pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4) on two occasions and (a) has received no bids on both occasions in response to its advertisement, or (b) the governing body has rejected such bids on two occasions because the contracting agent has determined that they are not reasonable as to price, on the basis of cost estimates

prepared for or by the contracting agent prior to the advertising therefor, or have not been independently arrived at in open competition, or (c) on one occasion no bids were received pursuant to (a) and on one occasion all bids were rejected pursuant to (b), in whatever sequence; any such contract or agreement may then be negotiated and may be awarded upon adoption of a resolution by a two-thirds affirmative vote of the authorized membership of the governing body authorizing such contract or agreement; provided, however, that:

- (i) A reasonable effort is first made by the contracting agent to determine that the same or equivalent materials or supplies, at a cost which is lower than the negotiated price, are not available from an agency or authority of the United States, the State of New Jersey or of the county in which the contracting unit is located, or any municipality in close proximity to the contracting unit;
- (ii) The terms, conditions, restrictions and specifications set forth in the negotiated contract or agreement are not substantially different from those which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4); and
- (iii) Any minor amendment or modification of any of the terms, conditions, restrictions and specifications, which were the subject of competitive bidding pursuant to section 4 of P.L.1971, c.198 (C.40A:11-4), shall be stated in the resolution awarding such contract or agreement; provided further, however, that if on the second occasion the bids received are rejected as unreasonable as to price, the contracting agent shall notify each responsible bidder submitting bids on the second occasion of its intention to negotiate, and afford each bidder a reasonable opportunity to negotiate, but the governing body shall not award such contract or agreement unless the negotiated price is lower than the lowest rejected bid price submitted on the second occasion by a responsible bidder, is the lowest negotiated price offered by any responsible supplier, and is a reasonable price for such work, materials, supplies or services.

Whenever a contracting unit shall determine that a bid was not arrived at independently in open competition pursuant to subsection (3) of this section it shall thereupon notify the county prosecutor of the county in which the contracting unit is located and the Attorney General of the facts upon which its determination is based, and when appropriate, it may institute appropriate proceedings in any State or federal court of competent jurisdiction for a violation of any State or federal antitrust law or laws relating to the unlawful restraint of trade.

C.40:48-2.54 Model schedule of towing, storage services adopted by municipality, county.

3. a. The governing body of a municipality or county which requires the towing and storage of motor vehicles without the consent of the owners of those vehicles shall adopt an ordinance or resolution, as appropriate, setting forth a model schedule of towing and storage services which they require and the rates therefor, which rates shall be based on the usual, customary and reasonable rates of operators towing and storing motor vehicles in the municipality or county, as applicable.

- b. The governing body of every municipality or county setting forth a schedule of services and rates pursuant to subsection a. of this section shall implement a procedure to receive complaints and resolve disputes arising from the towing and storage of motor vehicles required by that municipality or county without the consent of the owner.

C.40:48-2.55 Model schedule of towing, storage services adopted by Division of Consumer Affairs.

4. a. The Division of Consumer Affairs in the Department of Law and Public Safety may establish a model schedule of towing and storage services identifying those services for which a fee may be charged by the governing body of a municipality or county. This model schedule, if established, shall be provided, upon request, to any municipality or county.
- b. Each governing body that is required to adopt a resolution or ordinance pursuant to section 3 of P.L.1997, c.387 (C.40:48-2.54) shall submit its schedule of services and rates for the towing and storage of motor vehicles to the Division of Consumer Affairs for review within 90 days of the effective date of this act, or within 90 days of the adoption of that ordinance or resolution, whichever is later.

C.56:8-2.26 Charging of discriminatory, unusual rates for towing, storage.

5. It shall be an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any person to charge rates which are discriminatory or are not usual, customary and reasonable rates for the towing and storage of motor vehicles as provided in section 3 of P.L.1997, c.387 (C.40:48-2.54).

Repealer.

6. Section 60 of P.L.1990, c.8 (C.17:33B-47) is repealed.

7. This act shall take effect immediately.

Approved January 19, 1998.

NJ HIGHWAY AUTHORITY CONTRACT

CHAPTER 390

AN ACT concerning certain contracts of the New Jersey Highway Authority and amending P.L.1968, c.459.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1968, c.459 (C.27:12B-5.2) is amended to read as follows:

C.27:12B-5.2 Standing operating rules, procedures for entering into contracts by Highway Authority.

1. a. The New Jersey Highway Authority, in the exercise of its authority to make and enter into contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, shall adopt standing operating rules and procedures providing that, except as hereinafter provided, no contract on behalf of the authority shall be entered into for the doing of any work, or for the hiring of equipment or vehicles, where the sum to be expended exceeds the sum of \$7, 500.00 or, after June 30, 1985, the amount determined pursuant to subsection b. of this section unless the authority shall first publicly advertise for bids therefor, and shall award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing of services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities of this State and tariffs and schedules of the charges, made, charged, or exacted by the public utility for any such products to be supplied or services to be rendered are filed with the said board. Contracts for towing and storage services shall be advertised and awarded pursuant to subsection c. of this section.

This subsection shall not prevent the authority from having any work done by its own employees, nor shall it apply to repairs, or to the furnishing of materials, supplies or labor, or the hiring of equipment or vehicles, when the safety or protection of its or other public property or the public convenience require, or the exigency of the authority's service will not admit of such advertisement. In such case the authority shall, by resolution, passed by the affirmative vote of a majority of its members, declare the exigency or emergency to exist, and set forth in the resolution the nature thereof and the approximate amount to be so expended.

- b. Commencing January 1, 1985, the Governor, in consultation with the Department of the Treasury, shall, no later than March 1 of each odd-numbered year, adjust the threshold amount set forth in subsection a. of this section, or subsequent to 1985 the threshold amount resulting from any adjustment under this subsection, in direct proportion to the rise or fall of the consumer price index for all urban consumers in the New York City and the Philadelphia areas as reported by the United States Department of Labor. The Governor shall, no later than June 1 of each odd-numbered year, notify the authority of the adjustment. The adjustment shall become effective on July 1 of each odd-numbered year.
- c. The authority shall adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to provide open and competitive procedures for awarding contracts for towing and storage services. Towing and storage services on a highway project may be provided on a rotating basis, provided that the authority determines that there would be no additional cost to the authority, excepting administrative costs, as a result of those services being provided on a rotating basis. The regulations shall fix maximum towing and storage fees, and establish objective criteria to be considered in awarding a contract for towing and storage services which shall include, but shall not be limited to, reliability, experience, response time, acceptance of credit cards and

prepaid towing contracts, adequate equipment to safely handle a sufficient volume of common vehicle types under a variety of traffic and weather conditions, location of storage and repair facilities, security of vehicles towed or stored, financial return to the authority, maintenance of adequate liability insurance and appropriate safeguards to protect the personal safety of customers, including considerations related to the criminal background of employees. The Division of Consumer Affairs in the Department of Law and Public Safety shall provide, at the authority's request, a report to the authority on any prospective contractor for which the division has information relevant to the prospective contractor's service record, subject to the provisions of the New Jersey consumer fraud act, P.L.1960, c.39 (C. 56:8-1 et seq.). The Division of Insurance Fraud Prevention in the Department of Banking and Insurance also shall provide, at the authority's request, a report to the authority on any prospective contractor for which the division has information relevant to the prospective contractor's service record, subject to the "New Jersey Insurance Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.).

2. This act shall take effect immediately and shall apply to contracts entered into on and after the 60th day following the effective date of this act and to renewals of contracts entered into prior to the effective date of this act, which renewals are effectuated after the 60th day following the effective date of this act.

Approved January 19, 1998.

ABANDONED AND UNCLAIMED MOTOR VEHICLES

Title 39:10A-1 Abandoned and unclaimed motor vehicles

39:10A-1 Public Auction of Motor Vehicles

a. When the state or any county, county park commission, municipality or any authority created by any thereof, hereinafter referred to as a "public agency," shall have taken possession of a motor vehicle found abandoned, such taking of possession shall be reported immediately to (1) the Chief Administrator of the Motor Vehicle Commission on a form prescribed by the administrator, for the verification of ownership and (2) the National Insurance Crime Bureau.

Upon receipt of verification of ownership of the vehicle from the administrator, the public agency shall within three business days provide notice of possession of the vehicle to the owner of record and the holder of any security interest filed with the administrator by telephone, mail, facsimile or electronically. The public agency may assess the person claiming the vehicle, be it the owner of record or the holder of any security interest, for the actual costs of providing the notice required under this paragraph.

The public agency shall also within three business days notify the person storing the abandoned motor vehicle. The notice shall be given in the same manner as in the case of

notification of the owner of record and the security interest holder and shall include the name and address of the owner of record and holder of any security interest in the stored motor vehicle. Upon receipt of that notice, the person storing the abandoned motor vehicle shall provide notice to the owner of record and to any security interest holder. The notice shall be by first class mail, with a certificate of mailing, and shall include a schedule of the costs imposed for storing the motor vehicle and instructions explaining how the owner of record or the security interest holder may claim the stored motor vehicle. If the person storing the motor vehicle fails to provide this notice to the owner of record and to the security interest holder within 30 days of the date on which the storer of the vehicle received the notice required under this paragraph from the public agency, the maximum amount that person may be \$750, provided that the owner of record or security interest holder submits a proper claim for the vehicle not later than the 30th day following the date the notice is delivered from the public agency to the person storing the motor vehicle. If the owner of record or security interest holder fails to submit a proper claim for the vehicle on or before the 30th day, the person storing the motor vehicle may charge the security interest holder reasonable costs for the removal and storage of the motor vehicle. If the notice is properly provided by the person storing the motor vehicle, that person may charge the owner of record or the security interest holder reasonable costs for the removal and storage of the motor vehicle from the date the person removed and stored the motor vehicle. The public agency may assess the person storing the abandoned motor vehicle, and the person storing the abandoned motor vehicle may assess the security interest holder, for the actual costs of providing the notices required under this paragraph.

b. When such motor vehicle which has been ascertained not to be stolen and to be one which can be certified for a junk title certificate under section 3 of P.L.1964, c. 81 (c.39:10A-3) shall have remained unclaimed by the owner or other person having a legal right thereto for a period of 15 business days, even if at that time the owner has not been identified as a result of efforts to make identification by the public agency or the Motor Vehicle Commission, the same may be sold at auction in a public place. If the certified motor vehicle is sold at auction prior to identification of the owner, the public agency shall document the condition of the motor vehicle in writing and with photographs prior to the sale; document the amount obtained from the sale of the motor vehicle; and notify the owner, if his name and address are identified after the sale, of the auctions taken by the public agency to dispose of the motor vehicle.

c. When a motor vehicle which cannot be certified for a junk title certificate under section 3 of P.L.1964, c. 81 (C.39:10A-3) remains unclaimed by the owner or other person having a legal right thereto for a period of 20 business days, the motor vehicle may be sold at auction in a public place, but shall be no later than 90 business days after the public agency takes possession of the vehicle, except that a waiver of the 90-day limit may be obtained for goof cause from the Division of Local Government services in the Department of Community Affairs.

d. The public agency shall give notice of a sale conducted pursuant to subsection b. or c. of this section, by certified mail, to the owner, if his name and address be know and to the holder of any security interest filed by the administrator by one insertion, at least five days before the date of the sale, in one or more newspapers published in this State and circulating in the municipality in which such motor vehicle is held.

2. This act shall take effect on the first day of the third month following enactment.

39:10A-2. Reclaiming possession; payment of costs and penalties

At any time prior to sale the owner or other person entitled thereto may reclaim possession of the motor vehicle upon payment of the reasonable costs of removal and storage of the vehicle and any fine or penalty and court costs assessed against him for a violation which gave rise to the seizure or taking possession of such vehicle.

L.1964, c. 81, s. 2.

39:10A-3. Issuance of junk title certificate; grounds

If the public agency taking possession of a motor vehicle pursuant to this act shall, in its report thereof to the director, certify on an application prescribed by him that such motor vehicle is incapable of being operated safely or of being put in safe operational conditional except at a cost in excess of the value thereof, the division shall, without further certification or verification, issue to the public agency for a fee of \$2.00 a junk title certificate thereto, with proper assignment thereon, which shall be assigned and delivered to the purchaser of the vehicle at public sale.

L.1964, c. 81, s. 3. Amended by L.1975, c. 180, s. 19, eff. Jan. 1, 1976.

39:10A-4. Execution and delivery of application for certificate of ownership; issuance of certificate; fee

Upon the sale of any motor vehicle for which no junk title certificate shall have been issued, the public agency shall execute and deliver to the purchaser an application for certificate of ownership prescribed by the director in the same form and manner as provided in Revised Statutes 39:10-15, which shall also contain the name and address, if known, of the former owner. Such application shall be accepted by the director for issuance of a certificate of ownership for a fee of \$3.00.

L.1964, c. 81, s. 4. Amended by L.1968, c. 130, s. 16, eff. Aug. 1, 1968.

39:10A-5. Sale as barring claims of interest; remission of proceeds of sale

Upon the sale of a motor vehicle pursuant to the provisions of this act all claims of interest therein shall be forever barred and the proceeds realized therefrom after payment of the expenses of possession and sale, shall be remitted to the treasury of the public agency as its sole property.

L.1964, c. 81, s. 5.

39:10A-6. Rules and regulations

The Motor Vehicle Commission may make and promulgate rules and regulations to implement the provisions of this act.

L.1964, c. 81, s. 6.

39:10A-7. Additional remedy

This act is intended to provide an additional remedy and shall not be construed to supersede procedures provided under any other act.

L.1964, c. 81, s. 7.

39:10A-8. Motor vehicle abandoned at repair facility

For purposes of this act a motor vehicle shall be deemed to be abandoned if it is left at a motor vehicle repair facility without an attempt by the owner, a person on the owner's behalf or any other person having a legal right thereto to regain possession thereof:

- a. For a period in excess of 60 days without the consent of an authorized representative of the motor vehicle repair facility;
- b. For a period of 60 days in excess of the period for which consent has been given by an authorized representative of the motor vehicle repair facility; or
- c. For a period in excess of 60 days after being notified by an authorized representative of the motor vehicle repair facility that service or repairs to the motor vehicle have been completed.

L.1983, c. 455, s. 1.

39:10A-9. Removal and storage, sale or obtaining junk title certificate; inapplicability if dispute between repair facility and owner on amount due

- a. An authorized representative of a motor vehicle repair facility may take one or more of the following actions with respect to an abandoned motor vehicle:
 - (1) Remove and store, or hire another person to remove and store the motor vehicle pursuant to section 3 of this act;
 - (2) Sell or cause the motor vehicle to be sold, at public or private sale, pursuant to section 4 of this act; or
 - (3) Cause a junk title certificate to be issued for the motor vehicle pursuant to section 5 of this act.
- b. No motor vehicle shall be sold and no junk title certificate shall be issued pursuant to this act where the cause for a motor vehicle being left in the possession of a motor vehicle repair facility for a period in excess of that set forth in section 1 of this act is a dispute between the motor vehicle repair facility and the owner of the motor vehicle or other person having a legal right thereto regarding the amount to be paid in order to regain possession of the motor vehicle.

L.1983, c. 455, s. 2.

39:10A-10. Notice to owner of intent to remove and store

Prior to the removal and storage of a motor vehicle pursuant to section 2. a.(1) of this act, an authorized representative of a motor vehicle repair facility shall give the owner of the motor vehicle or other person having a legal right thereto 30 days' notice of the intent to remove and store the motor vehicle.

L.1983, c. 455, s. 3.

39:10A-11. Notice of intent to and of date, time, place and manner of sale

Prior to the sale of a motor vehicle pursuant to section 2. a.(2) of this act, an authorized representative of a motor vehicle repair facility shall:

- a. Give the owner of the motor vehicle or other person having a legal right thereto, the holder

of any security interest in the motor vehicle filed with the Motor Vehicle Commission and the Motor Vehicle Commission 30 days notice of the intent to sell the motor vehicle or cause it to be sold; and

b. Give the owner of the motor vehicle or other person having a legal right thereto and the holder of any security interest in the motor vehicle filed with the Motor Vehicle Commission at least five days notice of the date, time, place and manner of the proposed sale.

L.1983, c. 455, s. 4.

39:10A-12. Junk title certificate; issuance; notice

If a motor vehicle repair facility determines that a motor vehicle subject to the provisions of this act is incapable of being operated safely or of being put in safe operational condition except at a cost in excess of the value thereof, an authorized representative of the motor repair facility shall so certify to the Motor Vehicle Commission, on an application prescribed by him, and the Division of Motor Vehicles shall thereupon, without further certification or verification, issue to the motor vehicle repair facility, for a fee of \$10.00, a junk title certificate for the vehicle; but no title certificate shall be issued unless the motor vehicle repair facility first gives 30 days notice of its intention to obtain a junk title certificate to the owner of the motor vehicle or other person having a legal right thereto and to the holder of any security interest in the motor vehicle filed with the Motor Vehicle Commission.

L.1983, c. 455, s. 5.

39:10A-13. Notices; writing; method of delivery; publication

Any notice required to be given by this act shall be in writing and sent by certified or registered mail, return receipt requested, to the last known address of the person to whom the notice is to be given. In the event that the notice is unclaimed by the addressee, or if the address of the person to whom the notice is to be given is unknown to the person giving the notice and cannot be ascertained from the records on file with the Division of Motor Vehicles, the notice shall be given by publishing it twice in at least one newspaper published in this State and circulating in the municipality in which the motor vehicle is left.

L.1983, c. 455, s. 6.

39:10A-14. Reclamation of possession by owner prior to sale or issuance of junk title certificate

At any time prior to the sale of the motor vehicle or the issuance of a junk title certificate therefor, the owner of the motor vehicle may reclaim possession of the motor vehicle from the motor vehicle repair facility or other person with whom the motor vehicle is stored pursuant to this act, upon payment of the reasonable costs of removal and storage of the motor vehicle, the expenses incurred pursuant to the provisions of this act, and the charges for the servicing or repair of the motor vehicle.

L.1983, c. 455, s. 7.

39:10A-15. Sale of motor vehicle; certificate of ownership; application; issuance; fee

Upon the sale of a motor vehicle for which no junk title certificate has been issued, an application for a certificate of ownership on a form prescribed by the Motor Vehicle Commission shall be submitted to the director. The application, in addition to containing any

information required by the director, shall set forth the name and address, if known, of the former owner and shall contain a certification from the motor vehicle repair facility selling the motor vehicle that the sale was in conformity with the provisions of this act. The application shall be accepted by the director for issuance of a certificate of ownership for a fee of \$10.00.

L.1983, c. 455, s. 8.

39:10A-16. Bar of claims of former owner, other person formerly having legal right and holder of security interest

Upon the sale of a motor vehicle, or the issuance of a junk title certificate pursuant to the provisions of this act, all claims of interest in the motor vehicle of the former owner, any other person formerly having legal right thereto and any holder of a security interest shall be forever barred, except as provided for in section 10 of this act.

L.1983, c. 455, s. 9.

39:10A-17. Claims allowable against repair facility in compliance with act only for balance of proceeds of sale

No claim of any kind may be asserted against a motor vehicle repair facility that complies with the provisions of this act by the owner of a motor vehicle for damages arising out of the storage, removal, sale or issuance of a junk title certificate for a motor vehicle except for the balance of the proceeds of the sale of the motor vehicle, if any, after deduction of the expenses of the sale, the costs and expenses incurred in the removal and storage of the motor vehicle and the charges of the motor vehicle repair facility for the servicing and repair of the motor vehicle.

L.1983, c. 455, s. 10.

39:10A-18. Pattern or practice of knowingly violating act or aids or advises such pattern or practice; penalty

A motor vehicle repair facility, or any employee, officer or agent thereof, which or who engages in a pattern or practice of knowingly violating any of the provisions of this act or aids or advises in such a pattern or practice is guilty of a crime of the third degree.

L.1983, c. 455, s. 11.

39:10A-19. Rules and regulations

The Motor Vehicle Commission shall promulgate rules and regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), to implement the provisions of this act.

L.1983, c. 455, s. 12.

39:10A-20. Act as additional remedy; priority of perfected lien or security interest

This act provides an additional remedy and shall not be construed to supersede procedures provided under any other act, and shall not be deemed to supersede or alter the priority of any perfected lien or security interest on an abandoned motor vehicle, which lien or security interest shall have priority over the amounts due to the motor vehicle repair facility.

L.1983, c. 455, s. 13.

39:4-56.1. Willfully Disabling and Abandoning Vehicles

a. No person shall operate a vehicle upon the public highways, bridges or tunnels of this State or upon any highways, bridges or tunnels in this State operated by any authority of this State or by any authority created jointly by this State and any other State in such a manner as to willfully cause such vehicle to become disabled, by reason of lack of fuel or otherwise, for the purpose of interfering with or obstructing the passage of other vehicles.

b. No person shall willfully abandon a vehicle upon the public highways, bridges or tunnels of this State or upon any highways bridges or tunnels in this operated by any authority of this State or by any authority created jointly by this State and any other State for the purpose of interfering with or obstructing the passage of other vehicles.

39:4-56.2. Violation

Any person who has been convicted of a violation of this act shall be subject, for a first offense, to a fine of not less that \$200.00 nor more that \$500.00 and shall have his license to operate a motor vehicle suspended for a period of not less than a year nor more than 5 years. For a subsequent violation, he shall be fined not less than \$500.00 nor more than \$1,000.00 and shall have his license to operate a motor vehicle suspended for 5 years from the date of his conviction. In fixing the penalty to be imposed, the magistrate shall give consideration to the hazard to the public safety and the public inconvenience created by the conduct of such person.

39:4-56.3. Registration Suspended

The registration of any vehicle used by any person in violation of this section 1 of this act [R.S. 39:4-56.1] shall be suspended for not less than 90 days nor more than 1 year unless the owner thereof can demonstrate to the satisfaction of the Director of Motor Vehicles that said vehicle was used in such a manner without his knowledge and consent. In fixing the period of suspension, the director shall give consideration to the threat to public safety and the public inconvenience caused by the use of said vehicle.

39:4-56.4 Serious Threat to Health, Safety and Welfare

The Legislature finds and declares that a serious threat to the health, safety and welfare of the people of this State may be presented by any concerted effort, plan or demonstration involving the use and operation of vehicles in such a way as to impede, hamper, stall and interfere with the ordinary progress of vehicular traffic on, in and through the roads; highways and bridges of this State. Because of the special road hazards, with consequent danger to the lives and property of the people of this State, and economic loss which would inevitably flow from any such course of conduct, the Legislature determines that the penalties and sanctions provided by this act shall be applicable under such circumstances.

39:4-56.5. Abandonment of Motor Vehicles

It shall be unlawful for any person to abandon a motor vehicle on or along any highway or other public property or on any private property without the consent of the owner or other person in charge of the private property. A vehicle which has remained along any

highway or other public property or on private property without such consent for a period of more than 48 hours or for any period without current license plates shall be presumed to be an abandoned motor vehicle. Vehicles used or to be used in the construction, operation or maintenance of public utility facilities and which are left in a manner which does not interfere with the normal movement of traffic shall not be considered abandoned vehicles for the purposes of this section.

Any person that violates this section shall be subject for the first offense to a fine of not less than \$100.00 nor more than \$500.00 and his license or driving privilege may be suspended or revoked by the director for not more than 2 years. For any subsequent violation he shall be subject to a fine of not less than \$500.00 nor more than \$1,000.00 and his license or driving privilege be suspended or revoked for a period of not more than 5 years.

39:4-56.6. Abandonment of Vehicles on Private Property

No person shall park or leave unattended a vehicle on private property without the consent of the owner or other person in control or possession of the property or for a period in excess of that for which consent was given, except in the case of emergency or disablement of the vehicle in which case the owner or operator thereof shall arrange for the expeditious removal of the vehicle.

The owner or other person in control or possession of the property on which a vehicle is parked or left unattended in violation of this section may remove or hire another person to remove and store the vehicle. It shall be the obligation of the owner of the vehicle to pay the reasonable costs for the removal and for any storage which may result from such removal before he shall be entitled to recover the possession of the vehicle. If the owner of the vehicle refuses to pay such costs or fails to make any claim for the return of the vehicle within 90 days after such removal, the vehicle may be sold at public auction in accordance with the provisions of N.J.S. 2A:44-31.

39:4-56.7. Issuance of Summons for Violations

Any law enforcement officer may in the performance of his duty enter upon the property upon request of the property owner wherein a vehicle is parked in violation of section 1 of this act [R.S. 39:4-56.6] for the purpose of issuing a summons for such violation.

39:4-56.8. Public or Private Entity

a. As used in this act:

(1) "Public Entity" means the State, and any county, municipality, district, or political subdivision and any authority, agency, board or body thereof.

(2) "Public road or highway" means every street, road or highway open to the use of the public for the purpose of vehicular travel.

REMOVAL OF DEBRIS BY TOWING SERVICE

Title 39:4-56.8. Removal of debris by towing service

- a. As used in this act:
- (1) "Public entity" means the State, and any county, municipality, district, or political subdivision and any authority, agency, board or body thereof.
 - (2) "Public road or highway" means every street, road or highway open to the use of the public for the purpose of vehicular travel.
 - (3) "Private entity" means any entity other than a public entity with jurisdiction over a road or highway in the State open to the use of the public.
- b. Any towing service under contract to a public or private entity to tow disabled motor vehicles which, after being called upon to remove a disabled motor vehicle, fails to remove from public roads or highways any motor vehicle debris or material in the area surrounding that vehicle shall be subject to a fine of not less than \$25.00 nor more than \$50.00 if the debris or material is likely to cause injury to a person operating a motor vehicle or substantial damage to another motor vehicle. A towing service shall not be required to remove any debris or material which may be hazardous such as oil, gasoline, kerosene or other petroleum or chemical products, or debris or material which the service is not equipped to remove.

Adopted. L. 1983, c. 271, §1.

OVERWEIGHT/LENGTH LIMITS

STATE POLICE ENFORCEMENT BULLETIN

Prepared by New Jersey Division of Motor Vehicles

Effective immediately, mileage limitations imposed on commercial tow trucks removing overweight disabled vehicles from public or limited access highways in New Jersey have been increased from five to 75 miles.

New amendments to N.J.S.A. 39:3-84c now allow an oversize/overweight combination, up to a combined gross vehicle weight rating of 150, 000 lbs., to travel on public highways up to 75 miles from the point of disablement. For limited access highways the distance to the nearest exit would be added onto the 75 mile limitation.

In addition, the new legislation establishes two classes of tow trucks. (1) light medium duty means a gross weight of less than 32, 000 lbs.; (2) heavy duty tow truck is defined as having a gross weight of 32, 000 lbs. or more. Special cab decals to designate the two classes will be issued by DMV prior to July 1, 2001, the effective date for this requirement.

A heavy duty tow truck is permitted in combination with a disabled vehicle to exceed the

axle, dimensional, and maximum gross weight limits up to 150, 000 lbs. gross combined weight. Heavy duty tow trucks and combinations cannot exceed 45 miles per hour at time the total weight exceeds 80, 000 lbs. or one or more of its axles exceed limitations established in the table of maximum gross weight or exceeds maximum length and width standards currently prescribed by law.

These provisions do not apply on routes or areas where the Commissioner of Transportation has promulgated regulations establishing special operating requirements.

DRUG TESTING REGULATIONS

Department of Transportation

Federal Highway Administration (FHWA)

Alcohol & Drug Testing Compliance Regulations

(Rules published in February 15, 1994 Federal Register to include revisions issued on or before January 15, 1998)

WHAT Are the New Drug and Alcohol Testing Rules?

As a result of a catastrophic subway accident in New York involving alcohol misuse, Congress reacted with the passage of the Omnibus Transportation Employee Testing Act of 1991. This act expanded the extent of drug testing in two significant ways. First, it expands the scope of the current drug testing regulations and second, mandates testing for alcohol. The U.S. Department of Transportation (DOT) published final rules mandating anti-drug and alcohol misuse programs on February 15, 1994.

Company Policy

Covered employers are required to distribute a written policy on the misuse of alcohol and drugs prior to conducting any testing required under the final regulations. Employers must ensure each driver signs a statement certifying receipt of the policy, and the signed statement must be retained on file.

Employee Education

Every affected employee must receive information about alcohol misuse and controlled substance use as well as information about the company policy, procedures, the consequences of testing positive and who to contact (within the company) to seek information and/or assistance. There is no requirement for a formal classroom type course. Employers must document the contents of their education program and document distribution to employees.

Supervisor Training

Employees shall ensure that **all persons** designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. Supervisors who will be responsible for making determinations of whether reasonable suspicion exists to require a driver to undergo testing must be trained in understanding policy, procedures, regulations, and recognizing the signs and symptoms of drug and alcohol abuse. The training shall include the physical, behavioral, speech and performance indicators of probable alcohol

misuse and use of controlled substances. Training must be documented.

Who Must Be Tested

The prior FHWA drug rules called for testing of interstate drivers only. The rules have been extended to **all persons required to have a Commercial Driver's License (CDL)**. Covered drivers may be full time, regularly employed drivers, casual, intermittent or occasional drivers (including mechanics who test drive vehicles), owner-operators, leased drivers, or independent contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

Substances To Test For

Box the following text:

Definition of Commercial Motor Vehicle:

means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-

- (a) Has a gross combination weight rating of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (b) Has a gross vehicle weight rating of 26,001 pounds or more; or
- (c) Is designed to transport 16 or more passengers, including the driver; or
- (d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)

End of boxed text

DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines, phencyclidine (PCP), and alcohol.

When Testing Must Be Done

Pre-employment, random (50% annual rate for drugs and 10% annual rate for alcohol), reasonable suspicion, return-to-duty, follow-up testing, and post-accident testing.

Random: *Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately, and that if a driver is performing a safety-sensitive function, the employer shall ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.*

Post-accident: *As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:*

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or if
- (2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involve:
 - i. bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - ii. one or more of the motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Methods Of Testing

For drugs – split specimen urinalysis.

For alcohol – Evidential Breath Testing (EBT) device which must be operated by a trained Breath Alcohol technician (BAT).

Consequences For Drivers

Who Test Positive

Drivers who test positive cannot be returned to a safety-sensitive position until they have been evaluated by a Substance Abuse Professional (SAP). The driver must complete the SAP's recommendations prior to taking a return-to-duty test. Follow-up testing is required.

Payment for any necessary treatment or rehabilitation would be provided in accordance with the company's policy or labor/management agreement.

Record Keeping Requirements

All records must be maintained on an annual basis. The administrative record must include agreements with specimen collection facilities, laboratories, MROs, names and positions of company's testing program, laboratory summaries, testing procedures including random testing selection and notification procedures, and test records.

TOWING DEFINITIONS

Tow truck: Commercial motor vehicle designed exclusively to lift motor vehicles that have become disabled, wrecked, recovered stolen and police impounded by means of lifting from the front or rear by the following methods:

1. Sling type: mechanical or hydraulic
2. Wheel lift type: mechanical or hydraulic

Towing: When a tow truck and/or hydraulic flat bed carrier takes in its possession the care, control and custody of a motor vehicle by means of standard industry procedures.

Light duty tow truck: Used to tow and recover small light duty vehicles up to 10,000 lbs.

Medium duty tow truck: Used to tow and recover small commercial type vehicles up to 26,000 lbs. GVW or passenger vehicles unable to be recovered with light duty tow truck or flatbed.

Heavy duty tow truck: Commercial manufactured truck with wrecker body. Minimum GVWR 26,001 lbs. used to tow and recover commercial type vehicles over 26,000 GVW as well as passenger vehicles unable to be recovered by other means.

Hydraulic flatbed car carrier: Commercial motor vehicle designed exclusively to transport motor vehicles that have become disabled, wrecked, recovered stolen and police impound by means of bodily winching motor vehicles from roadway level up onto hydraulic bed for transporting purposes.

Specialized flat bed carrier equipped with special hydraulic oscillation knuckle boom crane: Commercial motor vehicle exclusively designed for special recovery procedures when needed and also to bodily lift and transport motor vehicles.

Road service: Use of a tow truck or service vehicle to attempt to repair a vehicle at the point of the breakdown.

Recovery: When the tow operator applies his knowledge in a skillful manner to preserve the condition of the motor vehicle while winching and/or lifting the damaged vehicle back to a normal towing or loading position.

Debris clean-up:

1. **Standard site clean-up:** Refers to the amount of debris removal that should reasonably be anticipated at the scene of motor vehicle accident or incident. The standard site clean-up is usually defined to the point of impact, the final resting point of the vehicle and the associated debris field.

2. **Extended site clean-up:** Refers to the removal of debris at the point of impact, as well as along the path of pre-impact and/or post impact, where vehicle disintegration and/or other property damage occur as a result of the motor vehicle accident or incident.

Absorbents: Any group of products used to soak up spills or vehicle fluids. These would include oil dry, absorbent pads, socks, booms, etc.

Collision wrap: Used in an attempt to cover exposed areas from the weather elements.

Tarping: Covering or re-covering a vehicle to prevent against further weather damage or unauthorized access.

Disposable bags: Used to carry away used absorbents, car parts, glass, etc.

Labor: The additional work done at the scene by the tow truck operator that is beyond that required to perform a basic tow, or any additional manpower needed to complete a recovery, winching or towing of a vehicle. Labor charge for additional man power shall be based on a per-man, per hourly rate with a one-hour minimum.

Waiting time: Additional time a tow operator spends at the scene other than the time required for the actual tow and/or recovery.

Impoundment: The storage of a motor vehicle upon the order of a law enforcement agency

Storage: "Storage charges for a 24-hour period" means the maximum allowable amount to be charged by a storage facility for a 24-hour period or fraction thereof. A new 24-hour

period begins at 12:01 a.m. Storage is charged on a per-calendar-day or any part thereof.

Outside secured storage: When a motor vehicle is placed in an outside, secured storage facility that will be completely enclosed with at least a 6-foot fence, will have at least one entrance and exit gate and will be completely illuminated by outside lighting in order to safeguard the motor vehicles.

Inside secured storage: When a motor vehicle is placed inside a secured facility at the request of the vehicle/owner/operator or at the request of law enforcement agency for preservation purposes; e.g. owner/operator request antique or classic motor vehicle and/or an expensive luxury motor vehicle and/or law enforcement request for preservation of further law enforcement investigation.

Administration charges: Charges for services including but not limited to physical inspection, telephone and/or fax calls, copying of documentation, removal of personal items and additional office paperwork before and at the time of release.

Vehicle access charge: Owner and/or insurance representative must be accompanied into the secured storage yard facility to inspect, remove personal belongings, adjust and take photographs. **Documentation such as driver license of vehicle owner or business card of insurance representative must be photocopied and time-stamped when this additional auxiliary service is performed.**

Vehicle removal charge (lot removal): Charge for a motor vehicle towed into the storage facility of the primary tower that is not moveable and must be towed out of the primary towers storage facility to a designated unsecured staging area for towing by the secondary tower.

Abandoned vehicle: Any motor vehicle or vessel partially dismantled or not readily capable of operation under its own power or not currently licensed or wrecked or junked. It shall also mean any vehicle whose owner has terminated the use and care of the vehicle and has either indicated by his words or actions an intent to leave it and no longer claim ownership of it or left it without making arrangements for the storage with the owner, occupant or person in control of the premises on which it is located.

Air cushion recovery: Use of any number of inflatable lifting apparatus (commonly referred to as air cushions and/or air bags). Used to lift, under controlled recovery movements, any objects (e.g. automobiles, trucks, tractors, tractor and semi-trailer combinations) either on and/or off the roadway, aircraft, underwater recovery and realignment of shifted loads inside semi-trailers.

Collection expense: Cost of fees spent in an attempt to secure payment for services rendered.

Crane/rotator: Use of specially manufactured vehicle that has an extendable boom that

rotates to recover vehicles that need to be recovered from unusual situations

Documentation fee: Cost of photographing, maintaining timeline, written explanations used to explain nature of crash/recovery to assist insurance company/vehicle owner understand the incident and substantiate charges.

Fuel surcharges: Applied to towing bill when cost of fuel is over the pre-determined amount.

Federal Fuel Surcharge will be applied to all towing and/or flatbed services as follows:

Cost per gallon (in cents)	Rate Adjustment %
130 and below.....	0
130.1 – 140.....	1
140.1 – 150.....	2
150.1 – 160.....	3
160.1 – 170.....	4
170.1 – 180.....	5
180.1 – 190.....	6
190.1 – 200.....	7
200.1 – 210.....	8
210.1 – 220.....	9
220.1 – 230.....	10
230.1 – 240.....	11
240.1 – 250.....	12
250.1 – 260.....	13
260.1 – 270.....	14
270.1 – 280.....	15
280.1 – 290.....	16
290.1 – 300.....	17
300.1 – 310.....	18
310.1 – 320.....	19
320.1 – 330.....	20
330.1 – 340.....	21
340.1 – 350.....	22
350.1 – 360.....	23
360.1 – 370.....	24
370.1 – 380.....	25
380.1 – 390.....	26
390.1 – 400.....	27

Source: United States Military Traffic Management Command

Incident: Any recurring or non-recurring event that created a diminished capacity to roadway function or threatens the environment.

Incident management escort & support vehicle: A truck or trailer containing assorted

supplies to mitigate the impact of incidents i.e. spill control, traffic control, auxiliary lighting, clean-up materials and equipment.

Mileage charges: Are calculated on a portal-to-portal basis, which consists of the following examples: towing company dispatched from towing facility to destination of tow, tows or transports motor vehicle from point of pick-up back to destination point at a towing company protected storage facility, a motor vehicle is towed from a point of pick-up to another destination other than the towing company facility, e.g. vehicle owner residence, mechanical repair facility, auto body repair facility or any other destination, mileage accrual at arrival back to the point of dispatch (towing company facility).

Off-road recovery: Use of specialized equipment or tow truck to retrieve a vehicle that has left the roadway.

Portable dollies and/or portable Go-Jac type dollies: A set of wheels installed under either end of a vehicle in order to facilitate its movement. Use of this type equipment would incur an additional labor charge.

Post incident expenses: A host of services provided to the customer's vehicle after the vehicle has been removed from the scene.

Recovery supervisor/coordinator: A trained individual who utilizes his expertise to facilitate a safe and effective response to an incident through direct instruction to other employees dealing with the other responders or physically creating the conditions needed to terminate an incident.

Specialized equipment: Use of a wide variety of primarily, but not limited to, construction type equipment not normally considered towing equipment used to access or clean-up a recovery scene of wreckage.

Subcontractor: Use of other commercial business to provide services needed that tower does not possess. Tower invoices a handling charge on top of subcontractor's invoice charge.

Trailerling: The use of Landoll type recovery unit to transport anything that is too large to be flat-bedded or would be damaged if towed in another manner.

Water recovery: The process of recovering a vehicle or any other object as requested that is in water or under water.

Willful abandonment: An action deliberately taken by an owner or insurance company to leave a vehicle or vessel at a storage yard in order to attempt to avoid paying the towing, recovery, storage etc. charges due against the vehicle. See NJ Statue 39:4-56.5 and 56.6.

Winching: The process of moving a motor vehicle by the use of additional chains, nylon slings and additional lengths of winch cable from a position that is not accessible for

direct hook up by conventional means for towing and/or loading onto a tow vehicle. Winching is not pulling a vehicle onto a flatbed carrier or lifting a motor vehicle by conventional means (tow sling, wheel left, etc.).

Wrecking: The process of removing wreckage from the roadway, e.g. the vehicle and its debris, that includes the removal of pieces of vehicles from a crash scene with the end result being to return the roadway back to pre-crash conditions.

INTERNATIONAL REGISTRATION PLAN (IRP)

State of New Jersey, Department of Transportation, Division of Motor Vehicles

Re: International Registration Plan (IRP)

If you own or lease a commercial vehicle that operates in interstate commerce, even if it leaves New Jersey only occasionally, please be advised that you may be affected by the International Registration Plan (IRP). The IRP is an international program for vehicle registration through which the vehicle's base state collects apportioned registration fees for each state where the vehicle travels. The base state then remits the fees to the other states and provides the vehicle owner/lessee with a registration credential (cab card) listing those states for which fees are paid.

The IRP applies to all commercial vehicles operating interstate with a gross weight of more than 26,000 pounds, or any commercial vehicle with 3 or more axles regardless of weight, or any commercial vehicle when used in combination exceeds 26,000 pounds.

Once a state is listing on an IRP cab card, vehicle operators are not required to pay additional registration fees for the right to operate **both** interstate and intrastate in that state. So, New Jersey-based carriers will no longer be required to purchase registration trip permits when traveling in some western states, and they may also conduct point-to-point business in any state listed on the IRP cab card. Please be advised, however, that IRP deal strictly with **registration fees**. It does not replace or eliminate any state's requirement for fuel use taxes (IFTA, etc.) or operating authority (SSRS).

After July 31, 1996, vehicles without IRP credentials will be prohibited from traveling outside New Jersey without first obtaining a registration trip permit.

For related questions, you may call the IRP Hotline at 609-633-9399.

INTERNATIONAL FUEL TAX AGREEMENT (IFTA)

State of New Jersey, Department of Transportation, Division of Motor Vehicles

Re: International Fuel Tax Agreement (IFTA)

The International Fuel Tax Agreement is an agreement among states and Canadian Provinces to simplify the reporting of fuel taxes by interjurisdictional and interstate motor carriers. Upon application, the carrier's base jurisdiction will issue credentials (license and decals) that will allow the IFTA licensee to travel in all IFTA member jurisdictions.

The IFTA applies to all commercial vehicles with a gross weight of more than 26,000 pounds, or any commercial vehicle with 3 or more axles regardless of weight, or any commercial vehicle when used in combination exceeds 26,000 pounds.

The IFTA license offers several benefits to the interstate motor carrier. These benefits include the following: one application, one set of credentials, one quarterly fuel tax report that reflects the net tax or refund due and in most circumstances one audit conducted by your base jurisdiction. These advantages all lead to cost and time savings for the interstate carrier.

After August 31, 1996, vehicles without IFTA credentials will be prohibited from traveling outside New Jersey without first obtaining an IFTA trip permit.

For related questions, you may call the IFTA Hotline at 609-633-9407.