ADOPTED REGULATION OF THE

TRANSPORTATION SERVICES AUTHORITY

OF THE DEPARTMENT OF BUSINESS AND INDUSTRY

LCB File No. R091-05

Effective December 29, 2005

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 706.171 and 706.4463; §§2-4, NRS 706.171; §5, NRS 706.166 and 706.171; §6, NRS 706.171.

A REGULATION relating to tow cars; revising the data that must be included in an application for a certificate of public convenience and necessity to operate a tow car; deleting certain provisions which require the operator of a tow car to ensure that property is adequately protected; repealing various provisions governing the scope of regulation by the Transportation Services Authority for the operation of a tow car and the disclosure of business interests; and providing other matters properly relating thereto.

Section 1. NAC 706.1376 is hereby amended to read as follows:

706.1376 1. An application for:

(a) The initial issuance, expansion or modification of a certificate of public convenience and necessity to operate a tow car made pursuant to NRS 706.386 to 706.411, inclusive; or

(b) The sale and transfer of an interest in:

(1) Such a certificate;

(2) Fifteen percent or more of the stock of a corporation that holds such a certificate;

(3) A partnership that holds such a certificate; or

(4) A corporate entity that holds such a certificate which would result in a change in the corporate control of the carrier,

➥ must, in addition to complying with the provisions of NAC 706.010 to 706.4019, inclusive, that are applicable to pleadings, contain the data set forth in subsection 2.

2. An application described in subsection 1 must contain the following data, either in the application or as exhibits attached thereto:

(a) The type of service proposed, a general description of the service and a reference to the authority pursuant to which the service will be performed.

(b) The specific authority requested and the statutory provision pursuant to which the certificate is requested.

(c) A copy of a sample invoice that will be used by the applicant. The invoice must have imprinted thereon the procedures that a customer of the tow car may use to file a complaint against the operator of the tow car.

(d) If the applicant will provide:

(1) Nonconsensual tows, a statement of the rates proposed to be charged and the rules governing service in the form of a tariff prepared pursuant to NAC 706.138 to 706.139, inclusive.

(2) Only towing services with the consent of the owner of the vehicle being towed, the title page of the tariff prepared in accordance with NAC 706.1385.

(e) The type and number of units of equipment that will be used in the proposed service and a statement as to which units of equipment are owned by the applicant, including photographs of

the equipment to be used and copies of the registration and titles of those vehicles already owned by the applicant that will be used under its operating authority.

(f) A statement ~~[of the qualifications and experience of the personnel who will manage and operate the proposed service, and the proposed operating procedures relating to service, safety, maintenance, the training of drivers, billing, relations with customers and the keeping of records. (g) A statement]~~ describing the facilities that will be used to provide the proposed service, including, without limitation, offices, terminals and impound yards.

~~[(h)]~~ *(g)* If the applicant is a corporation or a limited-liability company, a copy of its articles of incorporation or articles of organization, certified by the Secretary of State, and all effective amendments thereto. If the corporation or limited-liability company was incorporated or established in another state, the application must include:

(1) A copy of the certificate issued by the Office of the Secretary of State authorizing the corporation or limited-liability company to transact its business in the State of Nevada; or

(2) Its equivalent, as provided in NRS 80.120.

~~[(i)]~~ *(h)* If the applicant is a partnership, a copy of the partnership agreement and any amendments thereto.

~~[(j)]~~ *(i)* If the applicant is not a natural person, a list of all owners, including associated stock certificates, membership certificates or associated documents, along with the percentage of ownership interest of each partner, member or owner. If the applicant is a publicly traded corporation, the requirements of this paragraph may be satisfied by attaching to the application a copy of the Form 10-K or its equivalent filed with the Securities and Exchange Commission showing the controlling ownership, officers and directors of the corporation.

[~~(k)~~] *(j)* If the applicant is operating under a fictitious name, a copy of the certificate filed pursuant to chapter 602 of NRS, if applicable.

[~~(l)~~] *(k)* A sample of the dispatch log that will be used by the tow service.

[~~(m)~~] *(l)* Evidence that the applicant can secure the insurance required by NAC 706.191.

[~~(n)~~] *(m)* Additional information as is necessary for a full understanding of the application.

3. If any item required pursuant to this section or by statute is omitted or otherwise deficient after acceptance of the application or filing, the Transportation Services Authority will notify the applicant of the omission or deficiency, in writing, at the address of the applicant listed on the application or filing. If the applicant does not cure the omission or deficiency within 15 working days after the issuance of that notification, the Deputy Commissioner shall, at the next regular meeting of the Transportation Services Authority, move that the application or filing be dismissed.

4. As used in this section, "nonconsensual tow" has the meaning ascribed to it in NAC 706.4022.

Sec. 2. NAC 706.393 is hereby amended to read as follows:

706.393 1. No transfer of any operating right is effective except upon full compliance with these regulations and until after the Transportation Services Authority has approved the transfer as provided in this section. The mere execution of a chattel mortgage, deed of trust or other similar document [~~,~~] does not constitute a transfer. A proposed transfer of operating rights by means of the foreclosure of a mortgage or deed of trust or other lien upon such rights, or by an execution in satisfaction of any judgment or claim against the holder , is not effective without

compliance with these regulations and the prior approval of the Transportation Services Authority.

2. A proposed transfer of operating rights will not be approved if the Transportation Services Authority finds that the transferee does not intend to, or would not, engage in bona fide motor carrier operations under the operating rights, or if the Transportation Services Authority finds that the transferor acquired the operating rights to profit therefrom and has not engaged in bona fide motor carrier operations under the operating rights.

3. An application for the transfer of operating rights by ***a fully regulated carrier for the*** sale and ~~[purchase]~~ ***transfer of operating authority*** will not be approved if the:

(a) Transportation Services Authority considers and determines that the purchase price to be paid would be excessive and contrary to the public interest.

(b) Transfer would tend to create an unfair competitive operation and is not consistent with the public interest.

Sec. 3. NAC 706.402 is hereby amended to read as follows:

706.402 As used in NAC 706.402 to ~~[706.448,]~~ ***706.442,*** inclusive, unless the context otherwise requires, the words and terms defined in NAC 706.4022 to 706.4028, inclusive, have the meanings ascribed to them in those sections.

Sec. 4. NAC 706.412 is hereby amended to read as follows:

706.412 1. The operator of a tow car shall maintain at all times a copy of the tariff approved by the Transportation Services Authority and a copy of NAC 706.402 to ~~[706.448,]~~ ***706.442,*** inclusive, in each location where requests for towing are received and in each tow car used for nonconsensual tows.

2. A notice stating that a copy of the tariff is available in the tow car for inspection by the public must be placed on each side of the tow car. The notice must be at least 24 inches wide and 4 inches in height, and the lettering must have a stroke of at least one-quarter of an inch. The text of the notice must be:

Notice: A copy of the applicable charges is available for public inspection within this vehicle.

3. A notice must be prominently posted at a facility where vehicles are stored after nonconsensual towing which states that stored vehicles will be released only after arrangements for payment of all charges have been made between the operator of the tow car and the owner, driver or authorized representative of the owner or driver of the vehicle. The notice must contain the telephone number of the operator of the tow car or a person authorized to make the arrangements for payment.

Sec. 5. NAC 706.440 is hereby amended to read as follows:

706.440 1. The operator of a tow car shall not use or hold any cargo or personal property as a bailment for the rates and charges incurred in towing a vehicle, except that cargo may be held as security for payment of charges associated with cleaning the area where the cargo has spilled or for loading, transporting, securing or storing the cargo.

2. ~~[The operator of the tow car shall ensure that all property which comes into his possession because of the operation of a tow car is adequately protected. Any personal property in a towed vehicle must be released to the owner of the vehicle or his agent upon request.~~

~~3.]~~ Accessories and equipment for ~~[the]~~ ***a towed*** vehicle shall be deemed part of the vehicle rather than personal property for the purposes of this section.

~~[4.]~~ *3.* Cargo and personal property left unclaimed 48 hours before the final disposition is to be made of the associated vehicle may be sold or otherwise disposed of by the operator of a tow car.

Sec. 6. NAC 706.403, 706.444 and 706.448 are hereby repealed.

TEXT OF REPEALED SECTIONS

706.403 Scope of regulation by Transportation Services Authority for operation of tow cars. (NRS 706.171) In accordance with 49 U.S.C. § 14501 and NRS 706.011 to 706.791, inclusive, the Transportation Services Authority will regulate the operation of tow cars in this State with regard to:

1. The safety and welfare of the public;

2. Insurance; and

3. The price of for-hire transportation of a motor vehicle by a tow car, if that transportation is:

(a) Performed at the request of a law enforcement agency; or

(b) A nonconsensual tow.

706.444 Disclosure of business interests. (NRS 706.171) The operator of a tow car shall file a disclosure with the Transportation Services Authority detailing any business interest he or his employees, family members or partners in other businesses may have in any:

1. Facility for the repair of vehicles.
2. Parking facility.
3. Business which manages property.
4. Business providing parking services.

706.448 Prohibited acts concerning recommendations of facilities for repair. (NRS 706.171)

1. An operator of a tow car shall not recommend any facility for the repair of a disabled vehicle. He may advise the operator of a disabled vehicle of the nearest facility for the repair of the vehicle and the nearest franchised dealership for the vehicle.

2. An operator of a tow car shall not solicit or accept any remuneration or consideration in any form from any person which is to influence the operator's decision concerning where a vehicle is to be taken for repairs. Any remuneration or other consideration given to the operator of a tow car by any person in the business of repairing vehicles shall be deemed to be for that purpose.