

1 **IMPOUNDMENT OF VEHICLES AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Mark B. Madsen**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to removing or impounding a vehicle.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that a peace officer may not seize and take possession of any vehicle,
13 vessel, or outboard motor with a registration that has been expired for more than
14 three months unless the vehicle has an obvious and apparent defect that would
15 render the vehicle unsafe if operated on a highway;
- 16 ▶ requires a peace officer who arrests, cites, or refers for administrative action the
17 operator of a vehicle for violating certain driving under the influence offenses to
18 release the vehicle, rather than impound it, to a person with a valid operator's
19 license who is present at the time of arrest in certain circumstances;
- 20 ▶ requires a peace officer, or a person acting on behalf of a law enforcement agency or
21 highway authority, ordering the removal or impoundment of a vehicle, vessel, or
22 outboard motor without a warrant to:
- 23 • notify the owner or operator of the vehicle, vessel, or outboard motor of certain
24 rights;
 - 25 • allow the owner or operator to remove the owner's or operator's property from
26 the vehicle, vessel, or outboard motor prior to the removal or impoundment of
27 the vehicle;



28 • allow the owner or operator to contact another person to pick the owner or
29 operator up from the scene of the removal or impoundment, unless the owner or
30 operator is placed under arrest; and

31 • allow the owner or operator to refuse the removed or impounded vehicle, vessel,
32 or outboard motor from being subject to an inventory search if the owner or
33 operator consents in writing to waive any right to sue for any damage to or loss
34 of property located within the removed or impounded vehicle, vessel, or
35 outboard motor;

36 ▶ provides that if an inventory search of the removed or impounded vehicle, vessel, or
37 outboard motor is conducted by a peace officer, or by an order of a person acting on
38 behalf of a law enforcement agency or highway authority, after a person has refused
39 an inventory search, any physical evidence of a crime found within a vehicle, vessel,
40 or outboard motor pursuant to the inventory search is inadmissible in a court of law;

41 ▶ provides that a peace officer, or a person acting on behalf of a law enforcement
42 agency or highway authority, conducting an inventory search of a removed or
43 impounded vehicle, vessel, or outboard motor:

44 • may only search items that are within plain view of the peace officer or other
45 person acting on behalf of the peace officer;

46 • may only search the open areas of a vehicle, vessel, or outboard motor,
47 including places where property is ordinarily kept; and

48 • may not search closed containers or hidden places of the vehicle, vessel, or
49 outboard motor, including removing car parts; and

50 ▶ makes technical corrections.

51 **Money Appropriated in this Bill:**

52 None

53 **Other Special Clauses:**

54 None

55 **Utah Code Sections Affected:**

56 AMENDS:

57 **41-1a-1101**, as last amended by Laws of Utah 2011, Chapter 246

58 **41-6a-527**, as last amended by Laws of Utah 2012, Chapter 81

59 **41-6a-1406**, as last amended by Laws of Utah 2012, Chapter 226



61 *Be it enacted by the Legislature of the state of Utah:*

62 Section 1. Section **41-1a-1101** is amended to read:

63 **41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.**

64 (1) (a) The division or any peace officer, without a warrant, may seize and take
65 possession of any vehicle, vessel, or outboard motor:

- 66 (i) that the division or the peace officer has reason to believe has been stolen;
- 67 (ii) on which any identification number has been defaced, altered, or obliterated;
- 68 (iii) that has been abandoned in accordance with Section 41-6a-1408;
- 69 (iv) for which the applicant has written a check for registration or title fees that has not
70 been honored by the applicant's bank and that is not paid within 30 days;

71 (v) that is placed on the water with improper registration;

72 (vi) that is being operated on a highway:

73 (A) with registration that has been expired for more than three months and with an
74 obvious and apparent defect that would render the vehicle unsafe if operated on a highway;

75 (B) having never been properly registered by the current owner;

76 (C) with registration that is suspended or revoked; or

77 (D) subject to the restriction in Subsection (1)(b), without owner's or operator's security
78 in effect for the vehicle as required under Section 41-12a-301; or

79 (vii) (A) that the division or the peace officer has reason to believe has been involved
80 in an accident described in Section 41-6a-401, 41-6a-401.3, or 41-6a-401.5; and

81 (B) whose operator did not remain at the scene of the accident until the operator
82 fulfilled the requirements described in Section 41-6a-401 or 41-6a-401.7.

83 (b) The division or any peace officer may not seize and take possession of a vehicle
84 under Subsection (1)(a)(vi)(D) if the operator of the vehicle is not carrying evidence of owner's
85 or operator's security as defined in Section 41-12a-303.2 in the vehicle unless the division or
86 peace officer verifies that owner's or operator's security is not in effect for the vehicle through
87 the Uninsured Motorist Identification Database created in accordance with Section 41-12a-803.

88 (2) If necessary for the transportation of a seized vessel, the vessel's trailer may be
89 seized to transport and store the vessel.

90 (3) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard
91 motor under this section shall comply with the provisions of Section 41-6a-1406.

92 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
93 the commission shall make rules setting standards for public garages, impound lots, and
94 impound yards that may be used by peace officers and the division.

95 (b) The standards shall be equitable, reasonable, and unrestrictive as to the number of
96 public garages, impound lots, or impound yards per geographical area.

97 (5) (a) Except as provided under Subsection (5)(b), a person may not operate or allow
98 to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated
99 under this part without prior written permission of the owner of the vehicle.

100 (b) Incidental and necessary operation of a vehicle to move the vehicle from one
101 parking space to another within the facility and that is necessary for the normal management of
102 the facility is not prohibited under Subsection (5)(a).

103 (6) A person who violates the provisions of Subsection (5) is guilty of a class C
104 misdemeanor.

105 (7) The division or the peace officer who seizes a vehicle shall record the mileage
106 shown on the vehicle's odometer at the time of seizure, if:

107 (a) the vehicle is equipped with an odometer; and

108 (b) the odometer reading is accessible to the division or the peace officer.

109 Section 2. Section **41-6a-527** is amended to read:

110 **41-6a-527. Seizure and impoundment of vehicles by peace officers -- Impound**
111 **requirements -- Removal of vehicle by owner -- Forfeiture.**

112 (1) If a peace officer arrests, cites, or refers for administrative action the operator of a
113 vehicle for violating Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530,
114 41-6a-606, 53-3-231, 53-3-232, Subsections 53-3-227(3)(a)(i) through (vi), Subsection
115 53-3-227(3)(a)(ix), or a local ordinance similar to Section 41-6a-502 which complies with
116 Subsection 41-6a-510(1), the peace officer shall seize and impound the vehicle in accordance
117 with Section 41-6a-1406, except as provided under Subsection (2).

118 (2) (a) If a registered owner of the vehicle, other than the operator, is present at the
119 time of arrest, the peace officer [~~may~~] shall release the vehicle to that registered owner, but
120 only if:

- 121 ~~[(a)]~~ (i) the registered owner:
- 122 ~~[(+)]~~ (A) requests to remove the vehicle from the scene; and
- 123 ~~[(+)]~~ (B) presents to the peace officer sufficient identification to prove ownership of
- 124 the vehicle or motorboat;
- 125 ~~[(b)]~~ (ii) the registered owner identifies a driver with a valid operator's license who:
- 126 ~~[(+)]~~ (A) complies with all restrictions of his operator's license; and
- 127 ~~[(+)]~~ (B) would not, in the judgment of the officer, be in violation of Section
- 128 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 53-3-231, 53-3-232, or a local
- 129 ordinance similar to Section 41-6a-502 which complies with Subsection 41-6a-510(1) if
- 130 permitted to operate the vehicle; and
- 131 ~~[(e)]~~ (iii) the vehicle itself is ~~[legally]~~ operable without an obvious or apparent defect.
- 132 (b) If a person with a valid operator's license, other than the operator of the vehicle
- 133 who is the subject of the arrest, is present at the time of arrest, the peace officer shall release
- 134 the vehicle to that person, but only if:
- 135 (i) the operator of the vehicle who is the subject of the arrest consents to the release of
- 136 the vehicle; and
- 137 (ii) the person with a valid operator's license would not, in the judgment of the officer,
- 138 be in violation of Section 41-6a-502, 41-6a-517, 41-6a-518.2, 41-6a-520, 41-6a-530, 53-3-231,
- 139 53-3-232, or a local ordinance similar to Section 41-6a-502, which complies with Subsection
- 140 41-6a-510(1), if permitted to operate the vehicle.
- 141 (3) If necessary for transportation of a motorboat for impoundment under this section,
- 142 the motorboat's trailer may be used to transport the motorboat.
- 143 (4) A motor vehicle is subject to criminal or civil forfeiture under the procedures and
- 144 substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures
- 145 Act, upon a finding by the court that:
- 146 (a) the motor vehicle was used in a violation of Section 41-6a-502, 41-6a-517, a local
- 147 ordinance which complies with the requirements of Subsection 41-6a-510(1), Subsection
- 148 58-37-8(2)(g), or Section 76-5-207;
- 149 (b) the operator of the vehicle has previously been convicted of a violation committed
- 150 after May 12, 2009, of:
- 151 (i) a felony driving under the influence violation under Section 41-6a-502;

152 (ii) a felony violation of Subsection 58-37-8(2)(g); or
 153 (iii) automobile homicide under Section 76-5-207;
 154 (c) the operator of the vehicle was driving on a denied, suspended, revoked, or
 155 disqualified license; and

156 (d) (i) the denial, suspension, revocation, or disqualification under Subsection (4)(c)
 157 was imposed because of a violation of:

- 158 (A) Section 41-6a-502;
- 159 (B) Section 41-6a-517;
- 160 (C) a local ordinance which complies with the requirements of Subsection
 161 41-6a-510(1);
- 162 (D) Section 41-6a-520;
- 163 (E) Subsection 58-37-8(2)(g);
- 164 (F) Section 76-5-207; or
- 165 (G) a criminal prohibition that the person was charged with violating as a result of a
 166 plea bargain after having been originally charged with violating one or more of the sections or
 167 ordinances described in Subsections (4)(d)(i)(A) through (F); or

168 (ii) (A) the denial, suspension, revocation, or disqualification described in Subsection
 169 (4)(c) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,
 170 revocation, or disqualification; and

171 (B) the original denial, suspension, revocation, or disqualification was imposed
 172 because of a violation described in Subsection (4)(d)(i)(A) through (G).

173 Section 3. Section **41-6a-1406** is amended to read:

174 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**
 175 **requirements -- Administrative impound fee -- Refunds -- Possessor lien -- Rulemaking.**

176 (1) (a) If a vehicle, vessel, or outboard motor is removed or impounded as provided
 177 under Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a
 178 peace officer or by an order of a person acting on behalf of a law enforcement agency or
 179 highway authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall
 180 be at the expense of the owner.

181 (b) If a vehicle, vessel, or outboard motor is removed or impounded as provided under
 182 Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace

183 officer, or a person acting on behalf of a law enforcement agency or highway authority without
184 a warrant, the person ordering the removal or impoundment of the vehicle, vessel, or outboard
185 motor shall:

186 (i) notify the owner or operator of the vehicle, vessel, or outboard motor at the scene of
187 the removal or impoundment, if the owner or operator is present at the scene:

188 (A) of the owner's or operator's right to remove the owner's or operator's property from
189 the vehicle, vessel, or outboard motor prior to the removal or impoundment;

190 (B) of the owner's or operator's right to contact another person to pick the owner or
191 operator up from the scene of the removal or impoundment, unless the owner or operator is
192 placed under arrest and removed from the scene by law enforcement; and

193 (C) of the owner's or operator's right to refuse the vehicle from being subject to an
194 inventory search if the owner or operator consents to waive any right to sue for any damage or
195 loss sustained by the property remaining within the removed or impounded vehicle, vessel, or
196 outboard motor;

197 (ii) allow the owner or operator to remove the owner's or operator's property from the
198 vehicle, vessel, or outboard motor prior to the removal or impoundment of the vehicle, vessel,
199 or outboard motor without any interference, impedance, scrutiny, or observation by the person
200 or persons ordering the removal or impoundment;

201 (iii) allow the owner or operator to contact another person to pick the owner or
202 operator up from the scene of the removal or impoundment, unless the owner or operator is
203 placed under arrest and removed from the scene by law enforcement; and

204 (iv) allow the owner or operator to refuse the removed or impounded vehicle, vessel, or
205 outboard motor from being subject to an inventory search if the owner or operator consents in
206 writing to waive any right to sue for any damage to or loss of property located within the
207 removed or impounded vehicle, vessel, or outboard motor.

208 (c) If an inventory search of the removed or impounded vehicle, vessel, or outboard
209 motor is conducted by a peace officer, or a person acting on behalf of a law enforcement
210 agency or highway authority, after a person has refused the vehicle from being subject to an
211 inventory search under Subsection (1)(b)(iv), any evidence of a crime found within a vehicle
212 pursuant to the inventory search of the vehicle is inadmissible in a court of law.

213 (d) A peace officer, or a person acting on behalf of a law enforcement agency or

214 highway authority, conducting an inventory search of a removed or impounded vehicle, vessel,
215 or outboard motor:

216 (i) may only search items that are within plain view of the peace officer or other person
217 acting on behalf of the peace office;

218 (ii) may only search the open areas of the vehicle, vessel, or outboard motor, including
219 places where property is ordinarily kept; and

220 (iii) may not search closed containers or hidden places of the vehicle, vessel, or
221 outboard motor, including removing car parts.

222 (2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or
223 impounded to:

224 (a) a state impound yard; or

225 (b) if none, a garage, docking area, or other place of safety.

226 (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be
227 removed by a tow truck motor carrier that meets standards established:

228 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

229 (b) by the department under Subsection (10).

230 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report
231 of the removal shall be sent to the Motor Vehicle Division by:

232 (i) the peace officer or agency by whom the peace officer is employed; and

233 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck
234 operator is employed.

235 (b) The report shall be in a form specified by the Motor Vehicle Division and shall
236 include:

237 (i) the operator's name, if known;

238 (ii) a description of the vehicle, vessel, or outboard motor;

239 (iii) the vehicle identification number or vessel or outboard motor identification
240 number;

241 (iv) the license number or other identification number issued by a state agency;

242 (v) the date, time, and place of impoundment;

243 (vi) the reason for removal or impoundment;

244 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or

245 outboard motor; and

246 (viii) the place where the vehicle, vessel, or outboard motor is stored.

247 (c) Until the tow truck operator or tow truck motor carrier reports the removal as
248 required under this Subsection (4), a tow truck motor carrier or impound yard may not:

249 (i) collect any fee associated with the removal; and

250 (ii) begin charging storage fees.

251 (5) (a) Except as provided in Subsection (5)(e) and upon receipt of the report, the
252 Motor Vehicle Division shall give notice to the registered owner of the vehicle, vessel, or
253 outboard motor and any lien holder in the manner prescribed by Section 41-1a-114.

254 (b) The notice shall:

255 (i) state the date, time, and place of removal, the name, if applicable, of the person
256 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal,
257 and the place where the vehicle, vessel, or outboard motor is stored;

258 (ii) state that the registered owner is responsible for payment of towing, impound, and
259 storage fees charged against the vehicle, vessel, or outboard motor;

260 (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the
261 conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and

262 (iv) inform the registered owner and lienholder of the division's intent to sell the
263 vehicle, vessel, or outboard motor, if within 30 days from the date of the removal or
264 impoundment under this section, the owner, lien holder, or the owner's agent fails to make a
265 claim for release of the vehicle, vessel, or outboard motor.

266 (c) Except as provided in Subsection (5)(e) and if the vehicle, vessel, or outboard
267 motor is not registered in this state, the Motor Vehicle Division shall make a reasonable effort
268 to notify the registered owner and any lien holder of the removal and the place where the
269 vehicle, vessel, or outboard motor is stored.

270 (d) The Motor Vehicle Division shall forward a copy of the notice to the place where
271 the vehicle, vessel, or outboard motor is stored.

272 (e) The Motor Vehicle Division is not required to give notice under this Subsection (5)
273 if a report was received by a tow truck operator or tow truck motor carrier reporting a tow truck
274 service in accordance with Subsection 72-9-603(1)(a)(i).

275 (6) (a) The vehicle, vessel, or outboard motor shall be released after the registered

276 owner, lien holder, or the owner's agent:

277 (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of
278 the State Tax Commission;

279 (ii) presents identification sufficient to prove ownership of the impounded vehicle,
280 vessel, or outboard motor;

281 (iii) completes the registration, if needed, and pays the appropriate fees;

282 (iv) if the impoundment was made under Section 41-6a-527, pays an administrative
283 impound fee of \$350; and

284 (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard
285 motor is stored.

286 (b) (i) Twenty-nine dollars of the administrative impound fee assessed under
287 Subsection (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

288 (ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be
289 deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;

290 (iii) \$20 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall
291 be deposited in the Traumatic Spinal Cord and Brain Injury Rehabilitation Fund; and

292 (iv) the remainder of the administrative impound fee assessed under Subsection
293 (6)(a)(iv) shall be deposited in the General Fund.

294 (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be
295 waived or refunded by the State Tax Commission if the registered owner, lien holder, or
296 owner's agent presents written evidence to the State Tax Commission that:

297 (i) the Driver License Division determined that the arrested person's driver license
298 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter
299 or other report from the Driver License Division presented within 30 days of the final
300 notification from the Driver License Division; or

301 (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the
302 stolen vehicle report presented within 30 days of the impoundment.

303 (7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered
304 owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in
305 accordance with that section and the proceeds, if any, shall be disposed of as provided under
306 Section 41-1a-1104.

307 (b) The date of impoundment is considered the date of seizure for computing the time
308 period provided under Section 41-1a-1103.

309 (8) The registered owner who pays all fees and charges incurred in the impoundment of
310 the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and
311 charges, together with damages, court costs, and attorney fees, against the operator of the
312 vehicle, vessel, or outboard motor whose actions caused the removal or impoundment.

313 (9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel,
314 or outboard motor.

315 (10) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
316 the department shall make rules setting the performance standards for towing companies to be
317 used by the department.

318 (11) (a) The Motor Vehicle Division may specify that a report required under
319 Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and
320 retrieval of the information.

321 (b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the
322 administrator of the database may adopt a schedule of fees assessed for utilizing the database.

323 (ii) The fees under this Subsection (11)(b) shall:

324 (A) be reasonable and fair; and

325 (B) reflect the cost of administering the database.

Legislative Review Note
as of 3-4-13 4:40 PM

Office of Legislative Research and General Counsel