

 State Board of Towing Public Policy	Policy No.: PP-24-002
	Supersedes: NA
	Reference: ORS 822.200 ORS 822.995
Subject: Operating an Illegal Towing Business	Effective Date:

Authority/Applicable Statute(s) or Administrative Rule(s):

ORS 822.200 Operating illegal towing business

(1) A person commits the offense of operating an illegal towing business if the person does not hold a certificate issued under ORS 822.205 (Certificate) and the person does any of the following:

- (a) Engages in the towing or recovering of vehicles by any means for any direct or indirect compensation when the vehicle being towed or recovered is owned by a person other than the person performing the towing or recovery activity.
- (b) Engages in towing or recovering by any means, as part of any business operation of the person, vehicles that are wrecked, damaged, disabled or abandoned or replacement vehicles.
- (c) Purports in any way to be engaged in the business of performing activities described in this subsection.

(2) This section does not apply to any of the following:

- (a) Persons operating under and within the scope of a vehicle transporter certificate issued under ORS 822.310 (Privileges granted by certificate).
 - (b) A person who provides assistance to another motorist, whether or not compensation is received, if the assistance is not provided as part of the business operation of the person providing the assistance.
 - (c) A person engaging in any activity relating to a vehicle in which that person holds a security interest.
 - (d) An employee of a person issued a towing business certificate under ORS 822.205 (Certificate) while that employee is performing official duties as an employee.
 - (e) A person who holds a valid dismantler certificate under ORS 822.110 (Dismantler certificate) who tows a vehicle described under ORS 819.280 (Disposal of vehicle at request of person in lawful possession).
- (3) The offense described in this section, operating an illegal towing business, is a Class A misdemeanor. [1983 c.338 §811; 1985 c.16 §410; 2005 c.738 §§6,6a]

ORS 822.215 Grounds for denial, suspension, revocation or refusal of certificate

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

- (a) Used fraud or deception in securing the certificate.
- (b) Received in any manner or by any device any rebate or other additional fee for towing or recovery from a person who performs repairs on a vehicle who does not also own the vehicle. This paragraph does not prohibit the payment of the towing fee by a person who performs repairs on a vehicle if the fee is included in the charges by that person for repairs on the vehicle.
- (c) Used vehicles for the purposes of towing or recovering services that did not meet the minimum safety standards established by the department.
- (d) Failed to display special towing business registration plates, stickers or indicia or identification devices for proportionally registered tow vehicles authorized under ORS 805.200 (Plates and other devices with special designs) on each vehicle used to tow or recover vehicles.
- (e) Failed to maintain the amounts and types of insurance required to qualify for issuance of a towing business certificate under ORS 822.205 (Certificate).
- (f) Failed to obtain any permits or authority required under any provision of ORS chapter 825 or rules adopted thereunder.
- (g) Violated any provision of ORS 98.853 (Conditions allowing towing), 98.854 (Prohibitions placed on tower), 98.856 (Tower responsibility of disclosure to owner or operator of vehicle) or 98.858 (Right of owner or person in lawful possession of vehicle

to redeem or inspect vehicle, contact tower and obtain property of emergency nature) or a rule adopted under ORS 822.265 (Rulemaking authority).

ORS 822.995 Civil penalties for violations related to towing

(1) In addition to any other penalty provided by law, any person who violates any provision of ... ORS 822.200 (Operating illegal towing business), 822.215 (Grounds for denial, suspension, revocation or refusal of certificate) ... or 822.605 (False swearing relating to regulation of vehicle related businesses) or any rule adopted by the State Board of Towing is subject to payment of a civil penalty to the board.

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

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

Purpose:

The purpose of the Board's Public Policy administering ORS 822.200 *Operating an Illegal Towing Business* is to ensure fair and equitable towing practices and protect the safety and well-being of the public, property owners, and the towing industry by providing:

1. Authoritative interpretations of the requirements and definitions of violations under ORS 822.200 and related statutes used in Board investigations and assessment of civil penalties.
2. Establish statewide practice standards and expectations within the towing industry and public.
3. Ensure compliance of the laws through education, outreach, and defining authority and responsibility of all parties involved with commercial towing services.
4. Assist the Board's collaborative partners in protecting the public and enforcing the laws and regulations related to tow business certificate requirements.

Definitions:

The Board incorporates the following definitions in its public policy:

"CCD" means: Oregon Department of Transportation, Commerce and Compliance Division

"DMV" means: Oregon Department of Transportation, Driver and Motor Vehicle Services

"Person" means: an individual or a business entity.

"Tow Vehicle" means: a vehicle used for the purpose of towing or recovery in Oregon.

"TW Plate" or "Tow Plate" means: the distinctive plate issued by DMV indicating a tow or recovery vehicle.

OAR 735-154-0000 Regulations Governing Towing and Recovery Businesses

(2) Definitions for the purposes of OAR 735-154-0000 through 735-154-0050 are as follows:

(a) As used in ORS 822.200(1)(c), "purports...to be engaged in..." means to solicit or advertise towing services through the telephone book, business directory, newspaper, radio, television, posting on vehicles, signs, business, billboards or by any other means;

(b) A "towing or recovery vehicle" means any motor vehicle used by any person(s) for the purpose of towing or recovering of vehicles;

(c) "Towing business certificate" or "certificate" means the vehicle registration card containing distinctive language indicating it is a certificate issued in conjunction with the vehicle registration, for towing or recovery services;

(d) "Distinctive plate" means the prescribed Oregon registration plate format with a five-digit identification number and two letter prefix "TW" indicating a tow or recovery vehicle; and

(e) "Stickers" means month and year stickers of a type in current use by the Driver and Motor Vehicle Services Division of the Department of Transportation to indicate staggered registration dates.

Compliance and Violations

ORS 822.200 Operating illegal towing business

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- (a) Engages in the towing or recovering of vehicles by any means for any direct or indirect compensation when the vehicle being towed or recovered is owned by a person other than the person performing the towing or recovery activity.
- (b) Engages in towing or recovering by any means, as part of any business operation of the person, vehicles that are wrecked, damaged, disabled or abandoned or replacement vehicles.
- (c) Purports in any way to be engaged in the business of performing activities described in this subsection.

Failure to comply with the following laws, rules and regulations is grounds for investigation and disciplinary action for violation by the State Board of Towing:

1. An active DMV tow business certificate must be issued to a vehicle operating in Oregon:
 - A. providing tow or recovery services as a business, to provide commercial services, or for profit,
 - B. outfitted with the intent of providing towing and recovery services as a business, a commercial enterprise, or for profit.
2. A person cannot represent oneself as an Oregon tower on DMV forms, or other official documents, without an active DMV issued tow business certificate.
3. The tow business certificate and TW plates are to be used only on the tow vehicle the plates and tow business certificate are issued to.
4. The DMV issued vehicle title and tow business certificate must be issued under the same name.
5. Tow business certificates and TW plates cannot be transferred.
 - A. TW Plates are to be removed from the tow vehicle when a tow vehicle is sold, transferred, wrecked, or taken out of service as a tow/recovery vehicle.
 - B. Any new owner of the tow vehicle must apply for an original tow business certificate and plates.
6. If the tow vehicle is leased:
 - A. The lessee (not the lessor) must qualify for tow/recovery registration.
 - B. The lessee must be shown on the vehicle title, registration, and DMV issued tow business certificate.
 - C. A tow certificate holder cannot lease a tow vehicle to a second party unless the second party is recorded on the vehicle title, registration, and tow business certificate.

To be considered by the Board:

The lease assignment is a DMV requirement meant to address specific issues (a) illegal towing operations (b) persons circumventing legal requirements, responsibilities, and accountability of the tow certificates (c) possible insurance fraud, etc.

The Board cannot contradict the DMV rules.

The Board can develop a compliance policy outlining when the Board might find an exception to a statute that should be considered.

For instance: is it reasonable that tow companies be allowed to lease or rent a tow truck to another tower for a specific period of time or purpose? If yes: what is the requirement?

7. To be exempt under ORS 822.200 (c), the security interest must be perfected prior to the tow.
8. A tow conducted under the dismantler certificate exemption **must fully comply** with the requirements of ORS 819.280 (1) *A person may make a request to an authority described in ORS 819.140 (Agencies having authority to take vehicle into custody) (1)(b) or (c) to dispose of a vehicle that is on the private property of the person and that is appraised at a value of \$500 or less, as determined by a holder of a certificate issued under ORS 819.480 (Vehicle appraiser certificate), if the person is in lawful possession of the vehicle. For the purposes of this subsection, a person need not have the certificate of title to be in lawful possession of the vehicle.*
9. The appropriate type and amount of insurance required under ORS Chapter 825 and additional \$50,000 cargo insurance coverage must be maintained on tow and recovery vehicles to comply with the tow business certificate requirements.
10. Tow vehicles used in repossessions or as part of collection actions will:
 - A. Have a tow business certificate. The tow vehicle title and DMV issued tow business certificate must be issued under the same name.
 - B. Comply with all requirements of a tow business certificate.
 - C. Register with the Dept. of Consumer Business Services, Division of Financial Regulation as required under ORS Chapter 697.
11. Failure to properly register a tow vehicle with the appropriate state agency(ies) may invalidate the tow business certificate, including:
 - A. DMV registration if the tow/recovery vehicle has a combined weight of 26,000 pounds or less and is not proportionally registered (prorate) for operation in other states.
 - B. CCD registration if the combined weight of the tow/recovery vehicle is more than 26,000 pounds.
 - C. CCD registration on a proportional basis if required.
 - D. DCBS Division of Financial Regulation if the tow vehicle is used in repossessions or other collection actions.
 - E. DEQ testing and registration for tow/recovery vehicles within the Portland Area Vehicle Inspection Program Boundary or Medford Area Vehicle Inspection Program Boundary subject to DEQ testing.

Exemptions

ORS 822.200

(2) This section does not apply to any of the following:

(a) Persons operating under and within the scope of a vehicle transporter certificate issued under ORS 822.310 (Privileges granted by certificate).

(b) A person who provides assistance to another motorist, whether or not compensation is received, if the assistance is not provided as part of the business operation of the person providing the assistance.

(c) A person engaging in any activity relating to a vehicle in which that person holds a security interest.

(d) An employee of a person issued a towing business certificate under ORS 822.205 (Certificate) while that employee is performing official duties as an employee.

(e) A person who holds a valid dismantler certificate under ORS 822.110 (Dismantler certificate) who tows a vehicle described under ORS 819.280 (Disposal of vehicle at request of person in lawful possession).

1. A tow vehicle is exempt from the tow business certificate requirement when the tow vehicle is used exclusively for the exemption defined under ORS 822.200 (2).
2. Any use of the tow vehicle not specifically exempt under ORS 822.200 (2) requires a tow certificate, even when
 - A. The primary use of the tow vehicle is exempt
 - B. The non-exempt use of the vehicle is occasional or infrequent.

Board Investigation and Action:

1. The Board reviews submitted complaints for compliance or violation of Oregon's laws.
2. When a tower's actions and records comply with Oregon's laws, administrative rules, and the Board's public policy, the complaint will be closed with no formal action against the tower.
3. If review of the allegations or circumstances of a complaint indicate possible violations of Oregon's laws or the Board's administrative rules or public policy:
 - A. The Board will investigate the allegations of the complaint.
 - B. The Board, at its own discretion, may determine if the violations were reasonably:
 - a. Willful or intentional.
 - b. Negligent or reckless.
 - c. Inadvertent or in good faith.
4. The Board, at its discretion, will determine the appropriate course of corrective action and progressive discipline by:
 - A. Focusing, when reasonable, on the education of the tower and the towing community.
 - B. Progressive discipline: increasing the severity of the steps or measures against a person, persons, or entity when there is a failure to correct behavior or conduct, or when subsequent instances of inappropriate behavior and conduct occur.
 - C. To protect the safety and well-being of the public and the towing industry, the Board may determine, at its sole discretion, that the harm to the public or the egregiousness of the violations is cause for immediate escalation of the progressive disciplinary action by the Board without notice to the offending party.
5. The Board will consider mitigating circumstances as required under OAR 750-080-0020, including:
 - A. The tower's history of compliance with Oregon's laws and rules;
 - B. The effect of the violation on public safety and welfare;
 - C. Whether the conduct or action(s) was inadvertent or intentional;
 - D. The degree to which the action subject to sanction violates professional ethics and standards of the profession;
 - E. Any mitigating or aggravating factors the Board may choose to consider.
6. Board disciplinary actions for violation of ORS 822.200 (1) will be forwarded to the appropriate law enforcement for further investigation pursuant to ORS 822.200 (3) *The offense described in this section, operating an illegal towing business, is a Class A misdemeanor.*

7. Board disciplinary actions for failure to maintain the appropriate type and amount of insurance will be forwarded to DMV and CCD for further investigation.

8. Board disciplinary actions for false certification of a DMV Application for Tow or Recovery Vehicle Business Certificate will be forwarded to DMV, CCD, and appropriate law enforcement for further investigation pursuant to ORS 822.605 (2) *The offense described in this section, false swearing relating to regulation of vehicle related businesses, is a Class C felony.*

Collaborative investigations and authorization

1. DMV and CCD are the state agencies charged with defining and interpreting title, registration, insurance, and tow business certification requirements, minimum tow vehicle standards, and Oregon's motor vehicle code compliance. Questions regarding these requirements will be forwarded to the appropriate agency.
2. Determination of violation of a tow business certification requirement will be confirmed with DMV or CCD prior to Board investigation.
3. Tow vehicles used in repossession business will be forwarded to DCBS, Division of Financial Regulation to confirm compliance with Oregon's laws, rules, and registration requirements.
4. Determination of a violation of local ordinances or requirements will be confirmed with the appropriate agency prior to Board investigation.
5. When the Board finds that a tower's conduct or actions may reasonably be a criminal offense, the Board's findings and proposed disciplinary action will be forwarded to the appropriate law enforcement agency.

Reference:

- Initial Concept Summary Document and attachments
- August 20, 2024 Board Work Session Notes and materials