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**HOUSE BILL 2535**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Hayes, Goodman, and Pollet

AN ACT Relating to criminal background checks for employees of certain towing operators; and amending RCW 46.55.115.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 46.55.115 and 1993 c 121 s 2 are each amended to read as follows:

(1) The Washington state patrol, under its authority to remove vehicles from the highway, may remove the vehicles directly, through towing operators appointed by the state patrol and called on a rotational or other basis, through contracts with towing operators, or by a combination of these methods. When removal is to be accomplished through a towing operator on a noncontractual basis, the state patrol may appoint any towing operator for this purpose upon the application of the operator. Each letter of appointment ((~~shall be~~)) issued is contingent upon the submission of an application to the state patrol subject to subsection (2) of this section and the making of subsequent reports in such form and frequency and compliance with such standards of equipment, performance, pricing, and practices as may be required by rule of the state patrol.

((~~An~~)) (2) The state patrol may require that a towing operator that has applied for or been issued a letter of appointment or contract complete a criminal background check for prospective and current employees of the towing operator. The state patrol may refuse to issue or revoke a letter of appointment or contract if an employee that operates a tow truck for the towing operator that has been issued a letter of appointment or contract:

(a) Has been convicted of any of the following:

(i) Any class A felony or any sex offense as defined in RCW 9.94A.030, regardless of the date of conviction;

(ii) Any class B felony within the last ten years;

(iii) Any class C felony within the last five years;

(iv) Any driving under the influence offense under RCW 46.61.502, two or more times within the last five years;

(v) Any crime of false swearing; or

(b) Must register as a sex offender or kidnapping offender.

(3) The state patrol may refuse to issue or revoke a letter of appointment or contract if any applicant, partner, or corporate officer involved in daily operations of the towing operator:

(a) Has demonstrated a willful disregard for complying with ordinances, statutes, rules, or court orders, whether at the local, state, or federal level; or

(b) Fails to demonstrate character and general fitness sufficient to command the confidence of the state patrol and warrant a belief that the business will be operated honestly, fairly, and efficiently in the conduct of towing, impound, and vehicle auction activities. In determining character and general fitness, the state patrol may consider:

(i) Prior contacts with law enforcement;

(ii) Criminal record;

(iii) Reputation in the community; and

(iv) Associations.

(4)(a) A misrepresentation of fact found to have been made by a letter of appointment or contract applicant or holder is deemed a lack of good faith and constitutes good and sufficient cause for the denial of the application or the revocation of the letter of appointment or contract.

(b) For one year, beginning from the date of application denial or date of revocation of the letter of appointment or contract, only one application for the state patrol's rotational tow list may be considered and accepted for an applicant who has had its previous application denied or a holder who has had its letter of appointment or contract revoked.

(5) Any person subject to this section may request to review his or her record using the form provided in WAC 446-20-400 as it existed on the effective date of this section, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section. The request must be made by the person whose record is sought, except, if requested by the state patrol, other documentation to prove identification must be provided before viewing the record. Any person wishing to contest the information contained in his or her criminal history record must do so using the process established in chapter 446-20 WAC as it existed on the effective date of this section, or such subsequent date as may be provided by the state patrol by rule, consistent with the purposes of this section.

(6) A letter of appointment may be ((~~rescinded~~)) revoked by the state patrol upon evidence that the appointed towing operator is not complying with the laws or rules relating to the removal and storage of vehicles from the highway. The state patrol may not ((~~rescind an~~)) revoke a letter of appointment merely because a registered tow truck operator negotiates a different rate for voluntary, owner-requested towing than for involuntary towing under this chapter. The costs of removal and storage of vehicles under this section ((~~shall~~)) must be paid by the owner or driver of the vehicle, unless provided otherwise in statute or the Washington Administrative Code, and ((~~shall be~~)) is a lien upon the vehicle until paid, unless the removal is determined to be invalid.

(7) Rules ((~~promulgated~~)) adopted under this section ((~~shall be~~)) are binding only upon those towing operators appointed by the state patrol for the purpose of performing towing services at the request of the Washington state patrol. However, any rules adopted that are not consistent with this section are unenforceable.

(8) Any person aggrieved by a decision of the state patrol made under this section may appeal the decision under chapter 34.05 RCW.

(9) For the purposes of this section:

(a)(i) "Conviction" has the same meaning as defined in RCW 9.94A.030. "Conviction" does not include a deferred prosecution, stipulated order of continuance, or other method of resolving a criminal case that does not include a finding of guilty.

(ii) A criminal conviction that has been expunged must not be construed as a conviction for the purposes of this section.

(iii) Any crime referenced in this section is as defined in the criminal code. Any out-of-state conviction for an offense must be classified according to the comparable offense definitions and sentences provided by Washington law.

(b) "Daily operations" means work activities completed by employees such as impounding and recovering vehicles. Daily operations do not include administrative actions, dispatching, automotive repair and maintenance of vehicles that perform towing, roadside services, recoveries, auctions, storage yard activities, and other actions not directly related to directly impounding and recovering vehicles:

(i) The acceptance or release of a vehicle under a letter of appointment; or

(ii) Transactions for any tow requested under a letter of appointment.

**--- END ---**