

**ADOPTED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R036-12

Effective September 14, 2012

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

AUTHORITY: §1, NRS 679B.130 and 706.4481.

A REGULATION relating to possession of motor vehicles; prescribing the standard consent form which must be completed before an insurer may take possession of a motor vehicle from the operator of a tow car under certain circumstances; and providing other matters properly relating thereto.

Section 1. Chapter 690B of NAC is hereby amended by adding thereto a new section to read as follows:

1. If a motor vehicle is towed at the request of someone other than the owner or an authorized agent of the owner, an insurer may, in accordance with NRS 706.4481, obtain possession of the motor vehicle from the operator of the tow car upon obtaining the consent of the owner or authorized agent of the owner pursuant to NRS 690B.037 and providing a consent form to the operator of the tow car. Except as otherwise provided in subsection 2, the consent form required by NRS 706.4481 must be in substantially the following form:

***CERTIFICATION OF CONSENT TO THE TOWING
AND RELEASE TO AN INSURER OF A MOTOR VEHICLE***

TO: _____ (***“Releasor”***)

(Name of Tow Company or Person Currently in Possession of Vehicle Described Below)

An insurer must obtain consent from the owner of a motor vehicle, or the owner’s authorized agent, to take possession of the motor vehicle from an operator of a tow car. The owner’s authorized agent must not be a representative, employee or other agent of the insurer.

Vehicle Information

Make: _____ ***Model:*** _____ ***Year:*** _____ ***VIN:*** _____

Vehicle Owner: _____

Owner’s Authorized Agent (if applicable): _____

Insurer: _____

Insurer’s Employee or Authorized Representative: _____

Policy Number: _____ Claim Number: _____

STATEMENT OF CONSENT: “On behalf of the Insurer, I hereby warrant that the Insurer has obtained the explicit consent of the Vehicle Owner or the Owner’s Authorized Agent to have the vehicle towed and released to the Insurer. I warrant that the Insurer has documented such consent and will be able to produce evidence of such documentation at the request of the Owner or the Owner’s Authorized Agent. This form does not, in any manner, transfer ownership of the vehicle and does not waive any rights or prerogatives pertaining to such ownership. The Vehicle Owner retains all other rights, as provided under applicable Nevada law, to consent to the subsequent treatment of the vehicle within the Insurer’s claim-handling process.”

STATEMENT OF INDEMNIFICATION: “On behalf of the Insurer, I hereby warrant that the Insurer will indemnify the Releasor for any liability relating to the release of the motor vehicle to the Insurer.”

AFFIRMATION OF TRUTH: “On behalf of the Insurer, I declare under penalty of perjury, and all other applicable penalties under Nevada law, that the foregoing is true and correct.”

Employee of Insurer or Insurer’s Authorized Representative _____
Date

(Name of tow company taking possession of vehicle on Insurer’s behalf) _____
(Telephone number of tow company taking possession of vehicle)

(Address of tow company taking possession of vehicle)

No towing on behalf of the Insurer may commence until the consent of the Owner or the Owner's Authorized Agent has been obtained and this form has been completed by an employee of the Insurer or the Insurer's Authorized Representative.

2. An insurer that wishes to use a form which differs substantially from the form prescribed in subsection 1 must submit the form to the Commissioner and receive his or her approval before the insurer uses the form to obtain possession of a motor vehicle.

3. An insurer shall:

(a) Document the consent of an owner or an authorized agent of the owner which grants permission to the insurer to obtain possession of the motor vehicle; and

(b) Produce the documentation concerning consent at the request of the owner of the motor vehicle, an authorized agent of the owner or the Commissioner.

NRS 233B.066
INFORMATIONAL STATEMENT

Re: Proposed Regulation Concerning Vehicle Towing Consent Form and Possession of Motor Vehicles
LCB File No. R036-12, Division's Cause No. 12.0185

A workshop was held on August 1, 2012, and a hearing was held on August 10, 2012, at the office of the Department of Business and Industry, Division of Insurance ("Division"), located at 1818 East College Parkway, Suite 103, Carson City, Nevada 89706, with a simultaneous videoconference conducted at the Division's office located in the Bradley Building, 2501 E. Sahara Avenue, Suite 302, Las Vegas, Nevada 89104, in regard to adoption of the regulation concerning vehicle towing consent forms and possession of motor vehicles.

Public comment was solicited by posting notices of the workshop and hearing in the following public locations: the Division's Web site, the Division's Carson City and Las Vegas offices, Carson City Courthouse, Office of the Attorney General, Capitol Building Lobby, Capitol Building Press Room, Blasdel Building, and Legislative Counsel Bureau; and by providing the notices of the workshop and hearing to: the Donald W. Reynolds Press Center, Nevada State Library, Carson City Library, Churchill County Library, Clark County District Library, Douglas County Library, Elko County Library, Esmeralda County Library, Eureka Branch Library, Humboldt County Library, Lander County Library, Lincoln County Library, Lyon County Library, Mineral County Library, Pershing County Library, Storey County Library, Tonopah Public Library, Washoe County Library, and White Pine County Library.

The Division maintains an e-mail list of interested parties, comprised mainly of insurance companies, agencies, and other persons regulated by the Division. These persons were notified of the workshop and hearing and that a copy of the regulation could be obtained from or examined on the Division's Internet Web site.

The workshop was attended by three (3) interested members of the public in Carson City and three (3) in Las Vegas. The proposed regulation was presented orally by Gennady Stolyarov II, on behalf of the Division. One (1) written comment was received prior to the August 1, 2012 workshop from Mr. Clark Whitney of Tow Guys.

Regarding the persons who gave testimony at the workshop and/or submitted written comments, the following disclosures are made pursuant to NRS 233B.066(1)(c):

| Name | Organization Represented | Business Address | Business Telephone Number | Electronic Mail Address |
|------------------|---------------------------------|---|----------------------------------|---|
| Andrew MacKay | Nevada Transportation Authority | 1755 East Plumb Lane, Suite 216 Reno, NV 89502 | (775)688-2821 | amackay@nta.nv.gov |
| David R. Walker | Walker Towing | 2398 Silver Wolf Dr. Henderson, NV 89011 | (702)565-6220 | DRWalkerSR@embarqmail.com |
| Clark Whitney | Tow Guys | 2810 N. Nellis Blvd. Las Vegas, NV 89115 | (702)795-1700 | clarkwhitney.cw@gmail.com |
| Robert L. Compan | Farmers Insurance | 2030 E. Flamingo Road #200 Las Vegas, NV 89119 | (702)401-6093 | robert.compan@farmersinsurance.com |

The hearing was attended by two (2) interested members of the public in Carson City and three (3) in Las Vegas. The proposed regulation was presented orally by Gennady Stolyarov II, on behalf of the Division. Two (2) written comments were received on August 7, 2012, after the workshop but prior to the hearing, both from Mr. Mark Sektnan of the Property Casualty Insurers of America (PCI).

Regarding the persons who gave testimony at the hearing and/or submitted written comments, the following disclosures are made pursuant to NRS 233B.066(1)(c):

| Name | Organization Represented | Business Address | Business Telephone Number | Electronic Mail Address |
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| Andrew MacKay | Nevada Transportation Authority | 1755 East Plumb Lane, Suite 216 Reno, NV 89502 | (775)688-2821 | amackay@nta.nv.gov |
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|---------------|---|--|---------------|----------------------------------|
| Clark Whitney | Tow Guys | 2810 N. Nellis Blvd. Las Vegas, NV 89115 | (702)795-1700 | clarkwhitney.cw@gmail.com |
| Mark Sektnan | Property Casualty Insurers of America (PCI) | 1415 L Street, Suite 670, Sacramento, CA 95814 | (916)440-1115 | mark.sektnan@acicnet.org |

Based upon the written comments received and the oral comments and testimony provided, the proposed regulation, LCB File No. R036-12, was adopted with no amendments.

The economic impact of the regulation is as follows:

- (a) On the business it is to regulate: **Beneficial effect:** Insurers will be able to utilize the consent form promulgated in this regulation in order to efficiently obtain possession of a vehicle after receiving consent from the vehicle owner or the owner’s authorized agent. No adverse effects are anticipated.
- (b) On the small businesses: **Beneficial effect:** Because of the provisions of the proposed consent form, tow companies that are small business will be indemnified from any liability in releasing the vehicle to insurers who are able to present the consent form promulgated in this regulation. No adverse effects are anticipated.
- (c) On the public: **Beneficial effect:** This regulation includes strong protections for vehicle owners to ensure that this consent form is only used when the consent of the vehicle owner or the owner’s authorized agent is genuine. No adverse effects are anticipated.

The Division will not incur any additional expense to enforce this regulation.

The Division is not aware of any overlap or duplication of the regulation with any state, local or federal regulation.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

IN THE MATTER OF THE

CAUSE NO. **12.0185**
LCB FILE NO. **R036-12**

**REGULATION CONCERNING
VEHICLE TOWING CONSENT
FORMS AND POSSESSION OF
MOTOR VEHICLES**

**SUMMARY OF PROCEEDINGS
AND ORDER**

SUMMARY OF PROCEEDINGS

A public workshop, as required by Nevada Revised Statute (“NRS”) 233B.061, on the proposed regulation concerning vehicle towing consent forms and possession of motor vehicles was held before Amy L. Parks, Esq. (“Hearing Officer”), on August 1, 2012, at the office of the Nevada Division of Insurance (“Division”) in Carson City, Nevada, and was videoconferenced to the Las Vegas office located in the Bradley Building in Las Vegas, Nevada. A public hearing on the proposed regulation was also held before the Hearing Officer, on August 10, 2012, in Carson City, Nevada, and was videoconferenced to the Bradley Building in Las Vegas, Nevada. The regulation is proposed under the authority of NRS 679B.130 and NRS 706.4481.

The workshop was attended by three (3) members of the public in Carson City and three (3) members of the public in Las Vegas. The hearing was attended by two (2) members of the public in Carson City and three (3) members of the public in Las Vegas. In addition to testimony and comments by employees of the Division, four (4) members of the public testified at the workshop, and three (3) members of the public testified at the hearing. These testimonies will be summarized later in the present document.

One (1) written comment was received prior to the August 1, 2012 workshop. Mr. Clark Whitney of Tow Guys stated that he was concerned about the language at the end of the form, which states that “No towing on behalf of the Insurer may commence until the consent of the

Owner or the Owner's Authorized Agent has been obtained and this form has been completed by an employee of the Insurer or the Insurer's Authorized Representative." Mr. Whitney commented that some tow companies required the owner of the vehicle to travel to the company and physically sign a release to the insurance company before the car would be released; and that such towing companies imposed this and other requirements in order to prolong the vehicle's storage. Mr. Whitney further commented, however, that other tow companies were reasonable and released the vehicle with a fax or phone call from an agent. Mr. Whitney was concerned that the wording in question restricts those companies from releasing cars they would normally release with a fax. He also expressed his concern regarding the mandatory nature of the consent form.

During the workshop, Mr. Gennady Stolyarov II testified on behalf of the Division. In response to Mr. Whitney, Mr. Stolyarov clarified that the consent form may indeed be delivered by fax or e-mail – or by any other convenient method, as long as the form is filled out. The physical presence of the vehicle owner is not required to deliver the form. Furthermore, the signature of the vehicle owner on the form is not required. The insurer or the insurer's authorized representative is simply required to obtain the owner's consent and document such consent in the insurer's records. Mr. Stolyarov also explained that the consent form's existence and use is a requirement of **NRS 706.4481**, and that the language cited by Mr. Whitney is intended as an important consumer protection to prevent towing by the insurer in the event that the insurer has not, in fact, obtained the consent of the owner – verbal or otherwise. At the workshop, Mr. Whitney stated that he understood the purpose of this wording subsequent to the Division's explanation. He then asked whether an insurer could ever be the authorized agent of the vehicle owner. Mr. Stolyarov replied that the consent form specifically states that the owner's authorized agent must not be a representative, employee, or other agent of the insurer. Mr. Whitney then stated that sometimes the insurance adjuster represents himself as the authorized agent of the

vehicle owner and that this regulation makes it clear that this is not the case. Mr. Stolyarov affirmed Mr. Whitney's understanding of the regulation.

Mr. Robert Coman of Farmers Insurance then stated that there may be other circumstances, such as the insurer's ability to inspect the vehicle, which are separate from the matters addressed by this regulation. Mr. Stolyarov replied that, in this regulation, the question of the identity of the owner's authorized agent is restricted to the subject of this consent form, and the regulation is silent with regard to other matters of owner representation. The consent form in this regulation provides, in essence, that a claim adjuster may not give consent on behalf of the owner to release the vehicle without the owner or some other party representing the owner being notified. Mr. Whitney responded that hearings and workshops of the Nevada Transportation Authority might be a more appropriate venue for pursuing his other concerns.

During the workshop, Mr. Stolyarov explained that this regulation creates a new section in Chapter 690B of the Nevada Administrative Code. Mr. Stolyarov discussed Subsection 1, which includes the consent form and provides that the insurer must use a form that is substantially the same, except as otherwise permitted in Subsection 2. Mr. Stolyarov also explained that the Division's intent with this form is to permit electronic delivery and electronic signatures by employees or authorized representatives of the insurer. Mr. Stolyarov further discussed Subsection 2, which provides that an insurer that wishes to use a form which differs substantially from the form prescribed in Subsection 1 must submit the form to the Commissioner and receive the Commissioner's approval prior to using the form. The existing process for filing and approval of forms using the System for Electronic Rate and Form Filings ("SERFF") would accommodate requests by insurers to use substantially different consent forms, with each such form being subject to review for consistency with applicable Nevada law.

At the workshop, Mr. Stolyarov also discussed Subsection 3, which provides that an insurer shall document the consent of an owner or authorized agent of the owner who grants permission to the insurer to obtain possession of the motor vehicle, and produce the

documentation concerning consent at the request of the owner of the motor vehicle, an authorized agent of the owner, or the Commissioner. Mr. Stolyarov explained that this subsection provides important consumer protections to ensure that the owner's consent is properly documented and accessible. The subsection is flexible as to the manner of documentation, and electronic documentation would fulfill its intent.

A large portion of the workshop was devoted to addressing comments from the public. Mr. David Walker of Walker Towing asked whether the tow yard (the releasor) must obtain the consent form in order to release the vehicle. Mr. Stolyarov affirmed this fact and cited Subsection 1, Paragraph (b) of NRS 706.4481, which requires an insurer who seeks to obtain possession of the motor vehicle to provide the operator of the tow car with the consent form. Mr. Stolyarov stated that this is a transaction between the insurer and the releasor – and the insurer could deliver it to the releasor in any mutually convenient manner. Chairman Andrew MacKay of the Nevada Transportation Authority (“NTA”) expressed his agreement with this understanding of the letter of the law.

Mr. Clark Whitney asked whether any additional sections of the Nevada Administrative Code would need to be enacted via regulation in order to enable the NTA to enforce the use of the consent form. Hearing Officer Parks replied that the mandatory nature of the consent form is already codified in statute, in Chapter 706 of NRS, which the NTA has the authority to enforce.

At the workshop, Mr. Robert Compan asked which agency would have the authority to enforce the provisions of this regulation. Chairman MacKay testified that his agency is responsible for the regulation of the tow-car industry and the enforcement of Chapter 706 of NRS. He stated that if a tow operator is presented with a release form from the insurance company and does not release a vehicle, then this would be a violation of NRS 706.4481, which is under the authority of the NTA.

Later during the workshop, Mr. Adam Plain, Insurance Regulation Liaison for the Division of Insurance, asked Mr. Stolyarov if, after the release of the vehicle by the tow-car

operator, the vehicle owner alleges that the consent was not properly obtained or otherwise fraudulent, the enforcement would fall to the Commissioner of Insurance under NRS 690B or to the NTA under NRS 706. Mr. Stolyarov replied that, subsequent to the release of the vehicle, the matter of the appropriateness of the owner's consent is between the vehicle owner and the insurer – which is why Senate Bill 142, Section 3, establishes a new section of Chapter 690B of NRS, addressing the owner's ability to give such consent – specifically, that the owner of the vehicle may give consent for how the vehicle is subsequently disposed of, whether it is a total-loss or a repairable vehicle, and to what location the owner may direct the vehicle to be towed. Mr. Stolyarov explained that these matters would be within the scope of the authority of the Commissioner of Insurance to address if there is a consumer complaint. Hearing Officer Parks expressed her concurrence with this interpretation.

Mr. David Walker interpreted the Notice of Intent that was issued for this regulation to infer that the towing yards will be required to release the vehicle sooner than is appropriate. He stated, concerning his own business, that a time delay in releasing the vehicle only occurs when there is a delay with the claim adjuster or when there is an attempt to dump the vehicle. He stated that his company has been using the consent form (in its preliminary version, made available on the Division's Web site for insurers to use at their discretion) since October 2011 and has received mixed responses from it. Mr. Walker explained that, while most of the larger insurers have no problems with this form, some of the independent adjusters and other companies think that the tow yards are requiring this form as a delay tactic. Mr. Walker stated that there is no delay and that the average vehicle is picked up from his company's yard in five to seven days. He explained that the consent form streamlines the release but does nothing to address the time the vehicle is held. Hearing Officer Parks replied that the content of the public Notices of Intent is not part of the testimony for the workshop. She also stated that she is certain that the NTA and Division of Insurance understand that the tow yards would only release the vehicles when appropriate and in accordance with applicable law.

On August 7, after the workshop and prior to the hearing, two additional written comments were received from Mr. Mark Sektnan of the Property Casualty Insurers of America (“PCI”). Mr. Sektnan noted that the proposed form asks for a claim number and inquired why this information is necessary for a tow company to have. Mr. Sektnan also stated that the “Affirmation of Truth” language in the form should be part of the regulation but should not be part of the form.

Mr. Stolyarov noted at the hearing that the Division added the Claim Number field to the form pursuant to a previous suggestion by a representative of State Farm Insurance during the drafting of the consent form. Mr. Stolyarov further noted that the inclusion of a claim number would be useful in documenting that a claim has, in fact, occurred, which gives added legitimacy to the insurer’s attempt to obtain possession of the vehicle.

Regarding the “Affirmation of Truth” language, Mr. Stolyarov expressed the Division’s respectful disagreement with Mr. Sektnan’s statement. Mr. Stolyarov explained that the “Affirmation of Truth” language should be in the form itself, since it is a substitute for the signature of the vehicle owner on the form. At the Commissioner’s Property and Casualty Advisory Committee meeting of August 24, 2011, a representative of Farmers Insurance recommended similar language as a way of enabling the insurer to certify that the owner’s consent has been obtained, in lieu of obtaining the owner’s actual signature. The Division agreed to this treatment precisely because, by affirming the truth of this form under penalty of perjury and all other applicable penalties under Nevada law, the insurer would subject itself to strong penalties if the consent of the vehicle owner or owner’s authorized representative was not obtained. Because the insurer would have a strong incentive to avoid incurring such penalties, the Division believes that the presence of this language in the consent form would motivate insurers to be diligent in seeking the consent of the vehicle owner or owner’s authorized representative. The presence of the language in the form itself prominently directs to the insurer’s attention the significance of obtaining consent, whereas there is no guarantee that the

insurer's personnel will thoroughly review the text of the regulation every time they fill out a consent form. Mr. Stolyarov further added that NRS 706.4481(2) clearly requires the Commissioner to develop a "consent form" – which requires some meaningful relationship to the consent of the vehicle owner. Mr. Stolyarov explained that, since the Division agreed not to include the actual signature of the owner in the consent form, the "Affirmation of Truth" language is necessary to achieve an ironclad guarantee that such consent has, in fact, been obtained in the absence of a direct signature. Mr. Stolyarov expressed the Division's view that, if the "Affirmation of Truth" language is removed, the proposed form would cease to be a true consent form and would not fulfill statutory requirements.

During the remainder of the hearing, Mr. Stolyarov again presented this proposed regulation, LCB File No. R036-12, for adoption, with no further amendment. He also summarized the proceedings of the workshop. Chairman MacKay, Mr. Clark Whitney, and Mr. David Walker also testified briefly to express their appreciation for the work of the Division on the consent form and for the manner in which the workshop and hearing were conducted.

RECOMMENDED ORDER OF THE HEARING OFFICER

Based upon the testimony received at the workshop and hearing, and the written comments received, it is recommended that the regulation concerning vehicle towing consent forms and possession of motor vehicles, LCB File No. R036-12, be adopted, as proposed, as a permanent regulation of the Division. See Exhibit A.

SO RECOMMENDED this 28th day of August, 2012.

/s/
AMY L. PARKS
Hearing Officer

ORDER OF THE COMMISSIONER

Having reviewed the record in this matter and the recommendation of the Hearing Officer, it is hereby ordered that the regulation concerning vehicle towing consent forms and possession of motor vehicles, LCB File No. R036-12, be adopted, as proposed, as a permanent regulation of the Division. See Exhibit A.

SO ORDERED this 28th day of August, 2012.

SCOTT J. KIPPER
Commissioner of Insurance

By: _____/s
TODD RICH
Deputy Commissioner
with Delegation of Authority (See Exhibit B)