

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2594

By: Nance

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2001, Sections 951, as last amended by Section 25, Chapter 418, O.S.L. 2004, 953, as amended by Section 26, Chapter 418, O.S.L. 2004 and 953.1, as last amended by Section 2, Chapter 360, O.S.L. 2004 (47 O.S. Supp. 2005, Sections 951, 953 and 953.1), which relate to wreckers and towing services; modifying scope of certain definition; prohibiting display of wrecker license number except under certain circumstances; modifying certain hourly rate exception; requiring certain rate be billed based on weight or classification; providing an exception; providing exception to rate for extra labor; prohibiting certain rates from exceeding the average of rates; prohibiting eligibility of gross profit markup by wrecker service under certain circumstances; providing rate limitation for disposable supplies; requiring wrecker service to furnish invoice upon demand; providing limitations on use of air bags; allowing charge for on-scene coordinators; providing fee limitation; prohibiting certain charge; allowing charge for certain notifications; providing charge limitations; prohibiting certain charge until specified period of time has lapsed; providing an exception; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 47 O.S. 2001, Section 951, as last amended by Section 25, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2005, Section 951), is amended to read as follows:

Section 951. As used in Sections 951 through 964 of this title:

1. "Wrecker or wrecker vehicle" means any motor vehicle that is equipped with any device designed to tow another vehicle or combination of vehicles. The use of the term "wrecker" or "wrecker

vehicle" shall be construed to include a combination wrecker or combination wrecker vehicle, as defined in paragraph 2 of this ~~subsection~~ section, unless a specific differentiation is otherwise described;

2. "Combination wrecker" or "combination wrecker vehicle" means any wrecker vehicle which is designed and equipped with two separate and distinct devices to tow simultaneously two or more other vehicles or combinations of vehicles, whether or not both devices are in use simultaneously. One of the devices shall allow another vehicle to be loaded onto and transported upon the wrecker vehicle, and one of the devices shall allow another vehicle to be attached to and pulled by the wrecker vehicle;

3. "Tow" or "towing" means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of:

- a. attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or
- b. loading the vehicle onto and transporting the vehicle upon the wrecker vehicle;

4. "Rollback equipment" means a towing device or equipment upon which the towed vehicle is loaded and transported, removing the towed vehicle completely from the surface of the roadway. The term "rollback equipment" shall include car haulers;

5. "Dolly" means a towing device or equipment which lifts and suspends one axle of the towed vehicle above the surface of the roadway;

6. "Wrecker or towing service" means engaging in the business of or performing the act of towing or offering to tow any vehicle, except:

- a. where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly

visible letters not less than two (2) inches in height
the words "NOT FOR HIRE",

- b. where the service is performed by a transporter as defined in Section 1-181 of this title,
- c. where service is performed in conjunction with the transportation of household goods and property,
- d. where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or
- e. where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, either the vehicle is not involved in a collision or the vehicle is involved in a collision and is released at the discretion of the investigating law enforcement officer, and is being towed:

- (1) in either direction across the border between Oklahoma and a neighboring state, or
 - (2) through Oklahoma in transit to another state;
- provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law;

7. "Commissioner" means the Commissioner of Public Safety;

8. "Department" means the Department of Public Safety;

9. "Operator" means any person owning or operating a wrecker vehicle or wrecker or towing service;

10. "Officer" means any duly authorized law enforcement officer;

11. "Roadway" means any public street, road, highway or turnpike or the median, easement or shoulder of a roadway;

12. "Service call" means the act of responding to a request for service with a wrecker vehicle in which a service is performed; and

13. "Vehicle" shall:

- a. have the same meaning as defined in Section 1-186 of this title, and
- b. for the purposes of this chapter when referring to a vehicle or combination of vehicles being towed or stored, include a vessel. The term "vessel" shall have the same meaning as defined in Section 4002 of Title 63 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 47 O.S. 2001, Section 953, as amended by Section 26, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2005, Section 953), is amended to read as follows:

Section 953. A. No operator shall be permitted nor shall any employee of any operator be permitted, allowed or caused to solicit business or make service calls without the operator first having obtained from the Department of Public Safety a license to operate a wrecker or towing service. The number of the license shall be displayed, in conformance with rules of the Department, on both sides of every wrecker vehicle operated by the wrecker or towing service. A wrecker license number shall not be displayed on a wrecker vehicle unless the vehicle is owned or leased by the licensed wrecker service.

B. The license fee required by this section shall be in lieu of the motor carrier filing fee as required in Section 165 of this title. No applicant for a wrecker license shall be required to prove public convenience and necessity, file notices, nor shall a public hearing be held. The fee for such license shall be One Hundred Dollars (\$100.00), of which Ten Dollars (\$10.00) shall be allocated to the Department for the administration of Section 951 et seq. of this title.

C. All licenses shall expire on the last day of the calendar year and may be renewed annually at a cost of Fifty Dollars (\$50.00) upon application to the Department as prescribed by rule. No

license fee shall be refunded in the event that the license is suspended or revoked.

D. The Department shall issue a letter of reprimand, cancel, suspend, revoke, or refuse to issue or renew the license of an operator when it finds the licensee or applicant has not complied with or has violated any of the provisions of Section 951 et seq. of this title, or any rules adopted by the Department. A suspension or revocation shall be for a period of time deemed appropriate by the Department for the violation. Any canceled, suspended, or revoked license shall be returned to the Department by the operator, and the operator shall not be eligible to apply for another license until the period of suspension or revocation has elapsed.

E. The provisions of the Oklahoma Administrative Procedures Act are expressly made applicable to Section 951 et seq. of this title.

F. In any civil action to enforce the equal application of the alternation or rotation of wrecker or towing services regulated by a political subdivision of the state, the prevailing party shall be allowed attorney fees determined by the court, to be taxed and collected as costs.

G. Fees collected pursuant to the provisions of this section shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury except as provided by subsection H of this section.

H. Fees allocated to the Department by this section shall be deposited in the Department of Public Safety Revolving Fund.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 953.1, as last amended by Section 2, Chapter 360, O.S.L. 2004 (47 O.S. Supp. 2005, Section 953.1), is amended to read as follows:

Section 953.1 A. The rates and provisions of this section shall apply only to determine the maximum fees and charges for wrecker or towing services performed in this state, including incorporated and unincorporated areas, by a wrecker or towing

service licensed by the Department of Public Safety when that service appears on the rotation log of the Department or on the rotation log of any municipality, county or other political subdivision of this state, and the services performed are at the request or at the direction of any officer of the Department or of a municipality, county, or political subdivision. No wrecker or towing service in the performance of these services shall charge any fee which exceeds the maximum rates established in this section, adjusted as provided in subsection H of this section. Such rates shall be in addition to any other rates, fees or charges authorized or required by law. Any wrecker or towing service is authorized to collect from the owner, lienholder, agent or insurer accepting liability for paying the claim for a vehicle or purchasing the vehicle as a total loss vehicle from the registered owner of any towed or stored vehicle, the fee required by Section 904 of this title.

B. When wrecker or towing services are performed as provided in subsection A of this section:

1. Each performance of a wrecker or towing service shall be recorded by the operator on a bill or invoice as prescribed by rules of the Department;

2. Nothing herein shall limit the right of an operator who has provided or caused to be provided wrecker or towing services to require prepayment, in part or in full, or guarantee of payment of any charges incurred for providing such services;

3. This section shall not be construed to require an operator to charge a fee for the performance of any wrecker or towing services; and

4. The operator is authorized to collect all lawful fees from the owner, lienholder or agent or insurer accepting liability for paying the claim for a vehicle or purchasing the vehicle as a total loss vehicle from the registered owner of the towed vehicle for the

performance of any and all such services. An operator shall release the vehicle from storage upon authorization from the owner, agent or lienholder of the vehicle or, in the case of a total loss, the insurer accepting liability for paying the claim for the vehicle or purchasing the vehicle where the vehicle is to be moved to an insurance pool yard for sale.

C. Distance rates.

1. Rates in this subsection shall apply to the distance the towed vehicle is transported and shall include services of the operator of the wrecker vehicle. Hourly rates, as provided in subsection D of this section, may be applied in lieu of distance rates. Hourly rates may be applied from the time the wrecker vehicle is assigned to the service call until the time it is released from service either upon return to the premises of the wrecker or towing service or upon being assigned to perform another wrecker or towing service, whichever occurs first. When the hourly rate is applied in lieu of distance towing rates, the operator may not apply the two-hour minimum prescribed in subsection D of this section nor may hookup or mileage charges, as prescribed in this section, be applied.

Such distance rates shall be computed via the shortest highway mileage as determined from the latest official Oklahoma Department of Transportation state highway map, except as follows:

- a. for distances or portions of distances not specifically provided for in the governing highway map, the actual mileage via the shortest practical route will apply,
- b. in computing distances, fractions of a mile will be retained until the final and full mileage is determined, at which time any remaining fraction shall be increased to the next whole mile,

- c. when, due to circumstances beyond the control of the wrecker or towing service, roadway conditions make it impractical to travel via the shortest route, distance rates shall be computed based on the shortest practical route over which the wrecker vehicle and the vehicle it is towing can be moved, which route shall be noted on the bill or invoice, or
- d. when the wrecker or towing service is performed upon any turnpike or toll road, the turnpike or toll road mileage shall be used to determine the distance rates charged and the turnpike or toll road fees may be added to the bill or invoice.

2. Maximum distance rates shall be as follows:

Weight of Towed Vehicle (In pounds, including equipment and lading)	Distance Towed	Rate Per Mile
Single vehicle: 8,000 or less	25 miles or less	\$3.00
Single vehicle: 8,000 or less	Over 25 miles	\$2.50
Single vehicle: 8,001 to 12,000	25 miles or less	\$3.40
Single vehicle: 8,001 to 12,000	Over 25 miles	\$3.00
Single vehicle: 12,001 to 40,000	Any	\$5.75
Single vehicle: 40,000 or over	Any	\$6.75
Combination of vehicles	Any	\$6.75

D. Hourly Rates.

1. Rates in this subsection shall apply for the use of a wrecker vehicle and shall include services of the operator of such wrecker, except as provided in paragraph 4 of this subsection. Rates shall apply for all wrecker or towing services performed that are not otherwise provided for in this section, including, but not limited to, waiting and standby time, but shall not include the first fifteen (15) minutes of service ~~following the hookup of a~~

~~vehicle when a hookup fee is assessed,~~ as provided in subsection E of this section.

Hourly rates shall apply from the time the vehicle or labor is assigned to the service call until the time it is released from service either upon return to the premises of the wrecker or towing service or upon being assigned to perform another wrecker or towing service, whichever occurs first. Whenever a wrecker vehicle is used to tow a vehicle subject to distance rates, as provided in subsection C of this section, hourly rates shall apply only for the time such wrecker is used in the performance of services other than transportation, except when such hourly rates are used in lieu of such distance rates.

As used in this subsection, rates stated per hour apply for whole hours and, for fractions of an hour, rates stated per fifteen (15) minutes apply for each fifteen (15) minutes or fraction thereof over seven and one-half (7 1/2) minutes. However, if the service subject to an hourly rate is performed in less than two (2) hours, the charge applicable for two (2) hours may be assessed, except as provided for in subsection C of this section.

Maximum hourly rates shall be billed at a rate based on the towed vehicle weight as provided in paragraph 2 of this subsection or the classification of the size of the wrecker vehicle used to perform the service as provided in paragraph 3 of this subsection, whichever is less. Provided, if, due to circumstances of the towing situation, a larger wrecker vehicle is required to tow a Class D motor vehicle, then the fee for the larger wrecker vehicle may be charged.

2. Maximum hourly rates for wrecker or towing services performed for passenger vehicles, when rates for such services are not otherwise provided for by law, shall be as follows:

Weight of Towed Passenger Vehicle (In pounds)	Rate Per Hour	Rate Per 15 Minutes
--	------------------	------------------------

Single vehicle: 8,000 or less	\$60.00	\$15.00
Single vehicle: 8,001 to 24,000	\$80.00	\$20.00
Single vehicle: 24,001 to 44,000	\$120.00	\$30.00
Single vehicle: 44,001 or over	\$180.00	\$45.00
Combination of vehicles	\$180.00	\$45.00

3. Maximum hourly rates for all other wrecker or towing services, when rates for such other services are not otherwise provided for by law, shall be determined based upon the gross vehicle weight rating of each wrecker vehicle used as follows:

GVWR of Wrecker Vehicle (In pounds)	Rate Per Hour	Rate Per 15 Minutes
8,000 or less	\$60.00	\$15.00
8,001 to 24,000	\$80.00	\$20.00
24,001 to 44,000	\$120.00	\$30.00
44,001 or over	\$180.00	\$45.00
Combination wrecker vehicle with GVWR of 24,000 or over	\$180.00	\$45.00

4. a. Maximum hourly rates for extra labor shall be Thirty Dollars (\$30.00) per person per hour; provided, the gross profit markup allowed in subparagraph b of this paragraph shall not apply to this rate.

b. Maximum hourly rates for skilled or specialized labor and/or equipment shall be the actual customary and ordinary rates charged for such labor and/or equipment; provided, these rates shall not exceed that of the average of rates charged by commercial equipment rental and specialized labor companies in the area. When skilled or specialized labor or equipment is required, the wrecker operator's cost for such skilled or specialized labor or equipment plus a twenty-five percent (25%) gross profit markup to cover overhead costs for such labor will be added to the

invoice or freight bill to be collected in addition to all other applicable charges; provided, the cost of skilled or specialized labor or equipment provided by a company owned by the owner of, or any party to the ownership of, the wrecker service shall not be eligible for the gross profit markup.

c. The maximum markup rate for disposable supplies shall not exceed twenty-five percent (25%) of the cost of the product. The wrecker service shall furnish the sales invoice for any disposable supplies used and being charged upon the wrecker and towing bill upon demand by the person or entity paying the wrecker service bill or by an employee of the Department of Public Safety.

E. Hookup Rates.

1. Rates in this subsection shall apply to the hookup of a vehicle to a wrecker vehicle when such hookup is performed in connection with a wrecker or towing service described in this section. Such hookup rate shall include the first fifteen (15) minutes of such service, for which there shall be no additional fee charged, but shall not include the use of a dolly or rollback equipment or a combination wrecker vehicle to accomplish such hookup, for which an additional fee may be charged as provided in subsection F of this section. Hookup shall include, but not be limited to, the attachment of a vehicle to or the loading of a vehicle onto a wrecker vehicle.

2. Maximum hookup rates shall be as follows:

Weight of Vehicle Being Hooked Up

(In pounds, including equipment and lading)	Rate
Single vehicle: 8,000 or less	\$65.00
Single vehicle: 8,001 to 12,000	\$75.00

Single vehicle: 12,001 to 24,000	\$85.00
Single vehicle: 24,001 or over	\$95.00
Combination of vehicles	\$95.00

F. Additional Service Rates.

1. Rates in this subsection shall apply to the performance of the following services:

- a. the disconnection and reconnection of a towed vehicle's drive line when necessary to prevent mechanical damage to such vehicle,
- b. the removal and replacement of a towed vehicle's axle when necessary to prevent mechanical damage to such vehicle, or
- c. the use of a dolly or rollback equipment when essential to prevent mechanical damage to a towed vehicle or when neither end of such vehicle is capable of being towed safely while in contact with the roadway.

2. Maximum additional service rates shall be as follows:

Weight of Towed Vehicle (In pounds, including equipment and lading)	Service Performed		
	Disconnect Drive Line; Remove Axle	Reconnect Drive Line; Replace Axle	Use of Dolly or Rollback Equipment
	Rate Per Service Performed		
8,000 or less	\$10.00	\$15.00	\$25.00
8,001 to 12,000	\$15.00	\$20.00	\$30.00
	Rate Per 15 Minutes of Service Performed		
12,001 or over	\$20.00	\$20.00	Not applicable

3. The fee for the use of air bags shall not exceed Three Thousand Five Hundred Dollars (\$3,500.00) for the first six (6) hours of use, which shall include transportation to the scene and set up. The fee for the use of air bags for each additional hour

over six (6) hours shall be Six Hundred Dollars (\$600.00). This fee shall not be subject to the gross profit markup.

G. An operator shall be required to provide reasonable documentation to substantiate all lawful fees charged the owner, lienholder, agent or insurer paying the claim for the towed vehicle. Fees for which the operator is being reimbursed or having paid to a third party, shall include copies of the invoice or other appropriate documents to substantiate such payment to said third party.

H. Wrecker fees, including maximum distance, hourly, and hookup rates shall be adjusted weekly by the Department of Public Safety by adding a fuel surcharge as provided in this section. The Department shall base the surcharge on the Department of Energy "weekly retail on-highway diesel prices" for the "Midwest region" using One Dollar and ninety cents (\$1.90) per gallon as the base price with no fees added. The wrecker fees shall be adjusted to allow a one-percent increase in fees for every ten-cent increase in fuel cost starting at Two Dollars (\$2.00) per gallon.

I. Wrecker services may charge, but are not required to charge, for an on-scene coordinator when more than two large truck wreckers are used at the scene of a collision. The fee for the on-scene coordinator shall not exceed One Hundred Twenty-five Dollars (\$125.00) per hour.

J. Wrecker services shall not charge any party for completing forms required by the Department of Public Safety.

K. Wrecker services may charge, but are not required to charge, for the required notification of a vehicle impounded from private property. The charge shall not exceed Twenty Dollars (\$20.00) for the first notification of the owner or lienholder of the vehicle impoundment. Each additional or subsequent notification of the vehicle impoundment shall not exceed Five Dollars (\$5.00).

L. Wrecker services shall not charge for processing forms required by Section 91 of Title 42 of the Oklahoma Statutes until twenty-five (25) days have lapsed from the date of impoundment unless the vehicle is processed under paragraph 11 of subsection A of Section 91 of Title 42 of the Oklahoma Statutes.

SECTION 4. This act shall become effective November 1, 2006.

50-2-7876 GRS 01/12/06