

Repossession agents must be licensed by TDLR as “Tow Truck Operators”

What are the different types of licenses for tow truck operators?

All tow truck operators (drivers) are required to have one of the following licenses:

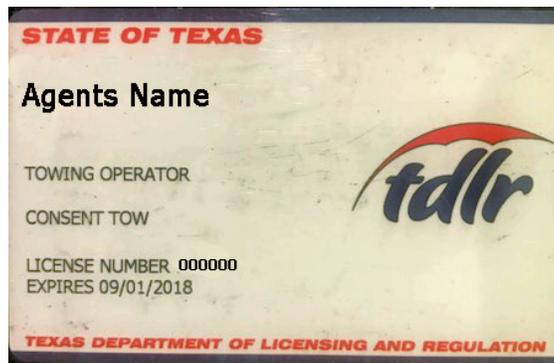
- Incident Management (IM) License** - Required to operate a tow truck with an Incident Management Permit. A driver with an IM License may also operate a tow truck with a Private Property Permit or Consent Tow Permit.
- Private Property (PP) License** - Required to operate a tow truck with a Private Property Permit. A driver with a PP License may also operate a truck with a Consent Tow Permit but may not operate a truck with an IM Permit.
- Consent Tow (CT) License** - Required to operate a tow truck that has a Consent Tow Permit. A driver with a CP License may not operate a tow truck that has an IM Permit or PP Permit.

Each of the above license types can also be paired with a VSF Employee registration for a Dual Tow Operator/VSF Employee License.

Who may legally repossess collateral in Texas?

Law enforcement officers should be aware that all towing operator (drivers) must carry a TDLR license.

All Texas repossession agents must have a “TDLR” Towing Operator License



All Texas repossession agencies must have a “TDLR” Licenses


TEXAS DEPARTMENT OF LICENSING AND REGULATION
TOW TRUCK CERTIFICATE OF REGISTRATION

Certificate of
Registration No: 0000000
Expiration Date: 12/31/2018

Company Name
Company Address

Having fulfilled the application requirements of the Texas Department of Licensing and Regulation (TDLR) relating to the registration of tow trucks, this Certificate of Registration is hereby granted to:

Company Name
Company Address

This Certificate of Registration is no transferable.
VOID IF ALTERED

Date Printed: 12/13/2017

What to expect on a TDLR Inspection

TDLR Inspections are required every two years. There are no fees associated with this inspection.

All tow company owners or managers must update company contact information in “**TOOLS**” to include telephone numbers, email, and mailing/physical addresses.

Tow Inspection Round-Ups are a convenient way to satisfy the two-year periodic inspection requirement. Inspectors will call to assign an inspection date. Please be sure to come on your assigned date.

Tow truck and equipment inspection includes:

- Tow operator’s license (TDLR license and driver’s license) for all drivers
- Current TLDR cab card.
- Proof of current liability insurance.
- Legible manufacturer’s data plate or document from manufacturer stating the capacity of boom, winch or carry mechanism.
- Winch in good condition (must not exceed capacity of boom or leak oil.)
- Hydraulic lines free of leaks and in good condition.
- Cables meeting manufacturer’s specifications and in good condition.
- Tow truck required signage.

Additional Required Information:

For Consent Tow Companies

- Documentation that drug tests have been performed (not the actual results of the test.)
- Active tow company insurance.

For Private Property and Incident Management Tow Companies

- Proof the company is following the adopted drug test policy for all employees and the owner, if applicable, and documentation that drug tests have been performed (not the actual results of the test.)
- Five (5) non-consent tow tickets from each of the following months: December 2016, May 2017, January 2018 (15 tickets total). If you do not have five for each month, we will need to inspect 15 tow tickets from the last six months.
- Active tow company insurance.

Three Most Common Violations Found at Tow Inspection Round-Ups

1. Lack of the required drug testing for all tow operators (16 Tex. Admin Code 86.710)
2. Required tow truck signage missing or improperly displayed (16 Tex. Admin Code 86.701)
3. Data plate not legible or no manufacturer's documentation indicating the capacity of the boom, the winch or the carry mechanism (16 Tex. Admin. Code Ch. 86.1000(a)(1)(2))

TDLR will not check for tow truck equipment (fire extinguishers, broom, shovel, etc.).

Texas Business and Commerce Code

BUS & COM § 9.609.

Secured Party's Right to Take Possession After Default

(a) After default, a secured party:

- (1) may take possession of the collateral; and
- (2) without removal, may render equipment unusable and dispose of collateral on the debtor's premises under Section 9.610.

(b) A secured party may proceed under Subsection (a):

- (1) pursuant to judicial process; or
- (2) without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

“Breach of the Peace” Defined.

Article 9 does not define “breach of the peace.”

A “breach of the peace” as used in the Uniform Commercial Code, means conduct that incites or is likely to incite immediate public turbulence, or that leads to or is likely to lead to an immediate loss of public order and tranquility.” Johnson v. Grossinger Motorcorp, Inc., 753 N.E.2d 431, 440 (Ill. 2001).

This statute provides that a creditor is entitled to use self-help repossession, but may only seize collateral without a court order if it can be accomplished without committing a breach of the peace. In other words, as a general rule, a creditor may repossess personal property (any property other than land) without filing a lawsuit or obtaining a court order authoring the repossession attempt. However, if the creditor chooses self help, the repossession attempt may only be pursued if it can be accomplished without breaching the peace.

For more info visit the Texas website at: www.statutes.legis.state.tx.us

DEBT COLLECTION SERVICES (Tax Collection)

Debt collection services are taxable. A debt collection service is any activity to collect or adjust a delinquent debt, to collect or adjust a claim, or to repossess property subject to a claim. For example, charges to perform any of the following services are subject to tax:

- collect overdue bills or returned checks for a retailer or service provider;
- send letters or make telephone calls related to delinquent accounts;
- receive incoming calls related to delinquent accounts;
- repossess property; and file liens.

The definition of debt collection does not require that you, the service provider, actually collect the claim or delinquent debt from the debtor. For example, if you make telephone calls and send letters in your customer's name to its delinquent debtors, you are providing a debt collection service. Even if the delinquent debtors responding to your calls and letters send payments directly to the creditor, you should collect tax on your charge to your customer.

As another example, you may be repossessing vehicles for a bank, and the bank's customer may contact the bank to bring the note current. The bank may make arrangements with the customer and notify you to close the account. Your charges to the bank are taxable even though you did not actually have to repossess the vehicle from the debtor.

For more info visit the Texas Comptroller website at: comptroller.texas.gov

Texas Finance Code

Title 4 Regulation of Interest, Loans, and Financed Transactions

Subtitled B. Loans and Financed Transactions

Chapter 348. Motor Vehicle Installment Sales

Subchapter A. General Provisions

Sec. 348.407.

RETENTION OR DISPOSITION OF NONATTACHED PERSONAL PROPERTY

(a) If a retail installment contract authorizes the holder or a person acting on the holder's behalf to retain or dispose of tangible personal property acquired in the repossession of a motor vehicle that is not attached to the vehicle and not subject to a security interest, the contract or another writing must require the holder to send written notice of the acquisition of the property to the retail buyer in accordance with this section.

(b) The notice must be mailed or delivered to the most recent address of the retail buyer shown on the records of the holder not later than the 15th day after the date on which the holder discovers the property.

(c) The notice must:

(1) State that the retail buyer may identify and claim the property at a reasonable time before the 31st day after the date on which the notice was mailed or delivered; and

(2) Give the location at which and reasonable times during the period that the retail buyer may identify and claim the

property.

(d) If the property is not claimed before the date described by Subsection (c)(1), the holder may:

(1) retain the property subject to any legal rights of the retail buyer; or (2) dispose of the property in a reasonable manner and distribute any proceeds of the disposition according to applicable law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 348.108.

CHARGES FOR COLLECTING DEBT

A retail installment contract may provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;

(2) court costs and disbursements; and (3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the motor vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Texas Finance Code - FIN § 345.355.

Prohibition on Certain Acts of Repossession

A retail installment contract or retail charge agreement may not:

authorize the holder or a person acting on the holder's behalf to:

(1) enter the retail buyer's premises unlawfully; or (A) commit a breach of the peace in the repossession of goods; or (B) provide for the retail buyer to execute a (2) power of attorney appointing, as the buyer's agent in the repossession of goods, the holder or a person acting on the holder's behalf

Texas Finance Code - FIN § 353.408.

Prohibition on Certain Acts of Repossession

A retail installment contract may not: authorize the holder or a person acting on the holder's behalf to: (1) enter the retail buyer's premises in violation of Chapter 9, Business (A) & Commerce Code; or commit a breach of the peace in the repossession of the commercial vehicle; or (B) contain, or provide for the execution of, a (2) power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

Texas Property Code - PROP § 30.03.

Petition for Writ of Assistance

A repossession agent may file a petition in a justice court for a writ of assistance for the repossession of an aircraft.

The repossession agent is entitled to the writ if the repossession agent establishes that:

The aircraft is subject to the proposed repossession; and the repossession agent is authorized to engage in the repossession.

The petition for the writ must include a copy of: the security agreement relating to the aircraft; the notice of default under the security agreement sent by the lender to the borrower; the instrument in which a power of attorney for the repossession is granted to the repossession agent by the lender; and the results of a title search of the Federal Aviation Administration's records for the aircraft.

Texas Property Code - PROP § 70.001.

Worker's Lien

A worker in this state who by labor repairs an article, (a) including a vehicle, motorboat, vessel, or outboard motor, may retain possession of the article until: the amount due under the contract for the repairs is paid; or (1) if no amount is specified by contract, the reasonable and usual compensation is paid. (2) If a worker relinquishes possession of a

motor vehicle, (b) motorboat, vessel, or outboard motor in return for a check, money order, or a credit card transaction on which payment is stopped, has been dishonored because of insufficient funds, no funds or because the drawer or maker of the order or the credit card holder has no account or the account upon which it was drawn or the credit card account has been closed, the lien provided by this section continues to exist and the worker is entitled to possession of the vehicle, motorboat, vessel, or outboard motor until the amount due is paid, unless the vehicle, motorboat, vessel, or outboard motor is possessed by a person who became a bona fide purchaser of the vehicle after a stop payment order was made. A person entitled to possession of property under this subsection is entitled to take possession thereof in accordance with the provisions of [Section 9.609, Business & Commerce Code](#) .

Except as provided by Subsection (b-1) (b), a lien provided by this section on a motor vehicle, motorboat, vessel, or outboard motor is released when a worker: receives good and sufficient payment of the amounts due under Subsection (a) and, if applicable, Subsection (d); or (1) relinquishes possession of the motor vehicle, motorboat, vessel, or outboard motor. (2) A worker's right to possession (b-2) under this section may not be assigned to a third party in return for payment of any amount due under Subsection (a) or (d).

A worker may take possession of an article under Subsection (b) (c) only if the person obligated under the repair contract has signed a notice stating that the article may be subject to repossession under this subsection separate from the written repair contract; or (1) printed on the written repair contract, (2) credit agreement, or other document in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous with a separate signature line.

A worker who takes possession of an article under Subsection (d) (b) may require a person obligated under the repair contract to pay the costs of repossession as a condition of reclaiming the article only to the extent of the reasonable fair market value of the services required. For the purpose of this subsection, to take possession of an article. charges represent the fair market value of the services required to take possession of an article if the charges represent the actual cost incurred by the worker in taking possession of the article.

A worker may not transfer to a third party, and a person who (e) performs repossession services may not accept, a check, money order, or credit card transaction that is received as payment for repair of an article and that is returned to the worker because of insufficient funds or no funds, because the drawer or maker of the check or money order or the credit card holder has no account, or because the account on which the check or money order is drawn or the credit card account has been closed.

A person commits an offense if the person transfers or accepts a (f) check, money order, or credit card transaction in violation of An offense under this subsection is a Class B Subsection (e). misdemeanor.

A motor vehicle that is repossessed under this section shall be (g) promptly delivered to the location where the repair was performed or a vehicle storage facility licensed under Chapter 2303, Occupations Code. The motor vehicle must remain at the repair location or a licensed vehicle storage facility at all times until the motor vehicle is lawfully returned to the motor vehicle's owner or a lienholder or is disposed of as provided by this subchapter worker because of insufficient funds or no funds, because the drawer or maker of the check or money order or the credit card holder has no account, or because the account on which the check or money order is drawn or the credit card account has been closed.

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Texas Business and Commerce Code - BUS & COM § 92.101.

Merchant's Repossession Right

This chapter does not prevent a merchant from attempting repossession of merchandise during the reinstatement period.

Texas Finance Code - FIN § 392.301.

Threats or Coercion

In debt collection, a debt collector may not use threats, (a) coercion, or attempts to coerce that employ any of the following practices:

using or threatening to use violence or other criminal means to cause harm to a person or property of a person; (1) accusing falsely or threatening to accuse falsely a person of fraud or any other crime; (2) representing or threatening to represent (3) to any person other than the consumer that a consumer is wilfully refusing to pay a nondisputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute; threatening to sell or assign to another (4) the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a defense to the consumer debt or would be subject to illegal collection attempts; threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings; (5) threatening to file a charge, complaint, (6) or criminal action against a debtor when the debtor has not violated a criminal law; threatening that nonpayment of a consumer (7) debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings; or threatening to take an action prohibited by law. (8) Subsection (a) does not prevent a debt collector from: (b) informing a debtor that the debtor may be (1) arrested after proper court proceedings if the debtor has violated a criminal law of this state; threatening to institute civil lawsuits or other judicial proceedings to collect a consumer debt; or (2) exercising or threatening to exercise a (3) statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

Texas Finance Code - FIN § 353.409.

Buyer's Waiver

A retail installment contract may not: (a) provide for a waiver of the retail buyer's (1) rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in: the collection of payments under the contract; or (A) the repossession of the commercial vehicle; or (B) provide that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale. (2) An act or agreement of the retail buyer before or at the time (b) of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

Texas Finance Code - FIN § 307.051.

Collateral Protection Insurance

Collateral protection insurance is insurance coverage that: (a) is purchased by a creditor after the date of a credit agreement; (1) provides monetary protection against loss (2) of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and is purchased according to the terms of a (3) credit agreement as a result of a debtor's failure to provide evidence of insurance or failure to obtain or maintain insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges incurred by the creditor in connection with the placement of collateral protection insurance, payable by a debtor.

Collateral protection insurance includes insurance coverage that is purchased to protect: (b) only the interest of the creditor; or (1) both the interest of the creditor and some or all of the interest of a debtor. (2) The term of a collateral protection insurance policy may be: © not greater than 12 months; or (1) the remaining term of the credit transaction if the remaining term is less than or equal to 24 months. (2) The effective date of coverage for collateral protection (d) the insurance may be earlier than the date of issuance of the policy. effective date may not be earlier than the date the collateral became uninsured.

A premium for collateral protection insurance covering (e) collateral other than real property may not be based on an amount that exceeds the actual amount of unpaid indebtedness of the debtor as of the This condition applies without regard to effective date of the policy. Whether the coverage under the policy limits the insurer's liability to: the amount of unpaid debt; (1) the cash value of the collateral; or (2) the cost of repair of the collateral. (3) With respect to collateral protection insurance covering real (e-1) property, a creditor, at the creditor's option, may obtain insurance that will cover either the replacement cost of improvements or the debtor amount of unpaid indebtedness, subject to policy limits. Shall be obligated to reimburse the creditor for the premium, finance charges, and any other charges incurred by the creditor in connection The creditor may use the previous with the placement of the insurance. Evidence of insurance coverage furnished by the debtor to determine the sufficient level of replacement cost coverage

to be provided.

Collateral protection insurance does not include insurance coverage that: (f) is purchased by the creditor for which the debtor is not charged; (1) is purchased at the inception of a credit (2) transaction in which the debtor is a party or to which the debtor agrees, whether or not costs are included in a payment plan under the credit transaction; is maintained by the creditor for the (3) protection of collateral that comes into the possession or control of the creditor through foreclosure, repossession, or a similar event; is credit insurance, mortgage protection (4) insurance, insurance issued to cover the life or health of the debtor, or any other insurance maintained to cover the inability or failure of the debtor to make payment under the credit agreement; is title insurance; (5) is flood insurance required to be placed by creditors under Section 102, National Flood Insurance Act of 1968 ((6) [42 U.S.C. Section 4012a](#)); or is insurance on a commercial vehicle securing a retail installment contract under Chapter 353.(7)

Texas Occupations Code - OCC § 2303.156. Payment by Lienholder or Insurance Company

A lienholder who repossesses a vehicle delivered to a vehicle (a) storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.

An insurance company that pays a claim of total loss on a (b) vehicle in a vehicle storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company paid the claim.

Texas Finance Code - FIN § 348.302. Lack of Notice Does Not Affect Validity as to Certain Creditors

Notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the motor vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

Debt Collection Services (Complete)

Debt collection services are taxable.

A debt collection service is any activity to collect or adjust a delinquent debt, to collect or adjust a claim, or to repossess property subject to a claim. For example, charges to perform any of the following services are subject to tax:

- collect overdue bills or returned checks for a retailer or service provider;
- send letters or make telephone calls related to delinquent accounts;
- receive incoming calls related to delinquent accounts;
- repossess property; and file liens.

The definition of debt collection does not require that you, the service provider, actually collect the claim or delinquent debt from the debtor. For example, if you make telephone calls and send letters in your customer's name to its delinquent debtors, you are providing a debt collection service. Even if the delinquent debtors responding to your calls and letters send payments directly to the creditor, you should collect tax on your charge to your customer.

As another example, you may be repossessing vehicles for a bank, and the bank's customer may contact the bank to bring the note current. The bank may make arrangements with the customer and notify you to close the account. Your charges to the bank are taxable even though you did not actually have to repossess the vehicle from the debtor.

Court-Ordered Child Support

The term "debt collection service" does not include the collection of court-ordered child support or medical child support. Charges for these services are not taxable.

Dishonored/Returned Checks

The fee you charge to collect a returned check is subject to sales tax as a debt collection service. You should add the tax to your fee and collect both from the person who wrote or endorsed the check.

Fees paid directly to retailers as service fees for insufficient checks, however, are not debt collection fees and are not taxable.

Collecting Tax

If your business includes both taxable and nontaxable services, you need to collect tax only on taxable services if you bill them separately and if the nontaxable services satisfy certain requirements. The nontaxable service must be distinct and identifiable, and it must be a type of service that you commonly provide by itself without another service. The charge for the taxable service must be reasonable.

If you do not bill your customer separately for the taxable service and it represents 5 percent or less of the overall contract price, you do not have to collect tax.

If you do not bill your customer separately for the taxable service and it represents more than 5 percent of the overall contract price, you should collect tax on the entire charge.

If you do not bill your customer separately for the taxable service at the time of the transaction, however, you or the purchaser can later establish through documentary evidence the percentage of the total charge that relates to taxable service.

Collect 6.25 percent Texas state tax plus any local taxes from your customer on the charge for your taxable service. The taxable charge includes all expenses connected with providing the service. For example, if you travel in connection with your taxable service, charges for airfare, meals, and hotel expenses that you pass on to your customer are part of your taxable sales price.

Debtors with Locations Inside and Outside of Texas

If you are engaged in business in Texas, you should collect Texas state tax, plus any local (city, county, special purpose district or transit) tax, on the total amount you bill for the debt collection service.

If the debtor is not located in Texas at the time the debt is placed with you for collection, you do not have to collect Texas tax on the charge to collect that debt. If the charges for debtors located in Texas are not separately stated from the charges for debtors located out-of-state, your client may give you an exemption certificate claiming multi-state benefit.

Your client must then report and pay Texas tax on the portion of the charges relating to the Texas debtors. If you separately state the charges for debtors located in Texas from those located out-of-state, you should only collect Texas tax on those charges for debtors located in Texas. Keep records showing those debtors located outside Texas at the time the accounts are placed with you for collection, to show why the service for those debtors is exempt.

If you separately state the charges for debtors located in Texas from those located out-of-state, you should only collect Texas tax on those charges for debtors located in Texas. Keep records showing those debtors located outside Texas at the time the accounts are placed with you for collection, to show why the service for those debtors is exempt.

Purchaser's Responsibilities

If the creditor is engaged in business in Texas at the time the account is placed with you for collection, and if the debtor (based on last known address) is located in Texas, Texas tax is due, even if you perform the service from a location outside Texas or outside the United States. If you are not engaged in business in Texas or in a specific local taxing jurisdiction and are not required to collect Texas tax, it is the Texas creditor's responsibility to report and pay the state and local use tax to the Comptroller's office.

Materials, Supplies and Equipment

You should pay tax on all materials, supplies and equipment you buy and use to perform debt collection services. For example, you must pay tax on paper and envelopes and office equipment.

Resale Certificate

You can give your supplier a resale certificate instead of paying tax on goods that are transferred to the care, custody, and control of your customer as part of your service. For example, if you purchase a blank CD to transfer the results of your debt collection services to your customer, you can purchase the blank CD tax-free with a resale certificate.

Reselling a Collection Service

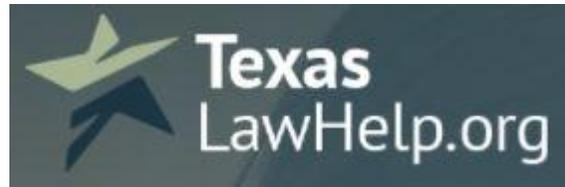
If you buy collection services from a third-party vendor and resell those services to your customer, you can give the third

party a resale certificate instead of paying tax. You will then collect tax from your customer on your total charge.

Contracts with Tax-Exempt Entities

You don't need to charge tax when you provide debt collection services for a government agency. Some nonprofit organizations are also exempt from tax. A nonprofit organization exempt from sales tax must give you an exemption certificate (PDF) and must also have a letter from the Comptroller's office exempting it from sales tax. Other nonprofit organizations must pay sales tax. If you have a question about a customer's exempt status, check our online search or give us a call.

State of Texas websites & useful links



www.texaslawhelp.org



www.license.state.tx.us/towing/towing.htm



<https://comptroller.texas.gov>



www.statutes.legis.state.tx.us