

House Bill 490

By: Representatives Heckstall of the 62nd and Fludd of the 66th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 44 of the Official Code of Georgia Annotated, relating to
2 general provisions for real and personal property, so as to provide for the regulation of the
3 use of tire clamps on trespassing motor vehicles and charging a fee for the removal of tire
4 clamps on trespassing motor vehicles; to provide for related matters; to provide an effective
5 date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 44 of the Official Code of Georgia Annotated, relating to general
9 provisions for real and personal property, is amended by revising Code Section 44-1-13,
10 relating to the removal of improperly parked cars or trespassing personal property,
11 concurrent jurisdiction, procedure, automatic surveillance prohibited, and penalties, as
12 follows:

13 "44-1-13.

14 (a) As used in this Code section, the term:

15 (1) 'Commission' means the Public Service Commission.

16 (2) 'Private property' means any parcel or space of private real property.

17 (3) 'Tire clamp' means any device used to immobilize a motor vehicle by locking a tire
18 on the motor vehicle, including any wheel clamp, boot, tire lock, or other automobile
19 immobilizer.

20 (a.1) Any person or his or her authorized agent entitled to the possession of any private
21 property shall have the right to lock the tire of any motor vehicle by use of a tire clamp or
22 to remove or cause to be removed from the property any vehicle or trespassing personal
23 property thereon which is not authorized to be at the place where it is found and to store
24 or cause to be stored such vehicle or trespassing personal property, provided that there shall
25 have been conspicuously posted on the private property notice that any vehicle or
26 trespassing personal property which is not authorized to be at the place where it is found

27 may be locked using a tire clamp or removed at the expense of the owner of the vehicle or
 28 trespassing personal property. Such notice shall also include information as to the location
 29 where the vehicle or personal property can be recovered, the cost of said recovery, the
 30 method for having the tire clamp removed, and information as to the form of payment;
 31 provided, however, that the owner of residential private property containing not more than
 32 four residential units shall not be required to comply with the posting requirements of this
 33 subsection. Only towing and storage firms issued permits or licenses by the local
 34 governing authority of the jurisdiction in which they operate or by the commission, and
 35 having a secure impoundment facility, shall be permitted to remove trespassing property
 36 and trespassing personal property at the request of the owner or authorized agent of the
 37 private property. Only businesses or persons issued a tire clamp permit or business license
 38 for the purpose of using tire clamp enforcement, which permit or license is issued by the
 39 local governing authority of the jurisdiction in which they operate or utilize tire clamps,
 40 shall be permitted to use tire clamps on trespassing motor vehicles on public or private
 41 property and to charge a fee for the removal of the tire clamp.

42 (b)(1) The commission shall have the authorization to regulate and control the use of tire
 43 clamps on trespassing vehicles on private property and the towing of trespassing vehicles
 44 on private property if such towing or tire clamping is performed without the prior consent
 45 or authorization of the owner or operator of the vehicle, including the authority to set just
 46 and reasonable rates, fares, and charges for services related to the use of tire clamps and
 47 the removal of tire clamps and the removal, storage, and required notification to owners
 48 of such towed or tire clamped vehicles. No storage fees shall be charged for the first 24
 49 hour period which begins at the time the vehicle is removed from the property, and no
 50 such fees shall be allowed for the removal and storage of vehicles removed by towing and
 51 storage firms found to be in violation of this Code section. The commission is authorized
 52 to impose a civil penalty for any violation of this Code section in an amount not to exceed
 53 \$2,500.00.

54 (2) In accordance with subsection (d) of this Code section, the governing authority of a
 55 municipality may require towing and storage operators to charge lower maximum rates
 56 on traffic moving between points within such municipality than those provided by the
 57 commission's maximum rate tariff and may require higher public liability insurance limits
 58 and cargo insurance limits than those required by the commission. The governing
 59 authority of a municipality shall not provide for higher maximum costs of removal,
 60 relocation, or storage than is provided for by the commission.

61 (c) In all municipalities, except a consolidated city-county government, having a
 62 population of 100,000 or more according to the United States decennial census of 1970 or
 63 any future such census, a person entitled to the possession of an off-street parking area or

64 vacant lot within an area zoned commercial by the municipality shall have the right to
65 remove any vehicle or trespassing personal property parked thereon after the regular
66 activity on such property is concluded for the day only if access to such property from the
67 public way is blocked by a sturdy chain, cable, or rope stretched at least 18 inches above
68 grade across all driveways or other ways providing access to the off-street parking area or
69 vacant lot and there is conspicuously posted in the area a notice, the location of which must
70 be approved by the municipality's police department, that any vehicle or trespassing
71 personal property parked thereon which is not authorized to be in such area may be
72 removed at the expense of the owner along with information as to where the vehicle or
73 trespassing personal property may be recovered, the cost of said recovery, and information
74 regarding the form of payment.

75 (d)(1) In addition to the regulatory jurisdiction of the commission, the governing
76 authority of each municipality having towing and storage firms operating within its
77 territorial boundaries may require and issue a license or permit to engage in private
78 trespass towing within its corporate municipal limits pursuant to this Code section to any
79 firm meeting the qualifications imposed by said governing authority. The fee for the
80 license or permit shall be set by such governing authority. The maximum reasonable
81 costs of removal, relocation, and storage pursuant to the provisions of this Code section
82 shall be compensatory, as such term is used in the public utility rate-making procedures,
83 and shall be established annually by the governing authority of each municipality having
84 towing and storage firms operating within its territorial boundaries; provided, however,
85 that no storage fees shall be charged for the first 24 hour period which begins at the time
86 the vehicle is removed from the property, and no such fees shall be allowed for the
87 removal and storage of vehicles removed by towing and storage firms found to be in
88 violation of this Code section.

89 (2) Towing and storage firms operating within a municipality's corporate limits shall
90 obtain a nonconsensual towing permit from the commission and shall file its registered
91 agent's name and address with the commission.

92 (e) Any person who suffers injury or damages as a result of a violation of this Code section
93 may bring an action in any court of competent jurisdiction for actual damages, which shall
94 be presumed to be not less than \$100.00, together with court costs. A court shall award
95 three times actual damages for an intentional violation of this Code section.

96 (f) It shall be unlawful and punishable by a fine of \$1,000.00 for any towing and storage
97 firm, permitted or unpermitted, licensed or unlicensed, to enter into any agreement with
98 any person in possession of private property to provide automatic or systematic
99 surveillance of such property for purposes of removal and relocation of any such vehicle
100 or trespassing personal property except upon call by such person in possession of such

101 private property to such towing and storage firm for each individual case of trespass;
102 provided, further, that it shall be unlawful and punishable by a fine of \$1,000.00 for any
103 towing and storage firm to pay to any private property owner or one in possession of
104 private property any fee or emolument, directly or indirectly, for the right to remove a
105 vehicle or trespassing personal property from said private property."

106 **SECTION 2.**

107 This Act shall become effective on July 1, 2011.

108 **SECTION 3.**

109 All laws and parts of laws in conflict with this Act are repealed.