House Bill 490
By: Representatives Heckstall of the 62nd and Fludd of the 66th

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

"44-1-13. (a) As used in this Code section, the term:
(1) 'Commission' means the Public Service Commission.
(2) 'Private property' means any parcel or space of private real property.
(3) 'Tire clamp' means any device used to immobilize a motor vehicle by locking a tire on the motor vehicle, including any wheel clamp, boot, tire lock, or other automobile immobilizer.
(a.1) Any person or his or her authorized agent entitled to the possession of any private property shall have the right to lock the tire of any motor vehicle by use of a tire clamp or to remove or cause to be removed from the property any vehicle or trespassing personal property thereon which is not authorized to be at the place where it is found and to store or cause to be stored such vehicle or trespassing personal property, provided that there shall have been conspicuously posted on the private property notice that any vehicle or trespassing personal property which is not authorized to be at the place where it is found

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

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

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

(c) In all municipalities, except a consolidated city-county government, having a population of 100,000 or more according to the United States decennial census of 1970 or any future such census, a person entitled to the possession of an off-street parking area or
vacant lot within an area zoned commercial by the municipality shall have the right to
remove any vehicle or trespassing personal property parked thereon after the regular
activity on such property is concluded for the day only if access to such property from the
public way is blocked by a sturdy chain, cable, or rope stretched at least 18 inches above
grade across all driveways or other ways providing access to the off-street parking area or
vacant lot and there is conspicuously posted in the area a notice, the location of which must
be approved by the municipality's police department, that any vehicle or trespassing
personal property parked thereon which is not authorized to be in such area may be
removed at the expense of the owner along with information as to where the vehicle or
trespassing personal property may be recovered, the cost of said recovery, and information
regarding the form of payment.

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

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

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

(f) It shall be unlawful and punishable by a fine of $1,000.00 for any towing and storage
firm, permitted or unpermitted, licensed or unlicensed, to enter into any agreement with
any person in possession of private property to provide automatic or systematic
surveillance of such property for purposes of removal and relocation of any such vehicle
or trespassing personal property except upon call by such person in possession of such
private property to such towing and storage firm for each individual case of trespass;
provided, further, that it shall be unlawful and punishable by a fine of $1,000.00 for any
towing and storage firm to pay to any private property owner or one in possession of
private property any fee or emolument, directly or indirectly, for the right to remove a
vehicle or trespassing personal property from said private property.”

SECTION 2.
This Act shall become effective on July 1, 2011.

SECTION 3.
All laws and parts of laws in conflict with this Act are repealed.