

Senate Bill 428

By: Senators Brass of the 28th, Mullis of the 53rd, Beach of the 21st, Harper of the 7th and James of the 35th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to  
2 allow for vehicle immobilization devices or boots to be applied to trespassing vehicles on  
3 certain property; to provide for definitions; to provide for rules and standards of operation;  
4 to provide for booting fees; to provide for notice and sign requirements; to require  
5 registration with the Secretary of State for the lawful immobilization and booting of  
6 trespassing vehicles; to provide for registration fees; to provide for the issuance of vehicle  
7 immobilization registrations and renewal registrations; to provide for preemption of local  
8 regulation; to provide for criminal and administrative penalties; to provide for related  
9 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by  
13 adding a new chapter to read as follows:

14 "CHAPTER 1A

15 44-1A-1.

16 As used in this chapter, the term:

17 (1) 'Impound' means having installed a vehicle immobilization device.

18 (2) 'Operator' means any individual or entity, including, but not limited to, a sole  
19 proprietor, independent contractor, partnership, or similar business entity, offering or  
20 operating a vehicle immobilization service.

21 (3) 'Vehicle immobilization device,' 'device,' or 'boot' means any mechanical device that  
22 is designed or used to be attached to a wheel, tire, or other part of a parked motor vehicle  
23 so as to prohibit the motor vehicle's usual manner of movement or operation.

24 (4) 'Vehicle immobilization service' means any service whereby vehicles are impounded.

25 44-1A-2.

26 (a) Vehicle immobilization devices may be used upon trespassing motor vehicles as  
27 provided for under this chapter.

28 (b)(1) It shall be unlawful for any person to act as an operator within this state unless  
29 such person has registered with the Secretary of State pursuant to this chapter; provided,  
30 however, that registration with the Secretary of State under this chapter shall not relieve  
31 such person from any other registrations with the Secretary of State as required by law;  
32 provided, further, that any operator offering or operating upon an annual permit, license,  
33 or registration issued by a county or municipal corporation on or before June 30, 2018,  
34 shall be deemed to be in compliance with this subsection until the date which was given  
35 for the expiration of such permit, license, or registration issued by a county or municipal  
36 corporation at the time of issuance.

37 (2) Any person who violates this subsection shall be guilty of a misdemeanor of a high  
38 and aggravated nature and shall be punished as provided by Code Section 17-10-4.

39 (c) It shall be unlawful for any person to act as an operator if such person also has  
40 ownership in property or a lot that is being used for the business of parking or allowing for  
41 the parking of motor vehicles or is engaged in the business of parking lot management or  
42 valet parking operations.

43 (d) Each operator shall conduct vehicle immobilization services using a name which is  
44 distinguishable from any other existing operator.

45 44-1A-3.

46 (a) Except as provided for in paragraph (1) of subsection (b) of Code Section 44-1A-2,  
47 every operator shall obtain the registration required by this chapter by filing an application  
48 with the Secretary of State. Such application shall state the name of the operator's  
49 business; the address of such business or the proposed location of such business; if a  
50 partnership, the names of all partners; if a limited liability company, the names of all  
51 members; and if a corporation, the names of all officers; and shall include a certificate of  
52 insurance showing the Secretary of State as certificate holder; the applicant's business  
53 license issued by a county or municipality; and if a corporation, limited liability company,  
54 or limited partnership, proof of current registration with the Secretary of State. Such  
55 application shall be accompanied by an executed affidavit wherein the operator attests that  
56 such operator is in compliance with the requirements of subsection (c) of Code Section  
57 44-1A-2 and subsections (c) and (d) of this Code section. Such affidavit shall be on forms  
58 provided for by the Secretary of State.

59 (b) Applicants shall furnish all data, information, and records relevant to their application  
60 and requested of them by the Secretary of State. Failure to furnish such data, information,

61 or records within 30 days from the date of any such request shall automatically result in the  
 62 dismissal of the application.

63 (c) It shall be unlawful for an operator to receive or maintain a registration under this  
 64 chapter issued by the Secretary of State if such operator, or any partner, member, or officer  
 65 of such operator, has been convicted of a felony offense within the last 15 years.

66 (d) Should any operator with a registration obtained pursuant to this chapter, or an officer,  
 67 partner, or member thereof, be convicted of committing any criminal offense described in  
 68 subsection (d) of this Code section, then such conviction shall constitute a basis for adverse  
 69 action under this chapter, including, but not limited to, suspension or revocation of the  
 70 operator's registration.

71 44-1A-4.

72 (a) The application fee for a vehicle immobilization service registration shall be \$1,000.00.  
 73 The application fee shall be paid to the Secretary of State by methods provided for by the  
 74 Secretary of State and shall be nonrefundable.

75 (b) Upon approval of an application for a vehicle immobilization service registration, a  
 76 registration shall be issued and be valid for a period of 12 months from the date of issuance  
 77 unless revoked or suspended. Such registration shall be renewed annually upon approval  
 78 by the Secretary of State of a renewal application and payment of a renewal fee of  
 79 \$1,000.00.

80 (c) All applications under this chapter shall be submitted by means designated by the  
 81 Secretary of State. Renewal applications shall be submitted no sooner than 90 days prior  
 82 to the expiration date of the registration.

83 44-1A-5.

84 (a) An operator shall not:

85 (1) Procure a registration by fraudulent conduct or false statement of a material fact;

86 (2) Pay in the form of a gratuity any person who does not have ownership in property or  
 87 a lot that is being used for the business of parking, or allowing for the parking of, motor  
 88 vehicles for information as to unauthorized or trespassing parked vehicles;

89 (3) Make any payment to an owner, employee, agent, or a person in possession of  
 90 property or a lot that is being used for the business of parking, or allowing for the parking  
 91 of, motor vehicles in excess of the reasonable and customary fee ordinarily charged by  
 92 such person in possession of such property or lot for parking thereon;

93 (4) Charge fees in excess of those provided for in Code Section 44-1A-6; or

94 (5) Impound any vehicle located on any portion of a public way within this state, unless  
 95 such operator is contracted to do so by a governmental agency.

96 (b)(1) An operator shall issue all individuals under such operator's employment, or who  
97 are acting on behalf of such operator, including such operator himself or herself, or  
98 partners, members, or officers of such operator, a photo identification with the name of  
99 the operator. Such individuals shall carry this operator issued identification with him or  
100 her at all times while performing vehicle immobilization services.

101 (2) All individuals under an operator's employment, or who are acting on behalf of such  
102 operator, including such operator himself or herself, or partners, members, or officers of  
103 such operator, shall wear a uniform that clearly identifies the operator while performing  
104 vehicle immobilization services.

105 (3) Vehicles being used by operators or individuals under an operator's employment to  
106 perform vehicle immobilization services shall have displayed on both sides of such  
107 vehicle the name of the operator, the address from which the operator conducts business,  
108 and the telephone number of the operator. The lettering shall be in a contrasting color to  
109 the color of the vehicle, or if a vehicle magnet is used, the lettering shall be in a  
110 contrasting color to the color of the magnet. Such lettering shall be at least one and  
111 one-half inches in height.

112 (c)(1) An operator may conduct vehicle immobilization services 24 hours per day, seven  
113 days per week, and 365 days per year.

114 (2) An operator shall maintain a telephone number that is staffed by a live individual 24  
115 hours per day and 365 days per year to communicate immediately with a driver or owner  
116 of an impounded vehicle.

117 (d) An operator who has impounded a vehicle shall immediately affix a notice to the  
118 driver's side window containing, at minimum, the following information:

119 (1) A warning that any attempt to move the vehicle may result in damage to the vehicle;  
120 and

121 (2) The fee required to remove the boot, the name of the operator, and the telephone  
122 number to call to have the boot removed.

123 (e) It shall be unlawful for an operator to impound vehicles on any private property  
124 without having entered into a valid written contract for vehicle immobilization services  
125 with the private property owner, lawful lessee, managing agent, or other person in control  
126 of the property.

127 (f) It shall be unlawful for an operator to fail to arrive on the site where a vehicle was  
128 impounded within one hour of being contacted by the owner, driver, or person in charge  
129 of the vehicle. It shall be unlawful for an operator to fail to release a vehicle from  
130 immobilization within one hour after receipt of payment from the owner, driver, or person  
131 in charge of such vehicle that has been impounded.

132 (g) It shall be unlawful for a vehicle immobilization service or operator to fail to provide  
133 a receipt of payment of the booting fee to the owner, driver, or person in charge of an  
134 impounded vehicle. The receipt shall have the name, address, and telephone number of the  
135 operator and the name of the individual employee or company identification number of the  
136 employee of such operator who removed the boot.

137 (h)(1) If the application of a vehicle immobilization device damages a vehicle, the  
138 operator shall pay the cost of repairs for that damage.

139 (2) If the owner, driver, or person in charge of a motor vehicle to which a device has  
140 been applied attempts to operate such motor vehicle or to remove the device, then the  
141 operator is not liable for any damage to such vehicle resulting from such attempt. In such  
142 an instance, such owner, driver, or person in charge of the vehicle shall be liable to the  
143 operator for the cost of damage to the vehicle immobilization device.

144 (i) An operator shall maintain minimum insurance coverage in the amount of \$1 million  
145 in commercial general liability and \$1 million in umbrella coverage and shall have workers'  
146 compensation coverage on all employees.

147 44-1A-6.

148 (a) No operator shall charge the owner of any impounded motor vehicle an amount in  
149 excess of \$85.00 for the removal of vehicle immobilization devices; provided, however,  
150 that any outstanding daily parking fees may also be collected when applicable. Motor  
151 vehicles remaining on the property for more than 24 hours after impounding may also be  
152 charged an additional fee of \$25.00 per day that such motor vehicle remains on such  
153 property without having paid for the removal of any vehicle immobilization devices.

154 (b) Operators shall allow for fees to be paid by cash, credit card, or debit card at no  
155 additional charges based on payment methods.

156 44-1A-7.

157 (a) It shall be unlawful for any operator to install or attach a device to any motor vehicle  
158 without posting signs meeting the following requirements:

159 (1) Signs shall be located at each designated entrance to a parking lot or parking area  
160 where parking prohibitions are to be effective, and where there is no designated entrance,  
161 such signs shall be erected so as to be clearly visible from each and every parking space;

162 (2) Signs shall be a minimum of 18 inches by 24 inches with lettering a minimum height  
163 of one and one-half inches; and

164 (3) The bottom of such signs located at a designated entrance to a parking lot shall be at  
165 least four feet above the site grade, and where there is no designated entrance, the bottom  
166 of such signs shall be six feet above site grade.

167 (b)(1) In lettering at least one and one-half inches in height and in a solid color that  
 168 contrasts with the background, signs shall clearly state the following minimum language:

169 '1. WARNING: BOOTING ENFORCED 24/7.

170 2. UNAUTHORIZED VEHICLES MAY BE IMPOUNDED (BOOTED) AT  
 171 OWNER'S RISK AND EXPENSE.

172 3. BOOT REMOVAL FEE: \$85.00. UNPAID PARKING FEES MAY ALSO BE  
 173 COLLECTED.

174 4. (Insert name of vehicle immobilization service that has been issued a registration  
 175 pursuant to this chapter).

176 5. FOR BOOT REMOVAL, CALL (insert operator's telephone number).'

177 (2) No abbreviations shall be used on signs required by this Code section.

178 44-1A-8.

179 (a) The Secretary of State, or his or her designee, may impose a fine upon an operator or  
 180 the revocation, suspension, or nonrenewal of a registration for due cause.

181 (b) No adverse action shall be taken regarding any registration issued pursuant to this  
 182 chapter until and after notice has been provided and a hearing has been held by the  
 183 Secretary of State for such action. Notice of such hearing shall be given in writing and  
 184 served at least 30 days prior to the date of a hearing. The notice shall state the grounds of  
 185 the complaint against the holder of such registration and shall designate the time and place  
 186 where such hearing shall be held. The notice shall be served upon the registration holder  
 187 via certified mail, signature required, addressed to the registration holder at the address  
 188 provided on the operator's current application.

189 (c) Any operator whose registration has been revoked pursuant to this chapter shall be  
 190 disqualified from reapplying for such a registration for 12 months immediately following  
 191 the revocation. The violation of any provision of this chapter by any person with any  
 192 ownership interest in an operator may result in the revocation of the operator's registration.

193 (d) The maximum fine for any violation of this chapter shall be \$1,000.00. The maximum  
 194 suspension for any one violation of this chapter shall be 30 days.

195 44-1A-9.

196 The Secretary of State shall have the power to promulgate all necessary rules and  
 197 regulations for the implementation and enforcement of this chapter.

198 44-1A-10.

199 A county or municipal corporation may adopt an ordinance that is identical to the  
 200 provisions of this chapter or that imposes additional requirements that exceed the minimum

201 standards of this chapter; provided, however, that a county or municipal corporation shall  
202 not adopt any ordinance that conflicts with this chapter."

203 **SECTION 2.**

204 This Act shall become effective on January 1, 2019.

205 **SECTION 3.**

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