

Senate Bill 541

By: Senators McLaurin of the 14th, Merritt of the 9th, Rahman of the 5th, Harbison of the 15th, Orrock of the 36th and others

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 relative to property, so as to prohibit the placement of wheel restraints on
3 trespassing motor vehicles; to provide for conforming changes; to provide for definitions; to
4 provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Chapter 1 of Title 44 of the Official Code of Georgia Annotated, relating to general
8 provisions relative to property, is amended by revising Code Section 44-1-13, relating to
9 removal or immobilization of trespassing cars or personal property, concurrent jurisdiction,
10 procedure, automatic surveillance prohibited, and penalty, as follows:

11 "44-1-13.

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

13 (1) 'Department' means the Department of Public Safety.

14 ~~(1.1)~~(2) 'Immobilization device' means any mechanical device designed or used to be
15 attached to a ~~wheel, tire, or other part~~ portion of a parked motor vehicle so as to prohibit

16 the motor vehicle's usual manner of movement or operation. Such term shall not include
17 a wheel restraint.

18 ~~(2)~~(3) 'Private property' means any parcel or space of private real property.

19 (4) 'Wheel restraint' means any mechanical device, including, but not limited to, a boot
20 or lock, designed or used to be attached to a wheel or tire of a motor vehicle so as to
21 prohibit the motor vehicle's usual manner of movement or operation.

22 (a.1) Any person or his or her authorized agent entitled to the possession of any private
23 property shall have the right to remove or cause to be removed from the property or
24 immobilize or cause to be immobilized any vehicle or personal property trespassing
25 thereon which is not authorized to be at the place where it is found and to store or cause to
26 be stored such trespassing vehicle or personal property, provided that there shall have been
27 conspicuously posted on the private property notice that any trespassing vehicle or personal
28 property which is not authorized to be at the place where it is found may be immobilized
29 or removed at the expense of the owner of the trespassing vehicle or personal property.
30 Such notice shall also include information as to the contact information for removal of an
31 immobilization device, the full legal names of the company conducting the immobilization
32 and the property owner where the immobilization occurred, the fee amount for removal of
33 an immobilization device, location where the removed vehicle or personal property can be
34 recovered, the cost of said recovery, and information as to the form of payment; provided,
35 however, that the owner of residential private property containing not more than four
36 residential units shall not be required to comply with the posting requirements of this
37 subsection. Only towing and storage firms issued permits or licenses by the local
38 governing authority of the jurisdiction in which they operate or by the department, and
39 having a secure impoundment facility, shall be permitted to remove trespassing vehicles
40 and personal property at the request of the owner or authorized agent of the private
41 property. Only persons issued a permit by the department and operating in a jurisdiction
42 which has authorized the immobilization of trespassing vehicles by ordinance or resolution

43 of the governing authority shall be authorized to place an immobilization device upon a
44 trespassing vehicle.

45 (b)(1) The department shall have the authorization to regulate and control the
46 ~~immobilization and towing of trespassing~~ of vehicles on private property through the
47 attachment of immobilization devices to or the towing of such vehicles if such
48 immobilization or towing is performed without the prior consent or authorization of the
49 owner or operator of the vehicle, including the authority to set just and reasonable rates,
50 fares, and charges for services related to the immobilization device attachment, removal,
51 relocation, storage, and required notification to owners of such vehicles. No storage fees
52 shall be charged for the first 24 hour period which begins at the time the vehicle is removed
53 from the property. No fees shall be allowed for the attachment of immobilization devices
54 or wheel restraints or removal and storage of vehicles by persons found to be in violation
55 of this Code section.

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

63 (c) In all municipalities, except a consolidated city-county government, having a
64 population of 100,000 or more according to the United States decennial census of 1970 or
65 any future such census a person entitled to the possession of an off-street parking area or
66 vacant lot within an area zoned commercial by the municipality shall have the right to
67 remove any vehicle or trespassing personal property parked thereon after the regular
68 activity on such property is concluded for the day only if access to such property from the
69 public way is blocked by a sturdy chain, cable, or rope stretched at least 18 inches above

70 grade across all driveways or other ways providing access to the off-street parking area or
71 vacant lot and there is conspicuously posted in the area a notice, the location of which ~~must~~
72 shall be approved by the municipality's police department, that any vehicle or trespassing
73 personal property parked thereon which is not authorized to be in such area may be
74 removed at the expense of the owner along with information as to where the vehicle or
75 trespassing personal property may be recovered, the cost of said recovery, and information
76 regarding the form of payment.

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

91 (2) Towing and storage firms operating within a municipality's corporate limits shall
92 obtain a nonconsensual towing permit from the department and shall file its registered
93 agent's name and address with the department. The department may assess and collect
94 an application fee in an amount to be determined by the commissioner and such amount
95 shall not exceed the total direct and indirect costs of administering the program or activity
96 with which the fee is associated. Pursuant to Code Section 45-12-92.1, the fees collected

97 shall be retained by the department and expended solely for the purpose of implementing
98 this Code section.

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

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

115 (g) It shall be unlawful and punishable by a fine of \$1,000.00 for any person or governing
116 authority of any county or municipality to install or attach a wheel restraint to any vehicle
117 which is not authorized to be at the location where such vehicle is found."

118 **SECTION 2.**

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