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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 351

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO THE REMOVAL OF MOTOR VEHICLES FROM PRIVATE OR PUBLIC PROPERTY BY PRIVATE TOW COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Part IV, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 69A. REMOVAL OF MOTOR VEHICLES FROM PRIVATE OR PUBLIC PROPERTY WITHOUT CONSENT OF THE MOTOR VEHICLE OWNER OR OPERATOR

§ 6901A. Definitions.

For purposes of this chapter:

(1) “Abandoned motor vehicle” means as described in Chapter 44 of this title.

(2) “Non-consensual tow” means the towing of a non-abandoned motor vehicle other than at the direction of the police without the consent of the motor vehicle’s owner, operator, or other person designated by the owner or operator from a private or public parking area. A “non-abandoned motor vehicle” is a motor vehicle that is not an “abandoned motor vehicle” as described in Chapter 44 of this title.

(3) “Operator” means the person who most recently operated a motor vehicle and parked the vehicle in a private or public parking area.

(4) “Private parking area” means any privately owned facility accessible by the general public that includes 1 or more spaces for motor vehicle parking and that are intended by the owner of the facility to be used primarily by the owner’s customers, residents, lessees, or guests.

(5) “Private tow company” means any person engaged in the towing of motor vehicles pursuant to a contract or other agreement to remove a motor vehicle from private or public parking areas without the consent of the motor vehicle owner or operator. For the purpose of this chapter, private tow company does not mean a person hired or contracted to remove a motor vehicle with the consent of the motor vehicle owner or operator, nor does private tow

company mean a person that removes an abandoned motor vehicle under Chapter 44 of this title or that is contracted to remove motor vehicles at the direction of the police under Chapter 69 of this title.

(6) "Public parking area" means any facility or roadway space owned by the State, or any political subdivision thereof, consisting of 1 or more spaces for motor vehicle parking that is accessible to the general public and designated for parking during specified times or for a specified length of time. Public parking area does not mean general residential roadways or other roadways on which motor vehicles are commonly parked for extended periods of time, unless clear and conspicuous signs are posted to specify the time or other limits to such parking.

(7) "Storage facility" means a facility to which privately-towed motor vehicles are brought and kept until retrieved or disposed of pursuant to this chapter.

(8) "Towing" means the transportation on the streets and highways of the State of motor vehicles, together with personal effects or cargo, by tow trucks. Wrecking or wrecker service, tow car service, and garage tow truck service are synonymous with and included within this definition.

§ 6902A. Applicability.

This Chapter applies to non-consensual towing of motor vehicles from private or public parking areas. This Chapter does not apply to the towing of motor vehicles at the direction of police under chapter 69 of this title or the towing of abandoned motor vehicles under Chapter 44 of this title.

§ 6903A. Pre-towing requirements.

(a) Prior to towing a motor vehicle from a private or public parking area, a person employed by, contracted by, or otherwise preparing to tow a motor vehicle on behalf of a private tow company must do the following:

(1) Ensure that the parking area has posted one or more signs in accordance with § 6904A of this chapter.

(2) Photograph the motor vehicle in a manner that clearly documents the unauthorized parking of the motor vehicle.

(3) If the parking area is a private parking area, obtain a prior written authorization from the owner of the private parking area to tow the motor vehicle. The prior written authorization must include all of the following:

a. The name of the person authorizing the tow.

b. A phone number and email address at which the person authorizing the tow can be reached during normal business hours.

c. The date and time the tow was authorized.

d. The signature of the person authorizing the tow.

50 **(b) Photographs and documentation required by this section must be maintained in the records of the private tow**
51 **company and be made available for inspection upon request for a minimum of two years from the date of the non-**
52 **consensual tow.**

53 **(c) The photographs and documentation required by this section must be provided to the owner or operator of the**
54 **motor vehicle upon request and without any charge to the owner or operator of the motor vehicle. The photographs and**
55 **documentation must be provided to the owner or operator of the motor vehicle by email or other equally convenient**
56 **electronic means if the owner or operator of the motor vehicle requests electronic copies of the photographs and documents.**

57 **§ 6904A. Consent for towing; exceptions.**

58 **(a) No private tow company may tow any motor vehicle parked for an unauthorized purpose or during a time at**
59 **which such parking is not permitted from any private parking area without the consent of the owner or operator of the**
60 **motor vehicle unless the following criteria are met:**

61 **(1) The private tow company has entered into a contract for towing with the owner or operator of the private**
62 **parking area.**

63 **(2) There is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen**
64 **by drivers entering the private parking area, a sign with lettering of no less than 1 inch in height containing the**
65 **following:**

66 **a. A statement of the purpose or purposes for which parking is authorized and the times during which**
67 **such parking is permitted.**

68 **b. A statement that unauthorized parking is prohibited and, if applicable, that unauthorized motor**
69 **vehicles will be towed and stored at the owner's expense.**

70 **c. The name, address, and telephone number of the private tow company that will perform the**
71 **towing.**

72 **d. The charges for the towing and storage of towed motor vehicles.**

73 **e. The street address of the storage facility where the towed motor vehicles can be redeemed after**
74 **payment of the posted charges and the times during which the motor vehicles may be redeemed.**

75 **f. Contact information for the owner and operator of the private parking area.**

76 **(3) There is affixed on each door of the tow truck a sign with lettering of no less than 3 inches in height**
77 **containing the name and telephone number of the private tow company.**

78 **(b) The owner, operator, or agent of a private parking area may not permit the towing of any motor vehicle parked**
79 **for an unauthorized purpose or during a time at which such parking is not permitted from the private parking area without**
80 **the consent of the motor vehicle owner or operator, unless the following criteria are met:**

81 **(1) The private property owner has contracted with a private tow company for non-consensual towing of**
82 **motor vehicles parked on the property without authorization.**

83 **(2) A sign conforming to the requirements of paragraph (a)(2) of this section is posted on the property.**

84 **(c) No private tow company may tow any motor vehicle parked for an unauthorized purpose or during a time at**
85 **which such parking is not permitted from any public parking area unless the following criteria are met:**

86 **(1) The private tow company has entered into a contract for private property towing with the State or political**
87 **subdivision.**

88 **(2) There is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen**
89 **by drivers entering a private parking area, or in a conspicuous location visible from the place at which the motor**
90 **vehicle is parked if on a public roadway, a sign as described in paragraph (a)(2) of this section. If the motor vehicle is**
91 **parked in a metered or paid public parking area, the sign may be affixed to or conspicuously placed near the device or**
92 **place at which payment may be tendered, if any.**

93 **§ 6905A. Incomplete tows.**

94 **(a) A private tow company that has undertaken the non-consensual tow of a motor vehicle must stop the tow if the**
95 **owner or operator returns before the motor vehicle has left the parking area and requests that the tow be stopped.**

96 **(b) A private tow company may require the owner or operator of a motor vehicle to pay a decoupling fee or drop**
97 **fee prior to releasing a motor vehicle that the private tow company has undertaken to tow. The decoupling or drop fee may**
98 **not exceed 50% of the non-consensual tow fee that would otherwise be charged.**

99 **(c) A private tow company may return a motor vehicle to a parking area or another location at the request of a**
100 **motor vehicle owner or operator who makes telephone contact with the tow company before the motor vehicle has been**
101 **placed in storage at a storage facility. The private tow company may collect the full non-consensual tow fee that would**
102 **otherwise be charged. No storage fee or ancillary fees other than the tow fee may be assessed if the motor vehicle is**
103 **retrieved within 24 hours from the time the private tow company first undertakes a tow.**

104 **(d) A private tow company may not non-consensually tow a motor vehicle if the owner or operator has returned**
105 **prior to the physical attachment between the motor vehicle to a tow truck or other towing vehicle. No fee may be charged to**
106 **the owner or operator where the owner or operator returns prior to the physical attachment between a motor vehicle and a**
107 **towing vehicle.**

108 § 6906A. Storage of non-consensually towed motor vehicles.

109 (a) No person may non-consensually tow a motor vehicle to a storage facility or store such a motor vehicle at a
110 storage facility unless the storage facility meets the following criteria.

111 (1) The storage facility has a business office open to the public between 8 a.m. and 6 p.m. at least 5 days a
112 week, excluding holidays.

113 (2) The storage facility is secured and, if it is an outdoor storage facility, lighted from dusk to dawn.

114 (3) The storage facility allows motor vehicle owners, lessees, lienholders, or persons authorized by such
115 owners, lessees, or lienholders of a non-consensually towed motor vehicle, to, at no fee, obtain personal items from a
116 towed motor vehicle during the normal business hours of the storage facility upon a showing of valid identification.

117 (4) The storage facility accepts as a means of payment all major credit cards and debit cards.

118 (5) The storage facility is in compliance with § 6907A of this chapter.

119 (b) A private tow company must provide reasonable accommodations for after-hours access to and release of
120 stored motor vehicles.

121 (1) A storage facility must post instructions on how to request after-hours access to or release of a stored
122 motor vehicle in each of the following manners:

123 a. Outside the private tow company and storage facility's place of business in a location easily-viewable
124 by the general public.

125 b. Prominently on the private tow company's or storage facilities website.

126 c. In any recorded phone message that members of the public seeking after-hours access to a motor
127 vehicle are likely to hear.

128 (2) A private tow company or storage facility may not charge an additional fee for after-hours access to or
129 release of stored motor vehicles.

130 (3) No private tow company or storage facility may charge storage fees for any portion of a day during which
131 an owner or operator of a motor vehicle is unable to obtain access to and release of the stored motor vehicle during the
132 hours of 8 a.m. to 6 p.m. upon at least 90 minutes notice pursuant to the instructions posted in accordance with this
133 section.

134 § 6907A. Fees and Payments.

135 (a) Any person operating or in charge of a storage facility must display, in that portion of the storage facility where
136 business is conducted with the public, a notice containing the following:

137 (1) That the owner, lessee, lienholder, or person authorized by such owner, lessee, or lienholder of a non-
138 consensually towed motor vehicle, may, at no fee, obtain personal items from a towed motor vehicle during the normal
139 business hours of the storage facility upon a showing of valid identification.

140 (2) The rates for towing, storage, and ancillary services related to the non-consensual tow of a motor vehicle.

141 (3) A statement that it is unlawful for a tow company or storage facility to refuse payment by major credit
142 card.

143 (b) All fees charged for the non-consensual tow of a motor vehicle, related storage, and ancillary services must be
144 reasonable and not excessive. Fees are presumptively excessive if they exceed by more than 25% the usual and customary
145 fee charged by the private towing company or storage facility for such services when provided with the consent of the
146 owner or operator of a motor vehicle, or if they exceed by more than 50% the usual and customary fee charged for such
147 nonconsensual towing or related storage service by other towing companies or storage facilities operating in the county
148 from which the motor vehicle was towed. Notwithstanding the foregoing, such fees may not exceed the maximum amounts
149 that may be charged for such services in accordance with any applicable schedule of permissible fees adopted by municipal
150 or other local ordinance.

151 (c) No owner or operator of a motor vehicle may be charged a cumulative total fee in excess of \$500 for the non-
152 consensual tow of a motor vehicle, storage, and related ancillary services.

153 (d) No person may assert any lien on a non-consensually towed motor vehicle for unpaid towing or storage fees,
154 unless the following criteria are met:

155 (1) The person seeking a lien notifies the owner, lessor, and, if applicable, the lienholder of a motor vehicle by
156 certified U.S. mail within 30 days of the date the motor vehicle was non-consensually towed.

157 (2) The notification includes an itemized list of all fees incurred as of the date of the notice and any periodic
158 fees that may be assessed.

159 (3) The notification informs the owner, lessor, and lienholder of the motor vehicle that the private tow
160 company may assert a lien against the motor vehicle if the motor vehicle is not retrieved and the fees are not paid
161 within 60 days of the delivery of the notice.

162 (e) Private tow companies and storage facilities must accept as a means of payment all major credit cards and debit
163 cards.

164 § 6908A. Unlawful practices.

165 (a) It is an unlawful for any person to violate any provision contained elsewhere in this chapter.

166 (b) It is unlawful for any private tow company to do any of the following:

167 (1) To give any benefit or advantage, including a pecuniary benefit, to any person for providing information
168 about motor vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with
169 private property towing of motor vehicles parked without authorization or during a time at which such parking is not
170 permitted.

171 (2) To charge a fee for the retrieval of private property from a non-consensually towed motor vehicle during a
172 storage facility's normal business hours.

173 (3) To monitor, patrol, or otherwise surveil a private or public parking area for the purposes of identifying
174 motor vehicles parked for unauthorized purposes and towing a motor vehicle parked for an unauthorized purpose from
175 such a parking area without having been specifically requested to tow the motor vehicle by the owner of the property,
176 if a private parking area, or by an authorized or designated agent of the State or political subdivision, if a public
177 parking area.

178 (c) An owner, manager, director, or other person in charge of overseeing a private tow company, storage facility,
179 or public or private parking area may not direct or knowingly allow employees, agents, or other individuals working on
180 behalf of the private tow company or storage facility to violate this chapter.

181 (d) A private tow company must have at all times a valid certificate of insurance and a schedule of insured
182 vehicles that are to be utilized by the towing company from an insurer authorized to do business in the State, including the
183 amounts of the garage keeper's legal liability coverage and any "on hook" coverage as an endorsement or contained in a
184 separate schedule, and liability insurance coverage, including in the case of each light-medium duty tow truck, motor
185 vehicle liability insurance coverage for the death of, or injury to persons and damage to property for each accident or
186 occurrence in the amount of at least \$750,000 single limit, and in the case of each heavy-duty tow truck, motor vehicle
187 liability insurance coverage for the death of, or injury to, persons and damage to property for each accident or occurrence in
188 the amount of at least \$1,000,000 single limit. A private tow company is liable to the owner, lessee, or lienholder of any
189 non-consensually towed motor vehicle for all property damage to a motor vehicle or the contents of a motor vehicle
190 sustained during or as a result of a non-consensual tow and subsequent storage.

191 (e) A violation of this chapter shall be deemed an unlawful practice under § 2513 of Title 6 and a violation of
192 Subchapter II of Chapter 25 of Title 6.

193 § 6909A. Damages, compensation, and penalties.

194 (a) Where a non-consensual tow was initiated or completed in violation of this Chapter, the owner or operator of
195 the non-consensually towed motor vehicle is entitled to reimbursement of all fees paid to the private tow company or
196 storage facility, in addition to actual damages incurred to retrieve the motor vehicle. If a private tow company or storage

197 facility fails to allow the owner or operator of a motor vehicle access to personal property in the vehicle as required by this
198 chapter, the private tow company or storage facility is liable for consequential damages incurred by the owner or operator
199 of the motor vehicle.

200 (b) If an owner or operator of a motor vehicle is entitled to reimbursement or damages under this section, all
201 private tow companies and storage facilities involved in the non-consensual towing and subsequent storage of the motor
202 vehicle shall be jointly and severally liable for such reimbursement or damages.

203 (c) If a court holds that an owner or operator of a motor vehicle is entitled to reimbursement or damages under this
204 section, the court shall order the reasonable attorneys' fees and costs to the owner or operator of the motor vehicle be paid
205 by the defendant or defendants in the action if all of the following are true:

206 (1) At least 10 business days prior to the filing of the action, the owner or operator of the motor vehicle made
207 an offer of settlement to the defendant or defendants in an amount equal to or less than the amount finally awarded by
208 the court to such owner or operator.

209 (2) The defendant or defendants rejected the offer of settlement. The failure of a defendant to respond to the
210 offer of settlement within 10 business days is deemed to be a rejection of the offer.

211 (d) The remedies provided for in this section are not exclusive and shall be in addition to any other procedures,
212 rights or remedies which exist with respect to any other provisions of law including but not limited to state or federal
213 criminal prosecutions or actions brought by private parties.

SYNOPSIS

This Act creates a new chapter in Title 21 pertaining to the towing of vehicles without the consent of the owner or operator. It makes violations of the chapter an unlawful practice enforceable by the Consumer Protection Unit of the Department of Justice. The Act creates the following requirements for the towing and storage of vehicles without the consent of the owner or operator:

Photographic evidence must be taken to document the unauthorized parking of a vehicle before it can be towed.

Tow companies and storage facilities must publicly display their rates.

Towing and storage rates must be reasonable, with reasonableness calculated in relation to the fees imposed by the companies for consensual towing and storage or based on average rates in the county.

A maximum total towing and storage rate of \$500 is imposed.

Tow companies must decouple or drop vehicles that have not been removed from parking areas if the owner returns before removal. The drop fee may not be more than 50% of the tow fee.

Storage facilities must be open or accessible to the public from 8 a.m. to 6 p.m. five days a week, and tow companies must make reasonable accommodations to redeem vehicles after-hours.

Individuals must be allowed to retrieve at no cost personal belongings from vehicles held in storage.

Tow companies and storage facilities must accept credit cards.

Where a tow is completed in violation of the chapter, the owner or operator is entitled to both reimbursement of the tow and storage fees as well as damages incurred to retrieve an illegally towed vehicle.

Tow companies are liable for property damage sustained due to a non-consensual tow or storage.

Tow companies may not patrol for illegally parked cars.

Tow companies may not pay or give other benefits to obtain information about cars parked without authorization.