



SPONSOR: Rep. Potter

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 267

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO THE REMOVAL OF MOTOR VEHICLES FROM PRIVATE PROPERTY.

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

Section 1. Amend Title 21 of the Delaware Code by adding a new Chapter by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 69A. REMOVAL OF MOTOR VEHICLES FROM PRIVATE PROPERTY.

§ 6901A. Definitions.

As used in this chapter:

(1) "Private parking area" means any privately owned facility consisting of 1 or more spaces for motor vehicle parking that is accessible to the general public and intended by the owner of the facility to be used primarily by the owner's customers, residents, lessees, or guests.

(2) "Towing" means the transportation on the streets and highways of the State of Delaware of 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 the definition of "towing."

§ 6902A. Applicability; in general.

(a) This chapter applies only to the removal of vehicles from private parking areas and does not apply to removal of vehicles under any other chapter of this title.

(b) Nothing in this subtitle prevents any municipality, county or other local authority from exercising any power to adopt local laws or regulations relating to the registration or licensing of persons engaged in, or otherwise regulating in a more stringent manner, the parking, towing or removal, or impounding of vehicles. These requirements are minimum standards and do not preclude enactment of additional regulations by any municipality, county or other local authority including the right to regulate rates when vehicles or vessels are towed from private property.

(c) This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles that are marked as such or to property owned by any governmental entity.

§ 6903A. Parking in private parking areas.

(a) No person shall park a vehicle in any private parking area without the express or implied consent of the owner or person in lawful possession of such property.

(b) The owner or person in lawful possession of any private parking area shall be deemed to have given consent to unrestricted parking by the general public in such parking areas unless signs are posted as described in this chapter.

§ 6904A. Signs.

(a) The owner or operator of a private parking area or the owner's or operator's agent may not have a vehicle towed or otherwise removed from a private parking area unless signs have been placed in accordance with all of the following standards:

(1) Must be at least 24 inches high and 30 inches wide.

(2) Must state the name, telephone number, and address of the towing company.

(3) Must state the location to which the vehicle will be towed or removed and provide the telephone number of the person who can be contacted to arrange for the reclaiming of the vehicle by its owner or the owner's agent.

(4) Must state the maximum amount the owner of the vehicle may be charged, including towing charges, daily storage fees, and any other charges that could result from the towing or removal of the vehicle.

(5) Must state the restrictions or prohibitions on the private parking area, including hours when parking is not permitted by the public and who is permitted or prohibited from parking in the private parking area.

(6) Must be clearly visible and readable to the driver of a motor vehicle entering or being parked in the parking lot.

(7) Must be conspicuously posted at each entrance to the private parking area. For private parking areas containing more than 5 parking spaces, signs must be placed to provide at least 1 sign for every 1,500 square feet of parking space.

(b) Signs must be posted for at least 24 hours before the first tow.

§ 6905A. Location to which vehicles towed or removed.

(a) A vehicle may not be towed or otherwise removed from a private parking area to a location that is:

(1) Subject to subsection (b) of this section, more than 15 miles from the private parking area.

(2) Outside the State.

(b) A local jurisdiction may establish a maximum distance from a private parking area to a towed vehicle storage facility that is different than that established under subsection (a)(1) of this section.

§ 6906A. Rights, duties and obligations of persons undertaking towing or removing motor vehicles.

(a) Unless otherwise set by local law, a person who tows or removes a vehicle from a private parking area:

(1) May not charge the owner of the vehicle, the owner's agent, the insurer of record, or any secured party more than:

a. The fee normally charged or authorized by the political subdivision from which the vehicle was towed for the public safety impound towing of vehicles.

b. The fee normally charged or authorized by the political subdivision from which the vehicle was towed for the daily storage of impounded vehicles.

c. If the political subdivision does not have an established fee for the public safety towing, recovery, or storage of impounded vehicles, \$200 for towing and recovering a vehicle and \$30 per day for vehicle storage.

d. Subject to subsection (b) of this section, the actual cost of providing notice under this section.

(2) Shall notify the police department in the jurisdiction where the private parking area is located within 1 hour after towing or removing the vehicle from the private parking area, and shall provide all of the following information:

a. A description of the vehicle, including the vehicle's registration plate number and vehicle identification number.

b. The date and time the vehicle was towed or removed.

c. The reason the vehicle was towed or removed.

d. The locations from which and to which the vehicle was towed or removed.

(3) Shall notify the Division of Motor Vehicles within 1 hour after towing or removing the vehicle from the private parking area, and shall provide the same information required in a notice to a police department in paragraph (2) of this subsection.

(4) Shall notify the police department in the jurisdiction where the private parking area is located if a vehicle is retained for more than 72 hours from the time the vehicle was towed or removed from the private parking area.

(5) Shall notify the owner, any secured party, and the insurer of record by certified mail, return receipt requested, and first-class mail within 5 days after towing or removing the vehicle, and shall provide the same information required in a notice to a police department in paragraph (2) of this subsection. The 5 days does not include federal holidays or any days when the storage facility is closed to the public.

(6) Shall provide to the owner, any secured party, and the insurer of record the itemized actual costs of providing notice under this section;

(7) Shall remain open for the reclaiming of vehicles for at least 2 hours after the last tow.

(8) May not assess storage fees until 24 hours after the towed or removed vehicle has been reported to the police department in the jurisdiction where the private parking area is located.

(9) May not assess storage fees for any day the storage facility is closed to the public, including weekends and federal holidays.

(10) Before towing or removing the vehicle, shall have written or oral authorization from the owner or operator of the private parking area or the owner's or operator's agent containing all of the following:

a. The name of the person authorizing the tow or removal.

b. A statement that the vehicle is being towed or removed at the request of the private parking area owner or operator.

c. Photographic evidence of the violation or event that precipitated the towing of the vehicle.

(11) May not obtain authorization from any employee, officer or agent of the towing company claiming to be an agent of the owner or operator of the private parking area.

(12) Shall obtain commercial liability insurance in the amount required by federal law for transporting property in interstate or foreign commerce to cover the cost of any damage to the vehicle resulting from the person's negligence.

(13) May not employ or otherwise compensate individuals, commonly referred to as "spotters," whose primary task is to report the presence of unauthorized parked vehicles for the purposes of towing or removal, and impounding.

(14) May not pay any remuneration to the owner, agent, or employee of the parking lot.

(b) No charge for providing notice if possession retaken within 48 hours. A person may not charge for the actual cost of providing notice under subsection (a)(1)d. of this section if the vehicle owner, the owner's agent, the insurer of record, or any secured party retakes possession of the vehicle within 48 hours after the police were notified of the tow or removal.

§ 6907A. Database.

The Department of Transportation shall:

(1) Establish and maintain a database containing the proper address for providing notice to an insurer under subsection (a)(4) of § 6906A for each insurer authorized to write a vehicle liability insurance policy in the State and make the database available to the public.

(2) Establish and maintain a database containing all vehicles reported towed or removed and make the database available to the public. The Department of Transportation shall update the website every 24 hours.

§ 6908A. Delivery to storage facility; repossession by owner before or after towing; payment.

(a) Subject to subsection (b) of this section, if a vehicle is towed or otherwise removed from a private parking area, the person in possession of the vehicle:

(1) Shall immediately deliver the vehicle directly to the storage facility stated on the signs posted in accordance with § 6904A of this chapter.

(2) May not move the towed vehicle from that storage facility to another storage facility for at least 72 hours after the vehicle arrived at the storage facility.

(3) Shall provide the owner of the vehicle or the owner's agent access to reclaim the vehicle at all times during normal business hours of the storage facility and at least 2 hours after the police were notified of the vehicle tow or removal. No storage facility can be closed to the public more than 2 consecutive days.

(b) Repossession by owner prior to removal to storage facility. Before a vehicle is removed from a private parking area, a tower who possesses the vehicle shall release the vehicle to the owner or an agent of the owner:

(1) If the owner or owner's agent requests that the tower release the vehicle and the vehicle can be driven under its own power.

(2) Whether or not the vehicle has been lifted off the ground.

(3) If the owner or agent pays a drop fee to the tower in an amount not exceeding 50% of the cost of a tow.

(c) Payment options and duties; availability of vehicle.

(1) A storage facility that is in possession of a towed vehicle shall:

a. Accept payment for outstanding towing, recovery and storage fees by cash or at least two major, nationally recognized credit cards.

b. If the storage facility accepts only cash, have an operable automatic teller machine available on the premises.

c. Discount the amount of the total fees by 10 percent if only cash is accepted.

(2) If a storage facility is unable to process a credit card payment because of a problem with the storage facility's credit card machine and does not have an operable automatic teller machine on the premises, the storage facility shall discount the total fees by 50 percent.

(3) A storage facility that is in possession of a towed vehicle shall make the vehicle available to the owner, the owner's agent, the insurer of record, or a secured party, under the supervision of the storage facility, for:

a. Inspection.

b. Retrieval from the vehicle of personal property that is not attached to the vehicle.

142 § 6909A.Penalties.

143 Any person who undertakes the towing or removal of a vehicle from a private parking area in violation of any
144 provision of this chapter shall be fined not less than \$250 and no more than \$500 for the first offense. For the second or
145 subsequent offense within 1 year, the fine shall be not less than \$500 and no more than \$1,000 for each offense.

146 Section 2. Amend § 3903 of Title 25 of the Delaware Code by making deletions as shown by strike through and
147 insertions as shown by underline as follows:

148 (a) If a lienholder under § 3901 or § 3902 of this title is not paid the amount due, and for which the lien is given
149 within ~~30~~60 days after the same or any part thereof became due, then the lienholder may proceed to sell the property, or so
150 much thereof as may be necessary, to satisfy the lien and costs of sale pursuant to § 3905 of this title if:

151 (1) An authorization to conduct a lien sale has been issued pursuant to this section;

152 (2) A judgment has been entered in favor of the lienholder on the claim which gives rise to the lien; or

153 (3) The owners and any secured parties of record or known lienholders of the property have signed, after the
154 lien has arisen, a release of any interest in the property in the form prescribed by § 3904 of this title.

SYNOPSIS

 This Act is intended to create minimum standards for nonconsensual towing or removing of vehicles from private parking areas. These standards include providing vehicle owners with proper notice that their vehicle may be subject to tow or removal, where their vehicle will be taken, the contact information for the tow or storage company in possession of their vehicle and the maximum rates they can be charged pursuant to the chapter. This Act also extends the amount of time a tower or storage facility must possess a vehicle before selling it.