SPONSOR: Rep. Osienski & Rep. K. Williams & Sen. Hansen
Reps. Burns, Cooke, Morrison, Ross Levin, Ortega, Romer, Wilson-Anton, K. Johnson, Lambert; Sens. Richardson, Sokola, Lawson, Pettyjohn, Pinkney, Lockman

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 67
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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 strikethrough 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 weighing 5,000 pounds or less 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.

(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 or portion thereof held open to the general public for motor vehicle parking and 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

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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 non-commercial roadways or other roadways on which motor vehicles are commonly parked for periods of time in excess of 24 hours.

(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.

(a) This chapter applies to non-consensual towing of motor vehicles weighing 5,000 pounds or less from private or public parking areas.

(b) Sections 6903A through 6905A of this chapter do not apply to the following:

(1) The towing of motor vehicles at the direction of police under Chapter 69 of this title.

(2) The towing of abandoned motor vehicles under Chapter 44 of this title or an equivalent municipal ordinance, code, or regulation.

(3) The towing of motor vehicles by a city, county, or state agency authorized to tow such vehicles under § 4181A or § 7003 of this title.

(4) The towing of motor vehicles by a municipality authorized to tow such vehicles under a municipal ordinance, code, or regulation that permits the towing of a vehicle due to unpaid parking tickets issued to the vehicle or unpaid traffic citations incurred while operating the vehicle.

§ 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) Obtain a prior written authorization from the owner of the private parking area to tow the motor vehicle if the towing will take place from a private parking area during a time when the parking area is held open to the general public for parking. The prior written authorization may be conveyed electronically and 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.

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

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

§ 6904A. Consent for towing; exceptions.

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

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

(2) A sign is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by drivers entering the private parking area. The sign must have lettering of no less than 1 inch in height and contain the following:

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

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

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

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

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

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

(3) A sign is affixed to each door of the tow truck with lettering of no less than 3 inches in height that contains the name and telephone number of the private tow company.

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

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

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

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

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

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

§ 6905A. Incomplete tows.

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

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

(c) A private tow company may return a motor vehicle to a parking area or another location at the request of a motor vehicle owner or operator who makes telephone contact with the tow company before the motor vehicle has been placed in storage at a storage facility. The private tow company may collect the full non-consensual tow fee that would

otherwise be charged. No storage fee or ancillary fees other than the tow fee may be assessed if the motor vehicle is retrieved within 24 hours from the time the private tow company first undertakes a tow.

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

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

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

(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 week, excluding holidays.

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

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

(4) The storage facility accepts as a means of payment all major credit cards and debit cards, or the storage facility has an operating automated teller machine (ATM). An ATM service or access fee must be reasonable.

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

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

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

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

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

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

(2) A private tow company or storage facility may charge a maximum fee of $50 for after-hours access to or release of stored motor vehicles.

(3) No private tow company or storage facility may charge storage fees or an after-hour access fee for any portion of a day during which an owner or operator of a motor vehicle is unable to obtain access to and release of the stored motor vehicle during the hours of 8 a.m to 6 p.m. within 90 minutes of following the instructions posted under paragraph (b)(1) of this section

§ 6907A. Fees and payments.

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

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

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

(3) A statement that it is unlawful for a tow company or storage facility to refuse payment by major credit card if the facility does not have an ATM with reasonable access or service fees.

(b)(1) All fees charged for the non-consensual tow of a motor vehicle and related storage services must be reasonable and not excessive. Fees are presumptively excessive if:

a. They exceed by more than 25% the usual and customary fee charged by the private towing company or storage facility for such services when provided with the consent of the owner or operator of a motor vehicle.

b. They exceed by more than 50% the usual and customary fee charged for such nonconsensual towing or related storage service by other towing companies or storage facilities operating in the county from which the motor vehicle was towed.

(2) Notwithstanding the foregoing, such fees may not exceed the maximum amounts that may be charged for such services in accordance with any applicable schedule of permissible fees adopted by municipal or other local ordinance.

(c) An owner or operator of a non-commercial motor vehicle or rental vehicle under § 2002 of Title 18 may not be charged a towing fee in excess of $250 or a daily storage rate in excess of $50. No other towing-related charges may be charged in addition to the maximum towing and storage fees.

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

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

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

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

(e) Private tow companies and storage facilities must accept as a means of payment all major credit cards and debit cards, or have an ATM for which any service or access fee is reasonable.

§ 6908A. Unlawful practices.

(a) It is an unlawful practice for a person to violate any provision of this chapter.

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

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

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

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

a. The private tow company has a contract with the owner of a private parking area or authorized or designated agent of the State or political subdivision of a public parking area to tow vehicles from the parking area.

b. The private tow company complies with the requirements of § 6903A of this title for each vehicle it tows from the parking area, including obtaining prior written authorization to tow a vehicle from a private parking area.

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

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

§ 6909A. Damages, compensation, and penalties.

(a) Where a non-consensual tow was initiated or completed in violation of this Chapter, the owner or operator of the non-consensually towed motor vehicle is entitled to reimbursement of all fees paid to the private tow company or storage facility, in addition to actual damages incurred to retrieve the motor vehicle. If a private tow company or storage facility fails to allow the owner or operator of a motor vehicle access to personal property in the vehicle as required by this chapter, the private tow company or storage facility is liable for consequential damages incurred by the owner or operator of the motor vehicle.

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

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

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

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

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