

The Senate Committee on Public Safety offered the following substitute to HB 119:

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 authorize the regulation of motor vehicle
3 immobilization operators by the Department of Public Safety; to limit the immobilization of
4 trespassing vehicles to jurisdictions that have authorized such activity by ordinance or
5 resolution; to provide for fees; to provide for notice requirements; to provide for licenses; to
6 remove authority to impose a civil penalty; to provide for related matters; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

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

14 "44-1-13.

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

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

17 (2) 'Immobilization device' means any mechanical device designed or used to be attached
18 to a wheel, tire, or other part of a parked motor vehicle so as to prohibit the motor
19 vehicle's usual manner of movement or operation.

20 (2)(3) 'Private property' means any parcel or space of private real property.

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

43 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 vehicles on private property if such
47 immobilization or towing is performed without the prior consent or authorization of the
48 owner or operator of the vehicle, including the authority to set just and reasonable rates,
49 fares, and charges for services related to the immobilization, removal, storage, and
50 required notification to owners of such ~~towed~~ vehicles. No storage fees shall be charged
51 for the first 24 hour period which begins at the time the vehicle is removed from the
52 property, ~~and no such.~~ No fees shall be allowed for the immobilization or removal and
53 storage of vehicles ~~removed by towing and storage firms~~ by persons found to be in
54 violation of this Code section. ~~The department is authorized to impose a civil penalty for~~
55 ~~any violation of this Code section in an amount not to exceed \$2,500.00.~~

56 (2) In accordance with subsection (d) of this Code section, the governing authority of a
57 municipality may require towing and storage ~~operators~~ firms to charge lower maximum
58 rates on traffic moving between points within such municipality than those provided by
59 the department's maximum rate tariff and may require higher public liability insurance
60 limits and cargo insurance limits than those required by the department. The governing
61 authority of a municipality shall not provide for higher maximum costs of
62 immobilization, removal, 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 immobilize or remove any trespassing vehicle or ~~trespassing~~ personal property parked
68 thereon after the regular activity on such property is concluded for the day only if access
69 to such property from the public way is blocked by a sturdy chain, cable, or rope stretched

70 at least 18 inches above grade across all driveways or other ways providing access to the
71 off-street parking area or vacant lot and there is conspicuously posted in the area a notice,
72 the location of which ~~must~~ shall be approved by the municipality's police department, that
73 any trespassing vehicle or ~~trespassing~~ personal property parked thereon which is not
74 authorized to be in such area may be immobilized or removed at the expense of the owner
75 along with information as to where the trespassing vehicle or ~~trespassing~~ personal property
76 may be recovered, the cost of said recovery, and information regarding the form of
77 payment.

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

94 (2) Towing and storage firms operating within a municipality's corporate limits shall
95 obtain a nonconsensual towing permit from the department and shall file its registered
96 agent's name and address with the department. Immobilization device operators

97 operating within a municipality's corporate limits pursuant to authorization to perform
98 such services pursuant to ordinance or resolution of a governing authority shall obtain an
99 immobilization operator permit from the department and shall file its registered agent's
100 name and address with the department. The department may assess and collect an
101 application fee in an amount to be determined by the commissioner and such amount
102 shall not exceed the total direct and indirect costs of administering the program or activity
103 with which the fee is associated. Pursuant to Code Section 45-12-92.1, the fees collected
104 shall be retained by the department and expended solely for the purpose of implementing
105 this Code section.

106 (e) Any person who suffers injury or damages as a result of a violation of this Code section
107 may bring an action in any court of competent jurisdiction for actual damages, which shall
108 be presumed to be not less than \$100.00, together with court costs. A court shall award
109 three times actual damages for an intentional violation of this Code section.

110 (f) It shall be unlawful and punishable by a fine of \$1,000.00 for any immobilization
111 device operator or towing and storage firm, permitted or unpermitted, licensed or
112 unlicensed, to enter into any agreement with any person in possession of private property
113 to provide automatic or systematic surveillance of such property for purposes of
114 immobilization or removal and relocation of any ~~such~~ trespassing vehicle or trespassing
115 personal property except upon call by such person in possession of such private property
116 to such immobilization device operator or towing and storage firm for each individual case
117 of trespass; provided, further, that it shall be unlawful and punishable by a fine of
118 \$1,000.00 for any ~~towing and storage firm~~ person to pay to any private property owner or
119 one in possession of private property any fee or emolument, directly or indirectly, for the
120 right to immobilize or remove a trespassing vehicle or trespassing personal property from
121 said private property."

122

SECTION 2.

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