

A Bill for an Act Relating to Towing.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that predatory towing is a combination of generally unethical practices used by some towing companies to maximize their income. These practices include using spotters to get cars towed almost as soon as they are parked; charging excessive fees for towing or storage; or making private side deals with owners of stores or parking lots to maximize towing income. The legislature further finds that any of these practices can result in unfair and excessive charges for the vehicle owner.

The purpose of this Act is to protect consumers from predatory towing practices by:

- (1) Clarifying the fees tow companies may charge;
- (2) Clarifying the duties of a tow company when a vehicle owner arrives on the scene while the vehicle is in the process of being hooked up;
- (3) Requiring tow and storage companies to accept credit cards and debit cards;
- (4) Subjecting any violation of the towing statute to the penalties and remedies under the State's unfair or deceptive acts or practices law and consumer protection law; and
- (5) Adding definitions for clarity.

SECTION 2. Section 290-11, Hawaii Revised Statutes, is amended to read as follows:

**“§290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles.** (a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without authorization of the owner or occupant of the property, may be towed away at the expense of the vehicle owner ~~[of the vehicle]~~, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall clearly state, in not less than two-inch high, light reflective letters on a contrasting background, that the vehicle parked without authorization will be towed and held at the expense of the vehicle owner, as well as the name, address, and a telephone number of the facility where the vehicle will be towed and held. The notice shall be of such size and be placed in a location that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall:

- (1) Charge not more than \$65 for a tow, or \$75 for a tow using a dolly, plus a mileage charge of \$7.50 per mile towed and \$25 per day or fraction thereof for storage for the first seven days and \$20 per day thereafter. In the case of a difficult hookup, a towing surcharge of \$30 shall apply. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., from Monday through Thursday and from six o'clock p.m. Friday to six o'clock a.m. Monday, the towing company shall be entitled to an overtime charge of \$15. ~~[If the vehicle is in the process of being hooked up or is hooked up to the tow truck and the owner appears on the scene, the towing~~

~~company shall unhook the vehicle and shall not charge any fee to the owner of the vehicle. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of \$30 shall be applicable;] The charges listed in this paragraph shall be the only charges tow companies are authorized to charge vehicle owners. For purposes of this paragraph, "difficult hookup" shall mean an above or below ground hookup in a multilevel facility;~~

- (2) If the vehicle is in the process of being hooked up, meaning up to the point when the tow truck is driving away, and the vehicle owner appears on the scene, the tow company shall release the vehicle to the vehicle owner at a location that ensures the safety of all persons and property involved, regardless of whether the release occurs on the scene or if the vehicle must be removed from the scene to be safely released; provided that no fee will be charged to the vehicle owner under this paragraph;

- [(2)] (3) Determine the name of the legal owner and the last registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the last registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed fifteen days following the tow. The notice shall state:

- (A) The maximum towing charges and fees allowed by law;
- (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
- (C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the [owners] legal owner and the last registered owner have not been [so] notified[, then the owner] pursuant to this paragraph, the vehicle may [recover the owner's car] be recovered by the vehicle owner from the towing company without paying tow or storage fees[; provided that the]. The notice need not be sent to a legal owner or last registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal owner or last registered owner five days after the mailing[. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of the damages and reasonable attorney's fees together with the cost of suit];

- [(3)] (4) Provide, when a vehicle is recovered by the vehicle owner [before written notice is sent by registered or certified mail,] the vehicle owner with a receipt stating:

- (A) The maximum towing charges and fees allowed by law; and
- (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

(4) (5) Accommodate payment by the vehicle owner for charges under paragraph (1) by cash ~~[and by either]~~, credit card ~~[or automated teller machine located on the premises.]~~, or debit card.

(c) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk.

(d) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal owner or last registered owner of the vehicle if the legal owner or last registered owner can be found. If the legal owner or last registered owner cannot be found at the address on record at the department of transportation or the county department of finance, the balance shall be deposited with the ~~[director of finance of the State]~~ State's unclaimed property program administered by the department of budget and finance and shall be paid out to the legal owner or last registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

(e) The transfer of title and interest by sale under this part is a transfer by operation of law~~;~~ provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.], pursuant to the requirements under section 286-52(f).

(f) Notwithstanding any law or ordinance to the contrary, including subsection ~~[(g)]~~ (h) and section 46-20.5, any towing company engaged in towing in a county with a population greater than five hundred thousand shall offer towing services to consumers twenty-four hours per day every day of the week~~;~~ which]. The towing services shall include the release of vehicles kept in storage to [a registered owner, legal owner,] an insurer, vehicle owner or a designated representative.

(g) Any person who violates any provision of this section shall be deemed to have:

- (1) Engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2 and subject to penalties and remedies under chapter 480; and
- (2) Furnished services without a license within the meaning of section 487-13 and subject to penalties and remedies under chapter 487.

~~[(g)]~~ (h) This section shall not apply to a county that has adopted ordinances regulating towing operations.

(i) As used in this section:

"Hooked up" means completely and securely attached and fastened to the tow truck by means of clamps, couplings, straps, tow bars, and other mechanical devices that are specifically designed to prevent the vehicle from dropping off or detaching from the tow truck in any way or otherwise shifting in any manner.

"Scene" means the location of the vehicle while it is in the process of being hooked up, or the location where it was hooked up, and anywhere within a fifty foot radius of that location.

"Vehicle owner" means any person, other than the towing company, who has possession of or any other interest in the vehicle, including but not limited to the legal or last registered owner of the vehicle, the insurance company insuring

the vehicle, the person renting the vehicle pursuant to chapter 437D or any other law authorizing a person to operate the vehicle, or any person in possession of the key or remote keyless ignition system device to the vehicle.

“Vehicle parked without authorization” means any vehicle left unattended on private or public property that is not parked in compliance with the notice required by subsection (a). “Vehicle parked without authorization” shall not include:

- (1) A vehicle otherwise parked in compliance with the notice required by subsection (a) where the vehicle owner has prepaid for parking and placed a payment receipt, placard, or permit anywhere on or in the vehicle and the payment receipt, placard, or permit is visible from outside the vehicle; or
- (2) A vehicle otherwise parked in compliance with the notice required by subsection (a) where the vehicle owner has received authorization from an owner, occupant, or person in charge of the property and placed the placard, permit, or written authorization, if any, anywhere on or in the vehicle and the placard, permit, or written authorization is visible from the outside of the vehicle.”

SECTION 3. Section 291C-165.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The towing company shall determine the name of the lien holder and the last registered owner of the vehicle from the department of transportation or the county department of finance. The lien holder and the registered owner shall be notified by the towing company in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

- (1) The maximum towing charges and fees allowed by law;
- (2) The telephone number of the county finance department that arranged for or authorized the tow; and
- (3) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Any towing company engaged in towing pursuant to this section shall comply with the requirements of section 291C-135. When the vehicle is recovered after the tow by the last registered owner or lien holder, the party recovering the vehicle shall pay the tow and storage charges which shall not exceed the charges as provided by section 290-11(b) or the rates agreed upon with the respective counties, whichever is lower, except that tow operators may charge additional reasonable amounts for excavating vehicles from off-road locations; provided that if the notice required by this section was not sent within twenty days after the tow, neither the last registered owner nor the lien holder shall be required to pay the tow and storage charges. No notice shall be sent to a legal or last registered owner or any person with any unrecorded interest in the vehicle whose name or address cannot be determined. ~~[A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained, and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of these damages and reasonable attorney's fees together with the cost of the suit.]~~ Any person who violates any provision of this section shall be deemed to have:

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- (1) Engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2 and subject to the penalties and remedies of chapter 480; and
- (2) Furnished services without a license within the meaning of section 487-13 and subject to penalties and remedies under chapter 487.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on October 1, 2020.

(Approved September 15, 2020.)

### Note

1. Prior to amendment “,” appeared here.