

ACT 259

H.B. NO. 1401

A Bill for an Act Relating to Motor Vehicle Towing.

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

SECTION 1. 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 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 state where the vehicle will be towed and held. The notice shall be of such size and be placed in a location reasonably calculated to call the sign to the attention of potential parkers.

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

- (1) Have permanently affixed on each door of the towing vehicle a sign with the name and telephone number of the towing business. The letters and numbers used in the sign shall be no less than two inches in height;
- (2) Maintain insurance coverage sufficient to protect owners of towed vehicles in the event of vehicle loss or damage due to towing;
- (3) Charge not more than \$50 for a tow, or \$60 for a tow using a dolly, plus a mileage charge of \$5 per mile towed and \$15 per day or fraction thereof for storage for the first seven days and \$10 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., the towing company shall be entitled to an overtime charge of \$15. If the vehicle is in the process of being hooked up to the tow truck and the owner appears on the scene before the vehicle has been moved by the tow truck, the towing company shall be entitled to an “unhooking” fee of not more than \$50. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of \$25 shall be applicable[. The towing company shall determine];
- (4) Determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the 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 twenty days following the tow. The notice shall state:

- [(1)] (A) The maximum towing charges and fees allowed by law;

- [(2)] (B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and
- [(3)] (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 have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or 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 or 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.

If a tow operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lienholder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is for the plaintiff, the court shall award the plaintiff a sum of not less than \$1,000 or threefold damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit;

[(c) When]

(5) Provide, when a vehicle is recovered by the owner before written notice is sent by registered or certified mail, [the towing company shall provide] the owner with a receipt stating:

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

(6) Accommodate payment by the owner for charges under paragraph (3) by cash and by either credit card or automated teller machine located on the premises.

[(d)] (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.

[(e)] (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 or registered owner of the vehicle if the legal or registered owner can be found. If the legal or registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the legal or 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.

[(f)] (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.

[(g)] (f) Each county by ordinance may enact additional restrictions to this section or may enact criminal sanctions in this area as required.

[(h)] For the purposes of this section, tow operators shall accommodate payment by the owner for charges under subsection (b) by cash and by either credit card or automated teller machine located on the premises.]”

SECTION 2. Section 291C-165.5(b), Hawaii Revised Statutes, is amended to read as follows:

“(b) The towing company shall determine the name of the lien holder and the 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 290-11(b)(1) and (2). When the vehicle is recovered after the tow by the 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 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 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.

If a tow operator fails to comply with the insurance requirements of section 290-11(b), no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lienholder, or insurer of the vehicle, who has been injured by the tow operator’s failure to comply with this section is entitled to sue for damages sustained. If a judgment is for the plaintiff, the court shall award the plaintiff a sum of not less than \$1,000 or threefold damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit.”

ACT 259

SECTION 3. Act 138, Session Laws of Hawaii 1998, is amended by amending section 3 to read as follows:

“SECTION 3. This Act shall take effect upon its approval; provided that the amendment set forth in Section 1 shall take effect on September 1, 1998[, and shall be repealed on July 1, 2000].”

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

SECTION 5. This Act shall take effect upon its approval.

(Approved July 6, 1999.)