

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 1239
HOUSE BILL 1645

AN ACT TO PROVIDE HEARING PROCEDURES FOR MOTORISTS WHOSE VEHICLES
ARE TOWED AS A RESULT OF PARKING OR OTHER MOTOR VEHICLE LAW
VIOLATIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read as follows:

"§ 20-161.2. Hearing procedures for towed vehicles. — (a) Whenever any vehicle is removed, towed, or stored pursuant to the provisions of this Chapter, Chapter 115C, Chapter 115D, Chapter 116 or Chapter 143 of the General Statutes, or any rule adopted pursuant thereto, the person authorizing the removal, towing, or storage of such vehicle shall be deemed a legal possessor within the meaning of G.S. 44A-2(d).

(b) Upon written request of the registered owner, lienholder, or person entitled to claim possession of any vehicle removed, towed, or stored, the magistrate in the county where the vehicle was removed, towed, or stored shall, as soon as practical, but in no event more than 24 hours from the request, conduct a hearing to determine whether probable cause existed for the removal, towing, or storage of the vehicle. Said request shall be made in a format approved by the Administrative Office of the Courts. An affidavit setting forth the reasons for and circumstances surrounding the removal, towing, or storage shall be admissible as evidence for the person authorizing the removal, towing, or storage of the vehicle, but shall not preclude the admission of testimony from or on behalf of the said person or other witnesses. The claimant shall be given an opportunity to present evidence. Following the hearing, the magistrate shall determine, from the evidence admitted, whether probable cause existed for the removal, towing, or storage of the vehicle. If the magistrate finds no probable cause existed, he shall issue an order so finding and directing the immediate release of the vehicle to the claimant. Notwithstanding any other provision of law, no person, firm, or corporation, who removes, tows, or stores a vehicle pursuant to this section may assert a mechanics lien for said removal, towing, or storage charges following a finding, by the magistrate pursuant to this section, of no probable cause for the removal, towing, or storage thereof. If the magistrate finds that probable cause existed for the initial removal, towing, or storage of the vehicle, the person actually removing, towing, or storing the vehicle shall have a mechanics lien against the vehicle for the removal, towing, or storage charges pursuant to Chapter 44A. If the claimant does not desire a hearing or if the magistrate finds probable cause following hearing, the claimant may obtain possession of the vehicle by:

- (1) payment of the removal, towing, or storage fees; or
- (2) posting bond in the amount of the removal, towing, or storage fees. Said bond shall be conditioned upon the filing, of an action as set forth below for the determination of the lawfulness of the removal, towing, or storage, and conditioned upon the return of the vehicle to the jurisdiction of the court at the time of trial. If no action is filed within 30 days to contest the lawfulness of the removal, towing, or storage, the Clerk of Superior Court shall pay the

bond to the person, firm or corporation that actually removed, towed or stored the vehicle.

(c) Any claimant who has posted bond pursuant to subsection (b)(2) above and who seeks to contest the payment or the amount of the removal, towing or storage fee must, within 30 days of said posting, file a small claim action in the county where the vehicle was removed, towed, or stored, for the amount of the removal, towing, or storage fees and naming the person who authorized the removal, towing, or storage as a defendant, as well as the person, firm, or corporation who actually conducted the removal, towing, or storage. If, at trial, the court finds that the vehicle was lawfully removed, towed, or stored, it shall enter judgment against the party claiming the vehicle for the amount of the removal, towing, or storage fees. The court shall further order possession of the vehicle restored to the person, firm, or corporation who removed, towed, or stored the motor vehicle and further declare a valid and enforceable mechanics lien upon the vehicle in favor of said person, firm, or corporation, pursuant to Chapter 44A, for the amount of the removal, towing, or storage fees. If the court finds the removal, towing, or storage was in violation of law, it shall order the immediate release of the motor vehicle and any bond remitted to the claimant. Upon any claimant's failure to appear at trial, the court shall order the bond forfeited, and the proceeds to the person, firm, or corporation who actually removed, towed, or stored the vehicle. No law enforcement officer, or other person authorized to enforce any of the provisions of this Chapter, Chapter 115C, Chapter 115D, Chapter 116 or Chapter 143, shall be held liable to any person, firm, or corporation who removes, tows, or stores a motor vehicle at the request or direction of the law enforcement officer or other such person. Any appeal from the ruling of the court shall be as in all other small claim actions.

(d) The provisions of this section shall not abrogate any rights of the claimant or the person, firm or corporation who removes, tows or stores a motor vehicle against any party for claims arising out of the removal, towing or storage.

(e) Every agency whose law enforcement officers act pursuant to this statute shall, by contract or regulations, provide compensation to the person, firm or corporation who actually removed, towed, or stored the vehicle if the court finds the removal, towing or storage was without probable cause."

Sec. 2. G.S. 115C-46(d), as the same appears in the 1981 Cumulative Supplement to Volume 3A of the General Statutes, 1978 Replacement, is hereby amended on lines 7 and 8 by deleting "and the registered owner of such vehicle shall become liable for removal and storage charges." and substituting in lieu thereof the words and punctuation "subject to the lien creation, notice and hearing provisions of G.S. 20-161.2."

Sec. 3. G.S. 116-44.4(i), as the same appears in Volume 3A of the General Statutes, 1978 Replacement, is hereby amended by rewriting the first sentence to read:

"An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area subject to the lien creation, notice and hearing provisions of G.S. 20-161.2."

Sec. 4. G.S. 143-340(19), as the same appears in the 1981 Cumulative Supplement to Volume 3C of the General Statutes, 1978 Replacement, is hereby amended on lines 6 and 7 by deleting the words and punctuation "and the registered owner of such vehicle shall become liable for removal and storage charges." and by substituting in lieu thereof the words and punctuation "subject to the lien creation, notice and hearing provisions of G.S. 20-161.2."

Sec. 5. This act shall become effective August 1, 1982 and shall expire on July 1, 1983.

In the General Assembly read three times and ratified, this the 18th day of June, 1982.