

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 420
HOUSE BILL 1061

AN ACT TO ENSURE DUE PROCESS FOR PERSONS WHOSE CARS ARE
TOWED PURSUANT TO A LAW ENFORCEMENT OFFICER'S ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-161.2 is repealed.

Sec. 2. A new Article is added to Chapter 20 of the General Statutes to read:
"Article 8.

"Post-Towing Procedures.

"§ 20-220. Definitions. – As used in this Article, unless the context clearly requires otherwise:

- (1) 'tower' means the person who towed the vehicle;
- (2) 'tow' in any of its forms includes to remove a vehicle by any means including towing and to store the vehicle;
- (3) 'towing fee' means the fee charged for towing and storing.

"§ 20-221. Coverage of Article. – (a) This Article applies to each towing of a vehicle that is carried out pursuant to G.S. 115C-46(d) or G.S. 143-340(19), or pursuant to the direction of a law enforcement officer except:

- (1) this Article applies to towings pursuant to G.S. 115D-21, 116-44.4, 116-226, 153A-132, and 160A-303 only insofar as specifically provided;
- (2) this Article does not apply to a seizure of a vehicle under G.S. 14-86.1, 18B-504, 90-112, 113- 137, or to any other seizure of a vehicle for evidence in a criminal proceeding or pursuant to any other statute providing for the forfeiture of a vehicle;
- (3) this Article does not apply to a seizure of a vehicle pursuant to a levy under execution.

(b) A person who authorizes the towing of a vehicle covered by this Article, G.S. 115D-21, 116-44.4, 116-226, 153A-132, or 160A- 303 is a legal possessor of the vehicle within the meaning of G.S. 44A-1(1).

"§ 20-222. Notice and probable cause hearing. – (a) Whenever a vehicle with a valid registration plate or registration is towed as provided in G.S. 20-221, the authorizing person shall immediately notify the last known registered owner of the vehicle of the following:

- (1) a description of the vehicle;
- (2) the place where the vehicle is stored;
- (3) the violation with which the owner is charged, if any;

- (4) the procedure the owner must follow to have the vehicle returned to him; and
- (5) the procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this State, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he or his agent waives this notice in writing.

(b) Whenever a vehicle with neither a valid registration plate nor registration is towed as provided in G.S. 20-221, the authorizing person shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in subsection (a). Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this subsection, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at least seven days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.

(c) The owner or any other person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate in the county where the vehicle was towed. If there is more than one magistrate's office in that county, the request may be filed with the magistrate in the warrant-issuing office in the county seat or in any other office designated to receive requests by the chief district court judge. The magistrate shall set the hearing within 72 hours of his receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing.

(d) The owner, the tower, the person who authorized the towing, and any other interested parties may present evidence at the hearing. The person authorizing the towing and the tower may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.

(e) The only issue at this hearing is whether or not probable cause existed for the towing. If the magistrate finds that probable cause did exist, the tower's lien continues. If the magistrate finds that probable cause did not exist, the tower's lien is extinguished.

(f) Any aggrieved party may appeal the magistrate's decision to district court.
"§ 20-223. Option to pay or post bond. – At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of his vehicle by:

- (1) paying the towing fee, or
- (2) posting a bond for double the amount of the towing fee.

"§ 20-224. Hearing on lien. – The tower may seek to enforce his lien or the owner may seek to contest the lien pursuant to Chapter 44A.

"§ 20-225. Payment to tower guaranteed. – Every agency whose law enforcement officers act pursuant to this Article, G.S. 115D- 21, 116-44.4, 116-226, 153A-132, or

160A-303 shall by contract or rules provide compensation to the tower if a court finds no probable cause existed for the towing."

Sec. 3. G.S. 115C-46(d) is amended by deleting the phrase "subject to the lien creation, notice and hearing provisions of G.S. 20-161.2" and substituting the phrase "and the registered owner of that vehicle shall become liable for removal and storage charges".

Sec. 4. G.S. 115D-21(b) is amended by adding a new paragraph at the end to read:

"Regardless of whether an institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-220 apply.

- (1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 8, Chapter 20, apply.
- (2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. provide by contract or ordinance for a schedule of reasonable towing fees,
 - b. provide a procedure for a prompt fair hearing to contest the towing,
 - c. provide for an appeal to district court from that hearing,
 - d. authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. if the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it."

Sec. 5. G.S. 116-44.4(i) is rewritten to read:

"(i) An ordinance adopted under any portion of this Part may provide that any vehicle illegally parked may be removed to a storage area. Regardless of whether a constituent institution does its own removal and disposal of motor vehicles or contracts with another person to do so, the institution shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-220 apply.

- (1) If the institution operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 8, Chapter 20, apply.
- (2) If the institution operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. provide by contract or ordinance for a schedule of reasonable towing fees,

- b. provide a procedure for a prompt fair hearing to contest the towing,
- c. provide for an appeal to district court from that hearing,
- d. authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
- e. if the institution chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the institution may destroy it."

Sec. 6. A new Article is added to Chapter 116 of the General Statutes to read:
 "Article 27.

"Private Institution Towing Procedures.

"§ 116-226. Post-towing procedures. – If a private college or university employs law enforcement officers so that Article 8, Chapter 20, would otherwise apply to the removal and disposal of motor vehicles, the governing body of that college or university may by rule or ordinance provide an alternative hearing procedure for the owner. For purposes of this section, the definitions in G.S. 20-220 apply.

- (1) If the college or university operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 8, Chapter 20, apply.
- (2) If the college or university operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. provide by contract or ordinance for a schedule of reasonable towing fees,
 - b. provide a procedure for a prompt fair hearing to contest the towing,
 - c. provide for an appeal to district court from that hearing,
 - d. authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. if the college or university chooses to enforce its authority by sale of the vehicle, provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the college or university may destroy it."

Sec. 7. G.S. 143-340(19) is amended by deleting the phrase "subject to the lien creation, notice and hearing provisions of G.S. 20-161.2" and substituting the phrase "and the registered owner of that vehicle shall become liable for removal and storage charges".

Sec. 8. G.S. 153A-132(c) is amended by rewriting the second paragraph to read:

"When an abandoned or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-222(a) and (b)."

Sec. 9. G.S. 153A-132(d) is rewritten to read:

"(d) Hearing Procedure. Regardless of whether a county does its own removal and disposal of motor vehicles or contracts with another person to do so, the county shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-220 apply.

- (1) If the county operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 8, Chapter 20, apply.
- (2) If the county operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. provide by contract or ordinance for a schedule of reasonable towing fees,
 - b. provide a procedure for a prompt fair hearing to contest the towing,
 - c. provide for an appeal to district court from that hearing,
 - d. authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
 - e. provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the county may destroy it."

Sec. 10. G.S. 153A-132(e) and (f) are repealed.

Sec. 11. G.S. 160A-303(c) is amended by deleting the last four sentences and substituting the following:

"When an abandoned or junked motor vehicle is removed, the city shall give notice to the owner as required by G.S. 20-222(a) and (b)."

Sec. 12. G.S. 160A-303(d) is rewritten to read:

"(d) Hearing Procedure. Regardless of whether a city does its own removal and disposal of motor vehicles or contracts with another person to do so, the city, shall provide a hearing procedure for the owner. For purposes of this subsection, the definitions in G.S. 20-220 apply.

- (1) If the city operates in such a way that the person who tows the vehicle is responsible for collecting towing fees, all provisions of Article 8, Chapter 20, apply.
- (2) If the city operates in such a way that it is responsible for collecting towing fees, it shall:
 - a. provide by contract or ordinance for a schedule of reasonable towing fees,

- b. provide a procedure for a prompt fair hearing to contest the towing,
- c. provide for an appeal to district court from that hearing,
- d. authorize release of the vehicle at any time after towing by the posting of a bond or paying of the fees due, and
- e. provide a sale procedure similar to that provided in G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the city may destroy it."

Sec. 13. G.S. 160A-303(e) and (h) are repealed.

Sec. 14. This act shall become effective July 1, 1983.

In the General Assembly read three times and ratified, this the 2nd day of June, 1983.