

By: Dutton (Senate Sponsor - Whitmire) H.B. No. 1399  
(In the Senate - Received from the House May 16, 2005;  
May 17, 2005, read first time and referred to Committee on Business  
and Commerce; May 20, 2005, reported adversely, with favorable  
Committee Substitute by the following vote: Yeas 6, Nays 0;  
May 20, 2005, sent to printer.)

COMMITTEE SUBSTITUTE FOR H.B. No. 1399 By: Averitt

A BILL TO BE ENTITLED  
AN ACT

relating to notice of a landlord's motor vehicle towing or parking  
rules and policies and to liability arising from certain actions of  
a towing service; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 92.013(a), Property Code, is amended to  
read as follows:

(a) A landlord shall give prior written notice to a tenant  
regarding a landlord rule or policy change that is not included in  
the lease agreement and that will affect any personal property  
owned by the tenant that is located outside the tenant's dwelling.  
A landlord shall provide to the tenant in a multiunit complex, as  
that term is defined by Section 92.151, a copy of any applicable  
including any change in] vehicle towing or parking rules or  
policies of the landlord and any changes to those rules or policies  
as provided by Section 92.0131.

SECTION 2. Subchapter A, Chapter 92, Property Code, is  
amended by adding Section 92.0131 to read as follows:

Sec. 92.0131. NOTICE REGARDING VEHICLE TOWING OR PARKING  
RULES OR POLICIES. (a) This section applies only to a tenant in a  
multiunit complex, as that term is defined by Section 92.151.

(b) If at the time a lease agreement is executed a landlord  
has vehicle towing or parking rules or policies that apply to the  
tenant, the landlord shall provide to the tenant a copy of the rules  
or policies before the lease agreement is executed. The copy of the  
rules or policies must be:

(1) signed by the tenant;  
(2) included in a lease agreement signed by the  
tenant; or

(3) included in an attachment to the lease agreement  
that is signed by the tenant, but only if the attachment is  
expressly referred to in the lease agreement.

(c) If the rules or policies are contained in the lease  
agreement or an attachment to the lease agreement, the title to the  
paragraph containing the rules or policies must read "Parking" or  
"Parking Rules" and be capitalized, underlined, or printed in bold  
print.

(d) If a landlord changes the vehicle towing or parking  
rules or policies during the term of the lease agreement, the  
landlord shall provide written notice of the change to the tenant  
before the tenant is required to comply with the rule or policy  
change. The landlord has the burden of proving that the tenant  
received a copy of the rule or policy change. The landlord may  
satisfy that burden of proof by providing evidence that the  
landlord:

(1) delivered the notice by certified mail, return  
receipt requested, addressed to the tenant at the tenant's  
dwelling; or

(2) made a notation in the landlord's files of the  
time, place, and method of providing the notice and the name of the  
person who delivered the notice by:

(A) hand delivery to the tenant or any occupant  
of the tenant's dwelling over the age of 16 years at the tenant's  
dwelling;

(B) facsimile to a facsimile number the tenant

provided to the landlord for the purpose of receiving notices; or  
(C) taping the notice to the inside of the main entry door of the tenant's dwelling.

(e) If a rule or policy change is made during the term of the lease agreement, the change:

(1) must:

(A) apply to all of the landlord's tenants in the same multiunit complex and be based on necessity, safety or security of tenants, reasonable requirements for construction on the premises, or respect for other tenants' parking rights; or

(B) be adopted based on the tenant's written consent; and

(2) may not be effective before the 14th day after the date notice of the change is delivered to the tenant, unless the change is the result of a construction or utility emergency.

(f) A landlord who violates Subsection (b), (c), (d), or (e) is liable for a civil penalty in the amount of \$100 plus any towing or storage costs that the tenant incurs as a result of the towing of the tenant's vehicle. The nonprevailing party in a suit under this section is liable to the prevailing party for reasonable attorney's fees and court costs.

(g) A landlord is liable for any damage to a tenant's vehicle resulting from the negligence of a towing service that contracts with the landlord or the landlord's agent to remove vehicles that are parked in violation of the landlord's rules and policies if the towing company that caused the damage does not carry insurance that covers the damage.

SECTION 3. (a) The change in law made by Section 92.0131(b), Property Code, as added by this Act, applies only to a lease agreement entered into or renewed on or after January 1, 2006. A lease agreement entered into or renewed before January 1, 2006, is governed by the law in effect when the lease was entered into or renewed, and the former law is continued in effect for that purpose.

(b) The change in law made by Section 92.0131(g), Property Code, as added by this Act, applies only to a negligent act that occurs on or after January 1, 2006. A negligent act that occurs before January 1, 2006, is governed by the law in effect when the negligent act occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect January 1, 2006.

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