

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

**Act 1878 of the Regular Session**

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

*As Engrossed: S3/31/05*

**A Bill**

HOUSE BILL 2721

5 By: Representative Kenney  
6 By: Senator Salmon  
7  
8

**For An Act To Be Entitled**

10 AN ACT TO AMEND THE TOWING AND RECOVERY LAWS OF  
11 THE STATE OF ARKANSAS FOR THE PROTECTION OF THE  
12 CONSUMERS OF THE STATE; AND FOR OTHER PURPOSES.  
13

**Subtitle**

14 TO AMEND THE TOWING AND RECOVERY LAWS OF  
15 THE STATE OF ARKANSAS FOR THE PROTECTION  
16 OF THE CONSUMERS OF THE STATE.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code Title 27, Chapter 50, Subchapter 12, is  
23 amended to add the following sections to read as follows:

24 27-50-1213. Rules of order or procedure.

25 (a) The Arkansas Towing and Recovery Board shall prescribe its rules  
26 of order or procedure in hearings or other proceedings before it under this  
27 subchapter.

28 (b) However, rules of order or procedure shall not be in conflict or  
29 contrary to the provisions of this subchapter or the Arkansas Administrative  
30 Procedure Act, § 25-15-201 et seq.  
31

32 27-50-1214. Summons, citation, and subpoena.

33 (a) It shall be the duty of the sheriffs and constables of the  
34 counties of this state and of any employee of the Arkansas Towing and  
35 Recovery Board, when so directed by the board, to execute any summons,



1 citation, or subpoena that the board may cause to be issued and to return the  
2 summons, citation, or subpoena to the board.

3 (b)(1) The sheriffs and constables serving and returning any summons,  
4 citation, or subpoena shall be paid the same fees as provided for those  
5 services in the circuit court.

6 (2) Any person, or a duly designated employee of the person, who  
7 appears before the board in response to a summons, citation, or subpoena  
8 shall be paid the same witness fee and mileage allowance as witnesses in the  
9 circuit court.

10 (c)(1) In case of failure or refusal on the part of any person to  
11 comply with any summons, citation, or subpoena issued and served as  
12 authorized, or in the case of the refusal of any person to testify or answer  
13 to any matter regarding that which he or she may be lawfully interrogated, or  
14 the refusal of any person to produce his or her record books and accounts  
15 relating to any matter regarding that which he or she may be lawfully  
16 interrogated, the circuit court of any county of the State of Arkansas, on  
17 application of the Arkansas Towing and Recovery Board, may:

18 (A) Issue an attachment for the person; and

19 (B) Compel the person to:

20 (i) Comply with the summons, citation, or subpoena;

21 (ii) Appear before the board or its designated  
22 employee;

23 (iii) Produce the documents specified in any  
24 subpoena duces tecum; and

25 (iv) Give his or her testimony upon such matters as  
26 he or she may be lawfully required.

27 (2) Any circuit court shall have the power to punish a person  
28 for contempt as in the case of disobedience of like process issued from or by  
29 any circuit court or by refusal to testify in the circuit court in response  
30 to the process, and the person shall be taxed with the costs of the  
31 proceedings.

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33 *SECTION 2. Arkansas Code § 27-50-1203 is amended to read as follows:*

34 *27-50-1203. Arkansas Towing and Recovery Board -- Creation.*

35 *(a)(1) There is hereby created the Arkansas Towing and Recovery Board*  
36 *consisting of nine (9) members appointed by the Governor and confirmed by the*

1 Senate, who shall serve terms of three (3) years.

2 (2) ~~four~~ Four (4) members shall be appointed from the towing  
3 industry and shall be licensed by the board to engage in nonconsent towing,  
4 with one (1) of the members being a resident of each of the four (4)  
5 congressional districts; two (2) members who are permitted to engage in the  
6 consent-only business shall be appointed from the state at large; two (2)  
7 members who are not associated with the towing industry shall be appointed  
8 from the state at large; and one (1) member shall be appointed from the  
9 insurance industry.

10 ~~(b) The board shall annually elect a chairman from its membership.~~

11 (b) The appointed board members shall be residents of the State of  
12 Arkansas at the time of appointment and throughout their terms.

13 (c)(1) The members shall determine by majority vote of the quorum of  
14 the board who shall serve as chair.

15 (2) The chair shall be elected annually from the membership of  
16 the board.

17 (d)(1) The board shall meet at such times and places that the chair  
18 deems necessary, but no meetings shall be held outside the State of Arkansas.

19 (2) Five (5) of the members of the board shall constitute a  
20 quorum for the purpose of transacting business.

21 (3) All actions of the board shall be by a quorum.

22 ~~(e)(1)~~ (e)(1) The board shall promulgate rules and regulations to carry  
23 out the intent of this subchapter and shall regulate the towing industry,  
24 including:

25 (A) Establishing reasonable licensing, insurance, and  
26 safety equipment requirements for any person engaging in nonconsent towing  
27 and related services under this subchapter; ~~and~~

28 (B) Establishing reasonable tow truck safety requirements  
29 for any tow vehicle as defined in this subchapter;

30 (C) Establishing a procedure to accept and investigate  
31 complaints for a consumer who claims that he or she has been overcharged for  
32 consent or nonconsent towing or storage fees;

33 (D) Determining and sanctioning excessive or unnecessary  
34 non-consensual towing fees charged to consumers;

35 (E) Requiring all entities permitted, licensed, or  
36 regulated under this subchapter to provide itemized billing for towing or

1 storage fees that explains how the charges were calculated; and  
2 (F) Requiring all entities permitted, licensed, or  
3 regulated under this subchapter to maintain a copy of their current maximum  
4 rate schedule posted in a conspicuous place and readily accessible to the  
5 public.

6 (2) The promulgation and adoption of rules and regulations shall  
7 in all respects be in the manner provided by the Arkansas Administrative  
8 Procedure Act, § 25-15-201 et seq.

9 (3) After the promulgation and adoption of rules or regulations,  
10 any proposed change to add to, amend, repeal, or change any of the rules or  
11 regulations shall not have effect until reviewed and approved by the  
12 Subcommittee on Administrative Rules and Regulations of the Legislative  
13 Council subsequent to the time that the General Assembly next meets in  
14 regular session unless a finding exists that imminent peril to the public  
15 health, safety, or welfare requires immediate adoption, amendment, or repeal  
16 of the rules or regulations.

17 ~~(d)(1)~~(f)(1) The board shall have the authority to levy applicable  
18 towing business license fees not to exceed one hundred dollars (\$100) per  
19 license, and the board shall have the authority to levy an applicable tow  
20 vehicle safety permit fee not to exceed twenty-five dollars (\$25.00) per tow  
21 vehicle safety permit.

22 (2) Furthermore, the board shall also have the authority to  
23 impose late filing fees in an amount not to exceed the original amount of the  
24 license fee or safety permit fee.

25 ~~(e)~~(g)(1) The board shall have the authority to employ and discharge  
26 any personnel as may be necessary to administer and enforce the provisions of  
27 this subchapter and the rules and regulations promulgated hereunder.

28 (2) The board shall employ an investigator to investigate  
29 consumer complaints related to overcharging for consent or nonconsent towing  
30 or storage fees, violations of this subchapter, and violations of the rules  
31 promulgated by the Arkansas Towing and Recovery Board under this subchapter.

32 ~~(f)~~(h) The board shall have the authority to obtain office space,  
33 furniture, stationery, and other proper supplies and conveniences reasonably  
34 necessary to carry out the provisions of this subchapter.

35 ~~(g)~~(i) Each member of the board may receive expense reimbursement and  
36 stipends in accordance with § 25-16-901 et seq.

1       ~~(h)(1)(j)~~ The board shall have the authority to establish a maximum  
2 amount to be charged by a towing business for each notification to an owner  
3 and a lienholder as required by this subchapter.

4       ~~(2) This authority shall not extend to the setting of any other~~  
5 ~~rate or tariff within the towing industry.~~

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7       SECTION 3. Arkansas Code § 27-50-1201 is amended to read as follows:  
8       27-50-1201. Applicability.

9       (a) The provisions of this subchapter shall apply to any person, firm,  
10 organization, or other entity engaged in the towing or storage of vehicles in  
11 the State of Arkansas.

12       (b) The provisions of this subchapter shall not apply to the following  
13 tow vehicles and related equipment:

14               (1) Car carriers capable of carrying five (5) or more vehicles  
15 and which have federal Interstate Commerce Commission authority;

16               (2) Tow vehicles owned by a governmental entity and not used for  
17 commercial purposes; and

18               (3) Tow vehicles that are registered in another state, operating  
19 under federal Interstate Commerce Commission authority, and which do not  
20 regularly do business or solicit business in the State of Arkansas. However,  
21 any tow vehicle for which this exemption is claimed must be in compliance  
22 with § 27-35-112.

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24       SECTION 4. Arkansas Code § 27-50-1204 is amended to read as follows:  
25       27-50-1204. Penalties.

26       (a) The owner of a vehicle, or the person who left the same unattended  
27 or abandoned, shall be liable for all reasonable costs of towing, recovery,  
28 storage, and other incidental costs related to such removal in excess of the  
29 proceeds of the sale of the vehicle.

30       (b) Any law enforcement agency which, without reasonable  
31 justification, fails to provide information to the towing-storage firm within  
32 twenty-four (24) hours as prescribed by this subchapter, shall be liable to  
33 the towing-storage firm for any accrued storage fees between the expiration  
34 of the twenty-four-hour period and such times as the information is provided.

35       (c) Upon any complaint, or on its own initiative, when the board has  
36 reason to believe that a law enforcement officer failed to adhere to an owner

1 preference request or otherwise violated this subchapter, the board may  
2 investigate the matter and submit its findings to proper law enforcement  
3 authorities.

4 (d) Any person, excluding law enforcement officers, who is determined  
5 by the Arkansas Towing and Recovery Board, after reasonable notice and  
6 opportunity for a fair and impartial hearing held in accordance with the  
7 Arkansas Administrative Procedure Act, § 25-15-201 et seq., to have committed  
8 an act that is in violation of this subchapter or any rules and regulations  
9 promulgated hereunder, is subject to civil penalties prescribed by the board,  
10 ~~e.g.,~~ including monetary penalties not to exceed five hundred dollars (\$500)  
11 ~~and/or~~ or suspension or revocation of any towing license or permit, or both.

12 (e) Nothing in this section shall be construed to limit the right to  
13 contest such penalties by judicial review in a court of competent  
14 jurisdiction.

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16 SECTION 5. Arkansas Code § 27-50-1206 is amended to read as follows:  
17 27-50-1206. Notice to storage firm.

18 (a)(1) Any order issued by a law enforcement officer to a licensed  
19 towing and storage firm to remove and store an unattended or abandoned  
20 vehicle shall provide information supplied from the records of the Office of  
21 Motor Vehicle, Arkansas Crime Information Center records or the motor vehicle  
22 records of any other state indicating the name and address of the last  
23 registered owner, the name and address of the holder of any recorded lien on  
24 the vehicle, and the vehicle identification or serial number of the vehicle.

25 (2) If there is evidence in the vehicle indicating that the  
26 vehicle is registered in another state, the information shall be supplied  
27 from the motor vehicle records of that state.

28 (b)(1) In the event that readily available records fail to disclose  
29 the name of the owner or any lienholder of record, the law enforcement  
30 officer or his or her agency shall notify the towing and storage firm, which  
31 shall perform a good faith search to locate documents or other evidence of  
32 ownership and lienholder information on or within the unattended or abandoned  
33 vehicle.

34 (2) For purposes of this subsection, a "good faith search" means  
35 that the towing and storage firm checks the unattended or abandoned property  
36 for any type of license plate, license plate record, temporary permit,

1 inspection sticker, decal, or other evidence which may indicate a possible  
2 state of registration and title.

3 (3) The towing and storage firm shall provide to the law  
4 enforcement officer or agency the results of the search and, if appropriate,  
5 certify that a physical search of the unattended or abandoned vehicle  
6 disclosed that no ownership documents were found and that a good faith search  
7 was conducted.

8 (c)(1) Within not more than twenty-four (24) hours from the order to  
9 remove, the officer involved or his or her agency shall contact the towing  
10 and storage firm advising of any unusual circumstances causing the delay of  
11 the required information that was not available to the officer at the time  
12 the order to remove was issued.

13 (2) The officer or agency shall provide the delayed information  
14 immediately upon receipt.

15 (d) When a vehicle is removed pursuant to this subchapter by law  
16 enforcement and is subject to impoundment or seizure pursuant to police power  
17 or any lawful order of court, the law enforcement officer shall provide to  
18 the towing and storage firm a written statement setting forth the conditions  
19 of release of the vehicle.

20

21 SECTION 6. Arkansas Code § 27-50-1207 is amended to read as follows:  
22 27-50-1207. Removal of vehicles.

23 (a)(1) Any law enforcement agency which directs the removal of  
24 unattended or abandoned vehicles shall adopt a written vehicle removal  
25 policy, the provisions of which shall not be in conflict with this  
26 subchapter.

27 (2)(A) Any vehicle removal policy shall provide that owner  
28 preference as defined by this subchapter shall be offered to the owner, to  
29 his or her agent, or to any competent occupant of any disabled or inoperative  
30 vehicle except in those instances where an emergency exists or where the  
31 immediate clearing of a public thoroughfare mandates an expedited towing  
32 service.

33 (B) If a law enforcement officer fails to provide an owner  
34 of a vehicle with an owner preference in a nonemergency situation, then the  
35 owner may file a complaint with the law enforcement agency that employs the  
36 law enforcement officer, the Arkansas Towing and Recovery Board, or both.

1 (3) Nothing in this section shall be construed to authorize the  
2 towing of a vehicle in violation with other provisions of this subchapter.

3 (b) All law enforcement officers shall comply with the policies  
4 prescribed by their agencies as to the removal of any unattended or abandoned  
5 vehicle as defined by this subchapter.

6 (c) No law enforcement officer shall suggest or recommend any  
7 particular towing and storage firm to the owner, to his or her agent, or to  
8 any competent occupant of any disabled or inoperative vehicle except in  
9 strict compliance with his or her agency's vehicle removal policy, nor shall  
10 law enforcement officers accept gifts or special consideration from the owner  
11 of a tow business or anyone acting on the owner's behalf in relation to  
12 removal of vehicles as provided by this subchapter.

13 (d) Upon request, any law enforcement officer or his or her agency who  
14 orders a removal pursuant to this subchapter shall provide to the owner, to  
15 his or her agent, or to any competent occupant of the removed vehicle the  
16 name, location, and telephone number of the towing and storage firm requested  
17 to remove and store the vehicle.

18 (e)(1) Should the owner or lienholder of a vehicle removed pursuant to  
19 this subchapter consider that the removal of the vehicle was not legally  
20 justified, the owner or lienholder may within twenty (20) days after removal  
21 or within twenty (20) days after the receipt of notification from the towing  
22 and storage firm, whichever is later, seek a review to determine if the  
23 unattended or abandoned property was wrongfully removed or withheld from the  
24 owner through the following procedures:

25 (A) In the case of a vehicle removed by or at the  
26 direction of a state agency, by filing a petition with the Arkansas State  
27 Claims Commission;

28 (B) In the case of a vehicle removed by or at the  
29 direction of a county or city agency and when the county or city has  
30 established an administrative review process, by filing a petition according  
31 to the established administrative review process; and

32 (C) In all other cases, including when the county or city  
33 has failed to establish an administrative review process, by filing a  
34 petition in the circuit court in the county where the unattended or abandoned  
35 vehicle is stored.

36 (2) In the case of a final decision reached through a county or



1 city administrative review, the owner or lienholder may appeal an adverse  
2 ruling to the circuit court in the county where the unattended or abandoned  
3 vehicle is stored.

4 (3) The petition shall name the state agency ordering the tow as  
5 a respondent and when filed in circuit court shall also name the towing  
6 company among the respondents. In the case of removal originated by an agency  
7 of a political subdivision of the state, the petition shall name the county,  
8 city, or town as a respondent.

9 (4) If the vehicle and its contents are subject to impoundment  
10 or seizure by law enforcement pursuant to the Arkansas Rules of Criminal  
11 Procedure or pursuant to an order by any court, Arkansas Rule of Criminal  
12 Procedure 15 shall exclusively govern the release of the vehicle and its  
13 contents to the extent applicable.

14 (f)(1) Upon the filing of the petition, the owner or lienholder may  
15 have the unattended or abandoned vehicle and contents released upon posting  
16 with the commission, with the court, or with the city or county clerk or  
17 other person designated by a political subdivision, as the case may be, a  
18 cash or surety bond equal to the amount of the charges for the towing and  
19 storage to ensure the payment of such charges in the event that he or she  
20 does not prevail.

21 (2) Upon the posting of the bond and the payment of the  
22 applicable fees, the administrative decision maker, commission, or court, as  
23 the case may be, shall issue an order notifying the towing company and the  
24 respondent agency of the posting of the bond. Upon receipt of the order, the  
25 towing company shall release the stored property.

26 (3) At the time of release, after reasonable inspection, the  
27 owner or the lienholder shall give a receipt to the towing and storage firm  
28 reciting any claim for known loss or damage to the unattended or abandoned  
29 property or the contents thereof.

30 (g) Upon determining the respective rights of the parties, the final  
31 order of the administrative decision maker, commission, or court as the case  
32 may be, shall provide for immediate payment in full of the reasonable  
33 recovery, towing, and storage fees by the owner or lienholder of the  
34 unattended or abandoned property or by the respective law enforcement agency.

35 (h) In cases where the owner or lienholder has posted a cash or surety  
36 bond to obtain immediate release and the owner or lienholder is found to be

1 responsible for reasonable recovery, towing, and storage fees, the  
2 administrative decision maker, commission, or court, as the case may be,  
3 shall declare the bond to be forfeited, with the amount paid to the towing  
4 and storage firm to cover reasonable recovery, towing, and storage fees.

5 (i) Nothing in this section shall be construed to waive the sovereign  
6 immunity of the State of Arkansas nor any immunity granted to its political  
7 subdivisions.

8  
9 SECTION 7. Arkansas Code § 27-50-1208(c), regarding possessory liens,  
10 is amended to read as follows:

11 (c) The notice shall be mandatory and by certified mail, return  
12 receipt requested, and shall be posted not sooner than two (2) business days,  
13 but within eight (8) business days after the date that the towing and storage  
14 firm receives ownership and lienholder information from the law enforcement  
15 agency as prescribed by this subchapter.

16  
17 SECTION 8. Arkansas Code § 27-50-1209(c)(2), regarding foreclosure of  
18 liens, is amended to read as follows:

19 (2) The verification shall be on a form prescribed by the Office  
20 of Motor Vehicle, a municipal police department, a county sheriff's  
21 department, ~~or~~ the Department of Arkansas State Police, or the Arkansas Crime  
22 Information Center.

23  
24 SECTION 9. Arkansas Code § 27-50-1210 is amended to read as follows:  
25 27-50-1210. Nonjudicial sale.

26 (a) After complying with the requirements of foreclosure of liens  
27 provided by this subchapter, ownership of the vehicle and its contents shall  
28 thereupon vest in the purchaser free of all liens of any nature. Should the  
29 nonjudicial sale produce more funds than the sum of all charges, including  
30 the costs of the sale and including a reasonable charge for processing the  
31 paperwork, the excess shall be paid as follows:

32 (1)(A) If the vehicle was removed to a government-owned impound  
33 lot, the excess shall be maintained for a period of three (3) years by the  
34 governmental entity that operates the impound lot.

35 (B) If the excess is not claimed during this period by the  
36 person legally entitled thereto, the monies shall be paid into the general

1 fund of the governmental entity operating the impound lot; or

2 (2) If the vehicle was removed to a private impound lot, the  
3 excess shall be paid to the county clerk to the account of the person legally  
4 entitled thereto. The Unclaimed Property Act, § 18-28-201 et seq., shall  
5 apply to any unclaimed funds or excess monies derived from the nonjudicial  
6 sale of a vehicle impounded at a private impound lot pursuant to this  
7 subchapter.

8 (b) Should the sale produce the same or less than the sum of all  
9 charges:

10 (1) Ownership of the vehicle and its contents shall thereupon  
11 vest in the possessory lienholder as purchaser free of all liens of any  
12 nature; and

13 (2) The possessory lienholder shall have a valid claim against  
14 the owner for the full amount of the charges, including the costs of the sale  
15 and including a reasonable charge for processing the paperwork, less the sale  
16 price of the vehicle and its contents.

17 (c)(1) Upon presentation of documentation to the ~~Officer~~ Office of  
18 Motor Vehicle to the effect that the sale procedure provided in this  
19 subsection has been complied with, protecting the rights of the owner or  
20 lienholder, the purchaser of the vehicle shall be entitled to receive a new  
21 title to the vehicle upon meeting other applicable administrative  
22 requirements of title and registration laws.

23 (2) The towing and storage firm shall execute an affidavit  
24 stating that the vehicle has been towed and stored as an unattended or  
25 abandoned vehicle and that notice has been given as required in this  
26 subchapter to the registered owners and all lienholders of record.

27 (3) The affidavit shall describe the vehicle by make, year,  
28 model, and vehicle identification number.

29

30 SECTION 10. Arkansas Code § 27-50-1211 is amended to read as follows:  
31 27-50-1211. Disposition of funds.

32 (a) All fees, fines, and charges collected by the ~~board~~ Arkansas  
33 Towing and Recovery Board under the provisions of this subchapter shall be  
34 paid to the secretary-treasurer who shall be the custodian of all funds and  
35 shall deposit same in a bank or banks to be designated by the board.

36 (b) The secretary-treasurer shall execute a bond in the amount

1 determined by the State Risk Manager pursuant to the blanket bond program as  
2 authorized in § 21-2-601 et seq. [repealed].

3 (c) The secretary-treasurer shall pay funds of the board only on  
4 vouchers signed by himself or herself and countersigned by the chairman. The  
5 total expenses for all purposes and obligations of the board shall not exceed  
6 the total fees, charges, and other funds paid to the board under the  
7 provisions of this subchapter.

8 (d) The secretary-treasurer shall make semiannual financial reports in  
9 detail to the board not later than January 31 and July 31 of each year, which  
10 financial reports will be kept on permanent file by the board.

11 /s/ Kenney

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APPROVED: 04/08/2005

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