

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representatives Thurman, Calhoun, Choate, Collier, Holland, O. Miller, Sanson, and**
5 **Stalnaker**

A Bill

HOUSE BILL 1329

For An Act To Be Entitled

9 "AN ACT TO PROVIDE FOR THE REMOVAL OF UNATTENDED AND
10 ABANDONED VEHICLES; TO PROTECT OWNER PREFERENCE OF TOWING
11 SERVICES; TO PROVIDE FOR LICENSING REQUIREMENTS OF TOW
12 OPERATIONS; TO PROVIDE FOR POSSESSORY LIENS ON TOWED
13 VEHICLES; TO PROVIDE PENALTIES FOR VIOLATIONS; TO PROVIDE
14 ADMINISTRATIVE PROCEDURES FOR THE ARKANSAS TOWING AND
15 RECOVERY BOARD; AND FOR OTHER PURPOSES."

Subtitle

17
18 "TO PROVIDE FOR THE REMOVAL OF UNATTENDED AND ABANDONED
19 VEHICLES."

20
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22
23 SECTION 1. SCOPE.

24 (a) The provisions of this act shall apply to any person, firm,
25 organization, or other entity engaged in towing vehicles in the State of
26 Arkansas.

27 (b) The provisions of this act shall not apply to the following tow
28 vehicles and related equipment:

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

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

33 (3) Tow vehicles that are registered in another state, operating
34 under Interstate Commerce Commission authority, and which do not regularly do
35 *business or solicit business in the state of Arkansas. However, any tow*

1 vehicle for which this exemption is claimed must be in compliance with
2 Arkansas Code 27-35-112.

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4 SECTION 2. DEFINITIONS.

5 For the purposes of this act, unless the context otherwise requires:

6 (1) "Unattended" means any vehicle left on public property without the
7 consent of an authority in charge of such property, or on or near a public way
8 without some person, gratuitous bailee or bailee for hire in possession of
9 such vehicle; and

10 (A) Which vehicle is located within a distance of three (3) feet
11 of the traveled surface of the public way; or

12 (B) Which vehicle is located at a distance of three (3) or more
13 feet of the traveled surface of the public way for a period of seventy-two
14 (72) hours or more; or

15 (C) Which vehicle remains not in the custody of some responsible
16 person following an accident where the operator has been removed to a hospital
17 or is otherwise unable to make personal arrangements for the vehicle's care;
18 or

19 (D) Which vehicle was operated to a place of apprehension by law
20 enforcement under police power, the operator thereof removed from the vehicle
21 and taken into police custody.

22 (2) "Abandoned" means any vehicle deemed to be unattended as defined
23 in this section, and

24 (A) as to which the owner has overtly manifested some intention
25 not to retake possession; or

26 (B) which remains unattended, whether in its first-found
27 location or in another location to which it has been removed pursuant to this
28 act, for a period of thirty (30) days during which period the owner has given
29 no evidence of an intent to retake possession.

30 (3) "Vehicle" means any device by which persons or things may be
31 transported upon a public highway and is of the type subject to registration
32 in Arkansas.

33 (4) "Public Way" means any road, highway, or street over which the
34 public may travel, including the traveled surface and any berm or shoulder
35 thereof. Nothing herein shall be applicable to vehicles left unattended or

1 abandoned on private property and subject to Arkansas Code Annotated §27-50-
2 1101 et seq.

3 (5) "Removal" means an officer of any law enforcement agency may
4 request a towing-storage firm which is licensed by the Arkansas Towing and
5 Recovery Board to engage in non-consent towing of vehicles to:

6 (A) remove and store any unattended or abandoned vehicle
7 pursuant to this act;

8 (B) remove and store any disabled or inoperative vehicle for
9 which the owner or person in charge thereof has waived his or her right to
10 "owner preference" as defined in this section; or

11 (C) remove and store any vehicle in which the operator was
12 apprehended by law enforcement officers.

13 (6) "Owner" of an unattended or abandoned vehicle shall, in absence of
14 conclusive evidence to the contrary, be deemed to be the person(s) in whose
15 name the same is registered with the Office of Motor Vehicles, Revenue
16 Division, Department of Finance and Administration, State of Arkansas, or in
17 whose name said vehicle is registered in any other state.

18 (7) "Person" means any individual, partnership, corporation,
19 association or other entity.

20 (8) "Consent" means towing, storage and/or recovery of any vehicle and
21 which towing, storage, and/or recovery is done with the permission of the
22 owner or other person in charge of the vehicle.

23 (9) "Non-consent" means towing, storage and/or recovery of any
24 unattended or abandoned vehicle as defined in this act, or any disabled or
25 inoperative vehicle for which the owner preference is waived by the owner or
26 person in charge thereof.

27 (10) "Tow Vehicle" means any motor vehicle and/or related equipment
28 subject to registration in the State of Arkansas which is used to tow,
29 recover, upright, transport or otherwise facilitate the movement of vehicles
30 on public highways.

31 (11) "Owner Preference" means the right of the owner or person in
32 charge of any disabled or inoperative vehicle to request some responsible and
33 reasonable person, gratuitous bailee or bailee for hire of his or her choosing
34 to take charge and care of said vehicle.

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1 SECTION 3. Arkansas Code Annotated §27-50-1203 is hereby amended to
2 read as follows:

3 "27-50-1203. Board created. (a) There is hereby created the Arkansas
4 Towing and Recovery Board consisting of seven (7) members appointed by the
5 Governor and confirmed by the Senate who shall serve terms of three (3) years.
6 *Four members shall be appointed from the towing industry with one of such*
7 *members being a resident of each of the four congressional districts; two*
8 *members who are not associated with the towing industry shall be appointed*
9 *from the state at large; and one member shall be appointed from the insurance*
10 *industry. Provided, the members serving on the board on the effective date of*
11 *this act shall continue to serve the remainder of their terms and members*
12 *appointed thereafter shall be appointed so as to phase in the requirements*
13 *hereof as rapidly as practical.*

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

15 (c) (1) The board shall promulgate such rules and regulations to
16 carry out the intent of this subchapter and shall regulate the towing industry
17 including:

18 (A) Establishing reasonable licensing, insurance and
19 safety equipment requirements for any person engaging in non-consent towing
20 and/or related services under this subchapter, and

21 (B) Establishing reasonable tow truck safety requirements
22 for any tow vehicle as defined in this subchapter.

23 (2) The promulgation and adoption of such rules and regulations
24 shall in all respects be in the manner provided by the Arkansas Administrative
25 Procedures Act, as amended from time to time, the same being Arkansas Code
26 Annotated §25-15-201 et seq.

27 (A) After the initial promulgation and adoption of such
28 rules and regulations, unless a finding exists that imminent peril to the
29 public health, safety, or welfare requires immediate adoption, amendment or
30 repeal of any such rule or regulation, any subsequent proposed amendments or
31 changes to the initial rules and regulations shall not have effect until after
32 such time the Arkansas General Assembly next meets in regular session.

33 (d) The Board shall have the authority to levy applicable towing
34 business license fee(s), not to exceed one hundred dollars (\$100) per license,
35 and the Board shall have the authority to levy an applicable tow vehicle

1 safety permit fee(s), not to exceed twenty-five dollars (\$25) per tow vehicle
2 safety permit.

3 (e) The Board shall have the authority to employ and discharge a
4 secretary who shall be the treasurer, and other personnel as may be necessary
5 to administer and enforce the provisions of this subchapter and the rules and
6 regulations promulgated hereunder.

7 (f) The Board shall have the authority to obtain office space,
8 furniture, stationery, and other proper supplies and convenience reasonably
9 necessary to carry out the provisions of this subchapter.

10 (g) Each member of the Board shall be entitled to receive the sum of
11 fifty dollars (\$50) per diem for each day actually spent on the work of the
12 Board, and each member of the Board shall receive reimbursement for his actual
13 and necessary expenses incurred in the performance of duties pertaining to
14 his/her office including necessary traveling expenses, board and lodging.

15 (h) The Board shall have the authority to establish a maximum amount
16 to be charged by a towing business for each notification to owner(s) and/or
17 lienholder(s) as required by this subchapter. Such authority shall not extend
18 to the setting of any other rate or tariff within the towing industry."
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20 SECTION 4. REMOVAL OF VEHICLES.

21 (a) No law enforcement agency shall adopt a vehicle removal policy in
22 conflict with this act. Any vehicle removal policy shall provide that "owner
23 preference", as defined by this act, shall be offered to the owner or person
24 in charge of any disabled or inoperative vehicle.

25 (b) All law enforcement officers shall comply with policies prescribed
26 by his/her agency as to "removal" of any unattended or abandoned vehicle as
27 defined by this act.

28 (c) No law enforcement officer shall suggest or recommend any
29 particular towing/storage firm to the owner or person in charge of any
30 disabled or inoperative vehicle except in strict compliance with his/her
31 agency_s vehicle removal policy.

32 (d) Upon request, any law enforcement officer or his/her agency, which
33 orders a removal pursuant to this act, shall provide to the owner or person in
34 charge of the removed vehicle, the name, location, and phone number of the
35 towing-storage firm requested to remove and store the vehicle.

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2 SECTION 5. TAGGING. Any law enforcement officer observing a vehicle on
3 or near a public way which appears to be unattended or abandoned shall:

4 (1) Order immediate removal of any unattended, abandoned, disabled, or
5 inoperative vehicle located within three (3) feet of the traveled surface of a
6 public way or which vehicle appears to create a hazard to the public, and
7 shall log such removal order accordingly;

8 (2) Tag any unattended, abandoned, disabled, or inoperative vehicle
9 located a distance three (3) feet or more by affixing securely a colored form
10 or other easily observable sticker. The tag or sticker shall show:

11 (A) The date and time of tagging;

12 (B) That said vehicle will be removed pursuant to this act
13 unless the vehicle is removed within seventy-two (72) hours;

14 (C) The location and telephone number where more information may
15 be obtained; and

16 (D) The identification of the officer.

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18 SECTION 6. NOTICE TO STORAGE FIRM.

19 (a) Any order issued by a law enforcement officer to a licensed
20 towing-storage firm to remove and store an unattended or abandoned vehicle
21 shall provide information supplied from the records of Motor Vehicles or the
22 Arkansas Criminal Information Center records indicating the name and address
23 of the last registered owner, the name and address of the holder of any
24 recorded lien on the vehicle, the VIN (Serial) number of the vehicle. Such
25 information shall be provided without cost or penalty.

26 (b) Within not more than twenty-four (24) hours from the order to
27 remove, the officer involved, or his/her agency, shall contact the towing-
28 storage firm advising of any unusual circumstances causing the delay of
29 required information that was not available to the officer at the time the
30 order to remove was issued. Such officer or agency shall provide the delayed
31 information immediately upon receipt.

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33 SECTION 7. POSSESSORY LIEN.

34 (a) The towing-storage firm shall have a possessory lien on the
35 vehicle and its contents for all reasonable charges of towing, recovery, and

1 storage for which the owner is liable.

2 (b) Such lien shall be perfected by:

3 (1) Maintaining possession, and

4 (2) Giving notice to the owner or owners and lienholders as
5 shown on the data provided by the law enforcement agency involved as
6 prescribed by this act.

7 (c) Such notice shall be by certified mail, return receipt requested,
8 and shall be posted within five (5) working days of the time that said vehicle
9 is logged in at the storage facility.

10 (d) The notice shall contain the following information:

11 (1) The name, address, and telephone number of the storage
12 facility;

13 (2) That the addressee_s vehicle is in the possession of that
14 towing-storage firm under police order, describing the circumstances;

15 (3) That towing, storage, and administrative costs are accruing
16 as legal liability of the owner;

17 (4) That the towing-storage firm claims a possessory lien for
18 all of such charges;

19 (5) That the owner may retake possession at any time during
20 business hours by appearing, proving ownership, and paying all charges, or by
21 other written arrangement between himself/herself and the towing-storage firm;
22 and

23 (6) That should the owner consider that the original taking was
24 improper or not legally justified, he has a right to contest such original
25 taking in a court of competent jurisdiction.

26 (e) Nothing in this section is to preclude the owner or his agent from
27 making alternative arrangements within the five (5) day time period with the
28 towing-storage firm waiving his/her rights to the five (5) days notice
29 requirement.

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31 SECTION 8. FORECLOSURE OF LIENS.

32 (a) The towing-storage firm holding a perfected possessory lien on any
33 vehicle and/or contents not redeemed by its owner or security lienholder
34 within the thirty (30) days as provided by this act, shall sell such vehicle
35 at non-judicial sale for cash. Such sale shall not occur later than ninety

1 (90) days from perfection of said lien.

2 (b) Notice of such sale shall be sent at least fifteen (15) days
3 before the date of such sale, by registered or certified mail, no return
4 receipt requested, to the said registered owner and lienholders, if any.

5 (c) In addition to said notice by mail, notice of such sale shall be
6 published in a newspaper of general circulation in the county at least once,
7 at least ten (10) days prior to said sale.

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9 SECTION 9. NON-JUDICIAL SALE.

10 (a) Should the non-judicial sale produce more funds than the sum of
11 all charges, including the costs of the sale and including a reasonable charge
12 for processing the paperwork, such excess shall be paid to the county clerk to
13 the account of the person legally entitled thereto. The Uniform Disposition
14 of Unclaimed Property Act, the same being Arkansas Code Annotated §18-28-201
15 et seq., will apply to any unclaimed funds.

16 (b) Should the sale produce the same or less than the said sum of all
17 charges:

18 (1) Ownership of the vehicle shall thereupon, free of all liens
19 of any nature, vest in the said possessory lienor;

20 (2) Said lienor shall have a valid claim against said owner for
21 the full amount of such charges less the sale price of said vehicle; and

22 (3) Upon presentation to the Office of Motor Vehicles, Revenue
23 Department, Department of Finance and Administration, State of Arkansas, of
24 documentation to the effect that the foreclosure procedure has been complied
25 with, protecting the rights of the owner or lienholder, the successful bidder
26 at said non-judicial sale shall be entitled to receive a new title to said
27 vehicle upon meeting other administrative requirements of salvage law and
28 Office of Motor Vehicle laws.

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30 SECTION 10. PENALTIES.

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

35 (b) Any law enforcement agency which, without reasonable

1 justification, fails to provide information to the towing-storage firm within
2 twenty-four (24) hours as prescribed by this act, shall be liable to the
3 towing-storage firm for any accrued storage fees between the expiration of the
4 twenty-four (24) hour period and such time as the information is provided.

5 (c) Upon any complaint, or on its own initiative, when the Board has
6 reason to believe that a law enforcement office failed to adhere to an "owner
7 preference" request or otherwise violated this act, the Board may investigate
8 the matter and submit its findings to proper law enforcement authorities.

9 (d) Any person, excluding law enforcement officers, who is determined
10 by the Arkansas Towing and Recovery Board, after reasonable notice and
11 opportunity for a fair and impartial hearing held in accordance with the
12 Arkansas Administrative Procedures Act, to have committed an act that is in
13 violation of this act and/or any rules and regulations promulgated hereunder,
14 is subject to civil penalties prescribed by the Board, e.g., monetary
15 penalties not to exceed five hundred dollars (\$500) and/or suspension or
16 revocation of any towing license or permit. Nothing in this section shall be
17 construed to limit the right to contest such penalties by judicial review in a
18 court of competent jurisdiction.

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20 SECTION 11. DISPOSITION OF FUNDS.

21 (a) All fees, fines and charges collected by the Board under the
22 provisions of this act shall be paid to the secretary-treasurer who shall be
23 the custodian of all funds and shall deposit same in a bank or banks to be
24 designated by the Board.

25 (b) The secretary-treasurer shall execute a bond in the amount
26 determined by the state risk manager pursuant to the blanket bond program as
27 authorized in Arkansas Code §21-2-601 et seq.

28 (c) The secretary-treasurer shall pay funds of the Board only on
29 vouchers signed by himself/herself and countersigned by the chairman. The
30 total expenses for all purposes and obligations of the Board shall not exceed
31 the total fees, charges, and other funds paid to the Board under the
32 provisions of this act.

33 (d) The secretary-treasurer shall make semi-annual financial reports
34 in detail to the Board not later than January 31 and July 31 of each year,
35 which financial reports will be kept on permanent file by the Board.

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SECTION 12. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 14. Arkansas Code of 1987 Annotated §§27-50-1201, 27-50-1202, 27-50-1204, 27-50-1205, 27-50-1206, 27-50-1207, 27-50-1208, 27-50-1209, and 27-50-1210 are hereby repealed.

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Randy Thurman, et al

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