

Act 899 of the 1989 Regular Session.

Act 899

HB1954

By: Representatives Mahony, Purdom, Beatty and J. Roberts

"AN ACT TO PROVIDE FOR THE REMOVAL OF UNATTENDED AND
ABANDONED VEHICLES; AND FOR OTHER PURPOSES."

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

SECTION 1. DEFINITIONS. (a) "Unattended" means:

(1) Any vehicle left on public property without the consent of an authority in charge of such property, or in possession of a gratuitous bailee or a bailee for hire; and

(2) Which vehicle remains without some person in charge thereof for more than twenty-four (24) hours in a location less than (3) feet of a public way, or for more than seventy-two (72) hours in a location of three (3) or more feet of a public way; or

(3) Which vehicle was operated to the place of apprehension by law enforcement under police power, and the operator thereof removed from the vehicle and taken into custody; or

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

(b) "Abandoned" means:

(1) Any vehicle, deemed to be unattended, as herein defined:

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

(B) which remains unattended, whether in its first-found location or in another location to which it has been moved pursuant to the provision hereof, for a period of thirty (30) days during which period the owner has given no evidence of an intent to retake possession.

(c) "Vehicle" means any contraption designed to have wheels, boat or motor home.

(d) "Public way" means any road, highway, or street over which the public may travel, including the paved surface and any berm or shoulder thereof. Nothing herein shall be applicable to vehicles left unattended on private property.

(e) "Removal" means an officer of any law enforcement agency may order the removal of any unattended vehicle by contracting a towing firm properly equipped to handle the removal and with storage facilities enabling it to care for said vehicle as a bailee for hire, and ordering said firm to remove said vehicle.

(f) "Owner" means the last registered owner of a vehicle and the holder of a lien on the vehicle, as shown on the records of the Office of Motor Vehicles of the Revenue Division of the Arkansas Department of Finance and Administration.

SECTION 2. When any law enforcement agency, towing, and/or storage firm or other person or entity takes possession of any unattended or abandoned vehicle which is subject to registration under the laws of this State, and on which there is any lien as reflected by the records of the Office of Motor Vehicles of the Division of Revenue of the Arkansas Department of Finance and Administration, the agency, firm or other person taking possession thereof

shall in all respects comply with the provisions of Act 344 of 1953 and Act 816 of 1973, as amended by Act 828 of 1987.

SECTION 3. PENALTIES. (a) The owner of a vehicle, or the person who left the same unattended or abandoned, shall be liable for all reasonable costs of removal, storage, administrative processing (as hereafter provided), and ultimate disposal of the same, and the storage facility shall have a lien on said vehicle for a cost of removal, storage and processing.

(b) In the absence of conclusive evidence to the contrary, the "Owner" of an abandoned vehicle shall be deemed to be the person in whose name the same is registered with the Office of Motor Vehicles, Revenue Division, Department of Finance and Administration, State of Arkansas.

SECTION 4. TAGGING. Any law enforcement officer observing a vehicle on or near a public way which appears to be unattended shall tag the same by affixing securely a colored form, or by using an easily observable sticker. Said tag shall show (1) the date and time of tagging; (2) that said vehicle will be removed pursuant to this statute unless the vehicle is removed within twenty-four hours if within three feet of a public way; (3) the location and telephone number where more information may be obtained, and (4) the identification of the officer.

SECTION 5. NOTICE TO STORAGE FIRM. Within twenty-four (24) hours of the order to remove and store an unattended vehicle the law enforcement agency involved shall contact the towing-storage firm giving information regarding the name and address of the last registered owner, the name and the address of the holder of any lien on the vehicle, and the serial number of the vehicle. The information shall be supplied from the records of the Office of Motor Vehicles, Revenue Division or the Arkansas Criminal Information Center records without cost or penalty.

SECTION 6. POSSESSORY LIEN. (a) The towing-storage firm shall have a possessory lien on the vehicle and its contents for all charges for which the owner is liable.

(b) Such lien shall be perfected by
(1) maintaining possession, and
(2) by giving notice to the owner or owners as shown on the data furnished by the officer's department, which shall be available from the law enforcement agency upon demand after the expiration of the twenty-four (24) hour period prescribed in Section 5.

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

(d) The notice shall contain the following information:
(1) the name, address, telephone number of the storage facility; and
(2) that the addressee's vehicle is in the possession of that towing-storage firm under the police order, describing the circumstances; and
(3) that towing, storage and administrative costs are accruing as legal liability of the owner; and
(4) that the towing-storage firm claims a possessory lien for all of such charges; and
(5) that owner may retake possession at any time during business hours by appearing, proving ownership, and paying all charges; and
(6) that should owner consider that the original taking was improper or not legally justified, he has a right to contest such original taking in a court of competent jurisdiction.

SECTION 7. FORECLOSURE OF LIENS. (a) Any vehicle and/or contents subject to said perfected lien, not redeemed within thirty (30) days by its owner or security-lienholder by payment of all charges and by retaking possession, may be sold at non-judicial sale by the possessory lienholder at public sale for cash.

(b) Notice of such sales shall be sent at least fifteen (15) days before the date of such sale, by registered or certified mail, no return receipt required to the said registered owner and lienholder(s), if any, as hereinafter described.

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

SECTION 8. (a) Should the auction sale produce more funds than the sum of all charges, including costs of the sale and including a reasonable charge for processing the paper work, such excess shall be paid to the County Clerk to the account of the person legally entitled thereto. The Uniform Disposition of Unclaimed Property Act (Ark. Code Ann. 18-28-201 et seq.) will apply to any unclaimed funds.

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

(1) the ownership of the vehicle shall thereupon, free of all liens of any nature vest in the said lienor,

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

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

SECTION 9. BOARD CREATED. (a) There is hereby created the Arkansas Towing and Recovery Board consisting of seven (7) members appointed by the Governor and confirmed by the Senate who shall serve terms of three (3) years. At the initial meeting of the Board, the members shall draw lots for terms of appointment. Two (2) shall draw lots for one (1) year appointments; two (2) shall draw lots for two year appointments; and three (3) shall draw lots for three year appointments.

(b) The Board shall elect a chairman from its membership.

(c) The Board shall promulgate such rules and regulations to carry out the intent of this Act and shall regulate the towing industry including requirements for licensing. Such authority shall not extend to the setting of tariffs for the towing industry.

SECTION 10. The provisions of this Act shall not apply to the following:

(1) a tow truck or employee used solely for the purpose of conducting a separate business, such as a salvage yard, taxi company, trucking company, automobile dealership, or other fleet operation, where the wrecker is not for hire;

(2) a tow truck which is privately owned and is used solely by the owner and is used solely by the owner in his private affairs and is not for hire;

(3) tow trucks or employees which are not residents of the State of Arkansas and are in temporary transit across the State, and meet the

requirements set forth in Arkansas Code 27-35-112.

SECTION 11. 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 12. Arkansas Code of 1987 Annotated 27-50-1201, 27-50-1202, 27-50-1203, 27-50-1204, 27-50-1205, 27-50-1206, 27-50-1207, 27-50-1208, 27-50-1209, 27-50-1210 are repealed.

SECTION 13. All laws and parts of laws in conflict with this Act are hereby repealed.

APPROVED: March 22, 1989
