

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 861 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/16/07

A Bill

SENATE BILL 805

5 By: Senator T. Smith
6
7

For An Act To Be Entitled

9 AN ACT TO CLARIFY THE PROCEDURES CONCERNING THE
10 NONCONSENSUAL TOWING OF A VEHICLE; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13 *TO CLARIFY THE PROCEDURES CONCERNING THE*
14 *NONCONSENSUAL TOWING OF A VEHICLE.*
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 27-50-1101 is amended to read as follows:
22 27-50-1101. Nonconsensual towing of vehicles.

23 (a)(1)(A) When any vehicles of a type subject to registration under
24 the laws of this state are found abandoned on private or public property
25 within this state or are parked on private or public property within this
26 state without the authorization of the property owners or other persons
27 controlling the property, the property owners or agents may have the vehicle
28 removed from the property by a towing and storage firm licensed by and
29 subject to the rules of the Arkansas Towing and Recovery Board.

30 (B) Prior to the removal of abandoned vehicles or of
31 vehicles parked without authority as provided by this section, the towing and
32 storage firm shall obtain in writing from the property owners or agents a
33 written statement that includes at a minimum the following:

34 (i) Identification of the property owner or agent,
35 including name, address, and telephone number;



1 (ii) A statement that the property from which the
2 vehicle is to be removed is property owned or otherwise under the control of
3 the agent requesting the removal;

4 (iii) That the vehicle is deemed abandoned or has
5 been parked on the property without authorization, as the case may be;

6 (iv) The make, model, and vehicle identification
7 number of the vehicle to be removed;

8 (v) The location to which the vehicle will be
9 removed, including the name, address, and telephone number of the towing and
10 storage firm removing the vehicle; and

11 (vi) The signature of the property owner or agent
12 requesting removal of the vehicle.

13 (C) A copy of the written statement shall be left with the
14 property owner or the on-site agent, who shall make the written statement
15 available for inspection upon request by any person claiming an interest in
16 the removed vehicle.

17 (D) The towing and storage firm removing the vehicle shall
18 retain a copy of the written statement for three (3) years and make the
19 statement available during regular business hours upon request to any person
20 claiming an interest in the removed vehicle or upon request to any law
21 enforcement officer or Arkansas Towing and Recovery Board investigator.

22 (E) Vehicles on the premises of an automobile repair
23 business shall be deemed abandoned if either the vehicle is unclaimed by the
24 vehicle owner within forty-five (45) days or the debt is not paid within
25 forty-five (45) days from the time the repair work is complete.

26 (F)(i) No towing and storage firm shall remove any
27 abandoned vehicle or improperly parked vehicle without the authorization of
28 the property owner or on-site agent as provided in this section except as may
29 otherwise be authorized by the provisions of § 27-50-1201 et seq. or as
30 directed by any law enforcement officer.

31 (ii) A property owner may designate in writing a
32 licensed towing and storage firm as its agent for the purposes of the removal
33 of abandoned vehicles or vehicles parked on private property without the
34 authorization of the property owners or other persons controlling the
35 property.

36 (G) No towing and storage firm removing a vehicle as

1 provided by this section shall pay any compensation related to the removal of
2 the vehicle, whether as a referral fee or otherwise, to the owner or agent
3 requesting the removal of the vehicle.

4 (2)(A) Any person towing a vehicle as provided by this section
5 and any person towing a vehicle without the authorization of the owner of the
6 vehicle or of the owner's agent, including towing pursuant to a directive of
7 repossession from a holder of a security interest in the vehicle, shall
8 notify the local police or sheriff's department within whose jurisdiction the
9 vehicle was removed of the vehicle's removal within two (2) hours of taking
10 possession of the vehicle.

11 (B) The towing and storage firm may not charge a storage
12 fee for the vehicle for the time it is stored prior to the notification
13 required to the local police or sheriff's department.

14 (C) Each police or sheriff's department receiving
15 notification of the removal of a vehicle as provided in this subsection shall
16 maintain a log recording the make, model, and vehicle identification number
17 of the vehicle, the date, time, and location of the removal, and the name,
18 address, and telephone number of the person removing the vehicle.

19 (D) Each police or sheriff's department receiving
20 notification of the removal of a vehicle as provided in this subsection shall
21 within twenty-four (24) hours of notification provide to the towing and
22 storage firm information supplied from the records of the Office of Motor
23 Vehicle, the Arkansas Crime Information Center, or, if there is evidence in
24 the vehicle indicating that the vehicle is registered in another state, the
25 motor vehicle records from that state that provides the vehicle
26 identification number or serial number, the name and address of the last
27 registered owner, and the name and address of the holder of any recorded lien
28 on the vehicle.

29 (E)(i) In the event that readily available records fail to
30 disclose the name of the owner of the vehicle or any lienholder of record,
31 the towing and storage firm shall perform a good faith search to locate
32 documents or other evidence of ownership and lienholder information on or
33 within the unattended or abandoned vehicle.

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

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

3 (3) Following removal of an abandoned vehicle or vehicle parked
4 without authority, possession of the vehicle, notice requirements to owners
5 and lienholders, and procedures for sale of unclaimed vehicles shall be
6 governed by the provisions of §§ 27-50-1208, 27-50-1209, and 27-50-1210.

7 (b)(1) It shall be unlawful for a person to:

8 (A) Direct the removal of or to remove a vehicle in
9 violation of this section; and

10 (B) Violate or aid or abet any violation of this section.

11 (2) A person who pleads guilty or nolo contendere to or is found
12 guilty of any violation of this section is guilty of a Class B misdemeanor.

13 (3) Each vehicle removal in violation of this section shall
14 constitute a distinct and separate offense.

15
16 SECTION 2. Arkansas Code § 27-50-1203(e), regarding the regulation of
17 the towing industry by the Arkansas Towing and Recovery Board, is amended to
18 read as follows:

19 (e)(1) The board shall promulgate rules and regulations to carry out
20 the intent of this subchapter and shall regulate the towing industry,
21 including:

22 (A) Establishing reasonable licensing, insurance, and
23 ~~safety~~ equipment requirements for any person engaging in ~~nonconsent~~ towing
24 and related services for safety purposes under this subchapter;

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

27 (C) Establishing a procedure to accept and investigate
28 complaints from a consumer who claims that he or she has been overcharged for
29 ~~consent or~~ nonconsent towing or storage fees;

30 (D) Determining and sanctioning excessive or unnecessary
31 non-consent towing fees or storage fees, or both, charged to consumers;

32 (E) Requiring all entities permitted, licensed, or
33 regulated under this subchapter to provide to the Arkansas Towing and
34 Recovery Board all documents in response to information requests by the
35 Arkansas Towing and Recovery Board pursuant to the investigation of consumer
36 complaints or board complaints against the permittee or licensee.

1 ~~(E)~~(F) Requiring all entities permitted, licensed, or
2 regulated under this subchapter to provide itemized billing for towing or
3 storage fees that explains how the charges were calculated; and

4 ~~(F)~~(G) Requiring all entities permitted, licensed, or
5 regulated under this subchapter to maintain a copy of their current maximum
6 rate schedule posted in a conspicuous place and readily accessible to the
7 public.

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

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

19
20 SECTION 3. Arkansas Code § 27-50-1203(f), regarding the authority to
21 impose fees by the Arkansas Towing and Recovery Board, is amended to read as
22 follows:

23 (f)(1) The board shall have the authority to levy applicable towing
24 business license fees not to exceed one hundred dollars (\$100) per license,
25 and the board shall have the authority to levy an applicable tow vehicle
26 safety permit fee not to exceed ~~twenty five dollars (\$25.00)~~ fifty dollars
27 (\$50.00) per tow vehicle safety permit.

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

31
32 SECTION 4. Arkansas Code § 27-50-1203(g), regarding the authority of
33 the Arkansas Towing and Recovery Board with regard to personnel, is amended
34 to read as follows:

35 (g)(1) The board shall have the authority to employ and discharge any
36 personnel as may be necessary to administer and enforce the provisions of

1 this subchapter and the rules and regulations promulgated hereunder.

2 (2) The board shall employ ~~an investigator~~ investigators to
3 investigate consumer complaints related to overcharging for ~~consent or~~
4 nonconsent towing or storage fees, violations of § 27-50-1101 and this
5 subchapter, and violations of the rules promulgated by the board under this
6 subchapter.

7
8 SECTION 5. Arkansas Code § 27-50-1204(d), regarding penalties for
9 towing and storage costs, is amended to read as follows:

10 (d) Any person, excluding law enforcement officers, who is determined
11 by the board, after reasonable notice and opportunity for a fair and
12 impartial hearing held in accordance with the Arkansas Administrative
13 Procedure Act, § 25-15-201 et seq., to have committed an act that is in
14 violation of this subchapter or any rules and regulations promulgated under
15 this subchapter, is subject to civil penalties prescribed by the board,
16 including monetary penalties not to exceed ~~five hundred dollars (\$500) or~~
17 five thousand dollars (\$5,000) or the suspension or revocation of any towing
18 license or permit, or both.

19
20 SECTION 6. Arkansas Code § 27-50-1204, regarding penalties for towing
21 and storage costs, is amended to add an additional subsection to read as
22 follows:

23 (f)(1) All penalties assessed by the board shall be paid no later than
24 fifteen (15) days after the appeal process under the Arkansas Administrative
25 Procedures Act, § 25-15-201 et seq., has passed.

26 (2) The failure to remit payment of penalties may result in the
27 suspension of the license or permit until the penalty is paid.

28
29 SECTION 7. Arkansas Code § 27-50-1208(b), regarding possessory liens
30 and notice to owners and lienholders, is amended to read as follows:

31 (b) The lien shall be perfected by:

32 (1) Maintaining possession;

33 (2) Mailing notice to the owner or owners and lienholders as
34 shown on the data provided by the law enforcement agency involved as
35 prescribed by this subchapter; or

36 (3) In the case of a vehicle removed pursuant to § 27-50-1101,

1 giving notice to the last known registered owner or owners and lienholders as
2 provided from the records of the Office of Motor Vehicle or the Arkansas
3 Crime Information Center or the motor vehicle records of any other state in
4 which the vehicle is registered indicating the name and address of the last
5 registered owner and the name and address of the holder of any recorded lien
6 on the vehicle.

7
8 SECTION 8. Arkansas Code § 27-50-1208(d), regarding possessory liens
9 and notice to owners and lienholders, is amended to read as follows:

10 (d)(1) If within forty-eight (48) hours the ownership and lienholder
11 information has not been received from the law enforcement agency requesting
12 the removal of a vehicle pursuant to this subchapter, the towing and storage
13 firm shall obtain information concerning the last known registered owner or
14 owners and lienholders as provided from the records of the ~~office~~ Office of
15 Motor Vehicle or the Arkansas Crime Information Center or the motor vehicle
16 records of any other state in which the vehicle is registered indicating the
17 name and address of the last registered owner and the name and address of the
18 holder of any recorded lien on the vehicle.

19 (2)(A) For the purpose of notices required by this section, if
20 the data records of the office do not contain any information as to the last
21 known registered owner or owners and lienholders, notice by publication one
22 (1) time in one (1) newspaper of general circulation in the county where the
23 vehicle was found unattended, abandoned, or improperly parked is sufficient
24 notice under this section.

25 (B) The notice by publication may contain multiple
26 listings of vehicles, shall be published within the time requirements
27 prescribed for notice by certified mail, and shall have the same contents
28 required for a notice by certified mail.

29
30 SECTION 9. Arkansas Code § 27-50-1212 is amended to read as follows:
31 27-50-1212. Criminal penalties.

32 (a) It shall be unlawful for a person to:

- 33 (1) Operate a tow vehicle in violation of this subchapter;
34 (2) Operate a tow vehicle without obtaining a tow vehicle safety
35 permit as required by the rules of the Arkansas Towing and Recovery Board;
36 (3) Operate a business engaging in nonconsensual towing of

1 vehicles without first obtaining the proper tow business license as required
2 by the rules of the board;

3 (4) Give false or forged evidence to the board or to any member
4 or an employee thereof for the purpose of obtaining a license or a tow
5 vehicle safety permit;

6 (5) Use or attempt to use an expired, suspended, or revoked
7 license or tow vehicle safety permit; or

8 (6) Violate or aid or abet any violation of this subchapter.

9 (b) The Department of Arkansas State Police, the Arkansas Highway
10 Police Division of the Arkansas State Highway and Transportation Department,
11 and county and municipal authorities may enforce § 27-50-1101 et seq. and §
12 27-50-1201 et seq.

13 ~~(b)~~(c) A person who pleads guilty or nolo contendere to or is found
14 guilty of any violation under this section shall be guilty of a misdemeanor
15 and shall be sentenced to pay a fine of not less than fifty dollars (\$50.00)
16 nor more than five hundred dollars (\$500) or to be imprisoned for a period
17 not exceeding ninety (90) days, or both.

18 (d) The fines imposed and collected under this section shall be
19 remitted as follows:

20 (1) Fifty percent (50%) to the Arkansas Towing and Recovery
21 Board for deposit into their cash fund; and

22 (2) Fifty percent (50%) to the law enforcement agency issuing
23 the violation.

24 ~~(e)~~(e) Each day of an unlawful practice proscribed by this section
25 shall constitute a distinct and separate offense.

26
27 /s/ T. Smith

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29 APPROVED: 4/3/2007