

Hall of the House of Representatives

83rd General Assembly - Regular Session, 2001

Amendment Form

Subtitle of House Bill No. 2538

"AN ACT TO AMEND SUBCHAPTER 12 OF TITLE 27 OF THE ARKANSAS CODE
CONCERNING THE REMOVAL OF UNATTENDED OR ABANDONED VEHICLES."

Amendment No. 1 to House Bill No. 2538.

Amend House Bill No. 2538 as originally introduced:

Delete Section 1 and substitute the following:

"SECTION 1. Arkansas Code 27-50-1202(5), concerning the definition of owner preference, is amended to read as follows:

(5) "Owner preference" means the right of the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle to request some responsible and reasonable person, gratuitous bailee, or bailee for hire of his or her choosing to take charge and care of the vehicle;

SECTION 2. Arkansas Code 27-50-1202(10), concerning unattended vehicles, is amended to read as follows:

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

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

(B) Which vehicle is located on or near a public way at a distance of three feet (3') or more of the traveled surface of the public way for a period of twenty-four (24) hours or more;

(C) Which vehicle is not located on or near a public way but is left for a period of forty-eight (48) hours or more;

(D) 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;

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

(F) Which vehicle is located upon any public right of way and due to geographic location, traffic density, or climatic conditions, creates a substantial hazard to the motoring public, as determined by a law enforcement officer; or

(G) Which vehicle, whether on public property, on or near a public way or otherwise, is subject to impound by law enforcement under police power or pursuant to lawful court order.

SECTION 3. Arkansas Code 27-50-1206, is amended to read as follows:
27-50-1206. Notice to storage firm.

(a) Any order issued by a law enforcement officer to a licensed towing and storage firm to remove and store an unattended or abandoned vehicle shall provide information supplied from the records of the Office of Motor Vehicle, Arkansas Crime Information Center records, or the motor vehicle records of any other state indicating the name and address of the last registered owner, the name and address of the holder of any recorded lien on the vehicle, and the vehicle identification or serial number of the vehicle. If there is evidence in the vehicle indicating that the vehicle is registered in another state, the information shall be supplied from the motor vehicle records of that state.

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

(2) For purposes of this subsection, a "good faith search" means that the towing and storage firm checks the unattended or abandoned property for any type of license plate, license plate record, temporary permit, inspection sticker, decal, or other evidence which may indicate a possible state of registration and title.

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

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

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

SECTION 4. Arkansas Code 27-50-1207, is amended to read as follows:
27-50-1207. Removal of vehicles.

(a)(1) ~~No~~ Any law enforcement agency which directs the removal of unattended or abandoned vehicles shall adopt a written vehicle removal policy, the provisions of which shall not be in conflict with this subchapter.

(2) Any vehicle removal policy shall provide that owner preference as defined by this subchapter shall be offered to the owner, his

or her agent, or to any competent occupant of any disabled or inoperative vehicle except in those instances where an emergency exists or where the immediate clearing of a public thoroughfare mandates an expedited towing service.

(3) Nothing in this section shall be construed to authorize the towing of a vehicle in violation with other provisions of this subchapter or the rules and regulations promulgated by the Arkansas Towing and Recovery Board.

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

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

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

(e)(1) Should the owner or lienholder of a vehicle removed pursuant to this subchapter consider that the original taking of the vehicle was not legally justified, the owner or lienholder within ten (10) days after removal or within ten (10) days after the receipt of notification from the towing and storage firm, whichever is later, may file a petition in the circuit court in the county where the unattended or abandoned vehicle is stored to determine if the unattended or abandoned property was wrongfully taken or withheld from the owner.

(2) The petition shall name the towing company among the defendants.

(3) The petition may also name the agency ordering the tow.

(f)(1) Upon filing of the petition, the owner or lienholder may have the unattended or abandoned vehicle and contents released upon posting with the court a cash or surety bond or other adequate security equal to the amount of the charges for towing and storage to ensure the payment of such charges in the event he or she does not prevail.

(2) Upon the posting of the bond and the payment of applicable fees, the court shall issue an order notifying the towing company of the posting of the bond and directing the towing company to release the stored property.

(3) If the vehicle and its contents are subject to impoundment or seizure under police power or pursuant to an order by any court, Rule 15 of the Arkansas Rules of Criminal Procedure shall govern release of the vehicle and its contents to the extent applicable.

(4) At the time of release, after reasonable inspection, the owner or lienholder shall give a receipt to the towing and storage firm reciting any claims for loss or damage to the unattended or abandoned property or the contents thereof.

(g) Upon determining the respective rights of the parties, the final

order of the court shall provide for immediate payment in full of reasonable recovery, towing and storage fees, along with reasonable attorney's fees and costs, by the unattended or abandoned property owner or lienholder or the respective law enforcement agency as may be allowed by law.

(h) Nothing in this section shall be construed to waive the sovereign immunity of the State of Arkansas.

SECTION 5. Arkansas Code 27-50-1208, is amended to read as follows:
27-50-1208. Possessory lien.

(a) The towing and storage firm shall have a first priority possessory lien on the vehicle and its contents for all reasonable charges for towing, recovery, and storage for which the owner is liable.

(b) The lien shall be perfected by:

(1) Maintaining possession; and

(2) Giving notice to the owner or owners and lienholders as prescribed in § 27-50-1101, informing the owners and lienholders that the vehicle may be sold at public auction if not claimed within the time period prescribed in § 27-50-1101. The towing and storage firm shall obtain the names and addresses of the owners and lienholders, if any, from the motor vehicle records of the state in which the vehicle is titled or registered as shown on the data provided by the law enforcement agency involved as prescribed by this subchapter.

~~(c) Any towing and storage firm failing to give the notice to the owner or owners and lienholders as prescribed in § 27-50-1101 shall be in violation of the subchapter and shall be subject to the civil penalties as prescribed by the Arkansas Towing and Recovery Board or to a suspension or revocation of any towing license or permit, or both.~~

(c) The notice shall be by certified mail, return receipt requested, and shall be posted not sooner than five (5) business days, but within eight (8) business days after the date the towing and storage firm receives ownership and lienholder information from the law enforcement agency as prescribed by this subchapter.

(d) The notice shall contain the following information:

(1) The year, make, model, and vehicle identification number of the vehicle towed;

(2) The name, address, and telephone number of the storage facility;

(3) That the vehicle is in the possession of that towing and storage firm under police order, describing the general circumstances of any law enforcement or other official hold on the vehicle;

(4) That towing, storage, and administrative costs are accruing as a legal liability of the owner;

(5) That the towing and storage firm claims a first priority possessory lien on the vehicle and its contents for all of such charges;

(6) That unless claimed within forty-five (45) days, the vehicle will be dismantled, destroyed, or sold at public sale to the highest bidder.

(7) That the failure to exercise their right to reclaim the vehicle and its contents within the time prescribed by this section constitutes a waiver by the owners and lienholders of all right, title, and interest in the vehicle and its contents and constitutes their consent to the sale, dismantling or destruction of the vehicle and its contents;

(8) That the owner or lienholder may retake possession at any

time during business hours by appearing, proving ownership, and release of law enforcement or other official hold, if any, and paying all charges or other written arrangement between the owner or lienholder and the towing and storage firm; and

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

(e) Nothing in this section is to preclude the owner, lienholder or their agent from making alternative arrangements within the five-day to eight-day time period with the towing and storage firm waiving his or her rights to the notice requirement.

(f) When any vehicle reclaimed from the towing and storage firm by a lienholder contains contents not subject to the lienholder's interest, the lienholder shall be accountable to the owner of the contents in the same manner as the lienholder would in any other case of repossession of a vehicle, and the towing and recovery firm releasing the vehicle and its contents shall be relieved from all responsibility for the contents.

(g)(1) Any towing and storage firm who in good faith follows the procedures of this subchapter shall not be subject to claims of unlawful detainer or conversion for vehicles or their contents for merely maintaining property pursuant to the possessory lien as provided by this subchapter.

(2) Any challenge to the removal of an unattended or abandoned vehicle as provided by this subchapter shall be controlled exclusively by the provisions of § 27-50-1207.

(3) Nothing in this section shall be construed to limit liability of the towing and storage firm for any other act or omission otherwise actionable under statutory or common law.

SECTION 6. Arkansas Code 27-50-1209, shall read as follows:

27-50-1209. Foreclosure of liens.

(a) The failure of the owner or lienholder to exercise their right to reclaim the vehicle and its contents within the time provided in this subchapter constitutes a waiver by the owner or lienholder of all right, title, and interest in the vehicle and its contents.

(b)(1) The towing and storage firm holding a perfected possessory lien on any vehicle and its contents not redeemed by its owner or security lienholder within the forty-five (45) days provided by this subchapter shall sell the vehicle and its contents at a nonjudicial sale for cash.

(2) The sale shall not occur later than ninety (90) days after perfection of the lien.

(c)(1) The towing and storage firm shall obtain written verification that the Arkansas Crime Information Center records do not list the vehicle as having been reported stolen.

(2) The verification shall be on a form prescribed by the Office of Motor Vehicle, a municipal police department, a county sheriff's department, or the Department of Arkansas State Police.

(d) Notice of the sale shall be sent at least fifteen (15) days before the date of the sale, by certified mail, no return receipt requested, to the registered owner and lienholder, if any.

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

SECTION 7. Arkansas Code 27-50-1210, is amended to read as follows:
27-50-1210. Nonjudicial sale

(a) After complying with the requirements of foreclosure of liens provided by this subchapter, ownership of the vehicle and its contents shall thereupon vest to the purchaser free of all liens of any nature. Should the nonjudicial sale produce more funds than the sum of all charges, including the costs of the sale and including a reasonable charge for processing the paperwork, the excess shall be paid to the county clerk to the account of the person legally entitled thereto. The Uniform Disposition of Unclaimed Property Act, § 18-28-201 et seq., will apply to any unclaimed funds.

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

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

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

~~(3)~~(c)(1) Upon presentation of documentation to the Officer of Motor Vehicle to the effect that the sale procedure provided by § 27-50-1101 in this subsection has been complied with, protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to receive a new title to the vehicle upon meeting other applicable administrative requirements of title and registration laws.

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

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

SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-third General Assembly that uncertainty exists concerning the due process provided when unattended and abandoned vehicles and their contents are removed by a law enforcement officer in this state, and that additional procedures should be established whereby certain post-deprivation notice and opportunity for hearing be provided. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

The Amendment was read _____
By: Representative Holt
LH/RRS _____
RRS596 **Chief Clerk**