

ARKANSAS SENATE
86th General Assembly - Regular Session, 2007
Amendment Form

Subtitle of Senate Bill No. 969

"TO AMEND THE LAW REGARDING NONCONSENT TOWING AND RECOVERY OF
VEHICLES."

Amendment No. 1 to Senate Bill No. 969.

Amend Senate Bill No. 969 as originally introduced:

Page 1, delete lines 20 through 22 in their entirety and substitute

"SECTION 1. Arkansas Code § 27-50-1202 (10), concerning the definition of "unattended", is amended to read as follows:

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

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

(B) ~~Which vehicle is~~ 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~~ 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~~ Remains ~~Does not remain~~ 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~~ 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;

(F) ~~Which vehicle is~~ Is located upon any public right of way and, due to geographic location, traffic density, or climatic conditions, ~~creates a~~ is creating an immediate and 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~~ Is subject to seizure by law enforcement under either a statute, the Arkansas Rules of Criminal Procedure, or pursuant to a lawful court order.

SECTION 2. Arkansas Code § 27-50-1203(e) – (g), concerning the board's authority to promulgate rules for the towing industry, are amended to read as



follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. Arkansas Code § 27-50-1204(a), concerning penalties, is amended to read as follows:

(a)(1) The owner of a vehicle ~~or~~ and the person who left the vehicle

unattended or abandoned or any owner or operator waiving an owner's preference shall be liable for all reasonable costs of towing, recovery, storage, and other incidental costs related to such a removal.

(2) If the vehicle is sold by foreclosure under § 27-50-1209, the owner or operator shall be liable for such costs in excess of the net proceeds of the sale of the vehicle.

SECTION 4. Arkansas Code § 27-50-1204(d), concerning penalties, is amended to read as follows:

(d) Any person, excluding law enforcement officers, who is determined by the board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to have committed an act that is in violation of this subchapter or any rules and regulations promulgated under this subchapter, is subject to civil penalties prescribed by the board, including monetary penalties not to exceed ~~five hundred dollars (\$500)~~ five thousand dollars (\$5000) or suspension or revocation of any towing license or permit, or both.

SECTION 5. Arkansas Code § 27-50-1204, concerning penalties, is amended to add a subdivision to read as follows:

(f)(1) A penalty assessed by the board shall be paid no later than fifteen (15) days after the conclusion of the appeal process under the Arkansas Administrative Procedures Act, § 25-15-201 et seq.

(2) If not paid timely, a license or permit may be suspended until the penalty is paid.

SECTION 6. Arkansas Code § 27-50-1205(1), concerning tagging by a law enforcement official, is amended to read as follows:

(1)(A) Order immediate removal of any unattended, abandoned, disabled, or inoperative vehicle:

(i) ~~located~~ Located within three feet (3') of the traveled surface of a public way; or

(ii) ~~which vehicle~~ That appears to create an immediate and substantial hazard to the public; and

(B) ~~shall~~ Shall log the removal order accordingly; or

SECTION 7. Arkansas Code § 27-50-1206(a) and (b), concerning the notice provided by a law enforcement officer to a licensed towing and storage firm, is amended to add an additional subdivision to read as follows:

(a)(1) 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.

(2) 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.

(3)(A) If a law enforcement officer or other official issues a

hold against the release of the vehicle, the law enforcement officer's order to remove and store the vehicle shall include a written explanation for the issuance of the hold.

(B) Whenever the vehicle is released, the law enforcement officer or other official who issued the hold shall provide written notice of the release to the towing and storage firm.

(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 in writing the towing and storage firm, which after receiving the notice 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 in writing 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 that a good faith search was conducted.

SECTION 8. Arkansas Code § 27-50-1207(a)(2)(B), concerning owner preference rights, is amended to an additional subdivision to read as follows:

(B)(1) If a law enforcement officer fails to provide an owner of a vehicle with an owner preference in a nonemergency situation, then the owner may file a complaint with the law enforcement agency that employs the law enforcement officer, the Arkansas Towing and Recovery Board, or both.

(2) Nothing in this subsection precludes a person who has been denied the right of owner preference from seeking any other legal or equitable remedy.

SECTION 9. Arkansas Code § 27-50-1207(c), concerning the recommendation of a towing and storage firm by a law enforcement officer, is amended to read as follows:

(c) No law enforcement officer shall:

(1) ~~suggest~~ Suggest or recommend any particular towing and storage firm to the owner, ~~to~~ 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; or~~

(2) ~~accept~~ Accept gifts or special consideration from the owner of a towing business or anyone acting on the owner's behalf in relation to removal of vehicles as provided by this subchapter.

SECTION 10. Arkansas Code § 27-50-1207(e) and (f), concerning an owner's rights, is amended to read as follows:

(e)(1) Should the owner or lienholder of a vehicle removed pursuant to this subchapter consider that the removal of the vehicle was not legally justified or properly subject to a law enforcement hold, the owner or

lienholder may within ~~twenty (20)~~ thirty (30) days after removal or within ~~twenty (20)~~ thirty (30) days after the receipt of notification of any law enforcement hold from the towing and storage firm, whichever is later, seek a review to determine whether the unattended or abandoned property was wrongfully removed or withheld from the owner through the following procedures:

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

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

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

(2) In the case of a final decision reached through a county or city administrative review, the owner or lienholder may appeal an adverse ruling to the circuit court in the county where the unattended or abandoned vehicle is stored.

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

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

(B) Nothing in this section shall operate to defeat the lien held by the towing company under § 27-50-1208.

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

(2)(A) Upon the posting of the bond and the payment of the applicable fees, the administrative decision maker, commission, or court, as the case may be, shall issue an order notifying the towing company and the respondent agency of the posting of the bond.

(B) Upon service of receipt of the order, the towing company shall release the stored property.

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

SECTION 11. Arkansas Code § 27-50-1208 is amended to read as follows:
27-50-1208. Possessory lien and notice to owners and lienholders.

(a)(1) 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.

(2)(A) The lien created under subdivision (a)(1) of this section attaches to the vehicle and its contents and to any trailer attached to the vehicle and the trailer's contents, including a motor vehicle or boat.

(B) The lien created under subdivision (a)(1) of this section does not apply to contents consisting of personal documents, medications, child restraint seating, wallets or purses and their contents, prescription eye glasses, prosthetics, cellular telephones, photographs, or books.

(3) The towing and storage firm shall release without charge to the owner of the vehicle or his or her authorized representative the items described in subdivision (a)(2)(B) of this section.

(b) The lien shall be perfected by:

(1) Maintaining possession;

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

(3) In the case of a vehicle removed pursuant to § 27-50-1101, giving notice to the last known registered owner or owners and lienholders as provided from the records of the:

(A) Office of Motor Vehicle;

(B) Arkansas Crime Information Center; or

(C) Motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(c)(1) The notice shall be mandatory and by certified mail, return receipt requested.

(2) The notice shall be posted not sooner than two (2) business days but within eight (8) business days after the date that the towing and storage firm receives the vehicle.

(d)(1) If within forty-eight (48) hours the ownership and lienholder information has not been received from the law enforcement agency requesting the removal of a vehicle pursuant to this subchapter, the towing and storage firm shall obtain information concerning the last known registered owner or owners and lienholders as provided from the records of the:

(A) ~~office~~ Office of Motor Vehicle;

(B) Arkansas Crime Information Center; or

(C) Motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

(2)(A) For the purpose of notices required by this section, if the data records of the ~~office~~ Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered, if known, do not contain any information as to the last known registered owner or owners and lienholders, notice by publication one (1) time in one (1) newspaper of general circulation in the county where the vehicle was found unattended,

abandoned, or improperly parked is sufficient notice under this section.

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

(e) 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 such charges;

(6) That unless claimed within forty-five (45) days, the vehicle and its contents 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 releasing the law enforcement or other official hold, if any, and by paying all charges or by other written arrangement between the owner or lienholder and the towing and storage firm;

(9) That should the owner consider that the original taking was not legally justified, he or she has a right for ~~twenty~~ thirty ~~(20)~~ thirty (30) days to contest the original taking as defined by § 27-50-1207; ~~and~~

(10) That the owner or operator or his or her authorized representative may recover without charge possession of any item described in subdivision (a)(2)(B) of this section by providing within forty-five (45) days to the towing and storage firm proof that the claimant is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to take possession of the items; and

(11) Notices to owners of vehicles deemed abandoned on the premises of automobile repair facilities pursuant to § 27-50-1101 shall also advise that the automobile repair person holds an absolute lien on the vehicle pursuant to § 18-45-201 et seq.

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

(g) 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.

(h)(1) Any towing and storage firm that in good faith follows the procedures of this subchapter or the provisions of § 27-50-1101 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 and holding 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 12. Arkansas Code § 27-50-1209 is amended to read as follows:
27-50-1209. Foreclosure of liens.

(a)(1) The failure of the owner or lienholder to exercise his, her, or its right to reclaim the vehicle and its contents by appearing, proving ownership, and releasing any law enforcement hold or other official hold and paying all charges or making other written arrangement between the owner or lienholder and the towing and storage firm within the time provided in this subchapter ~~forty-five (45) days of the posting or publication of notice to owners and lienholders~~ constitutes a waiver by the owner or lienholder of all right, title, and interest in the vehicle and its contents.

(2) If a law enforcement official or other official refuses to release any hold on the vehicle or its contents, the owner or lienholder has an additional twenty (20) days to reclaim the vehicle and its contents after the date when the hold is released.

(3)(A) The owner or lienholder may challenge any law enforcement official hold or other official hold under the procedures in § 27-50-1207(e).

(B) However, the provisions of § 27-50-1207(f) pertaining to release of the vehicle do not apply when the owner or lienholder challenges a law enforcement official hold or other official hold.

(b)(1) Except as provided in subsection (c) of this section, the towing and storage firm, municipality, or county that holds a perfected possessory lien on any vehicle and its contents not redeemed by its owner or security lienholder within the ~~forty-five (45) days~~ time frame provided by this ~~subchapter~~ section shall sell the vehicle and its contents at a nonjudicial public sale for cash.

(2) The sale shall not occur later than ninety (90) days after perfection of the lien or forty-five (45) days after the release of any law enforcement hold or other official hold, whichever is later.

(c) A vehicle that is held by a municipality or county on a storage lot owned and operated by the municipality or county may defer the public sale and make use of the vehicle for law enforcement purposes if:

(1) The municipality or county complies with the notice provisions of § 27-50-1208;

(2) ~~Forty-five (45) days have expired~~ The time frame as provided under ~~subdivision (b)(1)~~ subsection (a) of this section has expired; and

(3) The municipality or county enacts an ordinance that:

(A) Declares the municipality's or the county's policy regarding the deferral for law enforcement purposes;

(B) Charges a specific municipal or county official with

the responsibilities of:

(i) Identifying the vehicles to be used by the municipality or county; and

(ii)(a) Declaring a future date to publicly sell the vehicle pursuant to § 27-50-1210.

(b) The date of the sale shall be a maximum of six (6) months ~~from following~~ the passage of the ~~forty-five (45) days~~ required time frame for an owner or lienholder to reclaim a vehicle under subdivision (b)(1) subsection (a) of this section or as soon as is practicable if circumstances arise that prevent the sale on the declared sale date; and

(C) Requires that the official ensure that the public sale proceed on the sale date declared in the ordinance.

(d)(1) The towing and storage firm, municipality, or county 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 center, the Office of Motor Vehicle, a municipal police department, a county sheriff's department, or the Department of Arkansas State Police.

(3) When the verification provided by this subsection is sought directly from the center by the towing and storage firm, the center may charge a fee, not to exceed ten dollars (\$10.00) per vehicle verification.

(e)(1) 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.

(2) If the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered do not contain any information as to the last known registered owner or owners or lienholders, the notice required under subdivision (e)(1) of this section is not required.

(3) Nothing in this subsection removes the requirement of notice of sale by publication under subsection (f) of this section.

(f) 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 one (1) time at least ten (10) days prior to the sale.

SECTION 13. Arkansas Code § 27-50-1210(b)(1), concerning a nonjudicial sale, is amended to read as follows:

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

(1) ~~Ownership~~ At the election of the possessory lienholder, the sale of the vehicle may be cancelled and 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.

SECTION 14. Arkansas Code § 27-50-1213 is amended to read as follows:
27-50-1213. Limitation on removing from the state.

(a) A towing or wrecker service licensed in a state other than

Arkansas shall only remove a vehicle that was involved in a motor vehicle accident ~~collision~~ in the State of Arkansas from the site of the ~~collision~~ accident to another state if the state in which the towing or wrecker service is licensed extends the same privilege to a towing or wrecker service that is licensed in Arkansas and operating in the other state.

(b) For the purpose of determining whether a state permits Arkansas-licensed wreckers and Arkansas-licensed towing vehicles to remove a vehicle that was involved in an accident in that state, any limitation imposed by a county, parish, city, or other political subdivision of that state is deemed an action of that state.

(c)(1) This section applies only to the initial removal of a vehicle from the site of an accident to a point of storage or repair.

(2) This section does not apply to the secondary towing of a vehicle after an investigation of a motor vehicle accident is completed.

(d) When towing a vehicle in this state, a towing or wrecker service licensed in a state other than Arkansas must comply with the provisions of this subchapter and § 27-35-112."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Altes

GLG/LEF - 03-19-2007 16:14

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Secretary