

ARKANSAS SENATE
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of Senate Bill No. 830

"TO ALLOW MUNICIPALITIES TO REGULATE NONCONSENSUAL TOWING AND
STORAGE."

Amendment No. 1 to Senate Bill No. 830.

Amend Senate Bill No. 830 as originally introduced:

Delete everything after the enacting clause and substitute:

“SECTION 1. Arkansas Code § 27-50-1101 is amended to read as follows:
27-50-1101. Nonconsensual towing of ~~vehicles~~ a vehicle, implement, or
piece of machinery.

(a)(1)(A) When ~~any vehicles~~ a vehicle of a type subject to
registration under the laws of this state, an implement, or a piece of
machinery ~~are~~ is found abandoned on private or public property within this
state or ~~are~~ is parked on private or public property within this state
without the authorization of the property owners or other persons controlling
the property, the property ~~owners or agents~~ owner or his or her agent may
have the vehicle, implement, or piece of machinery removed from the property
by a towing and storage firm licensed by and subject to the rules of the
Arkansas Towing and Recovery Board.

(B)(i) A city of the first class, city of the second
class, or incorporated town by ordinance may regulate the manner that a
property owner or other person controlling the property removes a vehicle,
implement, or piece of machinery:

(a) By limiting:

(1) The distance from the location of
removal to the destination of storage; and

(2) The amount of towing and storage
charges, including the towing charge, the storage charge, the administrative
fee, and any other fee that may be charged, to be assessed against the owner
or operator of the vehicle, implement, or piece of machinery removed from the
property, with the difference between the charges allowed by the city and the
actual towing and storage charges to be assessed to the property owner or
other person controlling the property that requested the removal of the
vehicle; and

(3) The request for removal of a
vehicle, implement, or piece of machinery from the property to a towing and
storage firm that accepts payment methods of cash, credit cards, or debit



cards; and

(b) By requiring signage under § 27-51-1305 to include:

(1) The name, address, and telephone number of the towing and storage firm that may provide removal services from the parking lot;

(2) The amount of towing and storage charges that may be assessed against the owner or operator of the vehicle, implement or other machinery; and

(3) Disclosing whether the towing and storage firm will accept the payment methods of cash, checks, credit cards, or debit cards.

(ii) An ordinance enacted under this subdivision (a)(1)(B) shall not conflict with this section.

~~(B)(C)~~ Prior to the removal of an abandoned vehicle or of vehicle, implement, or piece of machinery or a vehicle, implement, or piece of machinery parked without authority as provided by this section, the towing and storage firm shall obtain in writing from the property owners or agents a written statement that includes at a minimum the following:

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

(ii) A statement that the property from which the vehicle, implement, or piece of machinery is to be removed is property owned or otherwise under the control of the agent requesting the removal;

(iii) That the vehicle, implement, or piece of machinery is deemed abandoned or has been parked on the property without authorization, as the case may be;

(iv) The make, model, and vehicle identification number or serial number of the vehicle, implement, or piece of machinery to be removed;

(v) The location to which the vehicle, implement, or piece of machinery will be removed, including the name, address, and telephone number of the towing and storage firm removing the vehicle, implement, or piece of machinery; and

(vi) The signature of the property owner or agent requesting removal of the vehicle, implement, or piece of machinery.

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

~~(D)(E)~~ The towing and storage firm removing the vehicle, implement, or piece of machinery shall retain a copy of the written statement for three (3) years and make the statement available during regular business hours upon request to any person claiming an interest in the removed vehicle, implement, or piece of machinery or upon request to any law enforcement officer or board investigator.

~~(E)(F)~~ Vehicles Unless other arrangements have been made with a repair business, a vehicle, implement, or piece of machinery on the premises of an automobile a repair business shall be deemed abandoned if either:

(i) the The vehicle, implement, or piece of machinery is unclaimed by the vehicle owner within forty-five (45) days; or

~~(ii) the~~ The debt is not paid within forty-five (45) days from the time the repair work is complete.

~~(F)(i)(G)~~ No A towing and storage firm shall not remove any abandoned vehicle, implement, or piece of machinery or improperly parked vehicle, implement, or piece of machinery without the authorization of the property owner or on-site agent as provided in this section except as may otherwise be authorized by the provisions of § 27-50-1201 et seq. or as directed by any law enforcement officer.

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

~~(G)(H)~~ No A towing and storage firm removing a vehicle, implement, or piece of machinery as provided by this section shall not pay any compensation related to the removal of the vehicle, implement, or piece of machinery, whether as a referral fee or otherwise, to the owner or agent requesting the removal of the vehicle, implement, or piece of machinery.

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

(B) The towing and storage firm may not charge a storage fee for the vehicle, implement, or piece of machinery for the time it is stored prior to the notification required to the local police department or sheriff's department office.

(C) Each police department or sheriff's department office receiving notification of the removal of a vehicle, implement, or piece of machinery as provided in this subsection shall maintain a log recording the following information related to the vehicle, implement, or piece of machinery: the make, model, and vehicle identification number of the vehicle, the date, time, and location of the removal, and the name, address, and telephone number of the person removing the vehicle

(i) Make;

(ii) Model;

(iii) Vehicle identification number or serial number;

(iv) Date, time, and location of the removal; and

(v) Name, address, and telephone number of the person removing the vehicle, implement, or piece of machinery.

(D)(i) Each police department or sheriff's department office ~~receiving that receives~~ notification of the removal of a vehicle, implement, or piece of machinery as provided in this subsection shall within twenty-four (24) hours of notification provide to the towing and storage firm information supplied from the records of the Office of Motor Vehicle, the Arkansas Crime Information Center, or, if there is evidence in the vehicle, implement, or piece of machinery indicating that ~~the vehicle~~ it is registered

in or from another state, the ~~motor vehicle~~ registration records from that state, ~~that provide the vehicle identification number or serial number~~, the name and address of the last registered owner, and the name and address of the holder of any recorded lien on the vehicle, implement, or piece of machinery.

(ii) If the information under subdivision (a)(2)(D)(i) of this section is not available for an implement or piece of machinery, the police department or sheriff's office that receives notice of the removal shall provide at a minimum whether any record exists in the records of the Office of Motor Vehicle or the Arkansas Crime Information Center regarding the implement or piece of machinery.

(E)(i) In the event that readily available records fail to disclose the name of the owner of the vehicle, implement, or piece of machinery or any lienholder of record, the towing and storage firm 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, implement, or piece of machinery.

(ii) For purposes of this subsection, a "good faith search" means that the towing and storage firm checks the unattended or abandoned vehicle, implement, or piece of machinery for any type of license plate, license plate record, temporary permit, inspection sticker, decal, or other evidence that indicates a possible state of registration and title or other information related to the owner.

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

(B)(i) The following procedures for the sale of an abandoned and unattended vehicle that is removed from a property as provided under §§ 27-50-1208 – 27-50-1210 shall apply in the same manner to an abandoned and unattended implement or piece of machinery:

(A) Possession of the implement or piece of machinery;

(B) Notice to owners and lienholders; and

(C) Procedures for sale.

(ii) The towing and storage company shall have a first priority possessory lien on the implement or piece of machinery and its contents for all reasonable charges for towing, recovery, and storage subject to the limits provided by ordinance if one is in effect.

(iii) Except as provided under subdivision (a)(3)(B)(iv) of this section, the lien against the implement or piece of machinery shall be perfected and all of the procedures related to the implement or piece of machinery shall be handled in the same manner as provided under § 27-50-1208(b)–(e) for abandoned and unattended vehicles.

(iv) If information on the owner or owners of an implement or piece of machinery that is in the possession of a towing and storage company is not available pursuant to subdivision (a)(2)(D)–(E) of this section, the towing and storage company shall provide notice by publication in a newspaper of general circulation in the region from where the implement or piece of machinery was removed.

(C)(i) Notwithstanding any provision of law to the contrary and to the extent that the city of the first class, city of the

second class, or incorporated town enacted an ordinance that limits the amount of towing and storage charges assessed against the owner or operator of the vehicle, implement, or piece of machinery, the towing and storage company shall have a first priority possessory lien limited to the amount allowed under the ordinance.

(ii) The towing and storage company may assess any remaining charges to the property owner or other person controlling the property who requested the vehicle, implement, or piece of machinery be removed from the property.

(b) A city attorney may refer a possible violation of this section or an ordinance enacted under this section to the Arkansas Towing and Recovery Board for investigation.

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

(A) Direct the removal of or to remove a vehicle, implement, or piece of machinery in violation of this section; and

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

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

(B) The information related to a plea of guilty or nolo contendere to or conviction for a violation as provided under subdivision (b)(1)(A) shall be reported to the Arkansas Towing and Recovery Board.

(3) ~~Each~~ The removal of each vehicle, implement, or piece of machinery ~~removal~~ in violation of this section shall constitute a distinct and separate offense.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there are issues related to towing and storage that have arisen that call into question the adequacy of state law; that there have been numerous incidents where a vehicle, implement, or piece of machinery was towed from an area that lacked proper signage to provide notice to the operator that parking was prohibited; that property owners have had vehicles, implements, or pieces of machinery removed to distant locations from the area in which found abandoned or improperly parked; and that, as a result, the towing and storage charges exceeded the usual and customary amount in the community; and this act is immediately necessary so that a city of the first class, city of the second class, or incorporated town can enact ordinances to regulate the property owners and to protect the health and safety of their citizens related to towing and storage. 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:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

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

By: Senator Madison

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Secretary