

1 INTERIM STUDY PROPOSAL 2009-201

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3 REQUESTING THE SENATE COMMITTEE ON INSURANCE AND COMMERCE AND THE  
4 HOUSE COMMITTEE ON INSURANCE AND COMMERCE TO STUDY THE PRACTICES  
5 RELATED TO TOWING AND STORAGE BUSINESSES AND LAW ENFORCEMENT  
6 RELATED TO NONCONSENSUAL TOWING.  
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8 WHEREAS, the issue of unfair towing and storage practices has come  
9 before the General Assembly many times in the past; and  
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11 WHEREAS, in a federal lawsuit that recently went to trial, at least  
12 thirty (30) individuals of Hispanic descent made allegations of racial  
13 profiling for traffic stops; and  
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15 WHEREAS, the cause given by law enforcement for making the traffic stop  
16 was driving with an obstructed view, which was often merely an air freshener  
17 or rosary beads hanging from the rearview mirror or having stickers on the  
18 sides of the rear windshield; and  
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20 WHEREAS, after the traffic stops, the plaintiffs allege that they were  
21 left stranded on the side of the road, had to wait at least one (1) day to  
22 get their vehicles back, had to pay hundreds of dollars in towing and storage  
23 fees, and spent hours in court with their cases being repeatedly delayed; and  
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25 WHEREAS, the traffic violations were, in most cases, dropped for lack  
26 of any underlying documentation of what the windshield obstruction was; and  
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28 WHEREAS, the municipality has asserted that an object hanging from the  
29 rearview mirror gave law enforcement the legal authority to stop the driver  
30 and that the stops were not discriminatory; and  
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32 WHEREAS, however, the only state law on the obstruction of a driver's  
33 view is Arkansas Code § 27-51-1401(a), which states, "No person shall drive a  
34 vehicle when it is so loaded, or when there are in the front seat a number of  
35 persons, exceeding three (3), as to obstruct the view of the driver to the  
36 front or sides of the vehicle so as to interfere with the driver's control

1 over the driving mechanism of the vehicle"; and

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3 WHEREAS, in the federal lawsuit, there also were allegations made  
4 against a towing company that the towing company paid "kickbacks" to the city  
5 for vehicles that were impounded, towed, and stored because the driver did  
6 not have a driver's license or insurance or both; and

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8 WHEREAS, in the federal lawsuit, the towing company settled its part of  
9 the lawsuit brought by the plaintiffs before trial; and

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11 WHEREAS, the Arkansas Towing and Recovery Board is created under  
12 Arkansas Code § 27-50-1203 and has the statutory duty to regulate the towing  
13 industry, including the authority to investigate complaints; and

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15 WHEREAS, Arkansas Code § 27-50-1207 requires a law enforcement agency  
16 that directs the removal of unattended or abandoned vehicles to adopt a  
17 written vehicle removal policy consistent with the applicable law; and

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19 WHEREAS, some law enforcement agencies have and use rotation lists for  
20 nonconsensual towing wherein several towing companies are placed on the list  
21 to be used by law enforcement for nonconsensual towing; and

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23 WHEREAS, Arkansas Code § 27-50-1208 gives towing and storage companies  
24 a first priority possessory lien on a vehicle and its contents for all  
25 reasonable charges for towing, recovery, and storage for which the owner is  
26 liable; and

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28 WHEREAS, issues have been raised as to the fairness of first priority  
29 possessory liens and the procedures for foreclosure of the liens,

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31 NOW THEREFORE,

32 BE IT PROPOSED BY THE SENATE COMMITTEE ON INSURANCE AND COMMERCE OF THE  
33 EIGHTY-SEVENTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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35 THAT the Senate Committee on Insurance and Commerce and the House  
36 Committee on Insurance and Commerce study the practices related to towing and

1 storage companies and law enforcement regarding nonconsensual towing,  
2 including gathering information and requesting testimony from:

3 (1) The Director of the Arkansas Towing and Recovery Board;

4 (2) The executive director of the Professional Towing and  
5 Recovery Association of Arkansas;

6 (3) A representative of the Arkansas Municipal League  
7 knowledgeable about this issue;

8 (4) The president of the Arkansas Association of Chiefs of  
9 Police;

10 (5) A representative of the Association of Arkansas Counties  
11 knowledgeable about this issue;

12 (6) The executive director of the Arkansas Sheriffs Association;

13 (7) The Director of the Department of Arkansas State Police; and

14 (8) Any other stakeholders with information relevant to this  
15 study.

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17 BE IT FURTHER PROPOSED THAT upon adoption of this study, staff transmit  
18 a copy of this study to the parties listed in subdivisions (1) – (7) above.

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20 Respectfully submitted,

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24 Senator Percy Malone

25 District 26  
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36 Filed Date: 12/03/2009 By: JSE/jse