Proposed Rulemaking

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Promulgated by:
Department of Labor and Licensing
Arkansas Towing and Recovery Board

Title 27. Transportation

Chapter VIII. Arkansas Towing and Recovery Board, Department of Labor and Licensing

Subchapter A. Generally

Part 170. Administrative Rules of the Arkansas Towing and Recovery Board

Subpart 1. Generally

27 CAR § 170-101. Applicability and exemptions.

(a) This part applies to a person that either:

(1) Engages in the towing or storage of vehicles in the State of Arkansas; or

(2) Performs vehicle immobilization services.

(b) This part does not apply to the following tow vehicles and related equipment:

(1) Car carriers capable of carrying five (5) or more vehicles and that have authority from the Federal Motor Carrier Safety Administration;

(2) Tow vehicles owned by a governmental entity and not used for commercial purposes;

(3) If in compliance with Arkansas Code § 27-35-112, tow vehicles that are:

(A) Registered in another state;

(B) Operating under authority from the Federal Motor Carrier Safety Administration; and

(C) Not regularly doing business or soliciting business in the State of Arkansas; and

(4) Tow vehicles used for noncommercial purposes, including without limitation tow vehicles used:

(A) For personal use;

(B) For transporting historic, special interest, or antique vehicles; or

(C) As a parade tow vehicle.

(c) This part does not apply to the storage of vehicles by a salvage vehicle pool or salvage vehicle auction that does not otherwise perform towing services.

27 CAR § 170-102. Definitions.

For purposes of this part:

(1) "Abandoned vehicle" means a vehicle deemed to be an unattended vehicle:

(A) As to which the owner has overtly manifested some intention not to retake possession; or

(B) That remains unattended, whether in its first-found location or in another location to which it has been removed under Arkansas Code § 27-50-1201 et seq., for a period of thirty (30) days during which period the owner gives no evidence of an intent to retake possession;

(2)(A) "Administrative fee" means a fee charged for the time, clerical services, and use of an office for the itemized invoicing of a recovery, tow, or storage bill and related processing.

(B) An administrative fee should reflect the effort needed to process a vehicle as required by law;

(3) "After-hours release" means a fee charged by a towing/storage firm to arrange for the release of a vehicle or personal property after normal/reasonable business hours at the request of the owner or other person authorized to retrieve the vehicle;

(4) "Board" means the Arkansas Towing and Recovery Board;

(5) "Business license number" means a five-digit number assigned to each tow business, which shall be permanently affixed to any permitted tow vehicle in the following manner:

(A) The business license number shall be preceded by the letters ATRB;

(B) The following letter or letters shall follow the five-digit number:

(i) "NC" if the tow vehicle is permitted for nonconsent towing;

(ii) "C" if the tow vehicle is permitted only for consent towing; or

(iii) "R" if the tow vehicle is permitted only for repossession and consent towing;

(C) The business license number along with the letters shall be placed in a conspicuous place near the business name on each side of the tow vehicle; and

(D) The numbers and letters shall be at least two inches (2") in height and easily visible from a distance of fifty feet (50');

(6) "Commercial purposes" includes any towing, storing, recovery, or transporting of a vehicle that is associated with a business regardless of the current vehicle's ownership status or whether charges were paid by a third party for services;

(7)(A) "Consent" means towing, storage, or recovery of a vehicle, which towing, storage, or recovery is done with the permission of the owner or other person in charge of the vehicle.

(B) "Consent" does not include the repossession of a vehicle by the vehicle lienholder, agent, or other person working on behalf of the lienholder;

(8) "Consumer complaint" means a complaint filed by a person with a vested interest as determined by the Arkansas Towing and Recovery Board in the towed property, including without limitation and in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., the:

(A) Owner of the towed vehicle or his or her agent;

(B) Lienholder of the vehicle;

(C) Company that insured the towed vehicle or is liable for the damages; or

(D) Law enforcement agency;

(9) "Director" means the Director of the Arkansas Towing and Recovery Board;

(10) "Electric vehicle" or "EV" means any motorized vehicle that can be powered by one (1) or more electric motors drawing its source of power from a battery and is capable of being charged from an external source or an onboarded system, including a hybrid electric vehicle but not including:

(A) A golf cart;

(B) A low-speed vehicle as defined by Arkansas Code § 27-14-614; or

(C) An electric or hybrid motorcycle;

(11) "Equipment" means:

(A) Any vehicle or related equipment used by a tow business or tow vehicle to perform towing or storage services; or

(B) Personal property commonly used to facilitate a business or farming operation for which a possessory lien is granted to a tow business under Arkansas Code §§ 27-50-1208 – 27-50-1210;

(12) "EV assessment" means an analysis by a third-party EV resource or, if similarly qualified, a tow company of the extent of damage, if any, to an electric vehicle and the steps to be taken to safely perform EV towing services and EV storage services;

(13) "EV storage services" means to properly store an electric vehicle in accordance with all state and federal laws, rules, and regulations, and includes all steps taken in connection therewith and the solicitation of EV storage services;

(14) "EV towing services" means to tow, recover, upright, transport, repossess, immobilize, or otherwise facilitate the movement or storage of electric vehicles on or off Arkansas's roadways and includes the solicitation of EV towing services;

(15)(A) "Fuel surcharge" means a surcharge determined by calculating a cents per mile rate utilizing the current weekly average for fuel as determined by the United States Department of Energy for the Gulf Coast Region PADD 3 that rises above the prior year's annual average to offset the fluctuating cost of fuel.

(B) Beginning and ending mileage shall be documented on tow receipt;

(16) "Impounded or seized vehicle" means a vehicle subject to impounding or seizure by law enforcement under Arkansas law, the Arkansas Rules of Criminal Procedure, a court order, or an ordinance;

(17) "Labor" means: (A) additional manpower or time required to prepare a vehicle beyond the normal scope of a standard tow, including without limitation:

(~~A~~1) Site clean-up;

(~~B~~2) Unloading of freight;

(~~C~~3) Tarping;

(~~D~~4) Securing vehicle parts and contents; and

(~~E~~5) Other recovery-related services;

(B) Labor does not mean manpower or time of the tow vehicle operator acting within the normal scope of a standard tow.

(18) "Licensee" means any person holding a valid license, registration, permit, endorsement, or enhancement issued by the Arkansas Towing and Recovery Board;

(19) "Nonconsent" means the towing, storage, or recovery of any unattended or abandoned vehicle, any disabled or inoperative vehicle, or a vehicle subject to impound or removal by law enforcement without the expressed or implied permission of the vehicle owner, operator, agent, or person in charge of the vehicle;

(20) "Notification fee" means a fee charged by a towing or storage firm for the actual expenses incurred to satisfy the notification requirements set forth in Arkansas Code § 27-50-1208(c)(1) that is not to be charged prior to two (2) business days after the date the towing/storage firm receives the vehicle and not to exceed the amount set forth in 27 CAR § 170-110(c);

(21) "Owner" means, in the absence of conclusive evidence to the contrary, the person in whose name the vehicle is registered with the Office of Motor Vehicle or in whose name the vehicle is registered in another state;

(22) "Owner preference" means the right of the owner, the owner's agent, or a competent occupant of a disabled or inoperable vehicle subject to nonconsent towing, storage, or recovery to request some responsible and reasonable person, gratuitous bailee, bailee for hire, or properly licensed or permitted tow facility chosen by the

owner, the owner's agent, or a competent occupant of the vehicle, to take charge and care of the vehicle;

(23) "Owner preference complaint" means a complaint concerning a violation of Arkansas Code § 27-50-1201 et seq., and the circumstances associated with owner preference and consent towing or nonconsent towing, which may be filed with and reviewed by the Arkansas Towing and Recovery Board under Arkansas Code § 27-50-1221 by:

(A) A vehicle owner;

(B) A lienholder;

(C) An insurance provider; or

(D) A law enforcement officer;

(24) "Person" means an individual or entity;

(25) "Personal use" means for a person's own, noncommercial purposes that is not associated with a business or commercial purpose;

(26) "Proof of ownership" means a valid certificate of title; VIN verification issued by local law enforcement; or other appropriate documentation sufficient to establish ownership;

(~~26~~27) "Public way" means a road, highway, or street over which the public may travel, including the traveled surface and a berm or shoulder of a road, highway, or street;

(~~27~~28) "Recover" or "recovery" means a service outside of the normal scope of a standard tow, including without limitation winching and corresponding labor for which a separate charge may be imposed if separately itemized on an invoice;

(~~28~~29) "Removal" means that a law enforcement officer may request a towing and storage firm that is licensed by the Arkansas Towing and Recovery Board to engage in nonconsent towing of vehicles to remove and store:

(A) An unattended vehicle or abandoned vehicle;

(B) A disabled or inoperative vehicle for which the owner or person in charge of the vehicle has waived his or her right to owner preference;

(C) A vehicle in which the operator was apprehended by law enforcement officers; or

(D) An impounded or seized vehicle;

(~~29~~30) "Repossession" means towing, storage, or recovery of a vehicle by the vehicle lienholder or an agent or other person working on behalf of the lienholder;

(~~30~~31) "Set out fee" means a fee charged by a towing/storage firm related to extraordinary or extenuating circumstances above and beyond the standard practice of releasing a vehicle, including without limitation using a forklift or tow truck because a vehicle is inoperable;

(~~31~~32) "Standard tow" means any tow of a vehicle subject to registration that is removed from private property, a public way, an accident scene, or the side of the roadway and towed in a fashion regularly accepted as routine, to include a tow vehicle operator, preparation for the tow, response time, hook-up, loading, snatch block usage unless used for recovery; unloading, and transportation back to facility within a reasonable operating perimeter;

(~~32~~33) "Storage" means: (A)a daily fee charged by a towing business to secure and safely store a vehicle and includes the release of a vehicle during normal or reasonable business hours;

(B) Storage does not mean a fee charged for weekend or holiday days in which the tow business does not offer an after-hours release option.

(~~33~~34) "Third-party EV resource" means a person with demonstrated expertise, training, and experience to properly:

(A) Assess the towing and storage of an electric vehicle;

(B) Train tow industry personnel to tow, recover, and store electric vehicles; or

(C) Provide additional services to protect the public health, welfare, and safety in the performance of EV towing services and EV storage services;

(~~34~~35) "Tow business" or "towing business" means:

(A) A person with an alternate business name under which the person is required by the Arkansas Towing and Recovery Board to operate towing, recovery, or

storage services, which name shall be properly filed with the Secretary of State or the county clerk under Arkansas Code § 4-70-203 and regulated by the Arkansas Towing and Recovery Board to be used exclusively for the operation of a tow facility, vehicle immobilization company, or a storage facility, including without limitation a person that:

(i) Dispatches tow vehicles for nonconsent or consent towing or repossession;

(ii) Stores vehicles; and

(iii) Conducts towing, recovery, or vehicle immobilization business with the general public; or

(B) A licensed or an unlicensed person that engages in towing services;

(~~35~~36) "Tow business license" means a certificate issued annually by the Arkansas Towing and Recovery Board entitling any person to engage in the towing business;

(~~36~~37) "Tow vehicle" means a motor vehicle or related equipment subject to registration in the State of Arkansas that is used to tow, recover, upright, transport, or otherwise facilitate the movement of vehicles on public highways;

(~~37~~38) "Tow vehicle safety permit" means a decal issued annually by the Arkansas Towing and Recovery Board to be affixed to the windshield of any tow vehicle operated by a licensed tow business displaying the annual period by year and month for which the permit is valid;

(~~38~~39) "Towing industry" includes all persons that engage in the conduct or solicitation of towing, recovery, or related storage services;

(~~39~~40) "Towing services" means: (A) to tow, recover, upright, transport, repossess, immobilize, store, or otherwise facilitate the movement or storage of vehicles on or off Arkansas's roadways ~~and includes the solicitation of towing services~~;

(B) Solicitation of towing services and the incidental labor, services, and equipment necessary for on-road or off-road recovery and cleanup for work actually performed by the tow business.

(~~40~~41) "Unattended" or "unattended vehicle" has the meaning stated in Arkansas Code § 27-50-1202;

(~~41~~42) "Vehicle" means a device by which persons or things may be transported upon a public highway and that is of the type subject to registration in Arkansas;

(~~42~~43)(A) "Vehicle immobilization" or "vehicle immobilization service" means operating or directing others to attach a wheel clamp or other Arkansas Towing and Recovery Board-approved, industry-recognized device used to temporarily render a vehicle immobile.

(B) A gladhand lock is not a Arkansas Towing and Recovery Board-approved vehicle immobilization device;

(~~43~~44) "Vehicle isolation bay" means one (1) or more self-contained EV storage areas with sufficient drainage capacity to contain hazardous waste constructed with fire resistant components in accordance with the standards and specifications:

(A) Required by state and federal law; and

(B) Promulgated by a third-party EV resource;

(~~44~~45) "Wheel clamp" means a device attached to a wheel of a vehicle that renders or is intended to render the vehicle immobile; and

(~~45~~46)(A) "Winching" means the additional use of cable and apparatus commonly known as a winch needed to recover or reposition a vehicle.

(B) "Winching" does not include a cable or winch used to pull a vehicle onto a rollback or trailer in connection with a standard tow.

27 CAR § 170-103. General organization of the Arkansas Towing and Recovery Board.

(a)(1) The Arkansas Towing and Recovery Board shall meet at least once in each quarter at the call of the chairperson and shall continue in session until business is completed insofar as possible.

(2) Five (5) members of the board shall constitute a quorum.

(b) Meetings of the board shall be held on dates and at times and locations selected by the chairperson of the board.

(c) Special meetings of the board may be called at any time by the chairperson~~, or in their absence the vice chairperson or the acting chairperson~~ or the Director in consultation with the chairperson.

(d) The board shall elect a chairperson annually from the membership of the board.

(e)(1) Any person desiring to appear before the board at any meeting on any matter within the jurisdiction of the board shall, at least ten (10) business days prior to such meeting, file with ~~the chairperson or~~ the Director of the Arkansas Towing and Recovery Board a written request in which the nature and purpose of the appearance shall be clearly and precisely stated in sufficient detail to fully apprise the board of the basis and extent of the business.

(2) This requirement may be waived at any meeting only by majority consent of the board members present and voting on the matter, provided, when such a request is in the nature of a complaint against a member of the towing industry under the provisions of Arkansas Code § 27-50-1201 et seq., as now or hereafter amended, the provisions of 27 CAR § 170-105 shall apply.

(f) The director shall arrange the order of business of all meetings of the board and shall, at least ten (10) business days prior thereto, notify all persons who are to appear before the board at such meeting of the place, the date, and the time of the meeting.

(g)(1) The director shall keep and maintain on file in the board's office a record of all proceedings of the board.

(2) The director shall also keep on file in the board's office copies of all orders issued by the board, for a period not less than three (3) years.

(h) The board shall be governed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., and the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq.

(i) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the director at the official address of the board.

(j) For any issue pertaining to the conduct of a board meeting not addressed by this part or the Arkansas Administrative Procedure Act the latest edition of Robert's Rules of Order shall serve as a guide.

27 CAR § 170-104. Powers of the Arkansas Towing and Recovery Board.

(a) The Arkansas Towing and Recovery Board shall have the power to take appropriate action and promulgate rules in the manner provided by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., deemed necessary or desirable to carry out the intent and purposes of Arkansas Code § 27-50-1201 et seq., and to regulate the vehicle immobilization, repossession, nonconsent towing/storage, and consent towing industry, including, but not limited to:

(1) Establishing reasonable licensing, insurance, and safety equipment requirements for any person engaged in towing, repossession, recovery, or related storage purposes;

(2) Establishing reasonable safety equipment requirements for any tow vehicle or vehicle immobilization service;

(3) Establishing procedures to accept and investigate consumer complaints or a board-initiated action for a vehicle owner, lienholder, law enforcement, or insurance company related to any violation associated with a consent or nonconsent tow, recovery, storage, or vehicle immobilization service;

(4) Determining and sanctioning excessive or unnecessary towing, recovery, storage, and vehicle immobilization fees charged to consumers;

(5) Requiring all entities permitted, licensed, or regulated under Arkansas Code § 27-50-1201 et seq., to provide to the board all documents in response to information requests by the board for the investigation of consumer complaints or board complaints against the licensee within ten (10) business days; and

(6) Requiring all entities permitted, licensed, or regulated by Arkansas Code § 27-50-1201 et seq., to maintain a copy of their current maximum rate schedule with the board and to post a copy of their current maximum rate schedule in a conspicuous place that is readily accessible to the public.

(b) The board shall have the authority to license, register, permit, set fees, and establish all requirements and qualifications for all towing business licenses, registrations, endorsements, enhancements, and permits, including without limitation:

(1) A consent registration or nonconsent, repossession, or vehicle immobilization business license;

(2) A tow vehicle safety permit;

(3) Tow vehicle safety equipment requirements;

(4) Signage;

(5) Tow authorizations; and

(6) Any license endorsement or enhancement.

(c)~~(1)~~ The board shall have authority to impose penalties for late renewal application filings in an amount not to exceed the amount of fees due for the initial application.

~~(2) The penalty for a late license, vehicle immobilization, endorsement, or enhancement renewal application filing shall be five dollars ($5.00) per day, not to exceed the amount due for the renewal.~~

~~(3) The penalty for a late permit renewal application filing shall be one dollar ($1.00) per day, per permit, not to exceed the amount due for the permit renewal.~~

(d) The board shall have authority to:

(1) Initiate a complaint or to investigate consumer complaints related to any alleged violation of:

(A) Arkansas Code § 27-50-1101 and § 27-50-1201 et seq.; or

(B) Any board rule promulgated pursuant thereto; and

(2) Grant and pursue any remedies pursuant thereto.

(e)~~(1)~~ The board shall have the authority to design and publish application forms for any tow business license, registration, permit, endorsement, or enhancement, and other forms, documents, and applications necessary or desirable to implement this part and to require the filing of same with the board.

~~(2) The Director of the Arkansas Towing and Recovery Board shall keep on file a copy of each application form adopted by the board, referencing minutes of the meeting during which such form is approved.~~

(f) The board shall have the authority to refuse to renew, to order a fine, penalty, or restitution, and to suspend or revoke any license, registration, permit, endorsement, enhancement, or tow vehicle safety permit for any violation of Arkansas Code § 27-50-1101 or § 27-50-1201 et seq., or any rule promulgated pursuant thereto.

(g)(1) Any vehicle immobilization, nonconsent towing/storage, repossession, or consent towing business determined by the board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., to have committed an act that is in violation of Arkansas Code § 27-50-1101 or § 27-50-1201 et seq., or any rule promulgated pursuant thereto, is subject to:

(A) Civil penalties, including monetary penalties, not to exceed five thousand dollars ($5,000) per offense;

(B) The payment of restitution; and

(C) The suspension or revocation of any license or permit, or both.

(2) Each act of violation constitutes a distinct and separate offense.

(3) Nothing in this part shall be construed to limit the right to seek judicial review of any determination of the board pursuant to the provisions of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(h) In the conduct of any investigation or hearing pursuant to any investigation, the officer conducting the hearing may administer oaths and may require testimony or evidence to be given under oath.

(i) The board shall have the authority to direct the execution of a summons, citation, or subpoena~~.~~<u>; including but not limited to requiring the requestor of a subpoena to serve such notice to the individual.</u>

(j) The board shall have the authority to require, and to set minimum amounts of coverage for, liability, on-hook, drive-away, and premises insurance on the part of each licensee.

(k) The board shall have the authority to establish the maximum amount charged for notification required by Arkansas Code § 27-50-1208 to be sent to a vehicle owner or lienholder.

(l) The board shall have the authority to issue fines between fifty dollars ($50.00) and two hundred fifty dollars ($250) for failure to comply with the signage provisions required by Arkansas Code § 27-50-1201 et seq., or by board rule.

27 CAR § 170-105. Complaint and hearing provisions.

(a)(1) The Arkansas Towing and Recovery Board shall promptly investigate and resolve a consumer or board-initiated complaint.

(2) If reasonable cause exists to believe a violation of Arkansas Code § 27-50-1101 or § 27-50-1201 et seq., or a board rule may have occurred, the Director of the Arkansas Towing and Recovery Board may initiate a complaint on behalf of the board.

(b)(1) The following guidelines shall apply to a complaint:

(A) A complainant shall respond to a request from board staff for additional information within ten (10) business days;

(B) Failure to respond to the request for additional information is grounds for immediate dismissal of the complaint;

(C) A complainant may file a written request for an extension of time with the board;

(D) The written request for an extension shall be submitted to board staff within ten (10) days after receiving a request for additional information; and

(E) If an extension is granted, the board investigator shall notify the affected tow business in writing of the extension.

(2)(A) A towing business shall respond to each request from board staff for information within ten (10) business days after receiving the request.

(B) Failure to respond to a written request by a tow company will result in a daily fine of up to twenty-five dollars ($25.00) per day until the information requested is received by board staff.

(C) The tow business may file a written request for an extension of time with
the board.

(D) The written request for an extension must be submitted to the board office within ten (10) days of ~~the postmarked date~~receiving the ~~of~~ request for additional information.

(E) If the extension is granted, the board investigator will notify the tow company in writing of the extension.

(3) The board may extend the period for the resolution of a complaint when conditions warrant such action.

(c) Any hearing conducted by the board may be held during a regular board meeting, or a special board meeting may be convened for that purpose.

(d)(1) The director shall have authority to delay or to deny approval of any application for a license or tow vehicle safety permit if the applicant fails to meet the minimum requirements and the qualifications set by the board.

(2) Said delay or denial shall be in writing to the applicant, stating the reason for the delay or the denial.

(3) Any applicant whose application is denied shall be advised of their right to appeal the denial to the board.

(e) An applicant who has been denied a license or tow vehicle safety permit by the director may appeal by notifying the board in writing within fifteen (15) days of the date of the notice of denial.

(f)(1) If for any reason the director determines that a license or permit has been issued in error, including for failure to receive the proper fee amount, the director may summarily suspend or revoke said license or permit.

(2) In such circumstance, or in the event of immediate suspension or revocation of any licensee or permit pursuant to 27 CAR § 170-109(d) or any other rule, the tow business shall be notified in writing via certified mail of its right to a hearing before the board.

(3) If the tow business fails to submit a request in writing for a hearing before the board within fifteen (15) days, the suspension or revocation shall become final.

(4) Upon any decision to hold a formal hearing to consider the suspension or revocation of any license or tow vehicle safety permit issued by the board, the board shall notify the tow business of the hearing.

(g)(1) If as the result of its own investigation or as result of an investigation of any consumer complaint filed against a tow business, it is determined by the board that sufficient evidence exists that a licensed business's conduct constitutes a violation of Arkansas Code § 27-50-1101, § 27-50-1201 et seq., or aboard rule, the board may initiate a hearing and invoke any one (1) or more of the following resolutions: fine or impose a civil penalty against respondent as set forth in 27 CAR § 170-104(g), reprimand respondent, suspend or revoke any license or permit issued to respondent, and award financial restitution to the complainant, at the discretion of the board.

(2) The board shall provide no less than fifteen (15) days advance written notice to the tow business of the hearing.

(3) The notice shall inform respondent of alleged facts or conduct warranting the hearing.

(4) If the board finds the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license, enhancement, endorsement, or permit may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

(h)(1) All evidence, including records and documents in the possession of the board of which it desires to consider shall be offered and made a part of the record in the hearing.

(2) Any respondent whose rights may be affected by said hearing shall have the right to appear personally and by counsel to introduce evidence, cross-examine witnesses, and examine any document or other evidence submitted.

(i) The board shall not be bound by the technical rules of evidence, and it may admit and give such probative value to any evidence as the board deems appropriate,

provided, however, that the board shall give effect to the rules of privilege recognized by the law and may exclude incompetent, irrelevant, immaterial, or repetitious evidence and may make rulings to protect witnesses from undue harassment or oppression and undue delay of the hearing.

(j)(1) Financial restitution to the complainant will be considered as part of the penalty by the board when a towing company or tow owner is found to have violated any law or rules promulgated by the board authorizing restitution.

(2) Only actual losses that have been incurred by the complainant may be paid as restitution.

(3) The amount of financial restitution to the complainant shall be determined by the board.

(4) Punitive damages will not be paid to the complainant.

(5) Nothing in this subsection prevents:

(A) A complainant from pursuing any other legal remedy; or

(B) The board from imposing any other type of fine, penalty, or sanction authorized by law.

(k)(1) The director shall maintain documents and files relative to board business.

(2) All pleadings and motions to be filed relative to any hearing before the board shall be in duplicate, signed, verified, dated, and filed with the director and held for a period not less than three (3) years.

(l)(1) In any hearing held for the purpose of affording any applicant the opportunity to show qualifications to hold a license or tow vehicle safety permit, the burden of going forward with the evidence shall be on the applicant.

(2) In hearings held for the purpose of reprimanding, suspending, revoking, or fining any respondent, the burden of going forward shall be on the board and its staff.

(m)(1) All decisions by the board shall be in writing and signed by the chairperson of the board and shall include findings of fact and conclusions of law separately stated in an appropriate order entered in accordance therewith.

(2) A copy of the findings of fact and conclusions of law and the order shall be sent to each party to the hearing.

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

(2) If not paid timely, a license, registration, permit, endorsement, or enhancement issued by the board may be suspended by the board until the penalty is paid.

(o)(1) If a person fails to pay a fine or installment payment due to the board under subsection (n) of this section and Arkansas Code § 27-50-1204, the board may cause the suspension of any tow vehicle license plate and registration of the person that is subject to the fine by providing written notice to the Office of Motor Vehicle of failure to pay.

(2) The notice of the failure to pay the fine ordered by the board shall contain the following information:

(A) The name of the entity or individual that is subject to the fine;

(B) The vehicle identification number or other identifying information for the vehicle owned by the entity or individual that is the subject of the fine;

(C) The date the board imposed the fine;

(D) The amount of the fine;

(E) The date the fine or installment payment became delinquent; and

(F) The amount of the fine or installment payments that remain delinquent.

(3) When the fine is paid, the board shall notify the Office of Motor Vehicle within two (2) business days by written notice to remove the suspension.

27 CAR § 170-106. License and tow vehicle safety permit requirements.

(a)(1) A tow business shall obtain from the Arkansas Towing and Recovery Board and renew annually the appropriate licenses, endorsements, enhancements, and permits to engage in towing, recovery, storage, vehicle immobilization, and related services.

(2) A nonconsent towing license includes the authority to perform vehicle immobilization, repossession, storage, and consent towing services.

(3) A consent tow service is required to obtain a consent registration and permit for each tow vehicle through the board.

(4) A repossession company is allowed to do consent towing and must obtain a repossession license and repossession permit for each tow vehicle.

(b)(1) Any tow vehicle as defined in Arkansas Code § 27-50-1201 et seq., and this part that is not exempt under the provisions of 27 CAR § 170-101 and is being operated on Arkansas's public roadways is required to have a valid tow vehicle safety permit displayed in the lower left corner of the windshield and a business license number permanently placed on both sides of the tow vehicle near the business name issued by the board.

(2)(A) Any tow vehicle used to provide nonconsent towing and related services shall display a nonconsent tow business license number and an annual tow vehicle safety permit issued by the board.

(B) Such tow vehicle may also be used to provide repossession and consent towing and related services.

(3)(A) Any tow vehicle used to provide only consent towing and related services shall display a consent registration number and an annual tow vehicle safety permit issued by the board.

(B) Such vehicle shall not be used to provide repossession or nonconsent towing and related services.

(4)(A) Any tow vehicle used to provide repossession towing and related services shall display a repossession tow business license number and an annual tow vehicle safety permit issued by the board.

(B) Such tow vehicle may also be used to provide consent towing and related services.

(5) The tow vehicle safety permit shall be placed on the tow vehicle for which it is intended immediately upon receipt.

(6) Failure to comply with this section could result in:

(A) A civil penalty of up to five thousand dollars ($5,000);

(B) The suspension or revocation of the tow vehicle permit; or

(C) Both.

(c)(1) Upon proper application reflecting that the qualifications required by the board in this part are met, the Director of the Arkansas Towing and Recovery Board shall issue the appropriate license, registration, endorsement, enhancement, or permit for towing, recovery, repossession, vehicle immobilization, or storage.

(2) No license, registration, endorsement, enhancement, or permit for towing, recovery, repossession, vehicle immobilization, or storage shall be issued until a complete application is filed with the board.

(3) For purposes of this part and except as otherwise provided or supplemented, a complete application for a towing business license, registration, endorsement, enhancement, or permit for towing, recovery, repossession, vehicle immobilization, or storage shall include as applicable, all requirements of the board and this part, including without limitation:

(A) Business application provided by the board completed in its entirety;

(B) Current certificate or certificates of insurance reflecting minimum insurance coverage as prescribed by the board in 27 CAR § 170-109, which must include:

(i) The physical address for which the tow business is licensed;

(ii) The legal name or names of the tow business; and

(iii) A complete description and vehicle identification number of each tow vehicle with on-hook coverage;

(C) Fees as prescribed by the board;

(D)(i) A copy of the current maximum rate sheet for each towing, recovery, and storage service, with the effective date of the rates clearly displayed.

(ii) The acceptance of a copy of the rate sheet does not constitute or imply approval of fees or rates;

(E) Proof of compliance with all signage requirements, including without limitation:

(i) Complaint notification process;

(ii) Exterior business location signage; and

(iii) Tow rate schedule; ~~and~~

(F) Proof of compliance with the consumer complaint process being placed on all invoices; and

(~~F~~G) Any other proof or documents needed to comply with the requirements, if applicable, for an enhanced nonconsent heavy-duty tow license under 27 CAR § 170-115.

(4)(A) A tow vehicle safety permit authorizing operation of a tow vehicle on public roadways in the State of Arkansas shall not be issued until a complete tow vehicle safety permit application is filed with the board.

(B) For purposes of this part a complete tow vehicle safety permit application shall include:

(i) An updated business application if needed;

(ii)*(a)* Completed inspection form approved by the board as part of the application process, including 27 CAR § 170-107 equipment standards, and that the tow vehicle was examined by a current and active Arkansas certified municipal, county, or state law enforcement officer or board staff who so verifies by his or her signature on the Tow Vehicle Safety Inspection Form, along with badge number and agency that the tow vehicle meets all of the requirements noted on the form.

(b) If the tow vehicle fails any part of the inspection, deficient items must be noted on the Tow Vehicle Safety Inspection Form and forwarded to the board.

(c) All items noted as deficient must be corrected and reinspected by the same law enforcement agency or board staff before a permit can be issued for that tow vehicle;

(iii) Photographs clearly showing the following views:

(a) The tow vehicle registration tag on the tow vehicle for which the permit is being requested;

(b) Driver side view of the towing vehicle showing both the name and phone number of the business; and

(c) Passenger side view of the towing vehicle showing both the name and phone number of the business;

(iv) Tow vehicle safety permit fee prescribed by the board; and

(v) Current certificate or certificates of insurance reflecting minimum insurance coverage as prescribed by the board in 27 CAR § 170-109.

(5)(A) No vehicle immobilization business license authorizing the use of vehicle immobilization in the State of Arkansas shall be issued until a complete application is filed with the board.

(B) For purposes of this part a complete application shall include:

(i)*(a)* Tow business license application provided by the board as part of the application completed in its entirety and vehicle immobilization device inspection form or forms.

(b) Up to ten (10) immobilization devices can be used on one (1) inspection form for license; and

(ii) Photographs showing the following views:

(a) The vehicle immobilization devices for which the permit is being requested; and

(b) A view of the vehicle immobilization device showing the serial number, name, and phone number of the business.

(6)(A) No showing of public convenience or necessity need be made in support of an application for any license, registration, endorsement, enhancement, or permit.

(B) It shall be the responsibility of the licensee to post the tow business license at the place of business and in a prominent location, viewable by the public.

(C) It shall be the responsibility of the licensee to affix the tow vehicle safety permit to the lower portion, driver's side, of the windshield in the tow vehicle for which the board issued the permit immediately upon receipt.

(D) It shall be the responsibility of the tow business to post a sign notifying customers of the consumer complaint process under Arkansas Code § 27-50-1218 and ensure such notification is included on all invoices.

(d)(1) Business licenses, business license numbers, consent registrations, and tow vehicle safety permits are nontransferable:

(A) From one (1) owner to another; and

(B) From one (1) tow vehicle to another.

(2)(A) If a licensee ceases to be involved in the towing business or vehicle immobilization business, the business license issued to that business shall be returned to the board within ten (10) business days of ceasing business.

(B) Any change in ownership of a towing business or vehicle immobilization business nullifies the license issued to the previous owner.

(3)(A) Any tow vehicle safety permit holder who sells, disposes of, or takes a tow vehicle out of service shall remove and submit the permit to the board's staff via United States mail and notify the board's staff that the tow vehicle is removed from its fleet within ten (10) business days of the removal.

(B) A tow vehicle safety permit shall only be displayed on a tow vehicle owned by the towing business to which the board issued the permit.

(4) Any nonconsent towing business or vehicle immobilization service safety licensee that takes a vehicle immobilization device out of service shall notify the board the device has been removed from their inventory within ten (10) business days of the removal.

(e)(1) A vehicle immobilization, towing, recovery, repossession, or storage license, registration, endorsement, enhancement, or permit shall be issued only to a legal entity that owns the tow business and shall not be issued solely to a fictitious name under which the tow business operates.

Example: Bob Smith owns a wrecker service. Bob Smith's Wrecker Service does not constitute a legal entity. Bob Smith, or Bob Smith dba Bob Smith's Wrecker Service, or Bob Smith's Wrecker Service, Inc. (if

legally incorporated), does constitute a legal entity in that Bob Smith is identified as legal owner of the wrecker service.

(2) Each separate business location of a towing business shall require a separate license, registration, endorsement, enhancement, or permit.

(3) The name in which a towing business is registered with the board shall correspond with the name of the insured as identified on the certificate or certificates of insurance issued to the board for the towing business.

(f) Each licensee and each tow vehicle safety permit holder shall notify the board's staff in writing immediately upon any change in name of the business, mailing address, telephone number, or physical location of the towing business. A towing business shall not operate under a new business name or physical location until such time as notification has been made to the board's staff and all permits have been updated.

(g)(1) Except as provided in subdivision (g)(2) of this section, if a final judgment rendered by a court of competent jurisdiction against a towing business or an owner or employee thereof, arising from ownership or operation of the towing business, including, but not limited to, towing, uprighting, recovery, transporting, immobilizing, and storage of vehicles, is not satisfied within thirty (30) calendar days, any or all of the towing business's licenses, registrations, endorsements, enhancements, or tow vehicle safety permits may be suspended until the judgment is satisfied.

(2) If approved by the board and in its discretion:

(A) A release or written agreement signed by the judgment creditor shall reinstate eligibility; and

(B) If the judgment is covered by insurance up to the amount and to the extent required by the board, a suspension under subdivision (g)(1) of this section may be waived.

(h) No application for a license, registration, endorsement, enhancement, or tow vehicle safety permit shall be approved by the board if the applicant or any of its directors, members, officers, or employees has any unpaid civil fine, penalty, or other indebtedness due and payable to the board.

27 CAR § 170-107. Equipment requirements.

(a) All tow vehicles that are in use by a towing business shall:

(1) Hold a current Arkansas motor vehicle registration certificate and have evidence of such properly displayed on the tow vehicle, e.g., state license plate;

(2) Comply with all motor vehicle laws enacted by the State of Arkansas and all Arkansas Department of Transportation and Department of Finance and Administration rules applicable thereto;

(3) Maintain a valid tow business license number permanently affixed and a tow vehicle safety permit issued by the Arkansas Towing and Recovery Board for that tow vehicle displayed on the lower portion, driver's side, of the tow vehicle's windshield; and

(4) If applicable, comply with the additional tow vehicle and equipment standards found in 27 CAR § 170-115 for the enhanced nonconsent heavy-duty tow license.

(b)(1) All tow vehicles as defined in this part that operate on Arkansas's roadways shall have the following minimum equipment installed on board or displayed:

(A) Fire extinguisher or extinguishers, ABC type, total capacity of not less than five pounds (5 lbs.);

(B) Amber flashing light or lights visible within a three hundred sixty-degree rotation around the tow vehicle and visible in bright sunlight;

(C) Tail, turn, and stop lights attached, or to be attached, to the towed or towing vehicle that are visible from the rear;

(D) Safety chains, straps, or both to secure the towed vehicle to the towing vehicle when towing or otherwise transporting vehicles on roadways;

(E) Flares, reflective cones, reflective triangle safety signals, or other similar safety devices;

(F)(i) Shovel and broom for removing debris from the roadway.

(ii) Mandatory only for tow vehicles used in accident recovery.

(iii) Provided, however, no tow vehicle shall respond to an accident scene along a public roadway without a broom and shovel on board;

(G)(i) The name and telephone number of the towing business displayed and permanently affixed by paint or decal on ~~each side~~each side of the tow vehicle along with the permanent business license number assigned by the board, e.g., ATRB9999, not less than two inches (2") in height so that it is visible and legible from a distance of fifty feet (50').

(ii) Magnetic signs not permanently affixed are not allowed;

(H)(i) Light and air brake hookups.

(ii) Required only on tow vehicles being designated "heavy duty" for the purpose of this part and capable of towing semi-truck and trailer vehicles; and

(I) Safety straps for wheel lift equipment as required by the equipment manufacturer for securing the towed vehicle to the towing vehicle.

(2) Tow vehicles equipped with winches and used for recovery, hoisting, or both, or for towing a vehicle during transport, shall have a winch with an eight-thousand-pound minimum capacity and a minimum three-eighths inch (3/8") diameter cable size, provided:

(A) Winch capacity and cable size shall increase proportionately with gross vehicle weight rating increase; and

(B) Come-a-long, chain, or other similar device shall not be used as a substitute for winch and cable.

(3)(A) Except as provided in subdivision (b)(3)(B) of this section, a tow vehicle used for hoisting, towing a vehicle during recovery, or transport shall be equipped with dual rear wheels and shall be rated at a minimum of nine thousand pounds (9,000 lbs.) gross vehicle weight rating.

(B) The owner of a tow vehicle for which the board issued a tow vehicle safety permit on or before January 1, 1995, and for which renewal permits have been issued regularly thereafter, is exempt from the dual wheel and nine thousand pounds (9,000 lbs.) gross vehicle weight rating requirements as long as ownership of the tow vehicle does not change and regular renewals continue to be issued by the board.

(4)(A)(i) Except as provided in subdivision (b)(4)(A)(ii) of this section, a tow vehicle used as a heavy-duty tow vehicle as defined by subsection (d) of this section shall be equipped with tandem rear axles and equipped with an underlift device rated at no less than twelve thousand pounds (12,000 lbs.) at full extension.

(ii) The owner of a heavy-duty tow vehicle for which the board issued a tow vehicle safety permit on or before January 1, 2007, shall be exempt from this requirement as long as ownership of the tow vehicle does not change and regular renewals continue to be issued by the board.

(B) Any tow vehicle used as a heavy-duty vehicle without an underlift shall not be utilized as a primary tow vehicle for nonconsent towing, but may be utilized by a nonconsent towing business in conjunction with other services rendered as part of nonconsent towing, provided, however, any usage in conjunction with nonconsent towing shall have coverage in compliance with the insurance requirements of 27 CAR § 170-109 and shall display a current consent tow vehicle safety permit issued by the board.

(5)(A)(i) Except as provided in subdivision (b)(5)(A)(ii) of this section, a tow vehicle used as a medium-duty tow vehicle as defined by subsection (d) of this section, excluding rollback tow vehicles, shall be equipped with an underlift device rated at no less than six thousand five hundred pounds (6,500 lbs.) at full extension.

(ii) The owner of a medium-duty tow vehicle for which the board issued a tow vehicle safety permit on or before January 1, 2007, shall be exempt from this requirement as long as ownership of the tow vehicle does not change and regular renewals continue to be issued by the board.

(B) Any tow vehicle used as a medium-duty vehicle without an underlift shall not be utilized as a primary tow vehicle for nonconsent towing, but may be utilized by a nonconsent towing business in conjunction with other services rendered as part of nonconsent towing, provided, however, any usage in conjunction with nonconsent towing shall have coverage in compliance with the insurance requirements of 27 CAR § 170-109 and shall display a current consent tow vehicle safety permit issued by the board.

(c) Each towing business and tow business operator shall use all of the tow business's equipment knowledgeably and safely.

(d)(1)(A) For purposes of this part, tow vehicles shall be classified by gross vehicle weight rating (GVWR) as follows:

(i) Light duty, nine thousand pounds (9,000 lbs.) to fifteen thousand pounds (15,000 lbs.) GVWR;

(ii) Medium duty, fifteen thousand one pounds (15,001 lbs.) to thirty-three thousand pounds (33,000 lbs.) GVWR; and

(iii) Heavy duty, thirty-three thousand one pounds (33,001 lbs.) or more GVWR.

(B) The owner or operator of any light-duty, medium-duty, or heavy-duty tow vehicle shall observe applicable gross vehicle weight ratings when transporting or attempting to transport vehicles on public roadways of the State of Arkansas.

(2)(A) A vehicle used in conjunction with a trailer, dolly, or other separately hitched towing-related device to transport or otherwise facilitate the movement of vehicles on public roadways is not a "tow vehicle" as defined in Arkansas Code § 27-50-1202(12).

(B) A trailer shall not be used to transport or otherwise facilitate the movement of vehicles on public roadways unless both the vehicle towing the trailer and the trailer comply with all motor vehicle laws enacted by the State of Arkansas and all Arkansas Department of Transportation and Department of Finance and Administration rules applicable thereto, including, but not limited to:

(i) Registration;

(ii) Lighting; and

(iii) Braking.

(C) A vehicle towing a trailer shall have liability insurance covering injury and damage meeting minimum financial responsibility laws of the State of Arkansas.

(D)(i) The weight distribution on a vehicle towing a trailer and on the trailer shall be stable during transport.

(ii) In the absence of evidence to the contrary, the weight distribution shall be considered stable when:

(a) The laden weight of the vehicle towing a trailer does not exceed the gross vehicle weight rating of the vehicle;

(b) The laden weight of the trailer does not exceed the gross trailer weight rating of the trailer; and

(c) No axle of the vehicle towing the trailer carries a weight in excess of the gross axle weight rating for that axle.

(E) A trailer, dolly, or other separately hitched towing-related device shall not be utilized as a primary tow vehicle for nonconsent towing, but may be utilized by a nonconsent towing business in conjunction with other services rendered as part of nonconsent towing if any usage in conjunction with nonconsent towing has coverage in compliance with the insurance requirements of 27 CAR § 170-109.

(e) Any towing business that adds a tow vehicle or vehicle immobilization device into service shall within ten (10) business days:

(1) Notify the board's staff of the year, make, and type, e.g., wrecker, rollback, hauler, etc.;

(2) Send to the board's staff from the licensee's insurance carrier an amended certificate of insurance reflecting the addition has been added to present coverage;

(3) Have the addition inspected pursuant to 27 CAR § 170-106(c), if applicable; and

(4) Submit to the board's staff a timely application for a tow vehicle safety permit and any other required permit.

(f) All tow businesses shall use an invoice for each vehicle towed, recovered, repossessed, stored, or immobilized, and each invoice shall explain how all charges were calculated, separately itemizing all fees and charges, include the consumer complaint process, and shall furnish, upon request, to the owner or lienholder of the towed, recovered, repossessed, stored, or immobilized vehicle or their agent a duplicate of the said itemized statement, bill, or invoice of all charges incurred.

(g) Each vehicle immobilization device used by a towing business shall comply with all motor vehicle laws enacted by the State of Arkansas and all Arkansas Department of Transportation and Department of Finance and Administration rules applicable thereto.

(h) Each vehicle immobilization device shall have:

(1) The company name, phone numbers, business license number assigned by the board, e.g. ATRB9999, and serial number of the vehicle immobilization or nonconsent towing/storage business permanently affixed in a legible manner; and

(2) A high visibility color.

27 CAR § 170-108. Fees.

(a)(1) All fees collected under Arkansas Code § 27-50-1201 et seq., shall be made payable to the Arkansas Towing and Recovery Board.

(2) Said fees shall be deposited in the general operating fund of the board.

(b) Each application for a vehicle immobilization, nonconsent towing/storage, or repossession license shall be accompanied by a license fee of one hundred fifty dollars ($150).

(c) Each application for a consent registration shall be accompanied by a registration fee of twenty-five dollars ($25.00).

(d)(1) Each application for a tow vehicle safety permit shall be accompanied by a fee of seventy-two dollars ($72.00) for each light-duty tow vehicle or each medium-duty rollback or medium-duty tow vehicle or heavy-duty tow vehicle.

(2) Tow vehicle safety permit fees may be prorated to correspond with the expiration date of a current tow business license.

(e)(1) Lost or destroyed tow vehicle safety permits shall require the purchase of replacement permits at a permit fee set by the board.

(2) Once a towing business license, registration, endorsement, enhancement, or permit has been issued the fee is nonrefundable.

(f)(1) The initial towing business license issued to a towing/storage/vehicle immobilization company shall expire one (1) year from the month of issuance, and

annually thereafter, until such time as the business ceases to operate or changes ownership.

(2) Licenses are not transferable from one (1) business to another or from one (1) owner to another.

(g)(1) The initial tow vehicle safety permit issued to a towing business for a designated tow vehicle shall expire one (1) year from the month in which it was issued.

(2) Tow vehicle safety permits are not transferable from one (1) tow vehicle to another or from one (1) owner of the tow vehicle to another.

(h)(1)(A) The Director of the Arkansas Towing and Recovery Board shall send a renewal notice to each holder of a license, registration, permit, endorsement, or enhancement at least thirty (30) calendar days prior to expiration.

(B) Any renewal application that is not complete under this part and received later than 4:30 p.m. on the date of expiration is subject to a fee for late filing in addition to the original filing fee.

(C) A completed, timely application for renewal received by the board defers the expiration of the existing license, registration, permit, endorsement, or enhancement pending review of the application by the board's staff.

(D) If the application is found to be sufficient it is not subject to a fee for late renewal application filing.

(2) An application reviewed after expiration of the license, registration, permit, endorsement, or enhancement and found to be insufficient is subject to the fee for late renewal application filing, effective upon notice of the review, and:

(A) The business will be notified in writing of any insufficiency or insufficiencies; and

(B) The penalty ~~as provided in 27 CAR § 170-104(c)~~ will be assessed from the date of notice of the insufficiency or insufficiencies to the date a complete application is received by the board.

(i) The penalty for late renewal shall be:

(1) Five dollars ($5.00) per day, not to exceed the amount due for the renewal for a late license, vehicle immobilization, endorsement or enhancement renewal application; and

(2) One dollar ($1.00) per day, not to exceed the amount due for the permit renewal for a late permit renewal application.

(~~i~~j) Any licensee or tow vehicle safety permit holder who fails to submit to the board a timely and sufficient application for renewal of a license, registration, endorsement, enhancement, or permit and continues to perform vehicle immobilization, towing, recovery, or storage services may be sanctioned under Arkansas Code § 27-50-1101 and § 27-50-1201 et seq., and the rules promulgated by the board.

27 CAR § 170-109. Insurance requirements.

(a)(1) All businesses required to be licensed by the Arkansas Towing and Recovery Board shall comply with all requirements of this section, including without limitation the requirement to obtain and keep in continuous effect all applicable insurance coverage required by subsection (b) of this section.

(2) Evidence of said insurance shall be filed with the board in the form of a valid certificate of insurance.

(3) The certificate of insurance shall:

(A) Be issued to the board at its current mailing address;

(B) Describe the provisions for notice of cancellation or material change, as stated in the insurance policy; and

(C) Display the physical location of each nonconsensual towing impound lot for which coverage is extended.

(b) The minimum coverage provisions insuring the public from loss or damage that may arise to any person or property by reason of the operation of any vehicle immobilization, towing, repossession, or storage service are as follows:

(1)(A) Each tow vehicle shall have liability insurance covering injury and damage for which the tow business or tow truck owner is liable.

(B) Said coverage shall meet state and federal minimum financial responsibility laws for motor carriers (45 C.F.R. § 387.9);

(2)(A) Each tow vehicle shall have cargo, on-hook, or similar insurance in an amount not less than fifty thousand dollars ($50,000) for light duty, one hundred thousand dollars ($100,000) for medium duty, and two hundred thousand dollars ($200,000) for heavy duty, according to the gross vehicle weight ratings under 27 CAR § 170-107.

(B) For purposes of this section, on-hook, cargo, or any similar term is construed to include coverage for losses and property damage to the vehicle or vehicles being towed, recovered, uprighted, transported, or driven away by the insured or agent of the insured when the insured is liable, whether or not such loss is due to the negligence of the insured or the agent; and

(3) Each nonconsent towing business shall maintain liability insurance in an amount not less than fifty thousand dollars ($50,000) to cover losses from personal injury and property damage incurred in the area in which vehicles impounded or otherwise stored by the business are stored, e.g., garagekeepers.

(c) Each licensee shall be responsible for maintaining on file with the board a valid certificate of insurance reflecting current coverage as outlined in subsection (b) of this section.

(d)(1) Any licensee who fails to meet the requirements of subsection (a), subsection (b), or subsection (c) of this section shall have any applicable license, registration, endorsement, enhancement, or permit immediately suspended by the Director of the Arkansas Towing and Recovery Board on behalf of the board.

(2) The director shall:

(A) Notify the licensee by mail of the suspension; and

(B) Immediately initiate formal hearing procedures.

(e) A vehicle immobilization company is responsible for any damage or liability incurred during the immobilization and subsequent tow and storage of an immobilized vehicle.

(f) A vehicle immobilization company shall maintain liability insurance in an amount not less than fifty thousand dollars ($50,000) to cover any damage liability incurred during the immobilization and subsequent tow and storage of an immobilized vehicle.

27 CAR § 170-110. Charges for notifications.

(a)(1)(A) All licensees shall comply with all requirements for notification to owners and lienholders, including without limitation Arkansas Code § 27-50-1101(a)(3), § 27-50-1208, and § 27-50-1209.

(B) Unless otherwise prescribed by law, any notice required to be given by a licensee to the registered owner or lienholder, or both, shall be given to those persons or entities listed as an owner or a lienholder on the records of the Office of Motor Vehicle, Arkansas Crime Information Center records, or the motor vehicle records of any other state if there is reason to believe the vehicle may be registered in a state other than Arkansas.

(2) Vehicle immobilization companies shall place a notification on the vehicle in a conspicuous area stating the following:

(A) The vehicle has been immobilized;

(B) The name, location, and local phone number of the company immobilizing the vehicle;

(C) A time limit of forty-eight (48) hours before the vehicle will be towed; and

(D) The name, location, and phone number of the tow company removing the vehicle after the forty-eight (48) hours has expired.

(b) For purposes of the second notice to be given and published pursuant to Arkansas Code § 27-50-1209, a licensee shall separately obtain the owner and lienholder information described in subsection (a) of this section and notice shall be given of the exact date, time, and place of the sale.

(c)(1) The charges for sending each notice required by law regardless of the number of owners and lienholders shall not exceed the greater of twenty-five dollars ($25.00) or the actual cost of postage.

(2) For the purposes of this subsection, each notice required by law to be sent regardless of the number of recipient owners and lienholders shall constitute a single notification subject to the limit of twenty-five dollars ($25.00) or the actual cost of postage, whichever is greater.

(d) All notification documents shall be maintained for a period of not less than three (3) years from the time of the tow or recovery of a vehicle.

27 CAR § 170-111. Excessive pricing factors.

The Arkansas Towing and Recovery Board may consider the following factors in determining if the pricing is excessive or unnecessary pursuant to Arkansas Code § 27-50-1203:

(1) Tow vehicle or vehicles required and size of tow vehicle or vehicles;

(2) Total time to accomplish recovery/tow;

(3) Number of regular employees required to safely complete recovery/tow;

(4) Number of extra people needed and used to effectively complete recovery/tow;

(5) Special equipment required to recover or tow;

(6) Location of vehicle recovered/towed;

(7) Hazardous materials or cargo recovery involved in recovery/tow;

(8) Comparison with reasonable prices in region as determined by the annually submitted rate sheets to the Arkansas State Police troops or the board;

(9) Weather conditions;

(10)(A) Computation of days of storage.

(B) ~~Midnight to midnight~~Twenty-four (24) hours from the time a vehicle is towed until released is presumed to be a reasonable period; ~~and~~

(11) Total time of clerical services performed for vehicle processing and possession time in regard to administrative fees;

(12) Use of under/over charges, miscellaneous fees, minimum hour charges, and other similar charges; and

(~~11~~13) Any other relevant information having a direct effect on the pricing of the recovery, towing, storage, or vehicle immobilization.

27 CAR § 170-112. Place of business requirements.

A towing business shall utilize business and storage facilities that are:

(1) Located in Arkansas;

(2) Easily accessible to the public, which includes the ability to conduct business during normal business hours;

(3) In compliance with all local, state, and federal rules, regulations, and ordinances;

(4) Utilizing an appropriate and secure filing system for records;

(5) Utilizing clear and visible signage displaying the name on the business license issued by the Arkansas Towing and Recovery Board that:

(A) Is a minimum of four feet by six feet (4' x 6') in size or meets the criteria established by a municipal zoning ordinance, subdivision regulation, or building code; and

(B) Displays the name, physical address, a published telephone number, and hours of operation of the tow business; ~~and~~

(6) Sufficient in space to safely secure the towed vehicles and personal property~~.~~; and

(7) If towing business is a nonconsent licensee, storage lot must be enclosed by a minimum of a six foot (6') fence with locking gate to equal or exceeding proportions.

27 CAR § 170-113. Issuance of citations.

(a) Acting upon probable cause or during an inspection or investigation, an investigator or the Director of the Arkansas Towing and Recovery Board may cite a tow business for any of the following offenses:

(1) Operating a tow vehicle without a proper permit or license;

(2) Operating a tow vehicle that is out of compliance with the safety and operating rules prescribed by the Arkansas Towing and Recovery Board;

(3) Operating a tow vehicle that has not been permitted or licensed as a tow vehicle by the State of Arkansas;

(4)(A) Not responding within the prescribed time frame to a request for information relating to a consumer complaint.

(B) Citations shall be in addition to the mandated daily accrual of twenty-five dollars ($25.00) per day;

(5) Failure to properly post required notifications in a conspicuous place as required by the board; or

(6) Failure to meet the basic criteria for an adequate place of business.

(b) Fines assessed by citation for each violation of subsection (a) of this section shall be:

(1) Fifty dollars ($50.00) for the first offense;

(2) One hundred dollars ($100) for the second offense; and

(3) Two hundred dollars ($200) for the third and each subsequent offense.

(c)(1) The tow business may pay the fine within fifteen (15) calendar days of receiving the citation or submit an appeal to the board within the fifteen (15) calendar days.

(2) Appeals shall be in writing and shall include the following information:

(A) Business name and address;

(B) Email address;

(C) Daytime telephone number;

(D) Name of responsible party and owner;

(E) Citation number;

(F) Permit number, if applicable;

(G) Reason for appeal; and

(H) Supporting evidentiary documentation.

(d)(1) If the fine is not paid and no notice of an appeal is filed within the fifteen (15) calendar days, the director shall set the violation and the unpaid fine for a hearing before the board.

(2) The tow business shall be notified in writing of the hearing date.

(e) The board may choose to take the following actions:

(1) Uphold the fine issued by the investigator or director;

(2) Uphold the citation and may require additional action for the violation;

(3) Reduce the fine or increase the fine not to exceed two hundred dollars ($200) for the violation;

(4) Dismiss the citation; or

(5) Revoke or suspend a license, registration, permit, endorsement, or enhancement.

27 CAR § 170-114. Suspension from law enforcement nonconsent rotation list.

(a) A complaint request from law enforcement to remove or suspend a tow business from the nonconsent rotation list shall include the following:

(1) Copy of rotation policy;

(2) Copy of complaint;

(3) Copy of supporting documentation for allegations; and

(4) Signature of the department head.

(b) Upon receipt of a complaint request from law enforcement to remove or suspend a tow company from the nonconsent rotation list, the Director of the Arkansas Towing and Recovery Board shall assign the complaint to an investigator to:

(1) Timely investigate the complaint;

(2) Determine whether the law enforcement agency's nonconsent rotation policy is reasonable; and

(3) Determine the severity of the violation.

(c) The Arkansas Towing and Recovery Board may issue fines in addition to removal or suspension of a tow business from the nonconsent rotation list.

(d)(1) A tow company may be suspended from the nonconsent rotation list for a first-time violation of the law enforcement agency's policy for up to fifteen (15) days.

(2) A second offense may result in a suspension of up to thirty (30) days by the law enforcement agency.

(3) A third offense may result in a suspension of a tow company from the nonconsent rotation list for up to one (1) year and a fine.

(e) The law enforcement agency may request a hearing before the board for additional sanctions, which may include a longer period of suspension from the nonconsent rotation list and a fine.

(f) A nonconsent rotation policy shall comply with Arkansas Code § 27-50-1219.

(g) A law enforcement agency shall provide each tow company that participates in the nonconsent rotation with a copy of the policy, and each tow company operator shall acknowledge in writing that he or she has received a copy of the policy.

(h)(1) A tow company participating in a nonconsent rotation policy administered by law enforcement shall be licensed and permitted by the board.

(2) Failure to properly license or renew with the board shall result in an immediate suspension until all permits are obtained.

(i) In addition to any law enforcement nonconsent rotation policy, a tow operator shall comply with all of the statutes and rules administered by the board.

(j) Nothing in this part shall be construed to prohibit a law enforcement agency, city, or county from:

(1) Enforcing any local nonconsent towing policies, rules, ordinances, or contracts;

(2) Removing a tow company from the local towing rotation list; or

(3) Assessing a fine, penalty, or other remedy available by law or under its contracts or policies.

27 CAR § 170-115. Enhanced tow vehicle license for heavy-duty nonconsent rotation.

(a) A tow business meeting the definition and standards as defined in this section may apply for an enhanced license to be designated as a heavy-duty motor vehicle incident management tow facility for participation in a law enforcement rotation program, heavy-duty nonconsent rotation.

(b) The tow facility shall:

(1) Complete in its entirety the application for a heavy-duty motor vehicle incident management tow facility, which includes an on-site inspection by an investigator or the Director of the Arkansas Towing and Recovery Board;

(2) Comply with all applicable state and federal laws for a tow business operating in the State of Arkansas; and

(3) Have at least one (1) person (owner, partner, or employee) who has proof of:

(A) Documented training through a nationally recognized towing and recovery program in heavy-duty on-scene recovery techniques; or

(B) Five (5) years or more experience in the towing and recovery of heavy-duty vehicles that can be verified.

(c) Each tow facility owner, partner, and employee shall complete a minimum of four (4) hours of traffic incident management training sanctioned by the Arkansas Towing and Recovery Board in a classroom setting or an online program sanctioned by the board.

(d) A tow vehicle used in the towing or recovery by a heavy-duty motor vehicle incident management tow facility shall:

(1) Meet the criteria in the Required Tow Vehicle and Equipment List established by the board;

(2) Successfully pass a tow vehicle safety inspection administered by board staff including proof of safety inspection by the Arkansas Highway Police Division of the Arkansas Department of Transportation for the North American Standard Level I Inspection Procedure of the Commercial Vehicle Safety Alliance; and

(3) Comply with all other applicable state and federal laws.

(e)(1) The tow vehicle or vehicles and equipment described in:

(A) Subsection (f) of this section shall be accessible for use at all times through ownership;

(B) Subsection (g) of this section may be shared with other licensed tow facilities located within a reasonable distance with a common ownership if accessible within thirty (30) minutes; or

(C) Subsection (h) of this section may be available through contract on a twenty-four (24) hours per day, seven (7) days per week basis if accessible within thirty (30) minutes and located within a reasonable distance.

(2) Each heavy-duty motor vehicle incident management tow facility shall independently satisfy the requirements of subsections (e) – (h) of this section.

(f) Items requiring ownership shall include:

(1) For tow vehicles, trailers, and other support vehicles:

(A)(i) Two (2) heavy-duty tow and recovery vehicles with a combined integrated unit capacity rating of seventy (70) tons established by the manufacturer's specifications, including without limitation gross vehicle weight rating, boom capacity, winch rating, wheel lift capacity, and wheelbase, all noted on the data plate of the unit.

(ii) A rotator may be substituted for one (1) of the tow vehicles;

(B) A medium-duty rollback or other similarly configured equipment, such as a trailer, that could be used instead;

(C) A support vehicle, service truck, or other vehicle capable of transporting equipment and supplies to the scene in a timely manner; and

(D) A skid steer or tractor with a front-loaded bucket and forks; and

(2) For equipment and supplies:

(A) Shovel or shovels;

(B) Broom or brooms;

(C) Crowbar or crowbars;

(D) Bolt cutter or cutters;

(E) Pike bar;

(F) Sledgehammer or sledgehammers;

(G) Snatch blocks, four (4) on each truck;

(H) Hydraulic jack or jacks and one (1) twenty-ton mat jack, a high-pressure lift jack;

(I) Ladder, twenty feet (20') Type 1A OSHA Standard;

(J) Wheel chocks;

(K) Hand truck;

(L) Pallet jack;

(M) Transfer pump, twenty gallons (20 gal.) per minute minimum;

(N) Two (2) fifty-five-gallon drums;

(O) Brake release kit;

(P) Full set of tools, standard and metric;

(Q) Transport chains and binders;

(R) Miscellaneous chains and straps for recovery;

(S) Hardwood cribbing and angle irons of various sizes;

(T) Heavy-duty flashlights;

(U) Acetylene/oxygen torch with tanks;

(V) Portable air compressor or other means of continuous air supply;

(W) Chop saw;

(X) Impact wrench with sockets; and

(Y) Light plant or truck mounted auxiliary flood lights.

(g) Items that may be shared with other tow facilities with common ownership located within a reasonable distance and that can be accessed within thirty (30) minutes or less shall include, for tow vehicles, trailers, and other support vehicles:

(1) Sliding or traveling axle trailer such as a Landoll or a heavy-duty low boy trailer or a heavy-duty construction trailer; and

(2) Box trailer for purposes of transloading cargo and the power unit to move the trailer to the scene.

(h) Items that may be rented on a twenty-four (24) hours per day, seven (7) days per week basis if located within a reasonable distance and accessible within thirty (30) minutes or less shall include, for tow vehicles, trailers, and other support vehicles:

(1) Rough terrain forklift;

(2) Standard forklift;

(3) Track hoe;

(4) Dumpsters and hoppers;

(5) Dump truck; and

(6) Forty-yard roll-offs.

(i) For the safety of on-scene personnel, each person working on scene should have personal protective equipment and the tow business shall meet the safety standards of the 2009 Edition, Manual on Uniform Traffic Control Devices, Section 6D.03 Worker Safety Considerations, Standard 04, including:

(1) High-visibility apparel meeting Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear" (see Section 1A.11), or equivalent revisions, and labeled as meeting the ANSI 107-2004 standard performance for Class 2 or 3 risk exposure;

(2) Eye protection;

(3) Head protection;

(4) Foot protection; and

(5) Hand protection.

(j) A law enforcement agency may utilize any properly licensed tow facility to respond to an incident when:

(1) Response time is of the essence; and

(2) A heavy-duty motor vehicle incident management tow facility is not available in or near the local area.

(k) A heavy-duty motor vehicle incident management tow facility shall perform in a manner that reflects the intent of this section to:

(1) Maintain or reestablish traffic flow as quickly as reasonable;

(2) Enable commerce; and

(3) Protect the safety and well-being of the motoring public.

(l)(1) Poor or inadequate on-scene performance by a heavy-duty motor vehicle incident management tow facility resulting in lengthy lane closures or unreasonable clean-up times may result in the suspension or revocation of its enhanced license.

(2) Criteria for a final determination shall include:

(A) Inability to access tow vehicles or equipment required for the issuance of an enhanced heavy-duty tow license in a timely manner;

(B) Improper maintenance of tow vehicles or equipment resulting in poor performance and unnecessary time delays;

(C) Demonstrating inadequate performance due to a lack of training by the owner, partner, or employee in accordance with subsections (b) and (c) of this section; and

(D) Lack of personnel to operate tow vehicles or utilize equipment in a timely manner.

(m) A tow business shall not be held accountable for any delay prior to the accident scene being turned over to its care or instructions or requests that may be made by law enforcement or other on-scene state or federal agencies with additional requirements for recovery or clean-up.

(n) A law enforcement agency that uses an enhanced heavy-duty nonconsent rotation list and manages a traffic incident may submit to the board for review a performance or safety-related issue.

27 CAR § 170-116. Sale and posting of vehicles, trailers, and contents on website.

(a) As used in this section, "vehicles, trailers, and contents" means a towed or stored vehicle and its contents and any trailer attached to the vehicle at the time it is towed and any contents of such trailer, including, but not limited to, other vehicles or boats, to which a possessory lien attached under Arkansas Code § 27-50-1208.

(b) All vehicles, trailers, and contents towed, recovered, or stored that have not been claimed within forty-five (45) days after perfection of the towing lien by both maintaining possession and sending notice by certified mail that complies with Arkansas

Code § 27-50-1208(b)(2) or (3) shall be offered for sale through a nonjudicial public sale pursuant to Arkansas Code §§ 27-50-1208 – 27-50-1210.

(c) All vehicles, trailers, and contents that are impounded, towed, recovered, or stored that have not been properly registered with a state, if required, and for which no ownership information may be found shall be advertised and sold in accordance with Arkansas Code §§ 27-50-1208 – 27-50-1210.

(d)(1) In addition to any advertising requirements requiring publication of vehicles, trailers, and contents in a newspaper of general circulation, the same shall be posted on the Arkansas Towing and Recovery Board's website, including without limitation vehicles, trailers, and contents that have been impounded and for which no owner or registration information can be found either through a thorough search of the vehicle, law enforcement, vehicle identification number, or the Office of Motor Vehicle licensing database.

(2) The post on the board's website shall occur on or before the tenth business day after the vehicle, trailer, and contents were towed.

(3) All posts on the board's website shall follow the template prescribed and shall be filled out completely.

(4) Usage fees shall be paid at the time the items are posted in accordance with 27 CAR § 170-108.

(e)(1)(A) All vehicles, trailers, and contents scheduled for a nonjudicial public sale shall be posted on the board's website in addition to any required newspaper posting at least fifteen (15) days before the sale.

(B) A newspaper publication and website posting shall include the specific date of the sale.

(2) All posts on the board's website shall follow the template prescribed and shall be filled out completely.

(3) Usage fees shall be paid at the time the items are posted in accordance with 27 CAR § 170-108.

(f) The board's online template shall include without limitation:

(1) Date and time of sale;

(2) Company name and tow business license number;

(3) The address of the facility where the nonjudicial public sale will occur, including the city and county;

(4) Type of sale (auction, written bids, online, etc.);

(5) Type and description of item to be offered for sale, for example, vehicle, motorcycle, trailer, equipment, etc.;

(6) A thorough description including, if applicable, year, make, model, vehicle identification or serial number, license plate number, color, reason for impounding, where the impound occurred, length of trailer, model and type of equipment, and any other items that may be included on the template or in the description that may help identify ownership; and

(7) Any special or unusual identifying marks or characteristics that may be helpful in determining ownership.

(g) The search engine for a user of the board's website shall include:

(1) The full vehicle identification or serial number;

(2) Make;

(3) Model;

(4) Year; and

(5) The county where the item was impounded.

(h) Failure to post items in accordance with this section may result in:

(1) Civil penalties not to exceed five thousand dollars ($5,000);

(2) Suspension or revocation of a tow business license; or

(3) Both.

(i) Any person claiming ownership of a vehicle, trailer, contents, or piece of equipment must provide proof of ownership and pay all applicable tow, recovery, and storage fees before taking possession of the item.

(j) A tow business shall be licensed through the board and operating with a current, active tow business license, and all civil penalties must be paid before posting a vehicle, trailer, contents, or piece of equipment on the website.

(k) Consumers and law enforcement officers may use the website without limitation and at no cost.

(l) A company, such as a financial institution, may contract with the board to develop a program that would allow the use of the database to automatically identify specific vehicles for a fee approved by the board.

27 CAR § 170-117. Recommendations for electric vehicle towing and storage services.

(a) **Towing authorization.** A duly licensed tow business in good standing may perform EV towing services and EV storage services.

(b) **Recommendations and outreach.**

(1) The Arkansas Towing and Recovery Board recommends that all EV towing services and EV storage services be performed according to the guidelines contained in this section and any subsequent guidance it is able to provide through outreach efforts, posting on its website, or both to reflect current best practices.

(2) The board will use its best efforts to provide information and resources to the tow industry and general public concerning the safe performance of EV towing services and EV storage services.

(c) **Recommended guidelines for performing EV towing services.**

(1)(A) Prior to performing an EV towing service it is recommended that a tow business complete or have a third-party EV resource complete an EV assessment.

(B) If during the performance of EV towing services anything occurs that might reasonably change the EV assessment obtaining an additional EV assessment is recommended.

(C) It is recommended that all EV towing services be performed in accordance with the most recent EV assessment.

(2) It is recommended that the tow business:

(A) Maintains a record of all EV assessments for two (2) years and provides a copy of the most recent EV assessment to:

(i) The person, if any, the tow business uses to provide EV storage services; and

(ii) Any other transferee of the EV, including without limitation:

(a) The EV owner;

(b) A lienholder;

(c) An insurance provider;

(d) A garage or body shop;

(e) A salvage vehicle pool or salvage vehicle auction; or

(f) Another tow business; and

(B) Attaches a sticker or decal indicating the risk level of the most recent EV assessment and that the sticker or decal remain affixed to the EV at all times during EV towing services and EV storage services.

(d) **Recommended guidelines for performing EV storage services.**

(1)(A) Prior to performing an EV storage service it is recommended that a tow business complete or obtain from a third-party EV resource an EV assessment.

(B) If during the performance of EV storage services anything occurs that might reasonably change the EV assessment, obtaining an additional EV assessment is recommended.

(C) It is recommended that all EV storage services be performed in accordance with the most recent EV assessment.

(2) It is recommended that the tow business:

(A) Maintains a record of all EV assessments for two (2) years and provides a copy of the most recent EV assessment to any transferee, including without limitation:

(i) The EV owner;

(ii) A lienholder;

(iii) An insurance provider;

(iv) A garage or body shop;

(v) A salvage vehicle pool or salvage vehicle auction; or

(vi) Another tow business; and

(B) Attaches a sticker or decal indicating the risk level of the most recent EV assessment and that the sticker or decal remain affixed to the EV at all times during EV towing services and EV storage services.

(3)(A) If an EV assessment indicates the EV may not be safely stored in the same manner as a non-EV, it is recommended that precautions be taken to appropriately store the EV to minimize risks of injury or property damage, such as storing it separate and apart from buildings, other vehicles, or combustible materials, or in a vehicle isolation bay.

(B) It is recommended that a vehicle isolation bay be located in an area that is easily accessible by fire equipment and personnel.

(4) It is recommended that:

(A) Each stored EV be clearly marked and recognizable as an electric vehicle; and

(B) A damaged EV not be stored inside a building unless it is secured in a fully enclosed vehicle isolation bay approved for indoor use.

(e) **Information and other resources.** The board may post on its website or otherwise publish information concerning training opportunities and best practices for providing EV towing services and EV storage services.

(f) **Recommended chain of custody procedures.** It is recommended that:

(1) Upon release of the EV to another party, including without limitation to the EV owner, a lienholder, an insurance provider, a garage or body shop, a salvage vehicle pool, a salvage vehicle auction, or another tow business, a copy of the most recent EV assessment and a written or electronic chain of custody record accompany the EV, signed and dated by the party releasing the EV and the party receiving the EV;

(2) Each party in the chain of custody maintain a copy of each chain of custody form signed by the party for two (2) years; and

(3) The chain of custody form include:

(A) The name and contact information of the tow business releasing the EV;

(B) The name and contact information of each party receiving the EV;

(C) A description of the EV including the year, make, model, and vehicle identification number of the EV; and

(D) Signature blocks and a place for the date for each person who transfers and each person who receives the EV.

(g) **Lien rights and procedures.**

(1) Except as provided in this subsection, a towing business that performs EV towing services or EV storage services, or both, shall have a first priority possessory lien on the EV, its contents, and any trailer, vehicle, or boat attached to the EV and their contents under Arkansas Code § 27-50-1208.

(2) If a tow business uses another tow business to provide EV storage services, upon payment of the fair market value of the towing services, the amount paid shall be transferred to and included in the storage tow business's lien for EV storage services.

(3) The procedures for notice, foreclosure, sale, and disposition of proceeds shall be governed by Arkansas Code §§ 27-50-1208 – 27-50-1210.

(h) **Reporting EV incidents to the board.** Any catastrophic, emergency, or otherwise noteworthy incident involving the towing or storage of an EV, including without limitation an incident involving fire, smoke emanating from the EV, damage to property, injury to persons, or necessitating an emergency response, shall be reported solely for informational purposes to the Director of the Arkansas Towing and Recovery Board no later than ten (10) business days after the incident by submitting the EV Incident Report Form located on the board's website.

27 CAR §170-118. Release of cargo and contents of a personal vehicle.

(a) Pursuant to Arkansas Code §27-50-1208, a towing business shall release cargo or the contents of a personal vehicle, other than those items already exempt from the possessory lien, upon payment of a fee and an assurance of future financial responsibility.

(b)(1) Assurance of future financial responsibility may include:

(A) A sworn affidavit attesting to the owner's financial obligations to the towing business;

(B) Proof of insurance;

(C) A letter of credit; or

(D) For cargo, a surety bond in the amount not to exceed the remaining invoice amount for the towing and storage services;

(2) Assurance of future financial responsibility may not include:

(A) Personal banking information;

(B) Proof of employment;

(C) Income tax information; or

(D) A surety bond of any amount for the release of the contents of a personal vehicle.

(3) The type of assurance of future financial responsibility may be determined by the owner of the cargo or personal vehicle or the towing business and any submission of the items listed in subsection (b)(1) shall be accepted by the towing business.

State of Arkansas
95th General Assembly
Regular Session, 2025

A Bill

HOUSE BILL 2001

By: Representative Painter
By: Senator K. Hammer

For An Act To Be Entitled

AN ACT TO CREATE THE ARKANSAS TOWING AND RECOVERY REFORM AND EFFICIENCY ACT OF 2025; TO AMEND THE LAW CONCERNING THE ARKANSAS TOWING AND RECOVERY BOARD; TO AMEND THE QUALIFICATIONS AND MEMBERSHIP OF THE ARKANSAS TOWING AND RECOVERY BOARD; TO AMEND THE LAW CONCERNING A LIEN PLACED ON CARGO OR THE CONTENTS OF A PERSONAL VEHICLE; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE ARKANSAS TOWING AND RECOVERY REFORM AND EFFICIENCY ACT OF 2025; TO AMEND THE LAW CONCERNING THE ARKANSAS TOWING AND RECOVERY BOARD; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Arkansas Towing and Recovery Reform and Efficiency Act of 2025".

SECTION 2. Arkansas Code § 27-50-1202, concerning definitions related to the removal or immobilization of unattended or abandoned vehicles, is amended to add additional subdivisions to read as follows:

(17) "Cargo" means goods and materials transported by a motor carrier, as defined under 49 C.F.R. § 390.5, as it existed on January 1,

2025, including without limitation:

(A) A pallet;

(B) A container;

(C) Bracing;

(D) An air pillow;

(E) A tie-down assembly or other securement system;

(F) A cradle;

(G) A chock; and

(H) Any other dunnage or packing; and

(18)(A) "Towing services" means to tow, recover, upright, transport, repossess, immobilize, store, or otherwise facilitate the movement or storage of vehicles on or off of a road, street, or highway.

(B) "Towing services" includes the solicitation of towing services and the incidental labor, services, and equipment necessary for on-road or off-road recovery and cleanup for work actually performed by the tow business.

SECTION 3. Arkansas Code § 27-50-1203(a) and (b), concerning the creation of the Arkansas Towing and Recovery Board, are amended to read as follows:

(a)(1) There is hereby created the Arkansas Towing and Recovery Board consisting of nine (9) members appointed by the Governor and confirmed by the Senate, who shall serve terms of three (3) years.

(2)(A) ~~Five (5) members shall be appointed from the towing industry and shall be:~~ Three (3) members shall be actively engaged in business in the towing industry, licensed by the board, and appointed from the state at large

~~(i) Licensed by the board to engage in nonconsent towing; and~~

~~(ii) Appointed from the state at large~~.

(B) One (1) member w~~ho is permitted to engage in repossession of vehicles using a tow vehicle shall be appointed from the state at large~~ shall be the Director of the Division of the Arkansas State Police or his or her designee.

(C)(i) ~~Two (2) members who are not associated with the towing industry shall be appointed from the state at large~~ One (1) member

shall be a current or former municipal chief of police or current or former county sheriff with knowledge of the towing industry.

(ii) A member appointed under subdivision (a)(2)(C)(i) of this section may designate a member of his or her staff with knowledge of the towing industry to act on his or her behalf at any meeting of the board.

(D) One (1) member shall be appointed from the commercial trucking insurance industry.

(E) One (1) member shall be appointed from the trucking industry.

(F) One (1) member shall have no affiliation with the towing industry and shall serve as a representative of consumers of towing services.

(G) One (1) member shall be a currently employed or retired person with at least five (5) years of experience responding to fire and emergency response incidents.

(b)(1) The appointed board members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.

(2)(A) A member appointed under subdivision (a)(2)(A) of this section shall remain licensed and engaged in the business of ~~nonconsent~~ towing.

(B) ~~A member appointed under subdivision (a)(2)(B) of this section shall be engaged in the business of vehicle repossession using a tow vehicle.~~

~~(C) A member appointed under subdivision (a)(2)(D) of this section shall remain actively engaged in the insurance industry.~~

~~(D)~~ A member appointed under subdivision (a)(2)(A)~~,~~ ~~subdivision (a)(2)(B), or subdivision (a)(2)(D)~~ of this section who no longer satisfies the requirements for his or her board position ~~under subdivision (b)(2)(A), subdivision (b)(2)(B), or subdivision (b)(2)(C) of this section~~ shall:

(i) Provide notification of his or her change of status to the Governor and the Director of the Arkansas Towing and Recovery Board; and

(ii) Resign from the board ~~within thirty (30) days of the date upon which the member no longer satisfies the requirements of~~

~~subdivision (b)(2)(A), subdivision (b)(2)(B), or subdivision (b)(2)(C) of this section~~ immediately.

SECTION 4. Arkansas Code § 27-50-1208(a)(2), concerning a possessory lien on an unattended or abandoned vehicle held by a towing and storage firm, is amended to add an additional subdivision to read as follows:

(D)(i) A possessory lien under this section shall not extend to:

(a) Cargo, if the owner of the cargo or his or her authorized representative pays a fee not to exceed twenty percent (20%) of the invoice for the towing and storing services to the towing and storage firm; or

(b) Except for items to which a possessory lien under this section shall not extend under subdivision (a)(2)(B) of this section, the contents of a personal vehicle if the owner of the personal vehicle or his or her authorized representative pays a fee not to exceed five percent (5%) of the invoice for the towing and storing services to the towing and storage firm.

(ii) When making a payment of a fee under subdivision (a)(2)(D)(i) of this section, the owner of the cargo or the contents of a personal vehicle or his or her authorized representative shall provide the towing and storage firm with an assurance of future financial responsibility for the total invoice amount for the towing and storage services for the motor vehicle from which the cargo or the contents of a personal vehicle are taken.

(iii)(a) An owner of the cargo or the contents of a personal vehicle or his or her authorized representative who has paid a fee under subdivision (a)(2)(D)(i) of this section shall not be required to pay the total invoice amount for the towing and storing services before the release of the cargo or the contents of a personal vehicle.

(b) This subdivision (a)(2)(D) does not prohibit a towing and storage firm from collecting the total invoice amount for towing and storage services from the owner or lienholder or perfecting the possessory lien under this section.

(c) Upon the payment of a fee under subdivision (a)(2)(D)(i) of this section, the owner of the cargo or the

contents of a personal vehicle shall be credited the amount paid toward the total invoice amount for the towing and storing services.

(iv) An owner of the cargo or the contents of a personal vehicle or his or her authorized representative shall ensure that the entity retrieving the cargo or the contents of a personal vehicle from a towing and storage firm is insured and is liable for any damage that may occur at the business location of the towing and storage firm as a result of the retrieval of the cargo or the contents of a personal vehicle.

(v) If a motor vehicle is towed due to a police-initiated tow and there is no dispute as to the fees assessed by the authorized towing and storage firm:

(a) The owner or operator of the vehicle or his or her authorized representative shall pay the authorized towing and storage firm's invoice; and

(b) The authorized towing and storage company shall release the motor vehicle and any cargo immediately.

(vi) If a motor vehicle is towed due to a police-initiated tow and there is a genuine dispute as to the reasonableness of amount of the fees assessed by the authorized towing and storage company, the authorized towing and storage company shall release the cargo immediately to the owner or the owner's designee in accordance with this subsection upon the submission of:

(a) If the cargo does not belong to the transportation company, proof of ownership of the cargo; or

(b) If the cargo belongs to the transportation company:

(1) A letter from the vehicle owner's insurance company stating that there is coverage for the relevant claim or accident that includes without limitation a claim number, a policy number, and the policy limits; or

(2) If the transportation company does not have an insurance policy sufficient to cover the cost of the cargo clean-up, a signed letter of guarantee from the transportation company.

SECTION 5. Arkansas Code § 27-50-1218, concerning the consumer complaint process with the Arkansas Towing and Recovery Board, is amended to

add an additional subsection to read as follows:

(e)(1) A towing and storage company shall display notice of the complaint process as provided for under subdivision (e)(2) of this section.

(2) Beginning July 1, 2025, notice of the complaint process provided for under this section shall be:

(A) In the form provided in subdivision (e)(3) of this section or as modified by the board; and

(B) Prominently printed in bold letters at the bottom of each invoice for towing services.

(3) Notice of the complaint process required under this section shall:

(A) Include without limitation:

(i) A statement that a complaint may be filed with the board under this section;

(ii) The telephone number of the board; and

(iii) The website of the board; and

(B) Be substantially in the following form:

"COMPLAINTS: A PERSON DAMAGED OR OVERCHARGED MAY FILE A COMPLAINT UNDER ARKANSAS CODE § 27-50-1218 WITH THE ARKANSAS TOWING AND RECOVERY BOARD, (501) 682-3801, www.artowing.arkansas.gov".

SECTION 6. TEMPORARY LANGUAGE. DO NOT CODIFY. Transition provisions — Appointment of members of the Arkansas Towing and Recovery Board.

(a) The current members at the time of the effective date of this act of the Arkansas Towing and Recovery Board are removed, and the Governor shall appoint all board member positions, subject to confirmation by the Senate.

(b) Until at least seven (7) members of the board are appointed and confirmed by the Senate, the Director of the Arkansas Towing and Recovery Board, in consultation with the Secretary of the Department of Labor and Licensing, shall exercise the powers and duties assigned to the board, except that the hearing and adjudication of a complaint filed with the board shall be continued until a quorum of the newly constituted board is assembled to hear and adjudicate the complaint.

SECTION 7. TEMPORARY LANGUAGE. DO NOT CODIFY. Transition Provisions - Initial terms of members of the Arkansas Towing and Recovery Board.

(a) The initial term of the three (3) members of the Arkansas Towing and Recovery Board who are actively engaged in business in the towing industry, licensed by the board, and appointed from the state at large shall expire on July 1 of 2026, 2027, and 2028, respectively.

(b) The term of the member of the board who is the Director of the Division of the Arkansas State Police or his or her designee shall be for the duration of time of his or her appointment as Director of the Division of the Arkansas State Police.

(c) The initial term of the member of the board who is a current or former municipal chief of police or current or former county sheriff with knowledge of the towing industry shall expire on July 1, 2028.

(d) The initial term of the member of the board who is appointed from the commercial trucking insurance industry shall expire on July 1, 2027.

(e) The initial term of the member of the board who is appointed from the trucking industry shall expire on July 1, 2028.

(f) The initial term of the member of the board who has no affiliation with the towing industry and who serves as a representative of consumers of towing services shall expire on July 1, 2026.

(g) The initial term of the member of the board who is a currently employed or retired person with at least five (5) years of experience responding to fire and emergency response incidents shall expire on July 1, 2027.

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that an urgent need exists to enact towing industry reforms, improve towing industry regulation and enforcement, and provide statewide efficiencies to state and local law enforcement; and that this act will accomplish these objectives and is immediately necessary to protect consumers from illegal, fraudulent, and unauthorized towing practices. 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.

APPROVED: 4/21/25