

State of Arkansas

76th General Assembly

First Extraordinary Session, 1987

HOUSE BILL

1030

By: Representatives Givens and Thicksten

"AN ACT TO PROVIDE FOR THE REMOVAL OF UNATTENDED AND  
ABANDONED VEHICLES; AND FOR OTHER PURPOSES."

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

SECTION 1. DEFINITIONS. (a) "Unattended" means:

(1) Any vehicle left on public property without the consent of an authority in charge of such property, or in possession of a gratuitous bailee or a bailee for hire; and

(2) Which vehicle remains without some person in charge thereof for more than twenty-four (24) hours in a location less than (3) feet of a public way, or for more than seventy-two (72) hours in a location of three (3) or more feet of a public way; or

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

(4) Which vehicle remains not in the custody of some responsible person following an accident where the operator has been removed to a hospital or is otherwise unable to make personal arrangements for the vehicle's care.

(b) "Abandoned" means:

(1) Any vehicle, deemed to be unattended, as herein defined:

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

(B) which remains unattended, whether in its first-found location or in another location to which it has been moved pursuant to the provision hereof, for a period of thirty (30) days during which period the owner has given no evidence of an intent to retake possession.

(c) "Vehicle" means any contraption designed to have wheels, boat or

motor home.

(d) "Public way" means any road, highway, or street over which the public may travel, including the paved surface and any berm or shoulder thereof. Nothing herein shall be applicable to vehicles left unattended on private property.

(e) "Removal" means an officer of any law enforcement agency may order the removal of any unattended vehicle by contracting a licensed towing firm properly equipped to handle the removal and with storage facilities enabling it to care for said vehicle as a bailee for hire, and ordering said firm to remove said vehicle.

SECTION 2. PENALTIES. (a) The owner of a vehicle, or the person who left the same unattended or abandoned, shall be liable for all reasonable costs of removal, storage, administrative processing (as hereafter provided), and ultimate disposal of the same, and the storage facility shall have a lien on said vehicle for a cost of removal, storage and processing.

(b) In the absence of conclusive evidence to the contrary, the "Owner" of an abandoned vehicle shall be deemed to be the person in whose name the same is registered with the Office of Motor Vehicles, Revenue Division, Department of Finance and Administration, State of Arkansas.

SECTION 3. TAGGING. Any law enforcement officer observing a vehicle on or near a public way which appears to be unattended shall tag the same by affixing securely a colored form, or by using an easily observable sticker. Said tag shall show (1) the date and time of tagging; (2) that said vehicle will be removed pursuant to this statute unless the vehicle is removed within two hours if within three feet of a public way; (3) the location and telephone number where more information may be obtained, and (4) the identification of the officer.

SECTION 4. NOTICE TO STORAGE FIRM. Within twenty-four (24) hours of the order to remove and store an unattended vehicle the law enforcement agency involved shall contact the towing-storage firm giving information regarding the name and address of the last registered owner and the serial number of the vehicle, as shown on the records of the Office of Motor Vehicles, Revenue Division, Department of Finance and Administration, State of Arkansas.

SECTION 5. POSSESSORY LIEN. (a) The towing-storage firm shall have a possessory lien on the vehicle and its contents for all charges for which the owner is liable.

(b) Such lien shall be perfected by

(1) maintaining possession, and

(2) by giving notice to the owner as shown on the data furnished by the officer's department.

(c) Such notice shall be certified mail and shall be posted within 5 working days of the time that the said vehicle is logged in at the storage facility.

(d) The notice shall contain the following information:

(1) the name, address, telephone number of the storage facility;

and

(2) that the addressee's vehicle is in the possession of that towing-storage firm under the police order, describing the circumstances; and

(3) that towing, storage and administrative costs are accruing as legal liability of the owner; and

(4) that the towing-storage firm claims a possessory lien for all of such charges; and

(5) that owner may retake possession at any time during business hours by appearing, proving ownership, and paying all charges; and

(6) that should owner consider that the original taking was improper or not legally justified, he has a right to an administrative hearing to contest such original taking; and

(7) that the envelope containing said notice contains form which owner may use to:

(A) claim a hearing or

(B) waive a hearing.

(8) that failure to claim a hearing within ten (10) days of the date of mailing the notice shall constitute a waiver of his right to the same; and

(9) that if the vehicle is not claimed and possession retaken, or arranged for, within thirty (30) days of the date of the posting of the notice, the lien will be foreclosed and said vehicle will be sold at public auction for cash; and

(10) that any charges in excess of the sale proceeds shall remain as

a civil obligation of owner.

(e) Any police agency which authorizes vehicle towing shall provide a hearing process and shall appoint a suitable person, not a member of a law enforcement agency, to be a hearings officer to determine validity of the original taking; the hearing procedure shall be informal and the rules of evidence relaxed.

(f) Should the owner prevail at the hearing, he shall be liable only to pay the cost of the tow, the same having been instigated under the police power. Should the owner not prevail, he shall be liable for all towing-storage administrative charges. Should the owner desire possession pending hearing he may obtain the same by posting with the hearings officer a bond of 100% of all charges. Under no circumstances shall the law enforcement agency be liable for any charges.

(g) Any owner aggrieved by the ruling of the hearings officer may have direct appeal to a court of record in the jurisdiction system.

SECTION 6. FORECLOSURE OF LIENS. (a) Any vehicle and/or contents subject to said perfected lien, not redeemed within thirty (30) days by its owner or security-lienholder by payment of all charges and by retaking possession, may be sold at non-judicial sale by the possessory lienholder at public sale for cash.

(b) Notice of such sales shall be sent at least fifteen (15) days before the date of such sale, by registered or certified mail, no return receipt required to the said registered owner and lienholder(s), if any, as hereinafter described.

(c) In addition to said notice by mail, notice of such sale shall be:

(1) published in a newspaper of general circulation in the county at least once, at least ten (10) days prior to said sale; or

(2) posted in the lienor's place of business, and

(A) in the County Courthouse or

(B) in the Post Office nearest to the lienor's premises.

SECTION 7. (a) Should the auction sale produce more funds than the sum of all charges, including costs of the sale and including a reasonable charge for processing the paper work, such excess shall be paid to the County Clerk to the account of the person legally entitled thereto, subject

to a five (5%) percent fee to said Clerk.

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

(1) the ownership of said vehicle shall thereupon, free of all liens of any nature vest in the said lienor, and

(2) said lienor shall have a valid claim against the said owner for the full amount of such charges less the salvage value of said vehicle on such date; such salvage value must be substantiated by a written statement by an established salvage dealer in the vicinity.

(c) Upon presentation to the Office of Motor Vehicles, Revenue Department, Department of Finance and Administration, State of Arkansas, of documentation to the effect that the foreclosure procedure has been complied with, protecting the rights of the owner or lienholder(s) the successful bidder at said auction sale shall be entitled to receive a new title to said vehicle upon meeting other administrative requirements of salvage law and Office of Motor Vehicle rules.

SECTION 8. BOARD CREATED. (a) There is hereby created the Board of Wrecker Operators consisting of seven (7) members appointed by the Governor and confirmed by the Senate who shall serve terms of three (3) years. At the initial meeting of the Board, the members shall draw lots for terms of appointment. Two (2) shall draw lots for one (1) year appointments; two (2) shall draw lots for two year appointments; and three (3) shall draw lots for three year appointments. The Governor shall appoint persons to the Board meeting the following criteria:

1. Two (2) individuals shall be appointed from a list of four (4) prospective appointees provided by the Arkansas Towing Association. Prospective appointees must reside in a county with a population of less than 50,000 residents.

2. Two (2) individuals shall be appointed from a list of four (4) prospective appointees provided by the Arkansas Towing Association. Prospective appointees must reside in a county with a population of more than 50,000 residents.

3. Two (2) persons shall be appointed to represent the interests of the citizens of Arkansas and shall not have any interest in or work for any towing company.

4. The director of the Arkansas State Police or that person's designee.

(b) The Board shall elect a chairman from its membership.

(c) The Board shall promulgate such rules and regulations to carry out the intent of this Act and shall regulate the towing industry including requirements for licensing. Such authority shall not extend to the setting of tariffs for the towing industry.

SECTION 9. All laws and parts of laws in conflict with this Act are hereby repealed.

