

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: H2/20/97

A Bill

HOUSE BILL 1570

4
5 By: Representatives Malone, Dawson and Wallis

For An Act To Be Entitled

9 "AN ACT TO PROHIBIT ANY JUDGE OF A MUNICIPAL COURT, ANY
10 STATE, COUNTY, OR MUNICIPAL LAW ENFORCEMENT AGENCY OR
11 OFFICER, OR ANY TOWING OR RECOVERY BUSINESS FROM SEIZING,
12 IMPOUNDING, DETAINING, OR KEEPING IN CUSTODY ANY
13 AUTOMOBILE, TRUCK OR OTHER MOTOR VEHICLE FOR THE
14 ENFORCEMENT OF ANY STATE MOTOR VEHICLE OR TRAFFIC LAW
15 WITHOUT THE SPECIFIC AUTHORITY OF STATE LAW OR THE
16 ARKANSAS RULES OF CRIMINAL PROCEDURE; AND FOR OTHER
17 PURPOSES."

Subtitle

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20 "TO PROHIBIT A MUNICIPAL COURT, LAW
21 ENFORCEMENT AGENCY, OR A TOWING BUSINESS
22 FROM SEIZING OR IMPOUNDING ANY MOTOR
23 VEHICLE WITHOUT SPECIFIC AUTHORITY OF
24 STATE LAW."

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

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28 SECTION 1. In accordance with the principle stated in Article 2,
29 Section 22 of the Arkansas Constitution of 1874 that the right to property in
30 Arkansas is "before and higher than any constitutional sanction", the Arkansas
31 General Assembly states the purpose of this act is to guarantee that the
32 citizens of Arkansas should be free to feel their personal property will be
33 free from any unreasonable detention and impoundment by government authorities
34 and by those acting under the color of government authority and that their
35 property should be subject to their control and not be detained, impounded, or
36 held in custody, or taxed for the cost of doing so, without some procedural

1 recourse or other due process of law.

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3 SECTION 2. On and after the effective date of this act, the judges of
4 the municipal courts of Arkansas shall not have any authority to order the
5 seizure, impoundment, detention, or any other custodial taking of any
6 automobile, truck, semitruck, truck and trailer, or any other motor vehicle
7 for the enforcement of any Arkansas traffic or motor vehicle laws, except
8 where the seizure, impoundment, detention, or custody of the motor vehicle is
9 specifically authorized under a specific procedure by a state law or is taken
10 in to custody in compliance with the Arkansas Rules of Criminal Procedure.

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12 SECTION 3. On and after the effective date of this act, no law
13 enforcement authority or officer of the State of Arkansas, no county sheriff
14 or sheriff's deputy, no municipal police authority or police officer, or city
15 or town marshal, and no constable shall have any authority to seize, impound,
16 detain, or perform any other custodial taking of any automobile, truck,
17 semitruck, truck and trailer, or any other motor vehicle for the enforcement
18 of any Arkansas traffic or motor vehicle laws, except where the seizure,
19 impoundment, detention, or custody of the motor vehicle is specifically
20 authorized under a specific procedure by a state law, where the motor vehicle
21 is taken into custody pursuant to an arrest, or where the motor vehicle is
22 taken into custody in compliance with the Arkansas Rules of Criminal
23 Procedure.

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25 SECTION 4. On and after the effective date of this act, no person,
26 firm, corporation, or other entity under contract to or under order of any
27 state or a local government law enforcement agency shall tow, haul, impound,
28 detain, or otherwise take into custody any automobile, truck, semitruck, truck
29 and trailer, or any other motor vehicle under the authority of the state or
30 local government for the enforcement of any Arkansas traffic or motor vehicle
31 laws, except where the seizure, impoundment, detention, or custody of the
32 motor vehicle is specifically authorized under a specific procedure by a state
33 law, where the motor vehicle is taken into custody pursuant to an arrest, or
34 where the motor vehicle is taken into custody in compliance with the Arkansas
35 Rules of Criminal Procedure.

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SECTION 5. (a) When any automobile, truck, semitruck, truck and trailer, or any other motor vehicle is found in an unauthorized or posted area for no parking on private or public property, the owner of the private or public property, or an agent, can order the immediate removal of any unattended vehicle from its property.

(b) As used in this section, "unauthorized or posted area for no parking" means an area or particular parking space where a specific automobile, truck, semitruck, truck and trailer, or any other motor vehicle is not authorized to park and which is posted with a warning sign or an area or particular space which is designated by the owner of the property for no parking of vehicles and which is posted with a warning sign. The warning sign shall include regulatory language, such as "AUTHORIZED PARKING ONLY - TOWING ENFORCED" or "NO PARKING AREA (OR SPACE) -TOWING ENFORCED". Further, the warning sign shall contain the name, location, and telephone number of the towing-storage firm requested to remove the vehicle or it shall state that the information is available on request and shall contain the name of the property owner or agent who may be contacted for the information.

(c) Upon request, any owner of private or public property, or an agent, who orders a removal pursuant to this section shall provide to the owner or person in charge of the removed vehicle the name, location, and telephone number of the towing-storage firm requested to remove and store the vehicle.

(d) Any person, firm, corporation, or other entity in the business of towing and storing motor vehicles which removes a vehicle from private or public property under an order from the owner or his agent who has complied with the requirements of this section shall be liable to any person for any damages for towing or detaining his or her vehicle.

SECTION 6. (a) Except as provided for in Section 5 of this act, if any person, firm, corporation, or other entity in the business of towing and storing any automobile, truck, semitruck, truck and trailer, or any other motor vehicle shall tow, haul, carry away, or otherwise detain any motor vehicle in which he has no property interest or right, which is not his own, or shall wilfully detain the motor vehicle not his own without permission, then the person, firm, corporation, or other entity so detaining the motor vehicle shall be liable to pay the owner treble the value of the motor vehicle

1 so towed, hauled, carried away, or otherwise detained, with costs and attorney
2 fees.

3 (b) If on the trial of any action brought under the provisions of this
4 section it shall appear that the defendant person, firm, corporation, or other
5 entity had reasonable cause to believe that the motor vehicle which was towed,
6 hauled, carried away, or otherwise detained was taken and held under specific
7 authority of state law or was taken by consent of the owner then the owner
8 shall recover single damages only, with costs and attorney fees.

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10 SECTION 7. All provisions of this act of general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 8. If any provisions of this act or the application thereof to
15 any person or circumstance is held invalid, the invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provisions or application, and to this end the provisions of this
18 act are declared to be severable.

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20 SECTION 9. All laws and parts of laws in conflict with this act are
21 hereby repealed.

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/s/Rep. Malone, et al

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