

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

A Bill

HOUSE BILL 1628

4
5 By: Representatives Angel, McGee, Willems, Harris, Dietz, and Wooldridge

For An Act To Be Entitled

9 "AN ACT TO AMEND VARIOUS SECTIONS OF SUBCHAPTER 12 OF
10 TITLE 27, CHAPTER 50, OF THE ARKANSAS CODE OF 1987,
11 ANNOTATED, TO CLARIFY WHO MAY CONSENT TO REMOVE AN
12 UNATTENDED VEHICLE, TO PERMIT THE TOWING AND RECOVERY
13 BOARD TO CHARGE LATE FEES, TO REQUIRE REVIEW OF CHANGES
14 AND AMENDMENTS TO BOARD RULES, TO CHANGE THE LENGTH OF
15 TIME TO GIVE LIEN NOTICES, AND TO PRESCRIBE CRIMINAL
16 PENALTIES FOR VIOLATIONS OF TOWING AND RECOVERY BOARD LAW;
17 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

Subtitle

19 "TO CLARIFY WHO MAY CONSENT TO HAVE
20 UNATTENDED VEHICLES TOWED AND TO ALLOW
21 THE TOWING AND RECOVERY BOARD TO CHARGE
22 LATE FEES AND PRESCRIBE CRIMINAL
23 PENALTIES."
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26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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28 SECTION 1. Arkansas Code § 27-50-1202(11), regarding the definition of
29 terms used in the Towing and Recovery Board law, is amended to read as
30 follows:

31 "(11) Owner preference means the right of the owner or ~~person in~~
32 ~~charge~~ any competent occupant of any disabled or inoperative vehicle to
33 request some responsible and reasonable person, gratuitous bailee, or bailee
34 for hire of his or her choosing to take charge and care of said vehicle."

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36 SECTION 2. Arkansas Code § 27-50-1203 is amended to read as follows:

1 "27-50-1203. Arkansas Towing and Recovery Board - Creation.

2 (a)(1) There is hereby created the Arkansas Towing and Recovery Board
 3 consisting of seven (7) members appointed by the Governor and confirmed by the
 4 Senate who shall serve terms of three (3) years.

5 (2) Four (4) members shall be appointed from the towing industry,
 6 with one (1) of such members being a resident of each of the four (4)
 7 congressional districts, two (2) members who are not associated with the
 8 towing industry shall be appointed from the state at large, and one (1) member
 9 shall be appointed from the insurance industry.

10 (b) The board shall annually elect a chairman from its membership.

11 (c)(1) The board shall promulgate rules and regulations to carry out
 12 the intent of this subchapter and shall regulate the towing industry,
 13 including:

14 (A) Establishing reasonable licensing, insurance, and
 15 safety equipment requirements for any person engaging in nonconsent towing and
 16 related services under this subchapter; and

17 (B) Establishing reasonable tow truck safety requirements
 18 for any tow vehicle as defined in this subchapter.

19 (2) The promulgation and adoption of such rules and regulations
 20 shall in all respects be in the manner provided by the Arkansas Administrative
 21 Procedure Act, as amended from time to time, §§ 25-15-201 et seq.

22 (3) After the promulgation and adoption of rules or regulations,
 23 any proposed change to add to, amend, repeal or change any of the rules or
 24 regulations, unless a finding exists that imminent peril to the public health,
 25 safety or welfare requires immediate adoption, amendment or repeal of the
 26 rules or regulations, shall not have effect until reviewed and approved by the
 27 Rules and Regulations Subcommittee of the Arkansas Legislative Council
 28 subsequent to the time the General Assembly next meets in regular session.

29 (d) The board shall have the authority to levy applicable towing
 30 business license fees not to exceed one hundred dollars (\$100) per license,
 31 and the board shall have the authority to levy an applicable tow vehicle
 32 safety permit fee not to exceed twenty-five dollars (\$25.00) per tow vehicle
 33 safety permit. Further, the board shall also have the authority to impose
 34 late filing fees in an amount not to exceed the original amount of the license
 35 fee or safety permit fee.

36 (e) The board shall have the authority to employ and discharge a

1 ~~secretary who shall be the treasurer, and other~~ any personnel as may be
 2 necessary to administer and enforce the provisions of this subchapter and the
 3 rules and regulations promulgated hereunder.

4 (f) The board shall have the authority to obtain office space,
 5 furniture, stationery, and other proper supplies and conveniences reasonably
 6 necessary to carry out the provisions of this subchapter.

7 (g) Each member of the board shall be entitled to receive the sum of
 8 fifty dollars (\$50.00) per diem for each day actually spent on the work of the
 9 board, and each member of the board shall receive reimbursement for his actual
 10 and necessary expenses incurred in the performance of duties pertaining to his
 11 or her office, including necessary traveling expenses, board, and lodging.

12 (h) The board shall have the authority to establish a maximum amount to
 13 be charged by a towing business for each notification to an owner and a
 14 lienholder as required by this subchapter. Such authority shall not extend to
 15 the setting of any other rate or tariff within the towing industry."
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17 SECTION 3. Arkansas Code § 27-50-1207 is amended to read as follows:

18 "27-50-1207. Removal of vehicles.

19 (a)(1) No law enforcement agency shall adopt a vehicle removal policy
 20 in conflict with this subchapter.

21 (2) Any vehicle removal policy shall provide that owner
 22 preference, as defined by this subchapter, shall be offered to the owner or
 23 ~~person in charge~~ any competent occupant of any disabled or inoperative
 24 vehicle, except in those instances where an emergency exists or the immediate
 25 clearing of a public thoroughfare mandates an expedited towing service.

26 (b) All law enforcement officers shall comply with policies prescribed
 27 by his or her agency as to the removal of any unattended or abandoned vehicle,
 28 as defined by this subchapter.

29 (c) No law enforcement officer shall suggest or recommend any
 30 particular towing-storage firm to the owner or ~~person in charge~~ any competent
 31 occupant of any disabled or inoperative vehicle, except in strict compliance
 32 with his or her agency's vehicle removal policy.

33 (d) Upon request, any law enforcement officer, or his or her agency,
 34 who orders a removal pursuant to this subchapter shall provide to the owner or
 35 ~~person in charge~~ any competent occupant of the removed vehicle the name,
 36 location, and telephone number of the towing-storage firm requested to remove

1 and store the vehicle."

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3 SECTION 4. Arkansas Code § 27-50-1208 is amended to read as follows:

4 "27-50-1208. Possessory lien.

5 (a) The towing-storage firm shall have a possessory lien on the vehicle
6 and its contents for all reasonable charges of towing, recovery, and storage
7 for which the owner is liable.

8 (b) Such lien shall be perfected by:

9 (1) Maintaining possession; and

10 (2) Giving notice to the owner or owners and lienholders as shown
11 on the data provided by the law enforcement agency involved as prescribed by
12 this subchapter.

13 (c) Such notice shall be by certified mail, return receipt requested,
14 and shall be posted ~~within~~ not sooner than five (5) working days, but within
15 eight (8) working days of the time that said vehicle is logged in at the
16 storage facility.

17 (d) The notice shall contain the following information:

18 (1) The name, address, and telephone number of the storage
19 facility;

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

22 (3) That towing, storage, and administrative costs are accruing
23 as a legal liability of the owner;

24 (4) That the towing-storage firm claims a possessory lien for all
25 of such charges;

26 (5) That the owner may retake possession at any time during
27 business hours by appearing, proving ownership, and paying all charges or by
28 other written arrangement between himself or herself and the towing-storage
29 firm; and

30 (6) That, should the owner consider that the original taking was
31 improper or not legally justified, he has a right to contest such original
32 taking in a court of competent jurisdiction.

33 (e) Nothing in this section is to preclude the owner or his agent from
34 making alternative arrangements within the five-day to eight-day time period
35 with the towing-storage firm waiving his or her rights to the ~~five-day~~ notice
36 requirement."

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SECTION 5. Subchapter 12 of Title 27, Chapter 50, of the Arkansas Code of 1987, Annotated, is amended to add a new § 27-50-1212 to read as follows:

"27-50-1212. Criminal Penalties.

(a) It shall be unlawful for a person to:

(1) operate a tow vehicle in violation of this subchapter;

(2) give false or forged evidence to the Towing and Recovery Board, or to any member or an employee thereof, for the purpose of obtaining a license or a tow vehicle safety permit;

(3) use or attempt to use an expired, suspended, or revoked license or tow vehicle safety permit;

(4) violate, or aid or abet any violation of this subchapter.

(b) A person who pleads guilty, nolo contendere, or is found guilty of any violation under this section shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500) or to be imprisoned for period not exceeding ninety (90) days, or both.

(c) Each day of an unlawful practice proscribed by this section shall constitute a distinct and separate offense."

SECTION 6. All provisions of this act of general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. If any provisions of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 9. Emergency. It is hereby found and determined by the Eighty-First General Assembly of the State of Arkansas that the present law regulating the towing and recovery business in Arkansas does not contain

1 criminal penalties and does not permit the board to charge late fees for
 2 licenses and permits; that these deficiencies in the law encourage unpermitted
 3 towing vehicles to continue to operate on the highways of Arkansas; and that
 4 these unpermitted towing vehicles pose a significant threat to the health and
 5 highway safety of the driving public on Arkansas' public streets and highways.
 6 Therefore, in order to reduce this significant threat to the public's driving
 7 safety, an emergency is hereby declared to exist, and this act being
 8 necessary for the immediate preservation of the public peace, health, and
 9 safety, shall become effective on the date of its approval by the Governor.
 10 If the bill is neither approved or vetoed by the Governor, it shall become
 11 effective on the expiration of the period of time during which the Governor
 12 may veto the bill. If the bill is vetoed by the Governor and the veto is
 13 overridden, it shall become effective on the date the last house overrides the
 14 veto.

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