

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 1920

4
5 By: Representatives Wooldridge, Angel, Davis, Magnus, Jeffress, and French

For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE § 27-50-1101 TO CLARIFY THE
10 PROCEDURE FOR SELLING ABANDONED VEHICLES; TO AMEND
11 ARKANSAS CODE § 27-50-1206 REGARDING MOTOR VEHICLE
12 REGISTRATION INFORMATION TO BE INCLUDED WHEN AN ORDER TO
13 REMOVE AND STORE A VEHICLE IS ISSUED BY A LAW ENFORCEMENT
14 OFFICER; TO AMEND ARKANSAS CODE § 27-50-1208 REGARDING
15 POSSESSORY LIENS FOR TOWING-STORAGE FIRMS; TO AMEND
16 ARKANSAS CODE § 27-50-1210 REGARDING THE PROCEDURE FOR
17 OBTAINING A TITLE TO AN ABANDONED VEHICLE; TO AMEND
18 ARKANSAS CODE § 18-45-204 REGARDING THE PROVISIONS WHICH
19 SHALL GOVERN SALES OF VEHICLES UNDER VEHICLE REPAIRMAN'S
20 LIENS; TO REPEAL ARKANSAS CODE § 27-50-1102 REGARDING
21 PROCEDURES FOR DISMANTLING ABANDONED VEHICLES AND TO
22 REPEAL ARKANSAS CODE § 27-50-1209 REGARDING THE PROCEDURES
23 TO FORECLOSE LIENS FOR TOWING-STORAGE FIRMS;
24 AND FOR OTHER PURPOSES."

Subtitle

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26
27 "TO CLARIFY THE PROCEDURES FOR OBTAINING
28 TITLES AND SELLING ABANDONED VEHICLES
29 UNDER TOWING-STORAGE LIENS AND VEHICLE
30 REPAIR LIENS AND THE INFORMATION
31 OBTAINED FOR NOTICES OF VEHICLE SALES."

32
33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

34
35 SECTION 1. Arkansas Code § 27-50-1101 is hereby amended to read as
36 follows:

1 "27-50-1101. Procedure to sell abandoned vehicles.

2 (a)(1) When any vehicles of a type subject to registration under the
3 laws of this state are found abandoned on private or public property within
4 this state, ~~except premises of auto repair businesses,~~ the property owner or
5 his agent may have the vehicle removed from their property by a towing-storage
6 firm. Vehicles on the premises of an automobile repair business shall be
7 deemed abandoned if, either, the vehicle is unclaimed by the vehicle owner
8 within forty-five (45) days, or the debt is not paid within forty-five (45)
9 days from the time the repair work is complete.

10 (2) The towing-storage firm which takes possession of and stores
11 the abandoned vehicle shall notify the local police or sheriff's department of
12 the removal within six (6) hours of taking possession of the vehicle. The
13 towing-storage firm may not charge a storage fee for the vehicle for the time
14 it is stored prior to the notification.

15 (3) ~~The~~ Not later than the tenth (10th) day after taking
16 possession of and storing the vehicle, or it being deemed abandoned, the
17 towing-storage firm which takes possession of and stores the abandoned
18 vehicle, or the automobile repair business upon whose premises the vehicle has
19 been deemed abandoned shall notify, not later than the tenth day after taking
20 the vehicle into custody, by certified mail, return receipt requested, the
21 last known registered owner of the vehicle and all lienholders of record
22 pursuant to § 27-14-101, et seq. that the vehicle ~~or vehicles are~~ is being
23 held and, unless claimed within ~~thirty (30)~~ forty-five (45) days, will be
24 dismantled, destroyed or sold at public sale to the highest bidder. The name
25 of the last known registered owner of the vehicle and all lienholders of
26 record may be obtained from the records of the Office of Motor Vehicles, the
27 Arkansas Crime Information Center records, or the motor vehicle records of any
28 other state where the vehicle was last registered.

29 (A) The notice shall describe the year, make, model, and
30 vehicle identification number of the abandoned vehicle, set forth the ~~location~~
31 name, address, and telephone number of the facility where the vehicle is being
32 held, inform the owner and any lienholders of their right to reclaim the
33 vehicle not later than the ~~ninetieth~~ forty-fifth (45th) day after the date of
34 the notice, ~~on~~ upon payment of all towing and storage charges resulting from
35 placing the vehicle in custody of the towing-storage firm, or upon payment of
36 all outstanding bills due the automobile repair business. Notices to owners

1 of vehicles deemed abandoned on the premises of automobile repair facilities
 2 shall also advise that the auto repairman holds an absolute lien on the
 3 vehicle pursuant to § 18-45-201, et seq.

4 ~~_____ (B) As to vehicles abandoned on premises of auto repair~~
 5 ~~businesses, the notice as provided herein shall advise the owner of the~~
 6 ~~vehicle that the vehicle may be picked up from the auto repair business within~~
 7 ~~thirty (30) days without charge to the owner of the auto.~~

8 ~~_____ (C)~~(B) The notice shall also state that the failure of the
 9 owner or lienholders to exercise their right to reclaim the vehicle within the
 10 time provided constitutes a waiver by the owner and lienholders of all right,
 11 title, and interest in the vehicle and their consent to the sale, dismantling
 12 or destruction of the abandoned vehicle ~~at a public auction~~ and that the
 13 towing-storage firm claims a possessory lien for all charges, pursuant to
 14 § 27-50-1208.

15 ~~_____ (D)~~(C) If the identity of the last registered owner cannot
 16 be determined, if the registration contains no address for the owner, or if it
 17 is impossible to determine with reasonable certainty the identity and
 18 ~~addresses~~ address of all lienholders, notice by ~~one (1)~~ publication ~~in~~ one (1)
 19 time in one (1) newspaper of general circulation in the area where the vehicle
 20 was abandoned is sufficient notice under this section.

21 ~~_____ (E)~~(D) The notice by publication may contain multiple
 22 listings of abandoned vehicles, shall be published within the time
 23 requirements prescribed for notice by certified mail, and shall have the same
 24 contents required for a notice by certified mail.

25 (4) ~~Thirty (30)~~ Forty-five (45) days after the notice has been
 26 given as described, the holder of the ~~vehicles~~ vehicle or the owner or
 27 operator of the automobile repair business on whose premises the vehicle was
 28 abandoned shall execute an affidavit stating that the ~~vehicles have~~ vehicle
 29 has been found abandoned and ~~are~~ is stored with the holder and that notice has
 30 been given, as provided in this section, to ~~their~~ the registered owners and
 31 all lienholders of record.

32 (5) The affidavit shall describe the vehicle by make, year, model,
 33 ~~serial number, and body style, and set forth the retail market value of the~~
 34 ~~vehicles.~~ vehicle identification number.

35 (6) The towing-storage firm or the owner or operator of the
 36 automobile repair business shall give written notice to the National

1 ~~Automobile Theft Bureau in Dallas, Texas, Insurance Crime Bureau, and, upon~~
 2 receipt of a response therefrom, the holder shall then sell the vehicle at ~~the~~
 3 ~~best available price~~ public sale to the highest bidder.

4 (7) The towing-storage firm or automobile repair business shall
 5 supply the buyer the necessary documentation required herein for the sale of
 6 such vehicle, and the buyer shall then apply to the nearest revenue office for
 7 title of the vehicle, submitting the affidavit and documentation and paying
 8 all license fees, title fees, and taxes required by law.

9 (8) ~~After~~ If the sale of the vehicles produces more funds than the
 10 sum of all charges, including the costs of the sale and including a reasonable
 11 charge for processing the paperwork, after ninety (90) forty-five (45) days
 12 from the date of sale, if the owner has not been located or if no claim has
 13 been made on the vehicles by any owner or lienholder for the balance of the
 14 proceeds, then the balance of the proceeds of the sale shall go to the State
 15 ~~Highway and Transportation Department Fund, Treasurer for deposit in the~~
 16 Highway and Transportation Department Fund, accompanied by a written ~~notarized~~
 17 statement, itemizing the various deductions from the gross sales price of the
 18 vehicle, signed by the selling party.

19 ~~———— (b) The provisions of this section shall apply to any abandoned vehicle~~
 20 ~~of a type subject to registration under the laws of this state. Vehicles on~~
 21 ~~the premises of an automobile repair business which are unclaimed by the~~
 22 ~~vehicle owner for a period of ninety (90) days and which are not being stored~~
 23 ~~for the vehicle owner shall be considered abandoned under this section.~~

24 ~~———— (c)(b)~~ If the person who has custody of an abandoned vehicle
 25 fails to comply with the notice requirement of subsection (a) of this section
 26 within ten (10) days of the date the vehicle is obtained or deemed abandoned,
 27 the amount recoverable for storage of the vehicle shall be limited to the
 28 amount ordinarily charged for ten (10) days.

29 (c) Upon presentation of documentation to the Office of Motor
 30 Vehicle establishing compliance with the sale procedure in this section,
 31 protecting the rights of the owner or lienholder, the purchaser of the vehicle
 32 shall be entitled to receive a new title to the vehicle upon meeting other
 33 applicable administrative requirements of the title and registration laws."

34

35 SECTION 2. Arkansas Code § 27-50-1206 is amended to read as follows:

36 "27-50-1206. Notice to storage firm.

1 (a) Any order issued by a law enforcement officer to a licensed
 2 towing-storage firm to remove and store an unattended or abandoned vehicle
 3 shall provide information supplied from the records of the Office of Motor
 4 ~~Vehicle or the Vehicles,~~ Arkansas Crime Information Center records, or the
 5 motor vehicle records of any other state indicating the name and address of
 6 the last registered owner, the name and address of the holder of any recorded
 7 lien on the vehicle, and the vehicle identification (serial) number of the
 8 vehicle. ~~Such information shall be provided without cost or penalty. In the~~
 9 event that there is evidence in the vehicle indicating that the vehicle is
 10 registered in another state, the information shall be supplied from the motor
 11 vehicle records of that state.

12 (b) Within not more than twenty-four (24) hours from the order to
 13 remove, the officer involved, or his or her agency, shall contact the
 14 towing-storage firm advising of any unusual circumstances causing the delay of
 15 required information that was not available to the officer at the time the
 16 order to remove was issued. Such officer or agency shall provide the delayed
 17 information immediately upon receipt."
 18

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

20 "27-50-1208. Possessory lien.

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

24 (b) Such lien shall be perfected by:

25 (1) Maintaining possession; and

26 (2) Giving notice to the owner or owners and lienholders as ~~shown~~
 27 ~~on the data provided by the law enforcement agency involved as prescribed by~~
 28 ~~this subchapter~~ prescribed in § 27-50-1101, informing the owners and
 29 lienholders that the vehicle may be sold at public auction if not claimed
 30 within the time period prescribed in § 27-50-1101. The towing and storage
 31 firm shall obtain the names and addresses of the owners and lienholders, if
 32 any, from the motor vehicle records of the state in which the vehicle is
 33 titled or registered.

34 ~~Such notice shall be by certified mail, return receipt requested,~~
 35 ~~and shall be posted within five (5) working days of the time that said vehicle~~
 36 ~~is logged in at the storage facility.~~

1 ~~_____ (d) The notice shall contain the following information:~~

2 ~~_____ (1) The name, address, and telephone number of the storage facility;~~

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

5 ~~_____ (3) That towing, storage, and administrative costs are accruing as a~~
 6 ~~legal liability of the owner;~~

7 ~~_____ (4) That the towing-storage firm claims a possessory lien for all of~~
 8 ~~such charges;~~

9 ~~_____ (5) That the owner may retake possession at any time during business~~
 10 ~~hours by appearing, proving ownership, and paying all charges or by other~~
 11 ~~written arrangement between himself or herself and the towing-storage firm;~~
 12 ~~and~~

13 ~~_____ (6) That, should the owner consider that the original taking was~~
 14 ~~improper or not legally justified, he has a right to contest such original~~
 15 ~~taking in a court of competent jurisdiction.~~

16 ~~_____ (e) Nothing in this section is to preclude the owner or his agent from~~
 17 ~~making alternative arrangements within the five-day time period with the~~
 18 ~~towing-storage firm waiving his or her rights to the five-day notice~~
 19 ~~requirement."~~

20

21 SECTION 4. Arkansas Code § 27-50-1210 is amended to read as follows:

22 "27-50-1210. Nonjudicial sale.

23 (a) Should the nonjudicial sale produce more funds than the sum of all
 24 charges, including the costs of the sale and including a reasonable charge for
 25 processing the paperwork, such excess shall be paid to the county clerk to the
 26 account of the person legally entitled thereto. The Uniform Disposition of
 27 Unclaimed Property Act, § 18-28-201 et seq., will apply to any unclaimed
 28 funds.

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

31 (1) Ownership of the vehicle shall thereupon, free of all liens
 32 of any nature, vest in the said possessory lienholder;

33 (2) Said lienholder shall have a valid claim against said owner
 34 for the full amount of such charges less the sale price of said vehicle; and

35 (3) Upon presentation of documentation to the Office of Motor
 36 Vehicle ~~of documentation~~ to the effect that the ~~foreclosure~~ sale procedure

1 provided by § 27-50-1101 has been complied with, protecting the rights of the
 2 owner or lienholder, the ~~successful bidder at said nonjudicial sale purchaser~~
 3 of the vehicle shall be entitled to receive a new title to ~~said the~~ vehicle
 4 upon meeting other applicable administrative requirements of ~~salvage law and~~
 5 Office of Motor Vehicle title and registration laws."

6

7 SECTION 5. Arkansas Code § 18-45-204 is amended to read as follows:

8 "18-45-204. Procedure for sale of property possessed by lienholder.

9 (a) The sale shall not take place until the expiration of thirty (30)
 10 days from the time the work is completed. If the debt is not paid at the end
 11 of that time, it shall be the duty of the lienholder, not less than ten (10)
 12 days before making the sale, to post up written notice of the proposed sale at
 13 or near the front door of his place of business and at least five (5) other of
 14 the most public places in the township. This written notice of the proposed
 15 sale shall specify the property to be sold, the name of the owner or debtor,
 16 and the time and place of sale, and the notice shall be signed by the
 17 lienholder.

18 (b) At the sale, which shall be at public auction for cash to the
 19 highest and best bidder, the lienholder shall have the right to bid not less
 20 than the amount of his debt. In case the property sells for more than the
 21 amount of the debt, he shall pay over the surplus on demand to the person
 22 entitled thereto after deducting the amount of his debt and the actual cost of
 23 the sale.

24 (c) It shall be the duty of the lienholder, besides giving notice as
 25 required in subsection (a) of this section, to make demand for the debt before
 26 making the sale by registered letter addressed to the last known residence or
 27 post office address of the debtor.

28 (d) In his dealings with the property held by him, the lienholder shall
 29 act in good faith with the debtor and shall be responsible for any abuse of
 30 the power and authority vested in him by the provisions of this subchapter.

31 (e) The provisions of § 27-50-1101 shall govern sales of vehicles
 32 subject to the registration laws of this state."

33

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

1

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

7

8 SECTION 8. (a) Arkansas Code § 27-50-1102, regarding the procedure to
9 dismantle or destroy abandoned vehicles, is repealed.

10 ~~27-50-1102. Procedure to dismantle or destroy abandoned vehicles.~~

11 ~~—— (a) Any vehicle abandoned on the private property of a person other
12 than the owner of the motor vehicle may be sold, dismantled, or destroyed by
13 the owner of the property on which the vehicle is abandoned in the manner
14 prescribed in this section.~~

15 ~~—— (b)(1) Any owner of property upon which a vehicle is abandoned shall
16 notify, not later than the tenth day after discovery of the vehicle on the
17 property, by certified mail, the last known registered owner of the vehicle
18 and all lienholders of record pursuant to § 27-14-101 et seq. that the vehicle
19 has been taken into custody.~~

20 ~~—— (2) The notice shall describe the year, make, model, and vehicle
21 identification number of the abandoned vehicle, set forth the location of the
22 facility where the vehicle is being held, inform the owner and any lienholders
23 of their right to reclaim the vehicle not later than the thirtieth day after
24 the date of the notice, on payment of all towing and storage charges resulting
25 from placing the vehicle in custody.~~

26 ~~—— (3) The notice shall also state that the failure of the owner or
27 lienholders to exercise their right to reclaim the vehicle within the time
28 provided constitutes a waiver by the owner and lienholders of all right,
29 title, and interest in the vehicle, and their consent to the sale or
30 dismantling or destruction of the abandoned vehicle.~~

31 ~~—— (c) If the identity of the last registered owner cannot be determined,
32 if the registration contains no address for the owner, or if it is impossible
33 to determine with reasonable certainty the identity and addresses of all
34 lienholders, notice by one (1) publication in one (1) newspaper of general
35 circulation in the area where the vehicle was abandoned is sufficient notice
36 under this section.~~

1 ~~—— (d) The notice by publication may contain multiple listings of abandoned~~
2 ~~vehicles, shall be published within the time requirements prescribed for~~
3 ~~notice by certified mail, and shall have the same contents required for a~~
4 ~~notice by certified mail.~~

5 ~~—— (e)(1) Thirty (30) days after the notice has been given as described,~~
6 ~~the holder of the vehicles on whose premises the vehicle was abandoned shall~~
7 ~~execute an affidavit stating that the vehicles have been found abandoned and~~
8 ~~are stored with the holder and that notice has been given, as provided in this~~
9 ~~section, to their registered owners and all lienholders of record.~~

10 ~~—— (2) The affidavit shall describe the vehicles by make, year, model,~~
11 ~~serial number, and body style, and set forth the retail market value of the~~
12 ~~vehicles.~~

13 ~~—— (3) The owner of the private property on whose premises the vehicle was~~
14 ~~abandoned shall give written notice to the National Automobile Theft Bureau in~~
15 ~~Dallas, Texas, and upon receipt of a response therefrom, the holder shall then~~
16 ~~sell the vehicle at the best available price.~~

17 ~~—— (4) The owner of the private property on whose premises the vehicle was~~
18 ~~abandoned shall supply the buyer the necessary documentation required herein~~
19 ~~for the sale of such vehicle, and the buyer shall then apply to the nearest~~
20 ~~revenue office for title of the vehicle, submitting the affidavit and~~
21 ~~documentation and paying all license fees, title fees, and taxes required by~~
22 ~~law.~~

23 ~~—— (5) After ninety (90) days from the date of sale, if the owner has not~~
24 ~~been located or if no claim has been made on the vehicles, then the balance of~~
25 ~~the proceeds of the sale shall go to the State Highway and Transportation~~
26 ~~Department Fund, accompanied by a written notarized statement, itemizing the~~
27 ~~various deductions from the gross sales price of the vehicles, signed by the~~
28 ~~selling party.~~

29 ~~—— (f) If the person who has custody of an abandoned vehicle fails to~~
30 ~~comply with the notice requirement of subsection (a) of this section within~~
31 ~~ten (10) days, the amount recoverable for storage of the vehicle shall be~~
32 ~~limited to the amount ordinarily charged for ten (10) days.~~

33 (b) Arkansas Code § 27-50-1209, regarding the foreclosure of liens by
34 towing-storage firms, is repealed.
35 ~~27-50-1209. Foreclosure of liens.~~

36 ~~—— (a) The towing-storage firm holding a perfected possessory lien on any~~

1 ~~vehicle and its contents not redeemed by its owner or security lienholder~~
2 ~~within the thirty (30) days provided by this subchapter shall sell such~~
3 ~~vehicle at a nonjudicial sale for cash. Such sale shall not occur later than~~
4 ~~ninety (90) days from perfection of said lien.~~

5 ~~—— (b) Notice of such sale shall be sent at least fifteen (15) days before~~
6 ~~the date of such sale, by registered or certified mail, no return receipt~~
7 ~~requested, to the said registered owner and lienholder, if any.~~

8 ~~—— (c) In addition to said notice by mail, notice of such sale shall be~~
9 ~~published in a newspaper of general circulation in the county at least once,~~
10 ~~at least ten (10) days prior to said sale.~~

11 (c) All laws and parts of laws in conflict with this act are hereby
12 repealed.

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