

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/15/01 H3/23/01 S4/9/01

A Bill

HOUSE BILL 2538

5 By: Representative Holt
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND SUBCHAPTER 12 OF TITLE 27 OF THE
10 ARKANSAS CODE CONCERNING THE REMOVAL OF
11 UNATTENDED OR ABANDONED VEHICLES BY LAW
12 ENFORCEMENT; AND FOR OTHER PURPOSES.
13

Subtitle

15 AN ACT TO AMEND SUBCHAPTER 12 OF TITLE
16 27 OF THE ARKANSAS CODE CONCERNING THE
17 REMOVAL OF UNATTENDED OR ABANDONED
18 VEHICLES.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 *SECTION 1. Arkansas Code 27-50-1202(5), concerning the definition of*
24 *owner preference, is amended to read as follows:*

25 *(5) "Owner preference" means the right of the owner, his or her agent,*
26 *or any competent occupant of any disabled or inoperative vehicle to request*
27 *some responsible and reasonable person, gratuitous bailee, or bailee for hire*
28 *of his or her choosing to take charge and care of the vehicle;*
29

30 *SECTION 2. Arkansas Code 27-50-1202(10), concerning unattended*
31 *vehicles, is amended to read as follows:*

32 *(10) "Unattended" means any vehicle left on public property without*
33 *the consent of an authority in charge of such property or on or near a public*
34 *way without some person, gratuitous bailee, or bailee for hire in possession*
35 *of such vehicle; and*

36 *(A) Which vehicle is located within a distance of three feet*

1 (3') of the traveled surface of the public way;

2 (B) Which vehicle is located on or near a public way at a
3 distance of three feet (3') or more of the traveled surface of the public way
4 for a period of twenty-four (24) hours or more;

5 (C) Which vehicle is not located on or near a public way but is
6 left for a period of forty-eight (48) hours or more;

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

11 (E) Which vehicle was operated to a place of apprehension by law
12 enforcement under police power and the operator thereof removed from the
13 vehicle and taken into police custody; ~~or~~

14 (F) Which vehicle is located upon any public right of way and
15 due to geographic location, traffic density, or climatic conditions, creates
16 a substantial hazard to the motoring public, as determined by a law
17 enforcement officer; or

18 (G) Which vehicle, whether on public property, on or near a
19 public way or otherwise, is subject to seizure by law enforcement under the
20 Rules of Criminal Procedure or pursuant to lawful court order.

21
22 SECTION 3. Arkansas Code 27-50-1206, is amended to read as follows:
23 27-50-1206. Notice to storage firm.

24 (a) Any order issued by a law enforcement officer to a licensed towing
25 and storage firm to remove and store an unattended or abandoned vehicle shall
26 provide information supplied from the records of the Office of Motor Vehicle,
27 Arkansas Crime Information Center records, or the motor vehicle records of
28 any other state indicating the name and address of the last registered owner,
29 the name and address of the holder of any recorded lien on the vehicle, and
30 the vehicle identification or serial number of the vehicle. If there is
31 evidence in the vehicle indicating that the vehicle is registered in another
32 state, the information shall be supplied from the motor vehicle records of
33 that state.

34 (b)(1) In the event that readily available records fail to disclose
35 the name of the owner or any lienholder of record, the law enforcement
36 officer, or his or her agency, shall notify the towing and storage firm which

1 shall perform a good faith search to locate documents or other evidence of
 2 ownership and lienholder information on or within the unattended or abandoned
 3 vehicle.

4 (2) For purposes of this subsection, a "good faith search" means
 5 that the towing and storage firm checks the unattended or abandoned property
 6 for any type of license plate, license plate record, temporary permit,
 7 inspection sticker, decal, or other evidence which may indicate a possible
 8 state of registration and title.

9 (3) The towing and storage firm shall provide to the law
 10 enforcement officer or agency the results of the search, and if appropriate,
 11 certify that a physical search of the unattended or abandoned vehicle
 12 disclosed that no ownership documents were found and a good faith search was
 13 conducted.

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

20 (d) When a vehicle is removed pursuant to this subchapter by law
 21 enforcement and is subject to impoundment or seizure pursuant to police power
 22 or any lawful order of court, the law enforcement officer shall provide to
 23 the towing and storage firm a written statement setting forth the conditions
 24 of release of the vehicle.

25
 26 SECTION 4. Arkansas Code 27-50-1207, is amended to read as follows:

27 27-50-1207. Removal of vehicles.

28 (a)(1) ~~No~~ Any law enforcement agency which directs the removal of
 29 unattended or abandoned vehicles shall adopt a written vehicle removal
 30 policy, the provisions of which shall not be in conflict with this
 31 subchapter.

32 (2) Any vehicle removal policy shall provide that owner
 33 preference as defined by this subchapter shall be offered to the owner, his
 34 or her agent, or to any competent occupant of any disabled or inoperative
 35 vehicle except in those instances where an emergency exists or where the
 36 immediate clearing of a public thoroughfare mandates an expedited towing

1 service.

2 (3) Nothing in this section shall be construed to authorize the
3 towing of a vehicle in violation with other provisions of this subchapter.

4 (b) All law enforcement officers shall comply with the policies
5 prescribed by their agencies as to the removal of any unattended or abandoned
6 vehicle as defined by this subchapter.

7 (c) No law enforcement officer shall suggest or recommend any
8 particular towing and storage firm to the owner, his or her agent, or to any
9 competent occupant of any disabled or inoperative vehicle except in strict
10 compliance with his or her agency's vehicle removal policy, nor shall law
11 enforcement officers accept gifts or special consideration from the owner of
12 a tow business or anyone acting on the owner's behalf in relation to removal
13 of vehicles as provided by this subchapter.

14 (d) Upon request, any law enforcement officer, or his or her agency,
15 who orders a removal pursuant to this subchapter shall provide to the owner,
16 his or her agent, or to any competent occupant of the removed vehicle the
17 name, location, and telephone number of the towing and storage firm requested
18 to remove and store the vehicle.

19 (e)(1) Should the owner or lienholder of a vehicle removed pursuant to
20 this subchapter consider that the removal of the vehicle was not legally
21 justified, the owner or lienholder may within twenty (20) days after removal
22 or within twenty (20) days after the receipt of notification from the towing
23 and storage firm, whichever is later, seek review to determine if the
24 unattended or abandoned property was wrongfully removed or withheld from the
25 owner through the following procedures:

26 (A) In the case of a vehicle removed by or at the
27 direction of a state agency, by filing a petition with the State Claims
28 Commission;

29 (B) In the case of a vehicle removed by or at the
30 direction of a county or city agency, and when the county or city has
31 established an administrative review process, by filing a petition according
32 to the established administrative review process;

33 (C) In all other cases, including when the county or city
34 has failed to establish an administrative review process, by filing a
35 petition in the circuit court in the county where the unattended or abandoned
36 vehicle is stored; or

1 (2) In the case of a final decision reached through a county or
2 city administrative review, the owner or lienholder may appeal an adverse
3 ruling to the circuit court in the county where the unattended or abandoned
4 vehicle is stored.

5 (3) The petition shall name the state agency ordering the tow as
6 a respondent, and when filed in circuit court shall also name the towing
7 company among the respondents. In the case of removal originated by an
8 agency of a political subdivision of the state, the petition shall name the
9 county, city or town as a respondent.

10 (4) If the vehicle and its contents are subject to impoundment
11 or seizure by law enforcement pursuant to the Arkansas Rules of Criminal
12 Procedure or pursuant to an order by any court, Rule 15 of the Arkansas Rules
13 of Criminal Procedure shall exclusively govern the release of the vehicle and
14 its contents to the extent applicable.

15 (f) (1) Upon filing of the petition, the owner or lienholder may have
16 the unattended or abandoned vehicle and contents released upon posting with
17 the State Claims Commission, court or with the city or county clerk or other
18 person designated by a political subdivision, as the case may be, a cash or
19 surety bond equal to the amount of the charges for the towing and storage to
20 ensure the payment of such charges in the event he or she does not prevail.

21 (2) Upon the posting of the bond and the payment of the
22 applicable fees, the administrative decision-maker, State Claims Commission
23 or court as the case may be, shall issue an order notifying the towing
24 company and the respondent agency of the posting of the bond. Upon receipt
25 of such order, the towing company shall release the stored property.

26 (3) At the time of release, after reasonable inspection, the
27 owner or lienholder shall give a receipt to the towing and storage firm
28 reciting any claim for known loss or damage to the unattended or abandoned
29 property or the contents thereof.

30 (g) Upon determining the respective rights of the parties, the final
31 order of the administrative decision-maker, State Claims Commission or court
32 as the case may be, shall provide for immediate payment in full of the
33 reasonable recovery, towing and storage fees by the unattended or abandoned
34 property owner or lienholder or the respective law enforcement agency.

35 (h) In cases where the owner or lienholder has posted a cash or surety
36 bond to obtain immediate release and the owner or lienholder is found to be

1 responsible for reasonable recovery, towing and storage fees, the
2 administrative decision-maker, State Claims Commission or court, as the case
3 may be, shall declare the bond to be forfeited with the amount paid to the
4 towing and storage firm to cover reasonable recovery, towing and storage
5 fees.

6 (i) Nothing in this section shall be construed to waive the sovereign
7 immunity of the State of Arkansas, nor any immunity granted to its political
8 subdivisions.

9
10 SECTION 5. Arkansas Code 27-50-1208, is amended to read as follows:
11 27-50-1208. Possessory lien.

12 (a) The towing and storage firm shall have a first priority possessory
13 lien on the vehicle and its contents for all reasonable charges for towing,
14 recovery, and storage for which the owner is liable.

15 (b) The lien shall be perfected by:

16 (1) Maintaining possession; and

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

25 ~~(c) Any towing and storage firm failing to give the notice to the~~
26 ~~owner or owners and lienholders as prescribed in § 27-50-1101 shall be in~~
27 ~~violation of the subchapter and shall be subject to the civil penalties as~~
28 ~~prescribed by the Arkansas Towing and Recovery Board or to a suspension or~~
29 ~~revocation of any towing license or permit, or both.~~

30 (c) The notice shall be by certified mail, return receipt requested,
31 and shall be posted not sooner than two (2) business days, but within eight
32 (8) business days after the date the towing and storage firm receives
33 ownership and lienholder information from the law enforcement agency as
34 prescribed by this subchapter.

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

36 (1) The year, make, model, and vehicle identification number of

1 the vehicle towed;

2 (2) The name, address, and telephone number of the storage
3 facility;

4 (3) That the vehicle is in the possession of that towing and
5 storage firm under police order, describing the general circumstances of any
6 law enforcement or other official hold on the vehicle;

7 (4) That towing, storage, and administrative costs are accruing
8 as a legal liability of the owner;

9 (5) That the towing and storage firm claims a first priority
10 possessory lien on the vehicle and its contents for all of such charges;

11 (6) That unless claimed within forty-five (45) days, the vehicle
12 will be dismantled, destroyed, or sold at public sale to the highest bidder.

13 (7) That the failure to exercise their right to reclaim the
14 vehicle and its contents within the time prescribed by this section
15 constitutes a waiver by the owners and lienholders of all right, title, and
16 interest in the vehicle and its contents and constitutes their consent to the
17 sale, dismantling or destruction of the vehicle and its contents;

18 (8) That the owner or lienholder may retake possession at any
19 time during business hours by appearing, proving ownership, and release of
20 law enforcement or other official hold, if any, and paying all charges or
21 other written arrangement between the owner or lienholder and the towing and
22 storage firm; and

23 (9) That, should the owner consider that the original taking was
24 not legally justified, he or she has a right for twenty (20) days to contest
25 the original taking as defined by § 27-50-1207.

26 (e) Nothing in this section is to preclude the owner, lienholder or
27 their agent from making alternative arrangements within the five-day to
28 eight-day time period with the towing and storage firm waiving his or her
29 rights to the notice requirement.

30 (f) When any vehicle reclaimed from the towing and storage firm by a
31 lienholder contains contents not subject to the lienholder's interest, the
32 lienholder shall be accountable to the owner of the contents in the same
33 manner as the lienholder would in any other case of repossession of a
34 vehicle, and the towing and recovery firm releasing the vehicle and its
35 contents shall be relieved from all responsibility for the contents.

36 (g)(1) Any towing and storage firm who in good faith follows the

1 procedures of this subchapter shall not be subject to claims of unlawful
2 detainer or conversion for vehicles or their contents for merely maintaining
3 property pursuant to the possessory lien as provided by this subchapter.

4 (2) Any challenge to the removal of an unattended or abandoned
5 vehicle as provided by this subchapter shall be controlled exclusively by the
6 provisions of § 27-50-1207.

7 (3) Nothing in this section shall be construed to limit
8 liability of the towing and storage firm for any other act or omission
9 otherwise actionable under statutory or common law.

10
11 SECTION 6. Arkansas Code 27-50-1209, shall read as follows:
12 27-50-1209. Foreclosure of liens.

13 (a) The failure of the owner or lienholder to exercise their right to
14 reclaim the vehicle and its contents within the time provided in this
15 subchapter constitutes a waiver by the owner or lienholder of all right,
16 title, and interest in the vehicle and its contents.

17 (b)(1) The towing and storage firm holding a perfected possessory lien
18 on any vehicle and its contents not redeemed by its owner or security
19 lienholder within the forty-five (45) days provided by this subchapter shall
20 sell the vehicle and its contents at a nonjudicial sale for cash.

21 (2) The sale shall not occur later than ninety (90) days after
22 perfection of the lien.

23 (c)(1) The towing and storage firm shall obtain written verification
24 that the Arkansas Crime Information Center records do not list the vehicle as
25 having been reported stolen.

26 (2) The verification shall be on a form prescribed by the Office
27 of Motor Vehicle, a municipal police department, a county sheriffs
28 department, or the Department of Arkansas State Police.

29 (d) Notice of the sale shall be sent at least fifteen (15) days before
30 the date of the sale, by certified mail, no return receipt requested, to the
31 registered owner and lienholder, if any.

32 (e) In addition to the notice by mail, notice of the sale shall be
33 published in a newspaper of general circulation in the county at least once,
34 at least ten (10) days prior to the sale.

35
36 SECTION 7. Arkansas Code 27-50-1210, is amended to read as follows:

1 27-50-1210. Nonjudicial sale

2 (a) After complying with the requirements of foreclosure of liens
 3 provided by this subchapter, ownership of the vehicle and its contents shall
 4 thereupon vest to the purchaser free of all liens of any nature. Should the
 5 nonjudicial sale produce more funds than the sum of all charges, including
 6 the costs of the sale and including a reasonable charge for processing the
 7 paperwork, the excess shall be paid to the county clerk to the account of the
 8 person legally entitled thereto. The Uniform Disposition of Unclaimed
 9 Property Act, § 18-28-201 et seq., will apply to any unclaimed funds.

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

12 (1) Ownership of the vehicle and its contents shall thereupon
 13 vest in the possessory lienholder as purchaser free of all liens of any
 14 nature; and

15 (2) The possessory lienholder shall have a valid claim against
 16 the owner for the full amount of the charges, including the costs of the sale
 17 and including a reasonable charge for processing the paperwork, less the sale
 18 price of the vehicle and its contents. — and

19 ~~(3)(c)(1)~~ Upon presentation of documentation to the Officer of Motor
 20 Vehicle to the effect that the sale procedure provided by § 27-50-1101 in
 21 this subsection has been complied with, protecting the rights of the owner or
 22 lienholder, the purchaser of the vehicle shall be entitled to receive a new
 23 title to the vehicle upon meeting other applicable administrative
 24 requirements of title and registration laws.

25 (2) The towing and storage firm shall execute an affidavit
 26 stating that the vehicle has been towed and stored as an unattended or
 27 abandoned vehicle, that notice has been given as required in this subchapter,
 28 to the registered owners and all lienholders of record.

29 (3) The affidavit shall describe the vehicle by make, year,
 30 model, and vehicle identification number.

31
 32 SECTION 8. EMERGENCY CLAUSE. It is hereby found and determined by the
 33 Eighty-third General Assembly that uncertainty exists concerning the due
 34 process provided when unattended and abandoned vehicles and their contents
 35 are removed by a law enforcement officer in this state, and that additional
 36 procedures should be established whereby certain post-deprivation notice and

1 opportunity for hearing be provided. Therefore, an emergency is declared to
2 exist and this act being immediately necessary for the preservation of the
3 public peace, health and safety shall become effective on the date of its
4 approval by the Governor. If the bill is neither approved nor vetoed by the
5 Governor, it shall become effective on the expiration of the period of time
6 during which the Governor may veto the bill. If the bill is vetoed by the
7 Governor and the veto is overridden, it shall become effective on the date
8 the last house overrides the veto.

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