

State of Arkansas  
85th General Assembly  
Regular Session, 2005

# A Bill

HOUSE BILL 2549

By: Representative L. Smith

## For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING THE  
NONCONSENSUAL TOWING AND RECOVERY OF VEHICLES;  
AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE LAW REGARDING THE  
NONCONSENSUAL TOWING AND RECOVERY OF  
VEHICLES.

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

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

27-50-1101. ~~Procedure to sell abandoned~~ Nonconsensual towing of  
vehicles.

(a)(1)(A) When any vehicles of a type subject to registration under the laws of this state are found abandoned on private or public property within this state or are parked on private or public property within this state without the authorization of the property owners or other persons controlling the property, the property owners or ~~their~~ agents may have the vehicle removed from their property by a towing and storage firm licensed by the Arkansas Towing and Recovery Board.

(B) Prior to the removal of abandoned vehicles or of vehicles parked without authority as provided by this section, the towing and storage firm shall obtain in writing from the property owners or agents a written statement that includes at a minimum the following:

(i) Identification of the property owner or agent, including name, address, and telephone number;



1                   (ii) A statement that the property from which the  
 2 vehicle is to be removed is property owned or otherwise under the control of  
 3 the agent requesting the removal;

4                   (iii) That the vehicle is deemed abandoned or has  
 5 been parked on the property without authorization, as the case may be;

6                   (iv) The make, model, and vehicle identification  
 7 number of the vehicle to be removed;

8                   (v) The location to which the vehicle will be  
 9 removed, including the name, address, and telephone number of the towing and  
 10 storage firm removing the vehicle; and

11                  (vi) The signature of the property owner or agent  
 12 requesting removal of the vehicle.

13                  (C) A copy of the written statement shall be left with the  
 14 property owner or agent who shall make the written statement available for  
 15 inspection upon request by any person claiming an interest in the removed  
 16 vehicle.

17                  (D) The towing and storage firm removing the vehicle shall  
 18 retain a copy of the written statement for three (3) years and make the  
 19 statement available during regular business hours upon request to any person  
 20 claiming an interest in the removed vehicle or upon request to any law  
 21 enforcement officer.

22                  ~~(B)~~(E) Vehicles on the premises of an automobile repair  
 23 business shall be deemed abandoned if either the vehicle is unclaimed by the  
 24 vehicle owner within forty-five (45) days or the debt is not paid within  
 25 forty-five (45) days from the time the repair work is complete.

26                  (F) No towing and storage firm shall remove any abandoned  
 27 vehicle or improperly parked vehicle without the authorization of the  
 28 property owner or agent as provided in this section, except as may otherwise  
 29 be authorized by the provisions of § 27-50-1201 et seq., or as directed by  
 30 any law enforcement officer.

31                  (G) No towing and storage firm removing a vehicle as  
 32 provided by this section shall pay any compensation related to the removal of  
 33 the vehicle, whether as a referral fee or otherwise, to the owner or agent  
 34 requesting the removal of the vehicle.

35                  (2)(A) ~~The towing and storage firm which takes possession of and~~  
 36 ~~stores the abandoned vehicle~~ Any person towing a vehicle as provided by this

1 section, and any person towing a vehicle without the authorization of the  
 2 owner of the vehicle, or the owner's agent, including towing pursuant to a  
 3 directive of repossession from a holder of a security interest in the  
 4 vehicle, shall notify the local police or sheriff's department within whose  
 5 jurisdiction the vehicle was removed of the vehicle's removal within ~~six (6)~~  
 6 ~~hours~~ two (2) hours of taking possession of the vehicle.

7 (B) The towing and storage firm may not charge a storage  
 8 fee for the vehicle for the time it is stored prior to the notification  
 9 required to the local police or sheriff's department.

10 (C) Each police or sheriff's department receiving  
 11 notification of the removal of a vehicle as provided in this subsection shall  
 12 maintain a log recording the make, model, and vehicle identification number  
 13 of the vehicle, the date, time, and location of the removal, and the name,  
 14 address, and phone number of the person removing the vehicle.

15 ~~(3) Not later than the tenth day after taking possession of and~~  
 16 ~~storing the vehicle or its being deemed abandoned, the towing and storage~~  
 17 ~~firm which takes possession of and stores the abandoned vehicle or the~~  
 18 ~~automobile repair business upon whose premises the vehicle has been deemed~~  
 19 ~~abandoned shall notify by certified mail with return receipt requested the~~  
 20 ~~last known registered owner of the vehicle and all lienholders of record~~  
 21 ~~pursuant to § 27-14-101 et seq. that the vehicle is being held, and unless~~  
 22 ~~claimed within forty five (45) days will be dismantled, destroyed, or sold at~~  
 23 ~~public sale to the highest bidder. The name of the last known registered~~  
 24 ~~owner of the vehicle and all lienholders of record may be obtained from the~~  
 25 ~~records of the Office of Motor Vehicle, the Arkansas Crime Information Center~~  
 26 ~~records, or the motor vehicle records of any other state where the vehicle~~  
 27 ~~was last registered. Nothing in this section shall preclude the owner or his~~  
 28 ~~or her authorized agent from making alternative arrangements with the towing~~  
 29 ~~and storage firm within the ten day time period and waiving, in writing, his~~  
 30 ~~or her right to the required notice.~~

31 ~~(A) The notice shall describe the year, make, model, and~~  
 32 ~~vehicle identification number of the abandoned vehicle, set forth the name,~~  
 33 ~~address, and telephone number of the facility where the vehicle is being~~  
 34 ~~held, and inform the owner and any lienholders of their right to reclaim the~~  
 35 ~~vehicle not later than the forty fifth day after the date of the notice upon~~  
 36 ~~payment of all towing and storage charges resulting from placing the vehicle~~

1 in the custody of the towing and storage firm or upon payment of all  
 2 outstanding bills due the automobile repair business. Notices to owners of  
 3 vehicles deemed abandoned on the premises of automobile repair facilities  
 4 shall also advise that the auto repairman holds an absolute lien on the  
 5 vehicle pursuant to § 18-45-201 et seq.

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

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

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

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

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

31 (5) The towing and storage firm or the owner or operator of the  
 32 automobile repair business shall obtain written verification that the  
 33 Arkansas Crime Information Center records do not list the vehicle as having  
 34 been reported stolen. The verification shall be on a form prescribed by the  
 35 Arkansas State Highway and Transportation Department, a municipal police  
 36 department, a county sheriff's department, or the Department of Arkansas

~~State Police. Upon receipt of the form, the holder shall then sell the vehicle at public sale to the highest bidder.~~

~~(6) The towing and storage firm or automobile repair business shall supply the buyer with the necessary documentation required in this section for the sale of the vehicle, and the buyer shall then apply to the nearest revenue office for the title of the vehicle, submitting the affidavit and documentation and paying all license fees, title fees, and taxes required by law.~~

~~(7) If the sale of the vehicle produces more funds than the sum of all charges, including the costs of the sale and including a reasonable charge for processing the paperwork, then after forty five (45) days from the date of the sale if no claim has been made by any owner or lienholder for the balance of the proceeds, the balance of the proceeds of the sale shall go to the Treasurer of State for deposit in the State Highway and Transportation Department Fund, accompanied by a written statement itemizing the various deductions from the gross sales price of the vehicle signed by the selling party.~~

~~(b) If the person who has custody of an abandoned vehicle fails to comply with the notice requirement of subsection (a) of this section within ten (10) days of the date the vehicle is obtained or deemed abandoned, the amount recoverable for storage shall be forfeited.~~

(3) Following removal of an abandoned vehicle or vehicle parked without authority, possession of the vehicle, notice requirements to owners and lienholders, and procedures for sale of unclaimed vehicles shall be governed by the provisions of §§ 27-50-1208, 27-50-1209, and 27-50-1210.

(b)(1) It shall be unlawful for a person to:

(A) Direct the removal or to remove a vehicle in violation of this section; and

(B) Violate or aid or abet any violation of this section;

(2) A person who pleads guilty or nolo contendere to or is found guilty of any violation of this section is guilty of a Class B misdemeanor.

(3) Each vehicle removal in violation of this section shall constitute a distinct and separate offense.

~~(c) Upon presentation of documentation to the office establishing compliance with the sale procedure in this section protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to~~

~~receive a new title to the vehicle upon meeting other applicable  
administrative requirements of the title and registration laws.~~

SECTION 2. Arkansas Code § 27-50-1204 is amended to read as follows:  
27-50-1204. 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 towing, recovery, storage, and other incidental costs related to such removal in excess of the proceeds of the sale of the vehicle.

(b) Any law enforcement agency which, without reasonable justification, fails to provide information to the towing-storage firm within twenty-four (24) hours as prescribed by this subchapter, shall be liable to the towing-storage firm for any accrued storage fees between the expiration of the twenty-four-hour period and such times as the information is provided.

(c) Upon any complaint, or on its own initiative, when the board has reason to believe that a law enforcement officer failed to adhere to an owner preference request or otherwise violated this subchapter, the board may investigate the matter and submit its findings to proper law enforcement authorities.

(d) Any person, excluding law enforcement officers, who is determined by the Arkansas Towing and Recovery Board, after reasonable notice and opportunity for a fair and impartial hearing held in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to have committed an act that is in violation of this subchapter or any rules and regulations promulgated hereunder, is subject to civil penalties prescribed by the board, e.g., monetary penalties not to exceed five hundred dollars (\$500) and/or suspension or revocation of any towing license or permit.

(e) Nothing in this section shall be construed to limit the right to ~~contest such penalties by judicial review in a court of competent jurisdiction.~~ seek judicial review of any determination of the Arkansas Towing and Recovery Board pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SECTION 3. Arkansas Code § 27-50-1208 is amended to read as follows:  
27-50-1208. Possessory lien and notice to owners and lienholders.

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

4 (b) The lien shall be perfected by:

5 (1) Maintaining possession; ~~and~~

6 (2) ~~Giving~~ Mailing notice to the owner or owners and lienholders  
 7 as shown on the data provided by the law enforcement agency involved as  
 8 prescribed by this subchapter~~+~~; or

9 (3) In the case of a vehicle removed pursuant to § 27-50-1101,  
 10 giving notice to the last known registered owner or owners and lienholders as  
 11 provided from the records of the Office of Motor Vehicle of the Department of  
 12 Finance and Administration.

13 (c)(1) The notice shall be by certified mail, return receipt  
 14 requested~~+~~.

15 (2) The notice ~~and~~ shall be posted not sooner than two (2)  
 16 business days, but within eight (8) business days after the date that the  
 17 towing and storage firm receives the vehicle.

18 (d)(1) If within forty-eight (48) hours the ownership and lienholder  
 19 information has not been received from the law enforcement agency requesting  
 20 the removal of a vehicle pursuant to as prescribed by this subchapter~~+~~, the  
 21 towing and storage firm shall obtain information concerning the last known  
 22 registered owner or owners and lienholders as provided from the records of  
 23 the Office of Motor Vehicle.

24 (2)(A) For the purposes of notices required by this section, if  
 25 the data records of the Office of Motor Vehicle do not contain any  
 26 information as to the last known registered owner or owners and lienholders,  
 27 notice by publication one (1) time in one (1) newspaper of general  
 28 circulation in the county where the vehicle was found unattended, abandoned,  
 29 or improperly parked is sufficient notice under this section.

30 (B) The notice by publication may contain multiple listings of  
 31 vehicles, shall be published within the time requirements prescribed for  
 32 notice by certified mail, and shall have the same contents required for a  
 33 notice by certified mail.

34 ~~(d)~~(e) The notice shall contain the following information:

35 (1) The year, make, model, and vehicle identification number of  
 36 the vehicle towed;

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

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

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

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

(6) That unless claimed within forty-five (45) days, the vehicle and its contents will be dismantled, destroyed, or sold at public sale to the highest bidder;

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

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

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

(10) Notices to owners of vehicles deemed abandoned on the premises of automobile repair facilities pursuant to § 27-50-1101 shall also advise that the automobile repairman holds an absolute lien on the vehicle pursuant to § 18-45-201 et seq.

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

~~(f)~~(g) When any vehicle reclaimed from the towing and storage firm by a lienholder contains contents not subject to the lienholder's interest, the lienholder shall be accountable to the owner of the contents in the same



1 manner as the lienholder would in any other case of repossession of a  
 2 vehicle, and the towing and recovery firm releasing the vehicle and its  
 3 contents shall be relieved from all responsibility for the contents.

4 ~~(g)~~(h)(1) Any towing and storage firm who in good faith follows the  
 5 procedures of this subchapter or the provisions of § 27-50-1101 shall not be  
 6 subject to claims of unlawful detainer or conversion for vehicles or their  
 7 contents for merely maintaining property pursuant to the possessory lien as  
 8 provided by this subchapter.

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

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

15  
 16 SECTION 4. Arkansas Code § 27-50-1209 is amended to read as follows:  
 17 27-50-1209. Foreclosure of liens.

18 (a) The failure of the owner or lienholder to exercise his, her, or  
 19 its right to reclaim the vehicle and its contents within the time provided in  
 20 this subchapter constitutes a waiver by the owner or lienholder of all right,  
 21 title, and interest in the vehicle and its contents.

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

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

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

31 (2) The verification shall be on a form prescribed by the  
 32 Arkansas Crime Information Center, the Office of Motor Vehicle, a municipal  
 33 police department, a county sheriff's department, or the Department of  
 34 Arkansas State Police.

35 (3) When the verification provided by this subsection is sought  
 36 directly from the Arkansas Crime Information Center by the towing and storage

1 firm, the Arkansas Crime Information Center may charge a fee not to exceed  
 2 ten dollars (\$10.00) per vehicle verification.

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

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

9  
 10 SECTION 5. Arkansas Code § 27-50-1210 is amended to read as follows:

11 27-50-1210. Nonjudicial public sale.

12 (a) After complying with the requirements of foreclosure of liens  
 13 provided by this subchapter, ownership of the vehicle and its contents shall  
 14 thereupon vest in the purchaser free of all liens of any nature. Should the  
 15 nonjudicial, public sale produce more funds than the sum of all charges,  
 16 including the costs of the sale and including a reasonable charge for  
 17 processing the paperwork, the excess shall be paid as follows:

18 (1)(A) If the vehicle was removed to ~~a government-owned~~ an  
 19 impound lot at the request of a law enforcement agency as authorized by this  
 20 subchapter, the excess shall be maintained for a period of three (3) years by  
 21 the ~~governmental~~ entity that operates the impound lot.

22 (B) If the excess is not claimed during this period by the  
 23 person legally entitled thereto, the monies shall be paid ~~into the general~~  
 24 ~~fund of the governmental~~ to the entity operating the impound lot; or

25 (2) If the vehicle was removed to a private impound lot pursuant  
 26 to § 27-50-1101, the excess shall be paid to the county clerk to the account  
 27 of the person legally entitled thereto. The Unclaimed Property Act, § 18-28-  
 28 201 et seq., shall apply to any unclaimed funds or excess ~~monies~~ moneys that  
 29 have been paid to the county clerk derived from the nonjudicial, public sale  
 30 of a vehicle impounded at a private impound lot pursuant to this  
 31 subchapter.

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

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

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

(c)(1) Upon presentation of documentation to the Officer of Motor Vehicle to the effect that the sale procedure provided in this subsection has been complied with, protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to receive a new title to the vehicle upon meeting other applicable administrative requirements of title and registration laws.

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

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

SECTION 6. Arkansas Code § 27-50-1212 is amended 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) Operate a tow vehicle without obtaining a tow vehicle safety permit as required by the rules of the Arkansas Towing and Recovery Board;

(3) Operate a business engaging in nonconsensual towing of vehicles without first obtaining the proper tow business license as required by the rules of the Arkansas Towing and Recovery Board;

~~(2)(4)~~ Give false or forged evidence to the Arkansas 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)(5)~~ Use or attempt to use an expired, suspended, or revoked license or tow vehicle safety permit; or

~~(4)(6)~~ Violate or aid or abet any violation of this subchapter.

(b) A person who pleads guilty or nolo contendere to 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

1 exceeding ninety (90) days or both.

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

4  
5 SECTION 7. Arkansas Code § 27-51-1305 is amended to read as follows:  
6 27-51-1305. Removal of motor vehicles parked without authority in  
7 parking lots.

8 (a) Consistent with the procedures of § 27-50-1101, the ~~The~~ owner of a  
9 parking lot, or his agent, or the lessee of a space in a parking lot may  
10 cause any motor vehicle parked on the lot without the consent of the owner of  
11 the lot, or his agent, or parked in the space of the lessee without the  
12 consent of the lessee, to be removed and stored at the expense of the owner  
13 or operator of the vehicle if a readable sign is prominently placed at each  
14 entrance to the lot specifying those persons who may park in the lot and  
15 prohibiting parking therein by all others.

16 (b) The owner of a lot or the lessee of a space in a lot who has an  
17 unauthorized vehicle removed and stored under the provisions of subsection  
18 (a) of this section shall not be liable for damages incurred by the owner or  
19 operator of an unauthorized vehicle as a result of removal or storage if the  
20 vehicle is removed by an insured vehicle wrecker service and stored by an  
21 insured storage company.

22  
23 SECTION 8. Arkansas Code § 23-89-211 is amended to read as follows:  
24 23-89-211. Total loss settlements.

25 (a) If an insurer settles a claim for damages to an automobile as a  
26 total loss to its own insured or a person having a claim against its insured,  
27 the insurer shall include with the payment for the loss:

28 (1) All applicable taxes, including sales taxes and fees as  
29 required under Rule and Regulation 43 of the State Insurance Department; and

30 (2) An itemized list stating the amount of the claim  
31 attributable to the value of the automobile and attributable to the sales tax  
32 on an automobile of that value.

33 (b) When settling a claim against an insured for damages to an  
34 automobile as a total loss, the insurer will take into consideration all  
35 applicable taxes, license fees, and other fees.

36 (c) An insurer may not abandon salvage to a towing or storage facility

in lieu of payment of towing and storage fees without the consent of the facility and the insured.

~~(e)~~(d) The failure of an insurer to comply with the requirements of subsections (a) ~~and (b)~~ through (c) of this section shall be considered an unfair claims settlement practice under § 23-66-206(13).