

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S3/31/05
A Bill

HOUSE BILL 2721

5 By: Representative Kenney
6 By: Senator Salmon
7
8

9 **For An Act To Be Entitled**

10 AN ACT TO AMEND THE TOWING AND RECOVERY LAWS OF
11 THE STATE OF ARKANSAS FOR THE PROTECTION OF THE
12 CONSUMERS OF THE STATE; AND FOR OTHER PURPOSES.
13

14 **Subtitle**

15 TO AMEND THE TOWING AND RECOVERY LAWS OF
16 THE STATE OF ARKANSAS FOR THE PROTECTION
17 OF THE CONSUMERS OF THE STATE.
18
19

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

22 SECTION 1. Arkansas Code Title 27, Chapter 50, Subchapter 12, is
23 amended to add the following sections to read as follows:

24 27-50-1213. Rules of order or procedure.

25 (a) The Arkansas Towing and Recovery Board shall prescribe its rules
26 of order or procedure in hearings or other proceedings before it under this
27 subchapter.

28 (b) However, rules of order or procedure shall not be in conflict or
29 contrary to the provisions of this subchapter or the Arkansas Administrative
30 Procedure Act, § 25-15-201 et seq.
31

32 27-50-1214. Summons, citation, and subpoena.

33 (a) It shall be the duty of the sheriffs and constables of the
34 counties of this state and of any employee of the Arkansas Towing and
35 Recovery Board, when so directed by the board, to execute any summons,
36 citation, or subpoena that the board may cause to be issued and to return the



1 summons, citation, or subpoena to the board.

2 (b)(1) The sheriffs and constables serving and returning any summons,
3 citation, or subpoena shall be paid the same fees as provided for those
4 services in the circuit court.

5 (2) Any person, or a duly designated employee of the person, who
6 appears before the board in response to a summons, citation, or subpoena
7 shall be paid the same witness fee and mileage allowance as witnesses in the
8 circuit court.

9 (c)(1) In case of failure or refusal on the part of any person to
10 comply with any summons, citation, or subpoena issued and served as
11 authorized, or in the case of the refusal of any person to testify or answer
12 to any matter regarding that which he or she may be lawfully interrogated, or
13 the refusal of any person to produce his or her record books and accounts
14 relating to any matter regarding that which he or she may be lawfully
15 interrogated, the circuit court of any county of the State of Arkansas, on
16 application of the Arkansas Towing and Recovery Board, may:

17 (A) Issue an attachment for the person; and

18 (B) Compel the person to:

19 (i) Comply with the summons, citation, or subpoena;

20 (ii) Appear before the board or its designated
21 employee;

22 (iii) Produce the documents specified in any
23 subpoena duces tecum; and

24 (iv) Give his or her testimony upon such matters as
25 he or she may be lawfully required.

26 (2) Any circuit court shall have the power to punish a person
27 for contempt as in the case of disobedience of like process issued from or by
28 any circuit court or by refusal to testify in the circuit court in response
29 to the process, and the person shall be taxed with the costs of the
30 proceedings.

31
32 *SECTION 2. Arkansas Code § 27-50-1203 is amended to read as follows:*

33 *27-50-1203. Arkansas Towing and Recovery Board -- Creation.*

34 *(a)(1) There is hereby created the Arkansas Towing and Recovery Board*
35 *consisting of nine (9) members appointed by the Governor and confirmed by the*
36 *Senate, who shall serve terms of three (3) years.*

1 (2) ~~four~~ Four (4) members shall be appointed from the towing
2 industry and shall be licensed by the board to engage in nonconsent towing,
3 with one (1) of the members being a resident of each of the four (4)
4 congressional districts; two (2) members who are permitted to engage in the
5 consent-only business shall be appointed from the state at large; two (2)
6 members who are not associated with the towing industry shall be appointed
7 from the state at large; and one (1) member shall be appointed from the
8 insurance industry.

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

10 (b) The appointed board members shall be residents of the State of
11 Arkansas at the time of appointment and throughout their terms.

12 (c)(1) The members shall determine by majority vote of the quorum of
13 the board who shall serve as chair.

14 (2) The chair shall be elected annually from the membership of
15 the board.

16 (d)(1) The board shall meet at such times and places that the chair
17 deems necessary, but no meetings shall be held outside the State of Arkansas.

18 (2) Five (5) of the members of the board shall constitute a
19 quorum for the purpose of transacting business.

20 (3) All actions of the board shall be by a quorum.

21 ~~(e)(1)~~(e)(1) The board shall promulgate rules and regulations to carry
22 out the intent of this subchapter and shall regulate the towing industry,
23 including:

24 (A) Establishing reasonable licensing, insurance, and
25 safety equipment requirements for any person engaging in nonconsent towing
26 and related services under this subchapter; ~~and~~

27 (B) Establishing reasonable tow truck safety requirements
28 for any tow vehicle as defined in this subchapter;

29 (C) Establishing a procedure to accept and investigate
30 complaints for a consumer who claims that he or she has been overcharged for
31 consent or nonconsent towing or storage fees;

32 (D) Determining and sanctioning excessive or unnecessary
33 non-consensual towing fees charged to consumers;

34 (E) Requiring all entities permitted, licensed, or
35 regulated under this subchapter to provide itemized billing for towing or
36 storage fees that explains how the charges were calculated; and

1 (F) Requiring all entities permitted, licensed, or
2 regulated under this subchapter to maintain a copy of their current maximum
3 rate schedule posted in a conspicuous place and readily accessible to the
4 public.

5 (2) The promulgation and adoption of rules and regulations shall
6 in all respects be in the manner provided by the Arkansas Administrative
7 Procedure Act, § 25-15-201 et seq.

8 (3) After the promulgation and adoption of rules or regulations,
9 any proposed change to add to, amend, repeal, or change any of the rules or
10 regulations shall not have effect until reviewed and approved by the
11 Subcommittee on Administrative Rules and Regulations of the Legislative
12 Council subsequent to the time that the General Assembly next meets in
13 regular session unless a finding exists that imminent peril to the public
14 health, safety, or welfare requires immediate adoption, amendment, or repeal
15 of the rules or regulations.

16 ~~(d)(1)~~(f)(1) The board shall have the authority to levy applicable
17 towing business license fees not to exceed one hundred dollars (\$100) per
18 license, and the board shall have the authority to levy an applicable tow
19 vehicle safety permit fee not to exceed twenty-five dollars (\$25.00) per tow
20 vehicle safety permit.

21 (2) Furthermore, the board shall also have the authority to
22 impose late filing fees in an amount not to exceed the original amount of the
23 license fee or safety permit fee.

24 ~~(e)(g)(1)~~ The board shall have the authority to employ and discharge
25 any personnel as may be necessary to administer and enforce the provisions of
26 this subchapter and the rules and regulations promulgated hereunder.

27 (2) The board shall employ an investigator to investigate
28 consumer complaints related to overcharging for consent or nonconsent towing
29 or storage fees, violations of this subchapter, and violations of the rules
30 promulgated by the Arkansas Towing and Recovery Board under this subchapter.

31 ~~(f)(h)~~ The board shall have the authority to obtain office space,
32 furniture, stationery, and other proper supplies and conveniences reasonably
33 necessary to carry out the provisions of this subchapter.

34 ~~(g)(i)~~ Each member of the board may receive expense reimbursement and
35 stipends in accordance with § 25-16-901 et seq.

36 ~~(h)(1)~~(j) The board shall have the authority to establish a maximum

1 amount to be charged by a towing business for each notification to an owner
2 and a lienholder as required by this subchapter.

3 ~~(2) This authority shall not extend to the setting of any other~~
4 ~~rate or tariff within the towing industry.~~

5
6 SECTION 3. Arkansas Code § 27-50-1201 is amended to read as follows:
7 27-50-1201. Applicability.

8 (a) The provisions of this subchapter shall apply to any person, firm,
9 organization, or other entity engaged in the towing or storage of vehicles in
10 the State of Arkansas.

11 (b) The provisions of this subchapter shall not apply to the following
12 tow vehicles and related equipment:

13 (1) Car carriers capable of carrying five (5) or more vehicles
14 and which have federal Interstate Commerce Commission authority;

15 (2) Tow vehicles owned by a governmental entity and not used for
16 commercial purposes; and

17 (3) Tow vehicles that are registered in another state, operating
18 under federal Interstate Commerce Commission authority, and which do not
19 regularly do business or solicit business in the State of Arkansas. However,
20 any tow vehicle for which this exemption is claimed must be in compliance
21 with § 27-35-112.

22
23 SECTION 4. Arkansas Code § 27-50-1204 is amended to read as follows:
24 27-50-1204. Penalties.

25 (a) The owner of a vehicle, or the person who left the same unattended
26 or abandoned, shall be liable for all reasonable costs of towing, recovery,
27 storage, and other incidental costs related to such removal in excess of the
28 proceeds of the sale of the vehicle.

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

34 (c) Upon any complaint, or on its own initiative, when the board has
35 reason to believe that a law enforcement officer failed to adhere to an owner
36 preference request or otherwise violated this subchapter, the board may

1 investigate the matter and submit its findings to proper law enforcement
2 authorities.

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

11 (e) Nothing in this section shall be construed to limit the right to
12 contest such penalties by judicial review in a court of competent
13 jurisdiction.

14

15 SECTION 5. Arkansas Code § 27-50-1206 is amended to read as follows:
16 27-50-1206. Notice to storage firm.

17 (a)(1) Any order issued by a law enforcement officer to a licensed
18 towing and storage firm to remove and store an unattended or abandoned
19 vehicle shall provide information supplied from the records of the Office of
20 Motor Vehicle, Arkansas Crime Information Center records or the motor vehicle
21 records of any other state indicating the name and address of the last
22 registered owner, the name and address of the holder of any recorded lien on
23 the vehicle, and the vehicle identification or serial number of the vehicle.

24 (2) If there is evidence in the vehicle indicating that the
25 vehicle is registered in another state, the information shall be supplied
26 from the motor vehicle records of that state.

27 (b)(1) In the event that readily available records fail to disclose
28 the name of the owner or any lienholder of record, the law enforcement
29 officer or his or her agency shall notify the towing and storage firm, which
30 shall perform a good faith search to locate documents or other evidence of
31 ownership and lienholder information on or within the unattended or abandoned
32 vehicle.

33 (2) For purposes of this subsection, a "good faith search" means
34 that the towing and storage firm checks the unattended or abandoned property
35 for any type of license plate, license plate record, temporary permit,
36 inspection sticker, decal, or other evidence which may indicate a possible

1 state of registration and title.

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

7 (c)(1) Within not more than twenty-four (24) hours from the order to
8 remove, the officer involved or his or her agency shall contact the towing
9 and storage firm advising of any unusual circumstances causing the delay of
10 the required information that was not available to the officer at the time
11 the order to remove was issued.

12 (2) The officer or agency shall provide the delayed information
13 immediately upon receipt.

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

19

20 SECTION 6. Arkansas Code § 27-50-1207 is amended to read as follows:
21 27-50-1207. Removal of vehicles.

22 (a)(1) Any law enforcement agency which directs the removal of
23 unattended or abandoned vehicles shall adopt a written vehicle removal
24 policy, the provisions of which shall not be in conflict with this
25 subchapter.

26 (2)(A) Any vehicle removal policy shall provide that owner
27 preference as defined by this subchapter shall be offered to the owner, to
28 his or her agent, or to any competent occupant of any disabled or inoperative
29 vehicle except in those instances where an emergency exists or where the
30 immediate clearing of a public thoroughfare mandates an expedited towing
31 service.

32 (B) If a law enforcement officer fails to provide an owner
33 of a vehicle with an owner preference in a nonemergency situation, then the
34 owner may file a complaint with the law enforcement agency that employs the
35 law enforcement officer, the Arkansas Towing and Recovery Board, or both.

36 (3) Nothing in this section shall be construed to authorize the

1 towing of a vehicle in violation with other provisions of this subchapter.

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

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

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

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

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

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

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

35 (2) In the case of a final decision reached through a county or
36 city administrative review, the owner or lienholder may appeal an adverse

1 ruling to the circuit court in the county where the unattended or abandoned
2 vehicle is stored.

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

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

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

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

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

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

34 (h) In cases where the owner or lienholder has posted a cash or surety
35 bond to obtain immediate release and the owner or lienholder is found to be
36 responsible for reasonable recovery, towing, and storage fees, the

1 administrative decision maker, commission, or court, as the case may be,
2 shall declare the bond to be forfeited, with the amount paid to the towing
3 and storage firm to cover reasonable recovery, towing, and storage fees.

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

7
8 SECTION 7. Arkansas Code § 27-50-1208(c), regarding possessory liens,
9 is amended to read as follows:

10 (c) The notice shall be mandatory and by certified mail, return
11 receipt requested, and shall be posted not sooner than two (2) business days,
12 but within eight (8) business days after the date that the towing and storage
13 firm receives ownership and lienholder information from the law enforcement
14 agency as prescribed by this subchapter.

15
16 SECTION 8. Arkansas Code § 27-50-1209(c)(2), regarding foreclosure of
17 liens, is amended to read as follows:

18 (2) The verification shall be on a form prescribed by the Office
19 of Motor Vehicle, a municipal police department, a county sheriff's
20 department, ~~or the Department of Arkansas State Police,~~ or the Arkansas Crime
21 Information Center.

22
23 SECTION 9. Arkansas Code § 27-50-1210 is amended to read as follows:
24 27-50-1210. Nonjudicial sale.

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

31 (1)(A) If the vehicle was removed to a government-owned impound
32 lot, the excess shall be maintained for a period of three (3) years by the
33 governmental entity that operates the impound lot.

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

1 (2) If the vehicle was removed to a private impound lot, the
2 excess shall be paid to the county clerk to the account of the person legally
3 entitled thereto. The Unclaimed Property Act, § 18-28-201 et seq., shall
4 apply to any unclaimed funds or excess monies derived from the nonjudicial
5 sale of a vehicle impounded at a private impound lot pursuant to this
6 subchapter.

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

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

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

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

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

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

28
29 SECTION 10. Arkansas Code § 27-50-1211 is amended to read as follows:

30 27-50-1211. Disposition of funds.

31 (a) All fees, fines, and charges collected by the ~~board~~ Arkansas
32 Towing and Recovery Board under the provisions of this subchapter shall be
33 paid to the secretary-treasurer who shall be the custodian of all funds and
34 shall deposit same in a bank or banks to be designated by the board.

35 (b) The secretary-treasurer shall execute a bond in the amount
36 determined by the State Risk Manager pursuant to the blanket bond program as

1 authorized in § 21-2-601 et seq. [repealed].

2 (c) The secretary-treasurer shall pay funds of the board only on
3 vouchers signed by himself or herself and countersigned by the chairman. The
4 total expenses for all purposes and obligations of the board shall not exceed
5 the total fees, charges, and other funds paid to the board under the
6 provisions of this subchapter.

7 (d) The secretary-treasurer shall make semiannual financial reports in
8 detail to the board not later than January 31 and July 31 of each year, which
9 financial reports will be kept on permanent file by the board.

10 /s/ Kenney

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36