

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

As Engrossed: S3/10/05

A Bill

SENATE BILL 978

4
5 By: Senator Malone
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For An Act To Be Entitled

9 AN ACT TO PROTECT THE RIGHTS OF PERFECTED
10 LIENHOLDERS OF VEHICLES THAT HAVE INCURRED TOWING
11 AND STORAGE CHARGES; TO CREATE A LIEN ON MOTOR
12 VEHICLES FOR TOWING AND STORAGE FEES; AND FOR
13 OTHER PURPOSES.
14

Subtitle

15 TO PROTECT THE RIGHTS OF PERFECTED
16 LIENHOLDERS OF VEHICLES THAT HAVE
17 INCURRED TOWING AND STORAGE CHARGES.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code §§ 27-50-1207 through 27-50-1210 are amended
24 to read as follows:

25 27-50-1207. Removal of vehicles.

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

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

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 or storage company shall release the stored property to the owner or~~
25 ~~any other lienholder that does not have a lien created under this subchapter.~~

26 ~~(3)(2)~~ (2) At the time of release, after reasonable inspection, the
27 owner or the 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, commission, or court as the case~~
32 ~~may be, shall provide for immediate payment in full of the reasonable~~
33 ~~recovery, towing, and storage fees by the owner or lienholder of the~~
34 ~~unattended or abandoned property or by 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, commission, or court, as the case may be,~~
 3 ~~shall declare the bond to be forfeited, with the amount paid to the towing~~
 4 ~~and storage firm to cover reasonable recovery, towing, and storage fees.~~

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

8
 9 27-50-1208. ~~Possessory lien~~ Lien.

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

13 (b)(1) The lien shall be perfected by:

14 ~~(1)(A)~~ Maintaining Having possession of the vehicle; and

15 ~~(2)(B)~~ Giving notice to the owner or owners and
 16 lienholders as shown on the data provided by the law enforcement agency
 17 involved as prescribed by this subchapter; and

18 ~~(3)(C)~~ Filing the lien with the Office of Motor Vehicle of
 19 the Department of Finance and Administration.

20 (2)(A) A lien under this subchapter shall be subject to the
 21 perfected lien of a financial institution or vendor of automobiles, trucks,
 22 tractors, or all other motor-propelled conveyances for any claim for the
 23 balance of purchase money due on the vehicle.

24 (B) A lien under this subchapter shall not take precedence
 25 over a bona fide purchaser for value of any automobile, truck, tractor, or
 26 other motor-propelled conveyances without either actual or constructive
 27 notice.

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

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

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

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

1 facility;

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

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

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

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

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

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

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

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

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

34 ~~(g)(1) Any towing and storage firm who in good faith follows the~~
35 ~~procedures of this subchapter shall not be subject to claims of unlawful~~
36 ~~detainer or conversion for vehicles or their contents for merely maintaining~~

1 ~~property pursuant to the possessory lien as provided by this subchapter.~~

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

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

8
9 27-50-1209. Foreclosure of liens.

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

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

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

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

23 (2) The verification shall be on a form prescribed by the Office
24 of Motor Vehicle, a municipal police department, a county sheriff's
25 department, or the Department of Arkansas State Police.

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

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

32
33 27-50-1210. Nonjudicial sale.

34 (a) After complying with the requirements of foreclosure of liens
35 provided by this subchapter, ownership of the vehicle and its contents shall
36 thereupon vest in the purchaser free of all liens of any nature. Should the

1 nonjudicial sale produce more funds than the sum of all charges, including
2 the costs of the sale and including a reasonable charge for processing the
3 paperwork, the excess shall be paid as follows:

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

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

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

16 ~~(b) Should the sale produce the same or less than the sum of all~~
17 ~~charges;~~

18 ~~(1) Ownership of the vehicle and its contents shall thereupon~~
19 ~~vest in the possessory lienholder as purchaser free of all liens of any~~
20 ~~nature; and~~

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

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

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

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

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SECTION 2. Arkansas Code Title 27, Chapter 50, Subchapter 12 is amended to add an additional section to read as follows:

27-50-1213. Limitation.

Nothing in this subchapter shall supersede or preempt a lien that has been perfected or a lienholder who holds a perfected lien.

/s/ Malone