

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 86th General Assembly
3 Regular Session, 2007

A Bill

SENATE BILL 805

4
5 By: Senator T. Smith
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For An Act To Be Entitled

8
9 AN ACT TO CLARIFY THE PROCEDURES CONCERNING THE
10 NONCONSENSUAL TOWING OF A VEHICLE; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13
14 TO CLARIFY THE PROCEDURES CONCERNING THE
15 NONCENSUAL TOWING OF A VEHICLE.
16 STATE, COUNTY, AND MUNICIPAL AGENCIES.
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18

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

21 SECTION 1. Arkansas Code § 27-50-1101 is amended to read as follows:
22 27-50-1101. Nonconsensual towing of vehicles.

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

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

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

36 (ii) A statement that the property from which the



1 vehicle is to be removed is property owned or otherwise under the control of
2 the agent requesting the removal;

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

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

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

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

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

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

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

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

30 (ii) A property owner may designate in writing a
31 licensed towing and storage firm as its agent for the purposes of the removal
32 of abandoned vehicles or vehicles parked on private property without the
33 authorization of the property owners or other persons controlling the
34 property.

35 (G) No towing and storage firm removing a vehicle as
36 provided by this section shall pay any compensation related to the removal of

1 the vehicle, whether as a referral fee or otherwise, to the owner or agent
2 requesting the removal of the vehicle.

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

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

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

18 (D) Each police or sheriff's department receiving
19 notification of the removal of a vehicle as provided in this subsection shall
20 within twenty-four (24) hours of notification provide to the towing and
21 storage firm information supplied from the records of the Office of Motor
22 Vehicle, the Arkansas Crime Information Center, or, if there is evidence in
23 the vehicle indicating that the vehicle is registered in another state, the
24 motor vehicle records from that state that provides the vehicle
25 identification number or serial number, the name and address of the last
26 registered owner, and the name and address of the holder of any recorded lien
27 on the vehicle.

28 (E)(i) In the event that readily available records fail to
29 disclose the name of the owner of the vehicle or any lienholder of record,
30 the towing and storage firm shall perform a good faith search to locate
31 documents or other evidence of ownership and lienholder information on or
32 within the unattended or abandoned vehicle.

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

1 indicate a possible state of registration and title.

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

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

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

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

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

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

14

15 SECTION 2. Arkansas Code § 27-50-1203(e), regarding the regulation of
16 the towing industry by the Arkansas Towing and Recovery Board, is amended to
17 read as follows:

18 (e)(1) The board shall promulgate rules and regulations to carry out
19 the intent of this subchapter and shall regulate the towing industry,
20 including:

21 (A) Establishing reasonable licensing, insurance, and
22 ~~safety~~ equipment requirements for any person engaging in ~~nonconsent~~ towing
23 and related services for safety purposes under this subchapter;

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

26 (C) Establishing a procedure to accept and investigate
27 complaints from a consumer who claims that he or she has been overcharged for
28 ~~consent or~~ nonconsent towing or storage fees;

29 (D) Determining and sanctioning excessive or unnecessary
30 non-consent towing fees or storage fees, or both, charged to consumers;

31 (E) Requiring all entities permitted, licensed, or
32 regulated under this subchapter to provide to the Arkansas Towing and
33 Recovery Board all documents in response to information requests by the
34 Arkansas Towing and Recovery Board pursuant to the investigation of consumer
35 complaints or board complaints against the permittee or licensee.

36 ~~(E)~~(F) Requiring all entities permitted, licensed, or

1 regulated under this subchapter to provide itemized billing for towing or
2 storage fees that explains how the charges were calculated; and

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

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

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

18
19 SECTION 3. Arkansas Code § 27-50-1203(f), regarding the authority to
20 impose fees by the Arkansas Towing and Recovery Board, is amended to read as
21 follows:

22 (f)(1) The board shall have the authority to levy applicable towing
23 business license fees not to exceed one hundred dollars (\$100) per license,
24 and the board shall have the authority to levy an applicable tow vehicle
25 safety permit fee not to exceed ~~twenty five dollars (\$25.00)~~ fifty dollars
26 (\$50.00) per tow vehicle safety permit.

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

30
31 SECTION 4. Arkansas Code § 27-50-1203(g), regarding the authority of
32 the Arkansas Towing and Recovery Board with regard to personnel, is amended
33 to read as follows:

34 (g)(1) The board shall have the authority to employ and discharge any
35 personnel as may be necessary to administer and enforce the provisions of
36 this subchapter and the rules and regulations promulgated hereunder.

1 (2) The board shall employ ~~an investigator~~ investigators to
 2 investigate consumer complaints related to overcharging for ~~consent or~~
 3 nonconsent towing or storage fees, violations of § 27-50-1101 and this
 4 subchapter, and violations of the rules promulgated by the board under this
 5 subchapter.

6
 7 SECTION 5. Arkansas Code § 27-50-1204(d), regarding penalties for
 8 towing and storage costs, is amended to read as follows:

9 (d) Any person, excluding law enforcement officers, who is determined
 10 by the board, after reasonable notice and opportunity for a fair and
 11 impartial hearing held in accordance with the Arkansas Administrative
 12 Procedure Act, § 25-15-201 et seq., to have committed an act that is in
 13 violation of this subchapter or any rules and regulations promulgated under
 14 this subchapter, is subject to civil penalties prescribed by the board,
 15 including monetary penalties not to exceed ~~five hundred dollars (\$500) or~~
 16 five thousand dollars (\$5,000) or the suspension or revocation of any towing
 17 license or permit, or both.

18
 19 SECTION 6. Arkansas Code § 27-50-1204, regarding penalties for towing
 20 and storage costs, is amended to add an additional subsection to read as
 21 follows:

22 (f)(1) All penalties accessed by the board shall be paid no later than
 23 fifteen (15) days after the appeal process under the Arkansas Administrative
 24 Procedures Act, § 25-15-201 et seq., has passed.

25 (2) The failure to remit payment of penalties may result in the
 26 suspension of the license or permit until the penalty is paid.

27
 28 SECTION 7. Arkansas Code § 27-50-1208(a), regarding possessory liens
 29 and notice to owners and lienholders, is amended to read as follows:

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

33 (2)(A) A lien under this section shall not extend to items of a
 34 personal nature including without limitation:

35 (i) Personal documents;

36 (ii) Medications;

1 (iii) Child restraint seating;

2 (iv) Wallets or purses; or

3 (v) Prescriptive eye glasses or prosthetics.

4 (B) Items of a personal nature shall be released without
5 charge by the towing and storage firm to the owner or operator of the motor
6 vehicle or their duly authorized representative.

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

10 (b) The lien shall be perfected by:

11 (1) Maintaining possession;

12 (2) Mailing notice to the owner or owners and lienholders as
13 shown on the data provided by the law enforcement agency involved as
14 prescribed by this subchapter; or

15 (3) In the case of a vehicle removed pursuant to § 27-50-1101,
16 giving notice to the last known registered owner or owners and lienholders as
17 provided from the records of the Office of Motor Vehicle or the Arkansas
18 Crime Information Center or the motor vehicle records of any other state in
19 which the vehicle is registered indicating the name and address of the last
20 registered owner and the name and address of the holder of any recorded lien
21 on the vehicle.

22
23 SECTION 9. Arkansas Code § 27-50-1208(d), regarding possessory liens
24 and notice to owners and lienholders, is amended to read as follows:

25 (d)(1) If within forty-eight (48) hours the ownership and lienholder
26 information has not been received from the law enforcement agency requesting
27 the removal of a vehicle pursuant to this subchapter, the towing and storage
28 firm shall obtain information concerning the last known registered owner or
29 owners and lienholders as provided from the records of the ~~office~~ Office of
30 Motor Vehicle or the Arkansas Crime Information Center or the motor vehicle
31 records of any other state in which the vehicle is registered indicating the
32 name and address of the last registered owner and the name and address of the
33 holder of any recorded lien on the vehicle.

34 (2)(A) For the purpose of notices required by this section, if
35 the data records of the office do not contain any information as to the last
36 known registered owner or owners and lienholders, notice by publication one

1 (1) time in one (1) newspaper of general circulation in the county where the
2 vehicle was found unattended, abandoned, or improperly parked is sufficient
3 notice under this section.

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

8
9 SECTION 10. Arkansas Code § 27-50-1212 is amended to read as follows:
10 27-50-1212. Criminal penalties.

11 (a) It shall be unlawful for a person to:

12 (1) Operate a tow vehicle in violation of this subchapter;

13 (2) Operate a tow vehicle without obtaining a tow vehicle safety
14 permit as required by the rules of the Arkansas Towing and Recovery Board;

15 (3) Operate a business engaging in nonconsensual towing of
16 vehicles without first obtaining the proper tow business license as required
17 by the rules of the board;

18 (4) Give false or forged evidence to the board or to any member
19 or an employee thereof for the purpose of obtaining a license or a tow
20 vehicle safety permit;

21 (5) Use or attempt to use an expired, suspended, or revoked
22 license or tow vehicle safety permit; or

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

24 (b) The Department of Arkansas State Police, the Arkansas Highway
25 Police Division of the Arkansas State Highway and Transportation Department,
26 and county and municipal authorities may enforce § 27-50-1101 et seq. and §
27 27-50-1201 et seq.

28 ~~(b)(c)~~ (c) A person who pleads guilty or nolo contendere to or is found
29 guilty of any violation under this section shall be guilty of a misdemeanor
30 and shall be sentenced to pay a fine of not less than fifty dollars (\$50.00)
31 nor more than five hundred dollars (\$500) or to be imprisoned for a period
32 not exceeding ninety (90) days, or both.

33 (d) The fines imposed and collected under this section shall be
34 remitted as follows:

35 (1) Fifty percent (50%) to the Arkansas Towing and Recovery
36 Board for deposit into their cash fund; and

