

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 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/16/09

A Bill

SENATE BILL 830

5 By: Senator Madison
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For An Act To Be Entitled

9 TO ALLOW MUNICIPALITIES TO REGULATE NONCONSENSUAL
10 TOWING AND STORAGE; AND FOR OTHER PURPOSES.
11

Subtitle

12 TO ALLOW MUNICIPALITIES TO REGULATE
13 NONCONSENSUAL TOWING AND STORAGE.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 *SECTION 1. Arkansas Code § 27-50-1101 is amended to read as follows:*

20 *27-50-1101. Nonconsensual towing of ~~vehicles~~ a vehicle, implement, or*
21 *piece of machinery.*

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

31 *(B)(i) A city of the first class, city of the second*
32 *class, or incorporated town by ordinance may regulate the manner that a*
33 *property owner or other person controlling the property removes a vehicle,*
34 *implement, or piece of machinery:*

35 *(a) By limiting:*

36 *(1) The distance from the location of*



1 removal to the destination of storage; and

2 (2) The amount of towing and storage
 3 charges, including the towing charge, the storage charge, the administrative
 4 fee, and any other fee that may be charged, to be assessed against the owner
 5 or operator of the vehicle, implement, or piece of machinery removed from the
 6 property, with the difference between the charges allowed by the city and the
 7 actual towing and storage charges to be assessed to the property owner or
 8 other person controlling the property that requested the removal of the
 9 vehicle; and

10 (3) The request for removal of a
 11 vehicle, implement, or piece of machinery from the property to a towing and
 12 storage firm that accepts payment methods of cash, credit cards, or debit
 13 cards; and

14 (b) By requiring signage under § 27-51-1305 to
 15 include:

16 (1) The name, address, and telephone
 17 number of the towing and storage firm that may provide removal services from
 18 the parking lot;

19 (2) The amount of towing and storage
 20 charges that may be assessed against the owner or operator of the vehicle,
 21 implement or other machinery; and

22 (3) Disclosing whether the towing and
 23 storage firm will accept the payment methods of cash, checks, credit cards,
 24 or debit cards.

25 (ii) An ordinance enacted under this subdivision
 26 (a)(1)(B) shall not conflict with this section.

27 ~~(B)(C)~~ Prior to the removal of ~~an~~ abandoned ~~vehicles or of~~
 28 vehicles ~~vehicle,~~ implement, or piece of machinery or a vehicle, implement,
 29 or piece of machinery parked without authority as provided by this section,
 30 the towing and storage firm shall obtain in writing from the property owners
 31 or agents a written statement that includes at a minimum the following:

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

34 (ii) A statement that the property from which the
 35 vehicle, implement, or piece of machinery is to be removed is property owned
 36 or otherwise under the control of the agent requesting the removal;

1 (iii) That the vehicle, implement, or piece of
 2 machinery is deemed abandoned or has been parked on the property without
 3 authorization, as the case may be;

4 (iv) The make, model, and vehicle identification
 5 number or serial number of the vehicle, implement, or piece of machinery to
 6 be removed;

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

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

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

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

23 ~~(E)~~(F) Vehicles Unless other arrangements have been made
 24 with a repair business, a vehicle, implement, or piece of machinery on the
 25 premises of an automobile a repair business shall be deemed abandoned if
 26 either:

27 (i) ~~the~~ The vehicle, implement, or piece of
 28 machinery is unclaimed by the vehicle owner within forty-five (45) days; or

29 (ii) ~~the~~ The debt is not paid within forty-five (45)
 30 days from the time the repair work is complete.

31 ~~(F)~~(i)(G) No A towing and storage firm shall not remove
 32 any abandoned vehicle, implement, or piece of machinery or improperly parked
 33 vehicle, implement, or piece of machinery without the authorization of the
 34 property owner or on-site agent as provided in this section except as may
 35 otherwise be authorized by the provisions of § 27-50-1201 et seq. or as
 36 directed by any law enforcement officer.

1 ~~(ii) A property owner may designate in writing a~~
 2 ~~licensed towing and storage firm as its agent for the purposes of the removal~~
 3 ~~of abandoned vehicles or vehicles parked on private property without the~~
 4 ~~authorization of the property owners or other persons controlling the~~
 5 ~~property.~~

6 ~~(G)(H) No~~ A towing and storage firm removing a vehicle,
 7 implement, or piece of machinery as provided by this section shall not pay
 8 any compensation related to the removal of the vehicle, implement, or piece
 9 of machinery, whether as a referral fee or otherwise, to the owner or agent
 10 requesting the removal of the vehicle, implement, or piece of machinery.

11 (2)(A) Any person towing a vehicle, implement, or piece of
 12 machinery as provided by this section and any person towing a vehicle,
 13 implement, or piece of machinery without the authorization of the owner ~~of~~
 14 ~~the vehicle~~ or ~~of~~ the owner's agent, including towing pursuant to a directive
 15 of repossession from a holder of a security interest in the vehicle,
 16 implement, or piece of machinery, shall notify the local police department or
 17 ~~sheriff's department~~ office within whose jurisdiction the vehicle, implement,
 18 or piece of machinery was removed of the ~~vehicle's~~ removal within two (2)
 19 hours of taking possession of the vehicle, implement, or piece of machinery.

20 (B) The towing and storage firm may not charge a storage
 21 fee for the vehicle, implement, or piece of machinery for the time it is
 22 stored prior to the notification required to the local police department or
 23 ~~sheriff's department~~ office.

24 (C) Each police department or ~~sheriff's department~~ office
 25 receiving notification of the removal of a vehicle, implement, or piece of
 26 machinery as provided in this subsection shall maintain a log recording the
 27 following information related to the vehicle, implement, or piece of
 28 machinery: the make, model, and vehicle identification number of the vehicle,
 29 the date, time, and location of the removal, and the name, address, and
 30 telephone number of the person removing the vehicle

31 (i) Make;

32 (ii) Model;

33 (iii) Vehicle identification number or serial
 34 number;

35 (iv) Date, time, and location of the removal; and

36 (v) Name, address, and telephone number of the

1 person removing the vehicle, implement, or piece of machinery.

2 (D)(i) Each police department or sheriff's department
3 office receiving that receives notification of the removal of a vehicle,
4 implement, or piece of machinery as provided in this subsection shall within
5 twenty-four (24) hours of notification provide to the towing and storage firm
6 information supplied from the records of the Office of Motor Vehicle, the
7 Arkansas Crime Information Center, or, if there is evidence in the vehicle,
8 implement, or piece of machinery indicating that the vehicle it is registered
9 in or from another state, the motor vehicle registration records from that
10 state, that provide the vehicle identification number or serial number, the
11 name and address of the last registered owner, and the name and address of
12 the holder of any recorded lien on the vehicle, implement, or piece of
13 machinery.

14 (ii) If the information under subdivision
15 (a)(2)(D)(i) of this section is not available for an implement or piece of
16 machinery, the police department or sheriff's office that receives notice of
17 the removal shall provide at a minimum whether any record exists in the
18 records of the Office of Motor Vehicle or the Arkansas Crime Information
19 Center regarding the implement or piece of machinery.

20 (E)(i) In the event that readily available records fail to
21 disclose the name of the owner of the vehicle, implement, or piece of
22 machinery or any lienholder of record, the towing and storage firm shall
23 perform a good faith search to locate documents or other evidence of
24 ownership and lienholder information on or within the unattended or abandoned
25 vehicle, implement, or piece of machinery.

26 (ii) For purposes of this subsection, a "good faith
27 search" means that the towing and storage firm checks the unattended or
28 abandoned vehicle, implement, or piece of machinery for any type of license
29 plate, license plate record, temporary permit, inspection sticker, decal, or
30 other evidence that indicates a possible state of registration and title or
31 other information related to the owner.

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

36 (B)(i) The following procedures for the sale of an

1 abandoned and unattended vehicle that is removed from a property as provided
2 under §§ 27-50-1208 – 27-50-1210 shall apply in the same manner to an
3 abandoned and unattended implement or piece of machinery:

4 (A) Possession of the implement or piece of
5 machinery;

6 (B) Notice to owners and lienholders; and

7 (C) Procedures for sale.

8 (ii) The towing and storage company shall have a
9 first priority possessory lien on the implement or piece of machinery and its
10 contents for all reasonable charges for towing, recovery, and storage subject
11 to the limits provided by ordinance if one is in effect.

12 (iii) Except as provided under subdivision
13 (a)(3)(B)(iv) of this section, the lien against the implement or piece of
14 machinery shall be perfected and all of the procedures related to the
15 implement or piece of machinery shall be handled in the same manner as
16 provided under § 27-50-1208(b)–(e) for abandoned and unattended vehicles.

17 (iv) If information on the owner or owners of an
18 implement or piece of machinery that is in the possession of a towing and
19 storage company is not available pursuant to subdivision (a)(2)(D)–(E) of
20 this section, the towing and storage company shall provide notice by
21 publication in a newspaper of general circulation in the region from where
22 the implement or piece of machinery was removed.

23 (C)(i) Notwithstanding any provision of law to the
24 contrary and to the extent that the city of the first class, city of the
25 second class, or incorporated town enacted an ordinance that limits the
26 amount of towing and storage charges assessed against the owner or operator
27 of the vehicle, implement, or piece of machinery, the towing and storage
28 company shall have a first priority possessory lien limited to the amount
29 allowed under the ordinance.

30 (ii) The towing and storage company may assess any
31 remaining charges to the property owner or other person controlling the
32 property who requested the vehicle, implement, or piece of machinery be
33 removed from the property.

34 (b) A city attorney may refer a possible violation of this section or
35 an ordinance enacted under this section to the Arkansas Towing and Recovery
36 Board for investigation.

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

2 (A) *Direct the removal of or to remove a vehicle,*
3 *implement, or piece of machinery in violation of this section; and*

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

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

8 (B) *The information related to a plea of guilty or nolo*
9 *contendere to or conviction for a violation as provided under subdivision*
10 *(b)(1)(A) shall be reported to the Arkansas Towing and Recovery Board.*

11 (3) ~~Each~~ *The removal of each vehicle, implement, or piece of*
12 *machinery removal in violation of this section shall constitute a distinct*
13 *and separate offense.*

14
15 SECTION 2. *EMERGENCY CLAUSE. It is found and determined by the*
16 *General Assembly of the State of Arkansas that there are issues related to*
17 *towing and storage that have arisen that call into question the adequacy of*
18 *state law; that there have been numerous incidents where a vehicle,*
19 *implement, or piece of machinery was towed from an area that lacked proper*
20 *signage to provide notice to the operator that parking was prohibited; that*
21 *property owners have had vehicles, implements, or pieces of machinery removed*
22 *to distant locations from the area in which found abandoned or improperly*
23 *parked; and that, as a result, the towing and storage charges exceeded the*
24 *usual and customary amount in the community; and this act is immediately*
25 *necessary so that a city of the first class, city of the second class, or*
26 *incorporated town can enact ordinances to regulate the property owners and to*
27 *protect the health and safety of their citizens related to towing and*
28 *storage. Therefore, an emergency is declared to exist and this act being*
29 *immediately necessary for the preservation of the public peace, health, and*
30 *safety shall become effective on:*

31 (1) *The date of its approval by the Governor;*

32 (2) *If the bill is neither approved nor vetoed by the Governor,*
33 *the expiration of the period of time during which the Governor may veto the*
34 *bill; or*

35 (3) *If the bill is vetoed by the Governor and the veto is*
36 *overridden, the date the last house overrides the veto.*

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/s/ Madison