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2 88th General Assembly
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A Bill

HOUSE BILL 1561

4
5 By: Representative D. Altes

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW RELATED TO THE REMOVAL AND
9 STORAGE OF UNATTENDED OR ABANDONED VEHICLES FOR
10 CLARIFICATION AND MODERNIZATION; TO DEFINE "IMPOUNDED
11 OR SEIZED VEHICLE"; AND FOR OTHER PURPOSES.

Subtitle

15 TO AMEND THE LAW RELATED TO THE REMOVAL
16 AND STORAGE OF UNATTENDED OR ABANDONED
17 VEHICLES FOR CLARIFICATION AND
18 MODERNIZATION; TO DEFINE "IMPOUNDED OR
19 SEIZED VEHICLE".

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

23
24 SECTION 1. Arkansas Code § 27-50-1202 is amended to read as follows:
25 27-50-1202. Definitions.

26 ~~For the purposes of this subchapter, unless the context otherwise~~
27 ~~requires~~ As used in this subchapter:

28 (1) "Abandoned vehicle" means ~~any~~ a vehicle deemed to be an
29 unattended vehicle as defined in this section:

30 (A) As to which the owner has overtly manifested some
31 intention not to retake possession; or

32 (B) ~~Which~~ That remains unattended, whether in its first-
33 found location or in another location to which it has been removed ~~pursuant~~
34 ~~to~~ under this subchapter, for a period of thirty (30) days, ~~during which~~
35 period the owner ~~has given~~ gives no evidence of an intent to retake
36 possession;



1 (2) "Consent" means towing, storage, or recovery of ~~any a~~
 2 vehicle, which towing, storage, or recovery is done with the permission of
 3 the owner or other person in charge of the vehicle;

4 (3) "Impounded or seized vehicle" means a vehicle subject to
 5 impounding or seizure by law enforcement under the Arkansas Code, the
 6 Arkansas Rules of Criminal Procedure, or a court order;

7 ~~(3)(4)~~ (4) "Nonconsent" means towing, storage, or recovery of ~~any an~~
 8 unattended vehicle, ~~or~~ abandoned vehicle, or impounded or seized vehicle as
 9 defined in this section or ~~any a~~ disabled or inoperative vehicle for which
 10 the owner preference is waived by the owner or person in charge ~~thereof of~~
 11 the vehicle;

12 ~~(4)(5)~~ (5) ~~"Owner" of an unattended or abandoned vehicle~~ "Owner"
 13 means, shall in the absence of conclusive evidence to the contrary, ~~be deemed~~
 14 ~~to be~~ the person in whose name the vehicle is registered with the Office of
 15 Motor Vehicle of the Revenue Division of the Department of Finance and
 16 Administration or in whose name the vehicle is registered in ~~any other~~
 17 another state;

18 ~~(5)(6)~~ (6) "Owner preference" means the right of the owner, his or
 19 her agent, or ~~any a~~ competent occupant of ~~any a~~ disabled or inoperative
 20 vehicle to request some responsible and reasonable person, gratuitous bailee,
 21 or bailee for hire of his or her choosing to take charge and care of the
 22 vehicle;

23 ~~(6)(7)~~ (7) "Person" means ~~any an~~ individual, partnership,
 24 corporation, association, or other entity;

25 ~~(7)(8)~~ (8) "Public way" means ~~any a~~ road, highway, or street over
 26 which the public may travel, including the traveled surface and ~~any a~~ berm or
 27 shoulder ~~thereof of a road, highway, or street~~. ~~Nothing herein shall be~~
 28 ~~applicable to vehicles left unattended or abandoned on private property and~~
 29 ~~subject to § 27-50-1101 et seq.;~~

30 ~~(8)(9)~~ (9) "Removal" means that ~~an officer of any law enforcement~~
 31 ~~agency a law enforcement officer~~ may request a towing and storage firm ~~which~~
 32 that is licensed by the Arkansas Towing and Recovery Board to engage in
 33 nonconsent towing of vehicles to remove and store;

34 (A) ~~Remove and store any~~ An unattended vehicle or
 35 abandoned vehicle ~~pursuant to~~ under this subchapter;

36 (B) ~~Remove and store any~~ A disabled or inoperative vehicle

1 for which the owner or person in charge ~~thereof~~ of the vehicle has waived his
 2 or her right to owner preference as defined in this section; ~~or~~

3 (C) ~~Remove and store any~~ A vehicle in which the operator
 4 was apprehended by law enforcement officers; or

5 (D) An impounded or seized vehicle;

6 ~~(9)(10)~~ (10) "Tow vehicle" means ~~any~~ a motor vehicle or related
 7 equipment subject to registration in the State of Arkansas ~~which~~ that is used
 8 to tow, recover, upright, transport, or otherwise facilitate the movement of
 9 vehicles on public highways;

10 ~~(10)(11)~~ (11) "Unattended vehicle" means ~~any~~ a vehicle that:

11 (A) Is left on public property without the consent of an
 12 authority in charge of the property or on or near a public way without some
 13 person, gratuitous bailee, or bailee for hire in possession of the vehicle
 14 and that:

15 ~~(A)(i)~~ (i) Is located within a distance of three feet
 16 (3') of the traveled surface of the public way;

17 ~~(B)(ii)~~ (ii) Is located on or near a public way at a
 18 distance of three feet (3') or more of the traveled surface of the public way
 19 for a period of twenty-four (24) hours or more; or

20 ~~(C)(iii)~~ (iii) Is not located on or near a public way but
 21 is left for a period of forty-eight (48) hours or more;

22 ~~(D)(B)~~ (B) Does not remain in the custody of some responsible
 23 person following an accident where the operator has been removed to a
 24 hospital or is otherwise unable to make personal arrangements for the
 25 vehicle's care;

26 ~~(E)(C)~~ (C) Was operated to a place of apprehension by law
 27 enforcement under police power and the operator ~~thereof~~ was removed from the
 28 vehicle and taken into police custody; or

29 ~~(F)(D)~~ (D) Is located upon ~~any~~ a public right of way and, due
 30 to geographic location, traffic density, or climatic conditions, is creating
 31 an immediate and substantial hazard to the motoring public, as determined by
 32 a law enforcement officer; ~~or~~ and

33 ~~(G) Is subject to seizure by law enforcement under either~~
 34 ~~a statute, the Arkansas Rules of Criminal Procedure, or a lawful court order;~~
 35 and

36 ~~(11)(12)~~ (12) "Vehicle" means ~~any~~ a device by which persons or things

1 may be transported upon a public highway and which is of the type subject to
 2 registration in Arkansas.

3
 4 SECTION 2. Arkansas Code § 27-50-1204(a)(1), regarding penalties
 5 related to the towing, recovery, and storage of an unattended or abandoned
 6 vehicle, is amended to read as follows:

7 (a)(1) ~~The owner of a vehicle and the person who left the vehicle~~
 8 ~~unattended or abandoned or any owner or operator waiving an owner's~~
 9 ~~preference~~ following shall be liable for all reasonable costs of towing,
 10 recovery, storage, and other incidental costs related to ~~such~~ a removal of a
 11 vehicle under this subchapter:

12 (A) The owner of the vehicle;

13 (B) The person who left the unattended vehicle or
 14 abandoned vehicle before removal; and

15 (C) An owner or operator who waives the owner preference.

16
 17 SECTION 3. Arkansas Code § 27-50-1205 is amended to read as follows:
 18 27-50-1205. Tagging.

19 (a) Any law enforcement officer or code enforcement officer as defined
 20 by municipal ordinance observing ~~a vehicle on or near a public way which~~
 21 ~~appears to be unattended or abandoned~~ an unattended vehicle, abandoned
 22 vehicle, disabled vehicle, or inoperative vehicle on or near a public way
 23 shall:

24 (1)(A) Order immediate removal of ~~any unattended, abandoned,~~
 25 ~~disabled, or inoperative~~ the vehicle if it:

26 (i) ~~Located~~ Is located within three feet (3') of the
 27 traveled surface of a public way; or

28 (ii) ~~That appears~~ Appears to create an immediate and
 29 substantial hazard to the public; and

30 (B) Log the removal order accordingly; or

31 (2) Tag ~~any unattended, abandoned, disabled, or inoperative~~ the
 32 vehicle if it is located at a distance of three feet (3') or more from the
 33 traveled surface of a public way by affixing securely a colored form or other
 34 easily observable sticker.

35 (b) The tag or sticker used under subdivision (a)(2) of this section
 36 shall show:

- 1 ~~(A)~~(1) The date and time of tagging;
- 2 ~~(B)~~(2) That the vehicle will be removed pursuant to this
- 3 subchapter unless the vehicle is removed within twenty-four (24) hours;
- 4 ~~(C)~~(3) The location and telephone number where more information
- 5 may be obtained; and
- 6 ~~(D)~~(4) The identification of the officer.

7

8 SECTION 4. Arkansas Code § 27-50-1206 is amended to read as follows:

9 27-50-1206. Notice to storage firm.

10 (a)(1) ~~Any~~ An order issued by a law enforcement officer to a licensed

11 towing and storage firm to remove and store an unattended vehicle, ~~or~~

12 abandoned vehicle, or impounded or seized vehicle shall provide information

13 supplied from the records of the Office of Motor Vehicle of the Revenue

14 Division of the Department of Finance and Administration, Arkansas Crime

15 Information Center records, or the motor vehicle records of ~~any other~~ another

16 state indicating the name and address of the last registered owner, the name

17 and address of the holder of any recorded lien on the vehicle, and the

18 vehicle identification or serial number of the vehicle.

19 (2) If there is evidence in the vehicle indicating that the

20 vehicle is registered in another state, the information shall be supplied

21 from the motor vehicle records of that state.

22 (3)(A) If a law enforcement officer or other official issues a

23 hold against the release of the vehicle, the law enforcement officer's order

24 to remove and store the vehicle shall include a written explanation for the

25 issuance of the hold.

26 (B) When the hold on the vehicle is released, the law

27 enforcement officer or other official who issued the hold shall provide

28 written notice of the release to the towing and storage firm.

29 (b)(1)~~(A) In the event that~~ If readily available records fail to

30 disclose the name of the owner or any lienholder of record, the law

31 enforcement officer or his or her agency shall notify in writing the towing

32 and storage firm.

33 ~~(B) that after~~ After receiving the notice, the towing and

34 storage firm shall perform a good faith search to locate documents or other

35 evidence of ownership and lienholder information on or within the unattended

36 vehicle or abandoned vehicle.

1 (2) For purposes of this subsection, a “good faith search” means
2 that the towing and storage firm checks the unattended or abandoned property
3 for any type of license plate, license plate record, temporary permit,
4 inspection sticker, decal, or other evidence that may indicate a possible
5 state of registration and title.

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

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

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

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

23
24 SECTION 5. Arkansas Code § 27-50-1207(a)(1), regarding removal of
25 vehicles, is amended to read as follows:

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

30
31 SECTION 6. Arkansas Code § 27-50-1207(b), regarding removal of
32 vehicles, is amended to read as follows:

33 (b) All law enforcement officers shall comply with the policies
34 prescribed by their agencies as to the removal of ~~any~~ an unattended vehicle,
35 or abandoned vehicle, or impounded or seized vehicle as defined by this
36 subchapter.

1
2 SECTION 7. Arkansas Code § 27-50-1207(e), regarding removal of
3 vehicles, is amended to read as follows:

4 (e)(1) Should the owner or lienholder of a vehicle removed ~~pursuant to~~
5 under this subchapter consider that the removal of the vehicle was not
6 legally justified or properly subject to a law enforcement hold, the owner or
7 lienholder may within thirty (30) days after removal or within thirty (30)
8 days after the receipt of notification of ~~any~~ a law enforcement hold from the
9 towing and storage firm, whichever is later, seek a review to determine
10 whether the unattended vehicle, abandoned vehicle, or unattended or abandoned
11 property was wrongfully removed or withheld from the owner through the
12 following procedures:

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

16 (B) In the case of a vehicle removed by or at the
17 direction of a county or city agency and when the county or city has
18 established an administrative review process, by filing a petition according
19 to the established administrative review process; and

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

24 (2) In the case of a final decision reached through a county or
25 city administrative review, the owner or lienholder may appeal an adverse
26 ruling to the circuit court in the county where the unattended vehicle or
27 abandoned vehicle is stored.

28 (3) The petition shall name the state agency ordering the tow as
29 a respondent and, when filed in circuit court, shall also name the towing
30 company among the respondents if the towing company still possesses the
31 vehicle. In the case of removal originated by an agency of a political
32 subdivision of the state, the petition shall name the county, city, or town
33 as a respondent.

34 (4)~~(A)~~ If the vehicle, ~~and~~ its contents, or both are subject to
35 impoundment or seizure by law enforcement ~~pursuant to~~ under the Arkansas
36 Rules of Criminal Procedure or ~~pursuant to an~~ a court order ~~by any court,~~ the

1 procedure for return or restoration of the impounded or seized vehicle and
 2 its contents shall be governed exclusively by Rule 15 of the Arkansas Rules
 3 of Criminal Procedure ~~shall exclusively govern the release of the vehicle and~~
 4 ~~its contents~~ to the extent applicable.

5 ~~(B) Nothing in this section shall operate to defeat the~~
 6 ~~lien held by the towing company under § 27-50-1208.~~

8 SECTION 8. Arkansas Code § 27-50-1207, regarding removal of vehicles,
 9 is amended to add an additional subsection to read as follows:

10 (j) This section shall not be construed to defeat a lien held by a
 11 towing company under § 27-50-1208.

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

15 (h)(1) ~~Any~~ A towing and storage firm that in good faith follows the
 16 procedures of this subchapter or the provisions of § 27-50-1101 shall not be
 17 subject to claims of unlawful detainer or conversion for vehicles or their
 18 contents for maintaining property pursuant to the possessory lien as provided
 19 by this subchapter.

20 (2) ~~Any~~ A challenge to the removal and holding of an unattended
 21 vehicle, or abandoned vehicle, or impounded or seized vehicle as provided by
 22 this subchapter shall be controlled exclusively by the provisions of § 27-50-
 23 1207.

24 (3) ~~Nothing in this~~ This section shall not be construed to limit
 25 liability of the towing and storage firm for any other act or omission
 26 otherwise actionable under statutory or common law.