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2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: H3/14/11
A Bill

HOUSE BILL 1561

5 By: Representative D. Altes
6

7 **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.
12
13

14 **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, a court order, or an ordinance;

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 ~~subchapter~~ section or ~~any a~~ disabled or inoperative vehicle
10 for which the owner preference is waived by the owner or person in charge
11 ~~thereof~~ of 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) "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) "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) Is located within a distance of three feet
16 (3') of the traveled surface of the public way;

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

26 ~~(E)~~ (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;

29 ~~(F)~~ (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

33 (E) Is disabled or inoperative, located on or near a
34 public way or on a public right-of-way, and honoring the owner preference
35 would create an immediate and substantial hazard to the motoring public, as
36 determined by a law enforcement officer, due to:

- 1 (i) Geographic location;
- 2 (ii) Traffic density; or
- 3 (iii) Climatic conditions; and

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

7 ~~(11)(12)~~ “(12) “Vehicle” means any a device by which persons or things
 8 may be transported upon a public highway and which is of the type subject to
 9 registration in Arkansas.

10
 11 SECTION 2. Arkansas Code § 27-50-1204(a)(1), regarding penalties
 12 related to the towing, recovery, and storage of an unattended or abandoned
 13 vehicle, is amended to read as follows:

14 (a)(1) ~~The owner of a vehicle and the person who left the vehicle~~
 15 ~~unattended or abandoned or any owner or operator waiving an owner’s~~
 16 ~~preference following shall be liable for all reasonable costs of towing,~~
 17 ~~recovery, storage, and other incidental costs related to such a removal of a~~
 18 ~~vehicle under this subchapter:~~

- 19 (A) The owner of the vehicle;
- 20 (B) The person who left the unattended vehicle or
 21 abandoned vehicle before removal; and
- 22 (C) An owner or operator who waives the owner preference.

23
 24 SECTION 3. Arkansas Code § 27-50-1205 is amended to read as follows:
 25 27-50-1205. Tagging.

26 (a) Any law enforcement officer or code enforcement officer as defined
 27 by municipal ordinance observing a vehicle on or near a public way which
 28 appears to be unattended or abandoned an unattended vehicle, abandoned
 29 vehicle, disabled vehicle, or inoperative vehicle on or near a public way
 30 shall:

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

- 33 (i) ~~Located~~ Is located within three feet (3’) of the
 34 traveled surface of a public way; or
- 35 (ii) ~~That appears~~ Appears to create an immediate and
 36 substantial hazard to the public; and

1 (B) Log the removal order accordingly; or

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

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

8 ~~(A)(1)~~ The date and time of tagging;

9 ~~(B)(2)~~ That the vehicle will be removed ~~pursuant to~~ under this
10 subchapter unless the vehicle is removed within twenty-four (24) hours;

11 ~~(G)(3)~~ The location and telephone number where more information
12 may be obtained; and

13 ~~(D)(4)~~ The identification of the officer.
14

15 SECTION 4. 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~~ For all requests
18 to a licensed towing and storage firm to remove and store an unattended
19 vehicle, ~~or~~ abandoned vehicle, or impounded or seized vehicle, the law
20 enforcement agency shall issue a written order that states the removal is for
21 nonconsent services and shall provide information supplied from the records
22 of the Office of Motor Vehicle of the Revenue Division of the Department of
23 Finance and Administration, Arkansas Crime Information Center records, or the
24 motor vehicle records of ~~any other~~ another state indicating the name and
25 address of the last registered owner, the name and address of the holder of
26 any recorded lien on the vehicle, and the vehicle identification or serial
27 number of the vehicle.

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

31 (3)(A) If a law enforcement officer or other official issues a
32 hold against the release of the vehicle, the law enforcement officer's order
33 to remove and store the vehicle shall include a written explanation for the
34 issuance of the hold.

35 (B) When the hold on the vehicle is released, the law
36 enforcement officer or other official who issued the hold shall provide

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

2 (b)(1) In the event that readily available records fail to disclose
3 the name of the owner or any lienholder of record, the law enforcement
4 officer or his or her agency shall notify in writing the towing and storage
5 firm that after receiving the notice ~~shall~~ the towing and storage firm is
6 required to perform a good faith search to locate documents or other evidence
7 of ownership and lienholder information on or within the unattended vehicle,
8 ~~or abandoned vehicle, or impounded or seized vehicle.~~

9 (2) For purposes of this subsection, a "good faith search" means
10 that the towing and storage firm checks the unattended vehicle, abandoned
11 vehicle, or impounded or seized vehicle ~~or abandoned property~~ for any type of
12 license plate, license plate record, temporary permit, inspection sticker,
13 decal, or other evidence that may indicate a possible state of registration
14 and title.

15 (3) The towing and storage firm shall provide in writing to the
16 law enforcement officer or agency the results of the search and, if
17 appropriate, certify that a physical search of the unattended vehicle, or
18 abandoned vehicle, or impounded or seized vehicle disclosed that no ownership
19 documents were found and that a good faith search was conducted.

20 (4) If the vehicle is subject to a hold limiting access to the
21 vehicle, the law enforcement agency issuing the hold shall perform a good
22 faith search to locate documents or other evidence of ownership and
23 lienholder information to the extent required to preserve limited access to
24 the vehicle.

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

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

32 (d) When a vehicle is removed ~~pursuant to~~ under this subchapter by law
33 enforcement and is subject to impoundment or seizure pursuant to police power
34 or any lawful court order, the law enforcement officer shall provide to the
35 towing and storage firm a written statement setting forth the conditions of
36 release of the vehicle.

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

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

8
9 SECTION 6. Arkansas Code § 27-50-1207(b), regarding removal of
10 vehicles, is amended to read as follows:

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

15
16 SECTION 7. Arkansas Code § 27-50-1207(e), regarding removal of
17 vehicles, is amended to read as follows:

18 (e)(1) Should the owner or lienholder of a vehicle removed ~~pursuant to~~
19 under this subchapter consider that the removal of the vehicle was not
20 legally justified or properly subject to a law enforcement hold, the owner or
21 lienholder may within thirty (30) days after removal or within thirty (30)
22 days after the receipt of notification of ~~any~~ a law enforcement hold from the
23 towing and storage firm, whichever is later, seek a review to determine
24 whether the unattended vehicle, abandoned vehicle, disabled vehicle, or
25 inoperative vehicle ~~or abandoned property~~ was wrongfully removed or withheld
26 from the owner through the following procedures:

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

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

34 (C) In all other cases, including when the county or city
35 has failed to establish an administrative review process, by filing a
36 petition in the circuit court in the county where the unattended vehicle or

1 *abandoned vehicle is stored.*

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

6 (3) *The petition shall name the state agency ordering the tow as*
 7 *a respondent and, when filed in circuit court, shall also name the towing*
 8 *company among the respondents if the towing company still possesses the*
 9 *vehicle. In the case of removal originated by an agency of a political*
 10 *subdivision of the state, the petition shall name the county, city, or town*
 11 *as a respondent.*

12 (4)(A) *If the vehicle, ~~and its contents,~~ or both are subject to*
 13 *impoundment or seizure by law enforcement ~~pursuant to~~ under the Arkansas*
 14 *Rules of Criminal Procedure or ~~pursuant to an a court order by any court,~~ the*
 15 *procedure for return or restoration of the impounded or seized vehicle and*
 16 *its contents shall be governed exclusively by Rule 15 of the Arkansas Rules*
 17 *of Criminal Procedure shall exclusively govern the release of the vehicle and*
 18 *its contents to the extent applicable.*

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

21
 22 *SECTION 8. Arkansas Code § 27-50-1207, regarding removal of vehicles,*
 23 *is amended to add an additional subsection to read as follows:*

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

26
 27 *SECTION 9. Arkansas Code § 27-50-1208(h), regarding possessory liens*
 28 *and notice to owners and lienholders, is amended to read as follows:*

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

34 (2) *~~Any~~ A challenge to the removal and holding of an unattended*
 35 *vehicle, ~~or~~ abandoned vehicle, or impounded or seized vehicle as provided by*
 36 *this subchapter shall be controlled exclusively by the provisions of § 27-50-*

1 1207.

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

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/s/D. Altes

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