

**27-50-1201. Applicability.**

(a) This subchapter applies to a person that either:

(1) Engages in the towing or storage of vehicles in the State of Arkansas and is hired to tow or store the vehicle; or

(2) Performs vehicle immobilization service.

(b) This subchapter does not apply to the following tow vehicles and related equipment:

(1) Car carriers capable of carrying five (5) or more vehicles and that have authority from the Federal Motor Carrier Safety Administration;

(2) Tow vehicles owned by a governmental entity and not used for commercial purposes; and

(3) If in compliance with § 27-35-112, tow vehicles that are:

(A) Registered in another state;

(B) Operating under authority from the administration; and

(C) Not regularly doing business or soliciting business in the State of Arkansas.

HISTORY: Acts 1993, No. 1000, § 1; 2005, No. 1878, § 3; 2011, No. 1061, § 4; 2013, No. 1136, § 1; 2013, No. 1421, § 2

**27-50-1202. Definitions.**

As used in this subchapter:

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

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

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

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

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

(4) "Nonconsent" means towing, storage, or recovery of an unattended vehicle, abandoned vehicle, or impounded or seized vehicle as defined in this section or a disabled

or inoperative vehicle for which the owner preference is waived by the owner or person in charge of the vehicle;

**(5)** "Owner" means, in the absence of conclusive evidence to the contrary, the person in whose name the vehicle is registered with the Office of Motor Vehicle or in whose name the vehicle is registered in another state;

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

**(7)** "Person" means an individual, partnership, corporation, association, or other entity;

**(8)** "Public way" means a road, highway, or street over which the public may travel, including the traveled surface and a berm or shoulder of a road, highway, or street;

**(9)** "Removal" means that a law enforcement officer may request a towing and storage firm that is licensed by the Arkansas Towing and Recovery Board to engage in nonconsent towing of vehicles to remove and store:

**(A)** An unattended vehicle or abandoned vehicle under this subchapter;

**(B)** A disabled or inoperative vehicle for which the owner or person in charge of the vehicle has waived his or her right to owner preference as defined in this section;

**(C)** A vehicle in which the operator was apprehended by law enforcement officers; or

**(D)** An impounded or seized vehicle;

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

**(11)** "Unattended vehicle" means a vehicle that:

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

**(i)** Is located within a distance of three feet (3') of the traveled surface of the public way;

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

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

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

(C) Was operated to a place of apprehension by law enforcement under police power and the operator was removed from the vehicle and taken into police custody;

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

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

(i) Geographic location;

(ii) Traffic density; or

(iii) Climatic conditions;

(12) "Vehicle" means a device by which persons or things may be transported upon a public highway and which is of the type subject to registration in Arkansas;

(13) "Vehicle immobilization service" means a person operating or directing others to operate a wheel clamp; and

(14) "Wheel clamp" means a device attached to a wheel of a vehicle that renders the vehicle immobile.

HISTORY: Acts 1993, No. 1000, § 2; 1997, No. 381, § 1; 1997, No. 392, § 1; 1999, No. 1279, § 4; 2001, No. 1830, §§ 1, 2; 2007, No. 1053, § 1; 2011, No. 1025, § 1; 2013, No. 1421, § 3.

### **27-50-1203. Arkansas Towing and Recovery Board -- Creation.**

(a) (1) There is hereby created the Arkansas Towing and Recovery Board consisting of nine (9) members appointed by the Governor and confirmed by the Senate, who shall serve terms of three (3) years.

(2) (A) Four (4) members shall be appointed from the towing industry and shall be licensed by the board to engage in nonconsent towing, with one (1) each of the members being a resident of each of the four (4) congressional districts.

(B) Two (2) members who are permitted to engage in the consent-only business shall be appointed from the state at large.

(C) Two (2) members who are not associated with the towing industry shall be appointed from the state at large.

(D) One (1) member shall be appointed from the insurance industry.

(b) The appointed board members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.

(c) (1) The members shall determine by majority vote of the quorum of the board who

shall serve as chair.

**(2)** The chair shall be elected annually from the membership of the board.

**(d) (1)** The board shall meet at such times and places that the chair deems necessary, but no meeting shall be held outside the State of Arkansas.

**(2)** Five (5) of the members of the board shall constitute a quorum for the purpose of transacting business.

**(3)** All actions of the board shall be by a quorum.

**(e) (1)** The board shall promulgate rules and regulations to carry out the intent of this subchapter and shall regulate the towing industry and vehicle immobilization service industry, including:

**(A)** Establishing reasonable licensing, insurance, and equipment requirements for any person engaging in towing and related services for safety purposes or vehicle immobilization services under this subchapter;

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

**(C)** Establishing a procedure to accept and investigate complaints from a consumer who claims that he or she has been overcharged for fees related to nonconsent towing, recovery, storage, or vehicle immobilization services;

**(D)** Determining and sanctioning excessive or unnecessary fees charged to consumers related to nonconsent towing, recovery, storage, or vehicle immobilization services;

**(E)** Requiring all entities permitted, licensed, or regulated under this subchapter to provide to the board all documents in response to information requests by the board pursuant to the investigation of consumer complaints or board complaints against the permittee or licensee;

**(F)** Requiring all entities permitted, licensed, or regulated under this subchapter to provide itemized billing for fees related to towing, storage, or vehicle immobilization services that explains how the charges were calculated;

**(G)** Requiring all entities permitted, licensed, or regulated under this subchapter to maintain a copy of their current maximum rate schedule or fee schedule posted in a conspicuous place and readily accessible to the public; and

**(H)** Requiring all entities permitted, licensed, or regulated under this subchapter to allow the owner or agent of the owner of a motor vehicle removed under this subchapter or under § 27-50-1101 to use any other entity permitted, licensed, or regulated under this subchapter when reclaiming the motor vehicle from storage.

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

**(3)** After the promulgation and adoption of rules or regulations, any proposed change to add to, amend, repeal, or change any of the rules or regulations shall not have effect until

reviewed and approved by the Subcommittee on Administrative Rules and Regulations of the Legislative Council subsequent to the time that the General Assembly next meets in regular session unless a finding exists that imminent peril to the public health, safety, or welfare requires immediate adoption, amendment, or repeal of the rules or regulations.

**(f) (1) (A)** The board shall have the authority to levy applicable towing business license and vehicle immobilization service license fees not to exceed two hundred dollars (\$200) per license, and the board shall have the authority to levy an applicable tow vehicle safety permit fee not to exceed one hundred dollars (\$100.00) per tow vehicle safety permit.

**(B)** A person licensed by the board to perform towing services is authorized to perform vehicle immobilization services without obtaining a separate vehicle immobilization service license.

**(2)** The board shall also have the authority to impose late filing fees in addition to the original filing fees in an amount not to exceed the original amount of the license fee or safety permit fee.

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

**(2)** The board shall employ investigators to investigate consumer complaints related to overcharging for nonconsent towing, recovery, storage fees, fees associated with the use of wheel clamps, violations of § 27-50-1101, this subchapter, and violations of the rules promulgated by the board under this subchapter.

**(h)** The board shall have the authority to obtain office space, furniture, stationery, and other proper supplies and conveniences reasonably necessary to carry out the provisions of this subchapter.

**(i)** Each member of the board may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

**(j)** The board shall have the authority to establish a maximum amount to be charged by a towing business for each notification to an owner and a lienholder as required by this subchapter.

**(k)** The board shall issue a towing business license or issue a tow vehicle safety permit for a tow vehicle licensed in another state to tow any vehicle in this state only when the tow vehicle owner establishes to the board's satisfaction that the operation of the tow vehicle in this state is in compliance with § 27-35-112.

HISTORY: Acts 1989, No. 899, § 9; 1993, No. 1000, § 3; 1997, No. 250, § 246; 1997, No. 392, § 2; 1999, No. 1279, § 2; 2005, No. 1878, § 2; 2007, No. 861, §§ 2-4; 2007, No. 1053, § 2; 2011, No. 780, § 8; 2013, No. 1002, §§ 1, 2; 2013, No. 1366, § 4; 2013, No. 1421, §§ 4, 5.

#### **27-50-1204. Penalties.**

**(a) (1)** The following shall be liable for all reasonable costs of towing, recovery, storage, and other incidental costs related to a removal of a vehicle under this subchapter:

**(A)** The owner of the vehicle;

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

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

**(2)** If the vehicle is sold by foreclosure under § 27-50-1209, the owner or operator shall be liable for such costs in excess of the proceeds of the sale of the vehicle.

**(b)** Any law enforcement agency that without reasonable justification fails to provide information to the towing and storage firm within twenty-four (24) hours as prescribed by this subchapter shall be liable to the towing and storage firm for any accrued storage fees between the expiration of the twenty-four-hour period and such time as the information is provided.

**(c)** Upon any complaint or on its own initiative when the Arkansas Towing and Recovery Board has reason to believe that a law enforcement officer failed to adhere to an owner preference request or otherwise violated this subchapter, the board may investigate the matter and submit its findings to proper law enforcement authorities.

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

**(e)** Nothing in this section shall be construed to limit the right to seek judicial review of any determination of the board pursuant to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**(f) (1)** A penalty assessed by the board shall be paid no later than fifteen (15) days after the conclusion of the appeals process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**(2)** If not paid timely, a license or permit issued by the board may be suspended until the penalty is paid.

**(3) (A)** If an entity or individual fails to pay a fine or an installment payment as provided under subdivision (f)(1) of this section, the board may provide written notice to the Office of Motor Vehicle of the failure to pay.

**(B)** The notice of the failure to pay a fine ordered by the board shall contain the following information:

**(i)** The name of the entity or individual that is subject to the fine;

**(ii)** The vehicle identification number or other identifying information for the vehicle owned by the entity or individual that is the subject of the fine;

- (iii) The date the board imposed the fine;
- (iv) The amount of the fine;
- (v) The date the fine or installment payment became delinquent; and
- (vi) The amount of the fine or installment payments that remain delinquent.

**(C)** Upon receipt of the notice of the failure to pay a fine or installment payment, the Office of Motor Vehicle shall suspend the tow vehicle license plate issued under § 27-14-601(a)(3)(J)(i) and the vehicle's registration.

**(D)** A suspension under this subdivision (f)(3) for failure to pay a fine ordered by the board shall remain in effect until the Office of Motor Vehicle receives written notice from the board that the fine has been paid.

HISTORY: Acts 1993, No. 1000, § 10; 2005, No. 1878, § 4; 2005, No. 2211, § 2; 2007, No. 861, §§ 5, 6; 2007, No. 1053, §§ 3-5; 2011, No. 732, § 1; 2011, No. 1025, § 2.

#### **27-50-1205. Tagging.**

Any law enforcement officer or code enforcement officer as defined by municipal ordinance observing an unattended vehicle, abandoned vehicle, disabled vehicle, or inoperative vehicle on or near a public way shall:

**(1) (A)** Order immediate removal of the vehicle if it:

- (i) Is located within three feet (3') of the traveled surface of a public way; or
- (ii) Appears to create an immediate and substantial hazard to the public; and

**(B)** Log the removal order accordingly; or

**(2) (A)** Tag the vehicle if it is located at a distance of three feet (3') or more from the traveled surface of a public way by securely affixing a colored form or other easily observable sticker.

**(B)** The tag or sticker used under subdivision (2) of this section shall show:

- (i) The date and time of tagging;
- (ii) That the vehicle will be removed under this subchapter unless the vehicle is removed within twenty-four (24) hours;
- (iii) The location and telephone number where more information may be obtained; and
- (iv) The identification of the officer.

HISTORY: Acts 1993, No. 1000, § 5; 1999, No. 1279, § 3; 2007, No. 100, § 1; 2007, No. 1053, § 6; 2011, No. 1025, § 3.

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

**(a) (1)** For all requests to a licensed towing and storage firm to remove and store an unattended vehicle, abandoned vehicle, or impounded or seized vehicle, the law enforcement agency shall issue a written order that states the removal is for nonconsent services and shall provide information supplied from the records of the Office of Motor Vehicle, Arkansas Crime Information Center records, or the motor vehicle records of another state indicating the name and address of the last registered owner, the name and address of the holder of any recorded lien on the vehicle, and the vehicle identification or serial number of the vehicle.

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

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

**(B)** When the hold on the vehicle is released, the law enforcement officer or other official who issued the hold shall provide written notice of the release to the towing and storage firm.

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

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

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

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

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

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

**(d)** When a vehicle is removed under this subchapter by law enforcement and is subject to impoundment or seizure pursuant to police power or any lawful court order, the law

enforcement officer shall provide to the towing and storage firm a written statement setting forth the conditions of release of the vehicle.

HISTORY: Acts 1993, No. 1000, § 6; 1997, No. 841, § 2; 2001, No. 1830, § 3; 2005, No. 1878, § 5; 2007, No. 1053, § 7; 2011, No. 1025, § 4.

### **27-50-1207. Removal of vehicles.**

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

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

**(B)** In those instances where exigent circumstances or where the immediate clearing of a public thoroughfare mandates an expedited towing service, owner preference shall be honored when the owner has requested a towing service that is located in the particular towing zone where services are to be rendered and is ready to promptly respond to the request for services.

**(C) (i)** If a law enforcement officer fails to provide an owner of a vehicle with an owner preference as required under this section, then the owner may file a complaint with the law enforcement agency that employs the law enforcement officer or the Arkansas Towing and Recovery Board, or both.

**(ii)** Nothing in this subsection precludes a person who has been denied the right of owner preference from seeking any other legal or equitable remedy.

**(3)** Nothing in this section shall be construed to authorize the towing of a vehicle in violation of other provisions of this subchapter.

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

**(c)** No law enforcement officer shall:

**(1)** Suggest or recommend any particular towing and storage firm to the owner, his or her agent, or any competent occupant of any disabled or inoperative vehicle; or

**(2)** Accept gifts or special consideration from the owner of a towing business or anyone acting on the owner's behalf in relation to removal of vehicles as provided by this subchapter.

**(d)** Upon request, any law enforcement officer or his or her agency who orders a removal pursuant to this subchapter shall provide to the owner, to his or her agent, or to any competent occupant of the removed vehicle the name, location, and telephone number of the towing and storage firm requested to remove and store the vehicle.

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

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

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

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

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

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

**(4)** If the vehicle, its contents, or both are subject to impoundment or seizure by law enforcement under the Arkansas Rules of Criminal Procedure or a court order, the procedure for return or restoration of the impounded or seized vehicle and its contents shall be governed exclusively by Rule 15 of the Arkansas Rules of Criminal Procedure to the extent applicable.

**(f) (1)** Upon the filing of the petition, the owner or lienholder may have the unattended or abandoned vehicle and contents released upon posting with the commission, with the court, or with the city or county clerk or other person designated by a political subdivision, as the case may be, a cash or surety bond equal to the amount of the charges for the towing and storage to ensure the payment of such charges in the event that he or she does not prevail.

**(2) (A)** Upon the posting of the bond and the payment of the applicable fees, the administrative decision maker, commission, or court, as the case may be, shall issue an order notifying the towing company and the respondent agency of the posting of the bond.

**(B)** Upon service of receipt of the order, the towing company shall release the stored property.

**(3)** At the time of release, after reasonable inspection, the owner or the lienholder shall give a receipt to the towing and storage firm reciting any claim for known loss or damage to the unattended or abandoned property or the contents thereof.

**(g)** Upon determining the respective rights of the parties, the final order of the administrative decision maker, commission, or court, as the case may be, shall provide for immediate payment in full of the reasonable recovery, towing, and storage fees by the owner or lienholder of the unattended or abandoned property or by the respective law enforcement agency.

**(h)** In cases where the owner or lienholder has posted a cash or surety bond to obtain immediate release and the owner or lienholder is found to be responsible for reasonable recovery, towing, and storage fees, the administrative decision maker, commission, or court, as the case may be, shall declare the bond to be forfeited, with the amount paid to the towing and storage firm to cover reasonable recovery, towing, and storage fees.

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

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

HISTORY: Acts 1993, No. 1000, § 4; 1995, No. 815, § 1; 1997, No. 392, § 3; 2001, No. 1830, § 4; 2005, No. 1878, § 6; 2007, No. 1053, §§ 8-10; 2011, No. 995, § 1; 2011, No. 1025, §§ 5-8.

#### **27-50-1208. Possessory lien and notice to owners and lienholders.**

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

**(2) (A)** A possessory lien under this section attaches to not only the vehicle and its contents but also any trailer attached to the vehicle at the time it is towed and any contents of such trailer including, but not limited to, other vehicles or boats.

**(B)** A lien under this section shall not extend to the following items, without limitation:

- (i)** Personal or legal documents;
- (ii)** Medications;
- (iii)** Child-restraint seating;
- (iv)** Wallets or purses and the contents of such;
- (v)** Prescription eyeglasses;
- (vi)** Prosthetics;
- (vii)** Cell phones;
- (viii)** Photographs; and
- (ix)** Books.

**(C)** The items described in subdivision (a)(2)(B) of this section shall be released without charge by the towing and storage firm to the owner or operator of the motor vehicle or his or her duly authorized representative.

**(b)** The lien shall be perfected by:

**(1)** Maintaining possession;

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

**(3)** In the case of a vehicle removed pursuant to § 27-50-1101, giving notice to the last known registered owner or owners and lienholders as provided from the records of the:

**(A)** Office of Motor Vehicle;

**(B)** Arkansas Crime Information Center; or

**(C)** If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

**(c) (1)** The notice shall be mandatory and by certified mail, return receipt requested.

**(2)** The notice shall be posted not sooner than two (2) business days but within eight (8) business days after the date that the towing and storage firm receives the vehicle.

**(d) (1)** If within forty-eight (48) hours the ownership and lienholder information has not been received from the law enforcement agency requesting the removal of a vehicle pursuant to this subchapter, the towing and storage firm shall obtain information concerning the last known registered owner or owners and lienholder or lienholders as provided from the records of the:

**(A)** Office of Motor Vehicle;

**(B)** Arkansas Crime Information Center; or

**(C)** If known, motor vehicle records of any other state where the vehicle's registration indicates the name and address of the last registered owner and the name and address of the holder of any recorded lien, if any, on the vehicle.

**(2) (A)** For the purpose of notices required by this section, if the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered, if known, do not contain any information as to the last known registered owner or owners and lienholder or lienholders, notice by publication one (1) time in one (1) newspaper of general circulation in the county where the vehicle was found unattended, abandoned, or improperly parked is sufficient notice under this section.

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

**(e) (1)** The notice shall contain the following information:

- (A)** The year, make, model, and vehicle identification number of the vehicle towed;
  - (B)** The name, address, and telephone number of the storage facility;
  - (C)** That the vehicle is in the possession of that towing and storage firm under police order, describing the general circumstances of any law enforcement or other official hold on the vehicle;
  - (D)** That towing, storage, and administrative costs are accruing as a legal liability of the owner;
  - (E)** That the towing and storage firm claims a first priority possessory lien on the vehicle and its contents for all such charges;
  - (F)** That unless claimed within forty-five (45) days, the vehicle and its contents will be dismantled, destroyed, or sold at public sale to the highest bidder;
  - (G)** That the failure to exercise the right to reclaim the vehicle and its contents within the time prescribed by this section constitutes a waiver by the owner and lienholder of all right, title, and interest in the vehicle and its contents and constitutes consent to the sale, dismantling, or destruction of the vehicle and its contents;
  - (H)** That the owner or lienholder may retake possession at any time during business hours by appearing, proving ownership, and releasing the law enforcement or other official hold, if any, and by paying all charges or by other written arrangement between the owner or lienholder and the towing and storage firm;
  - (I)** That should the owner consider that the original taking was not legally justified, he or she has a right for thirty (30) days to contest the original taking as described by § 27-50-1207; and
  - (J)** That the owner of the vehicle or operator or his or her authorized representative may recover without charge any item described in subdivision (a)(2)(B) of this section by providing within forty-five (45) days to the towing and storage firm proof that the claimant is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to take possession of the items.
- (2)** A notice to an owner of a vehicle deemed abandoned on the premises of an automobile repair facility under § 27-50-1101 shall also advise that the automobile repair person holds an absolute lien on the vehicle under § 18-45-201 et seq.
- (f)** Nothing in this section is to preclude the owner, lienholder, or agent from making alternative arrangements within the two-day to eight-day period with the towing and storage firm, waiving his or her rights to the notice requirement.
- (g)** When any vehicle reclaimed from the towing and storage firm by a lienholder contains contents not subject to the lienholder's interest, the lienholder shall be accountable to the owner of the contents in the same manner as the lienholder would in any other case of repossession of a vehicle, and the towing and recovery firm releasing the vehicle and its contents shall be relieved from all responsibility for the contents.
- (h) (1)** A towing and storage firm that in good faith follows the procedures of this

subchapter or the provisions of § 27-50-1101 shall not be subject to claims of unlawful detainer or conversion for vehicles or their contents for maintaining property pursuant to the possessory lien as provided by this subchapter.

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

**(3)** This section shall not be construed to limit liability of the towing and storage firm for any other act or omission otherwise actionable under statutory or common law.

HISTORY: Acts 1993, No. 1000, § 7; 1997, No. 392, § 4; 1997, No. 841, § 3; 1999, No. 1279, § 5; 2001, No. 1830, § 5; 2005, No. 1878, § 7; 2005, No. 2211, § 3; 2007, No. 506, §§ 1, 2; 2007, No. 861, §§ 7, 8; 2007, No. 1053, § 11; 2009, No. 483, § 4; 2011, No. 1025, § 9.

### **27-50-1209. Foreclosure of liens.**

**(a) (1)** The failure of the owner or lienholder to exercise his, her, or its right to reclaim the vehicle and its contents within forty-five (45) days of the posting or publication of notice to owners and lienholders constitutes a waiver by the owner or lienholder of all right, title, and interest in the vehicle and its contents.

**(2)** If a law enforcement official or other official refuses to release any hold on the vehicle or its contents, the owner or lienholder has an additional twenty (20) days to reclaim the vehicle and its contents after the date when the hold is released.

**(3) (A)** The owner or lienholder may challenge any law enforcement official hold or other official hold under the procedures in § 27-50-1207(e).

**(B)** However, the provisions of § 27-50-1207(f) pertaining to release of the vehicle do not apply when the owner or lienholder challenges a law enforcement official hold or other official hold.

**(b) (1)** Except as provided in subsection (c) of this section, the towing and storage firm, municipality, or county that holds a perfected possessory lien on any vehicle and its contents not redeemed by its owner or security lienholder within the time frame provided by this section shall sell the vehicle and its contents at a nonjudicial public sale for cash.

**(2)** The sale shall not occur later than ninety (90) days after perfection of the lien or forty-five (45) days after the release of any law enforcement hold or other official hold, whichever is later.

**(c)** A vehicle that is held by a municipality or county on a storage lot owned and operated by the municipality or county may defer the public sale and make use of the vehicle for law enforcement purposes if:

**(1)** The municipality or county complies with the notice provisions of § 27-50-1208;

**(2)** The time frame as provided under subsection (a) of this section has expired; and

**(3)** The municipality or county enacts an ordinance that:

**(A)** Declares the municipality's or the county's policy regarding the deferral for law enforcement purposes;

**(B)** Charges a specific municipal or county official with the responsibilities of:

**(i)** Identifying the vehicles to be used by the municipality or county; and

**(ii) (a)** Declaring a future date to publicly sell the vehicle pursuant to § 27-50-1210.

**(b)** The date of the sale shall be a maximum of six (6) months following the passage of the time frame for an owner or lienholder to reclaim a vehicle under subsection (a) of this section or as soon as is practicable if circumstances arise that prevent the sale on the declared sale date; and

**(C)** Requires that the official ensure that the public sale proceed on the sale date declared in the ordinance.

**(d) (1)** The towing and storage firm, municipality, or county shall obtain written verification that the Arkansas Crime Information Center records do not list the vehicle as having been reported stolen.

**(2)** The verification shall be on a form prescribed by the center, the Office of Motor Vehicle of the Department of Finance and Administration, a municipal police department, a county sheriff's department, or the Department of Arkansas State Police.

**(3)** When the verification provided by this subsection is sought directly from the center by the towing and storage firm, the center may charge a fee, not to exceed ten dollars (\$10.00) per vehicle verification.

**(e) (1)** Notice of the sale shall be sent at least fifteen (15) days before the date of the sale by certified mail, no return receipt requested, to the registered owner and lienholder, if any.

**(2)** If the data records of the Office of Motor Vehicle or the office of motor vehicles for the state where the vehicle is registered do not contain any information as to the last known registered owner or owners or lienholders, the notice required under subdivision (e)(1) of this section is not required.

**(3)** Nothing in this subsection removes the requirement of notice of sale by publication under subsection (f) of this section.

**(f)** In addition to the notice by mail, notice of the sale shall be published in a newspaper of general circulation in the county at least one (1) time at least ten (10) days prior to the sale.

HISTORY: Acts 2001, No. 1830, § 6; 2005, No. 1878, § 8; 2005, No. 2189, § 1; 2005, No. 2211, § 4; 2007, No. 506, § 3; 2007, No. 1053, § 12.

### **27-50-1210. Nonjudicial public sale.**

**(a)** After complying with the requirements of foreclosure of liens provided by this subchapter, ownership of the vehicle and its contents shall thereupon vest in the purchaser

free of all liens of any nature. Should the nonjudicial public sale produce more funds than the sum of all charges, including the costs of the sale and including a reasonable charge for processing the paperwork, the excess shall be paid as follows:

**(1) (A)** If the vehicle was removed to an impound lot at the request of a law enforcement agency as authorized by this subchapter, the excess shall be maintained for a period of one (1) year by the entity that operates the impound lot.

**(B)** If the excess is not claimed during this period by the person legally entitled thereto, the moneys shall be paid to the entity operating the impound lot; or

**(2) (A)** If the vehicle was removed to a private impound lot under § 27-50-1101, the excess shall be paid to the county clerk to the account of the person legally entitled to the excess.

**(B)** The Unclaimed Property Act, § 18-28-201 et seq., shall apply to any unclaimed funds or excess moneys that have been paid to the county clerk.

**(b)** Should the sale produce the same or less than the sum of all charges:

**(1)** At the election of the possessory lienholder, the sale of the vehicle may be cancelled and ownership of the vehicle and its contents shall thereupon vest in the possessory lienholder as purchaser free of all liens of any nature; and

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

**(c) (1)** Upon presentation of documentation to the Office of Motor Vehicle to the effect that the sale procedure provided in this subsection has been complied with protecting the rights of the owner or lienholder, the purchaser of the vehicle shall be entitled to receive a new title to the vehicle upon meeting other applicable administrative requirements of title and registration laws.

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

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

HISTORY: Acts 1993, No. 1000, § 9; 1997, No. 841, § 4; 2001, No. 1820, § 1; 2001, No. 1830, § 7; 2005, No. 1878, § 9; 2005, No. 2211, § 5; 2007, No. 1053, § 13; 2011, No. 872, § 1.

#### **27-50-1211. Disposition of funds.**

**(a)** All fees, fines, and charges collected by the Arkansas Towing and Recovery Board under the provisions of this subchapter shall be paid to the secretary-treasurer, who shall be the custodian of all funds and shall deposit same in a bank or banks to be designated by the board.

**(b)** The secretary-treasurer shall execute a bond in the amount determined by the State Risk Manager pursuant to the blanket bond program as authorized in § 21-2-601 et seq. [repealed].

**(c)** The secretary-treasurer shall pay funds of the board only on vouchers signed by himself or herself and countersigned by the chair. The total expenses for all purposes and obligations of the board shall not exceed the total fees, charges, and other funds paid to the board under the provisions of this subchapter.

**(d)** The secretary-treasurer shall make semiannual financial reports in detail to the board not later than January 31 and July 31 of each year, which financial reports will be kept on permanent file by the board.

HISTORY: Acts 1993, No. 1000, § 11; 2005, No. 1878, § 10.

### **27-50-1212. Criminal penalties.**

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

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

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

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

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

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

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

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

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

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

**(1)** Fifty percent (50%) to the Administration of Justice Fund Section of the Office of Administrative Services of the Department of Finance and Administration by the tenth day of each month on a form provided by that office for deposit into the Arkansas Towing and Recovery Board treasury fund; and

(2) Fifty percent (50%) to the law enforcement agency issuing the violation.

(e) Each day of an unlawful practice proscribed by this section shall constitute a distinct and separate offense.

HISTORY: Acts 1997, No. 392, § 5; 2005, No. 2211, § 6; 2007, No. 861, § 9; 2009, No. 644, § 1.

**27-50-1213. Limitation on removing from the state.**

(a) A towing or wrecker service licensed in a state other than Arkansas shall only remove a vehicle that was involved in a motor vehicle accident in the State of Arkansas from the site of the accident to another state if the state in which the towing or wrecker service is licensed extends the same privilege to a towing or wrecker service that is licensed in Arkansas and operating in the other state.

(b) For the purpose of determining whether a state permits Arkansas-licensed wreckers and Arkansas-licensed towing vehicles to remove a vehicle that was involved in an accident in that state, any limitation imposed by a county, parish, city, or other political subdivision of that state is deemed an action of that state.

(c) (1) This section applies only to the initial removal of a vehicle from the site of an accident to a point of storage or repair.

(2) This section does not apply to the secondary towing of a vehicle after an investigation of a motor vehicle accident is completed.

(d) When towing a vehicle in this state, a towing or wrecker service licensed in a state other than Arkansas must comply with the provisions of this subchapter and § 27-35-112.

HISTORY: Acts 2005, No. 1807, § 1; 2007, No. 1053, § 14.

**27-50-1214. Rules of order or procedure.**

(a) The Arkansas Towing and Recovery Board shall prescribe its rules of order or procedure in hearings or other proceedings before it under this subchapter.

(b) However, rules of order or procedure shall not be in conflict or contrary to the provisions of this subchapter or the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 2005, No. 1878, § 1.

**27-50-1215. Summons, citation, and subpoena.**

(a) It shall be the duty of the sheriffs and constables of the counties of this state and of any employee of the Arkansas Towing and Recovery Board, when so directed by the board, to execute any summons, citation, or subpoena that the board may cause to be issued and to return the summons, citation, or subpoena to the board.

**(b) (1)** The sheriffs and constables serving and returning any summons, citation, or subpoena shall be paid the same fees as provided for those services in the circuit court.

**(2)** Any person, or a duly designated employee of the person, who appears before the board in response to a summons, citation, or subpoena shall be paid the same witness fee and mileage allowance as witnesses in the circuit court.

**(c) (1)** In case of failure or refusal on the part of any person to comply with any summons, citation, or subpoena issued and served as authorized, or in the case of the refusal of any person to testify or answer to any matter regarding that which he or she may be lawfully interrogated or the refusal of any person to produce his or her record books and accounts relating to any matter regarding that which he or she may be lawfully interrogated, the circuit court of any county of the State of Arkansas on application of the board may:

**(A)** Issue an attachment for the person; and

**(B)** Compel the person to:

**(i)** Comply with the summons, citation, or subpoena;

**(ii)** Appear before the board or its designated employee;

**(iii)** Produce the documents specified in any subpoena duces tecum; and

**(iv)** Give his or her testimony upon such matters as he or she may be lawfully required.

**(2)** Any circuit court shall have the power to punish a person for contempt as in the case of disobedience of like process issued from or by any circuit court or by refusal to testify in the circuit court in response to the process, and the person shall be taxed with the costs of the proceedings.

HISTORY: Acts 2005, No. 1878, § 1.

#### **27-50-1216. Moving a total-loss vehicle from a storage facility.**

**(a)** As used in this section, "storage facility" means a facility where a wrecked or inoperable vehicle is stored that charges storage fees to a vehicle owner as a result of the claim from the wrecked or inoperable vehicle.

**(b) (1) (A)** If an insurance company determines that a vehicle is a total loss claim, the insurance company may authorize its agent to move the vehicle to a location of its choosing without:

**(i)** The approval of the storage facility; and

**(ii)** A release document from the owner.

**(B)** Instead of a release document, the insurance company shall obtain a verbal release from the vehicle owner to move the total loss vehicle as provided under this section and document the verbal release in the claim file.

**(2) (A)** To authorize the moving of the vehicle, the insurance company shall submit notice by regular mail, hand-delivery, facsimile, or electronic transmission to the storage facility on company letterhead of the intent to move the vehicle.

**(B)** The notice shall include:

**(i)** A description of the vehicle, including its identification number;

**(ii)** The identification of the agent who is to move the vehicle;

**(iii)** The date the owner of the vehicle authorized release of the vehicle to the insurance company; and

**(iv)** A statement that the insurance company will indemnify and hold harmless the storage facility for all liability and costs it incurs defending itself in any civil or criminal claim arising from moving the vehicle without a release document from the owner.

**(C)** The owner and any lienholder of the vehicle shall receive a copy of the notice by regular mail.

**(c)** The storage facility shall make the vehicle available for immediate release and removal during regular business hours of the storage facility upon receipt of:

**(1)** The letter described under subdivision (b)(2) of this section;

**(2)** The release of any law enforcement or other official hold; and

**(3)** Settlement of all fees incurred up to and including the date of removal.

**(d) (1)** If an insurance company or its agent moves a vehicle as provided under this section, the insurance company shall indemnify and hold harmless the storage facility for liability and all expenses associated with civil or criminal claims arising from moving the vehicle without a release document from the owner.

**(2)** In any action in which a storage facility prevails against an insurance company for indemnification under this subsection, in addition to any damages suffered, the storage facility shall be awarded attorney's fees and costs incurred.

**(e)** This section shall not be construed to restore or grant any right, title, or interest in the vehicle or its contents as may have been waived under § 27-50-1209(a).

HISTORY: Acts 2011, No. 1206, § 1.