

Arkansas Towing & Recovery Board
2019 Legislative and Regulatory Review
2:00 P.M. Thursday January 31st 2019
Sherwood Forest . 1111 W. Maryland . Sherwood, Arkansas

PROGRAM

Opening Remarks and Introduction of Guests

Welcome & Introduction of Guests · Steven Rogers

Opening Remarks · Matt Ross
ATRB Legislative Chairman

Rules for the Legislative Review

Steven Rogers

House Cleaning Legislation w/Handouts



Definition of a Tow Business
Allowing Passengers in a Towed Vehicle

Legislation with Substantive Changes w/Handouts



Permitting ALL Tow Vehicles Used for Commercial Purposes
Surety Bond Requirement for a Non Consent Tow Company

Traffic Incident Management (TIM)

The Importance of Safety, Communication and Quick Clearance

Guest Speaker · Lieutenant Brad Perkins
Arkansas Highway Police

TIM Coalition Legislation w/Handouts



Enhanced Heavy Duty Tow License

Closing Remarks

Matt Ross

ATRB Legislative Review • 2019
A Bill to Protect Persons When No Transportation is Available
Except a Towed Vehicle

ISSUE •

A bill clarifying when a person can ride in a towed vehicle.

DRAFTED LANGUAGE

27-35-104. Riding in spaces not for passengers.

(a) No person shall ride on any vehicle upon any portion of the vehicle not designed or intended for the use of passengers.

(b) This section shall not apply to any employee engaged in the necessary discharge of a duty or to persons riding within bodies of trucks in space intended for merchandise.

(c) A person or persons may ride in a secure, towed vehicle to the nearest safe haven when no other transportation is available and leaving a person or persons on-scene could endanger their well-being.

(1) A sling type tow vehicle may not be used for the purpose of towing a vehicle with passengers under any circumstance.

WHY •

Additional language is needed in the statute to clarify and offer direction to a tow company when an accident occurs or a vehicle breaks down, needs towed and the towed vehicle occupants outnumber the passenger capacity of the tow vehicle.

This provision would come into play when transporting passengers to the nearest safe haven in their properly secured and towed vehicle is superior to leaving a person or persons standing on the side of a busy highway. It does not require a tow company to transport a person or persons, it simply offers an option.

ANALYSIS •

This should not be a controversial bill. It is primarily a safety issue giving a tow operator some much needed clarification on what to do when roadside assistance turns into an 'urgency based' passenger transportation issue.

ATRB Legislative Review • 2019

A Bill to Define a Tow Business

ISSUE •

A bill expanding and clarifying the definition of a tow business.

DRAFTED LANGUAGE

27-50-1202-Definitions

(10) "Tow Business" a place used exclusively for the operation of a tow facility, vehicle immobilization company and/or a storage facility licensed and regulated by the Arkansas Towing And Recovery Board; a facility intended to:

- (A) dispatch tow vehicles for non-consent or consent towing including repossession; and/or
- (B) safely store vehicles impounded or towed and;
- (C) conduct business with the general public; and
- (D) whose corporate name or dba is properly filed with the Arkansas Secretary of State

WHY •

Currently there are functions that are intended primarily for a tow business, specifically the possessory lien law, however there is nothing in the statute that defines a tow business in a manner that would limit anyone from licensing themselves as a tow business and taking advantage of the lien process to take possession of vehicles to which they have no right.

ANALYSIS •

This is primarily a 'housekeeping' issue and should not attract any negative attention. It simply clarifies the legislative intent of what a tow business is and better protects the possessory lien law process.

ATRB Legislative Review • 2019
A Bill to Require a Tow Vehicle Safety Inspection for All Tow Vehicles

ISSUE •

Legislation requiring **ALL** tow vehicles to be permitted when used for commercial purposes. A part of this proposal would be the elimination of the 'consent only' business license.

DRAFTED LANGUAGE

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; or
- (3) Uses a tow vehicle for commercial purposes:

27-50-1223-Tow Vehicle Safety Inspection Required for All Tow Vehicles

(a)(1) all tow vehicles as defined in ACA §27-50-1201 shall be permitted through the Arkansas Towing and Recovery Board.

(2) a safety inspection form approved by the board shall be submitted annually for approval which has been completed by a certified law enforcement officer or an investigator of the Arkansas Towing & Recovery Board;

(A) should a tow vehicle fail to pass the safety inspection subsequent inspections must be conducted by the agency or division of that agency that conducted the original inspection.

(B) the Board shall be notified of any tow vehicle failing the Tow Vehicle Safety Inspection within 48 hours.

(3) the applicant shall submit a copy of the current annual inspection form required by the Arkansas Department of Transportation for commercial vehicles; and

(4) the applicant shall provide proof of insurance as prescribed by the board;

(A) a lapse in coverage or cancellation of the insurance policy will result in the immediate suspension or revocation of the permit.

(B) Operating a tow vehicle without insurance may result in civil penalties or fines in accordance with the guidelines of the board.

(5) all applicable fees, including late fees shall be submitted in full at the time application is made.

(6) All signage and decal requirements shall be met at the time of application or within the time frame prescribed by the board.

WHY •

Who should be permitted has long been an issue. The agency has little to no regulatory authority over a 'consent' tow or the businesses that primarily engages in 'consent only' towing. Requiring a garage or body shop to buy a business license is needless. (Licensing should be preserved for repossession tow companies although they are considered a consent tow given the relationship of the lien holder.)

One of the primary issues that drove the legislature to create the Arkansas Towing & Recovery Board in the early 90's was highway safety. The tow board feels strongly that all tow vehicles used for commercial purposes should be permitted through the agency, insuring that tow vehicles are safe, equipped, properly insured and have met the standards of the State of Arkansas relative to the commercial vehicle inspection process.

A number of used car lots and automobile auction facilities claim the exemption. Attempting to determine ownership of a towed vehicle makes it confusing to law enforcement impacting enforcement.

Too often those claiming the exemption abuse the privilege regularly towing customer owned vehicles as well as soliciting tow business.

ANALYSIS •

This bill focuses on the safety of commercial vehicles towing, recovering and transporting vehicles on public highways. The proposed changes would restore the permitting of all tow vehicles as it was prior to 2011. Existing law exempts anyone towing 'their own vehicles' from ATRB's licensing and permitting even if the tow vehicles are used for commercial purposes.

The loss of revenue as a result of no longer licensing consent only businesses should be offset through permitting ALL tow vehicles. This should be 'revenue neutral' for the agency.

While the proposed legislation will receive wide support from the tow industry and law enforcement agencies it will likely be opposed by the used car industry/association. It is important to remember that the legislation does not require a business license, only compliance with the tow vehicle safety inspection process which in addition to insuring a safe tow vehicle also verifies that the tow vehicle is properly insured.

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A Bill to Require a Surety Bond for a Non Consent Tow Business

ISSUE •

A bill requiring each licensed tow business to acquire a \$25,000 surety bond.

DRAFTED LANGUAGE

27-50-1203 Arkansas Towing and Recovery Board-Creation

(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, surety bond and equipment requirements for any person engaging in towing and related services for safety purposes or vehicle immobilization services under this subchapter;

(i) Require all entities licensed under this subsection to file with the board a surety bond in the amount of \$25,000 for the current licensing year for each business location.

(ii) In lieu of a \$25,000 surety bond an applicant may provide the board with:

(a) an irrevocable letter of credit in the same amount from an Arkansas chartered bank or a federally chartered bank in Arkansas, or

(b) a certificate of deposit in the same amount.

(iii) the board may process a claim against the surety bond, irrevocable letter of credit or the certificate of deposit for non-payment of the following and after the time for an appeal has expired and efforts have been exhausted by the board to collect the debt:

(a) a civil penalty resulting from a disciplinary hearing of more than \$500.00

(b) restitution ordered by the board to a vehicle owner, lien holder or insurance company as a part of the final order issued by the board.

(c) license and permit fees or late fees in an amount over \$500.00

(iv) The surety bond, irrevocable letter of credit or certificate of deposit may not be cancelled by the licensee during the licensing year.

(a) cancellation or revocation of the surety bond, irrevocable letter of credit or certificate of deposit will result in the immediate suspension or revocation of the business license.

(b) operation of the tow business must cease immediately until a surety bond, irrevocable letter of credit or certificate of deposit has been restored.

WHY •

It is not unusual for a tow company who has violated a number of provisions in the rule or statute, found guilty and ordered to pay restitution to the vehicle owner or fined by the board to abandon the company

Arkansas Towing & Recovery Board

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licensed through the tow board and open a similarly named company using a relative or business associate. Restitution and civil penalties are never paid and the offending licensee continues to operate in Arkansas with no consequences.

There are multiple e

ANALYSIS •

Over the years the tow board has looked at a number of ways to 'qualify' applicants through the licensing process. It tends to make the licensing process look arbitrary raising far too many questions and legal issues. Too, stringent licensing standards is not popular with the legislature.

Requiring a surety bond is a relatively inexpensive 'fix' for the tow industry to an on-going problem. A \$25,000 surety bond would insure a vehicle owner, lien holder or insurance company of receiving any restitution ordered by the board, civil penalties would be paid.

Any effort to create a 'new' company would be looked at carefully. The 'new' applicant could be held accountable by the surety bond company, 'repeat offenders' would find it difficult to meet a surety bond / licensing standard. An insurance provider can qualify a candidate more easily than a state licensing agency requiring a background check, considering credit rating, past criminal history and outstanding judgements.

The annual cost for a surety bond is not expensive. A credit worthy, well capitalized tow company could expect to pay less than \$150.00 per year for a \$25,000 surety bond.

The agency knows this will be a controversial issue. While it will get mixed reaction from the tow industry the proposed legislation should gain the support of consumer protection groups, the law enforcement community and hopefully the Attorney General's office.

Thank You for Being a Part of this Historic Event

If you have a question or questions we want to answer them. Please use this form to make sure we have the correct contact information and drop it in the box or your way out or mail it to this. We will answer all questions within the week.

Name _____

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→ FOR FASTER ANSWERS

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