



## New towing laws now in effect

**T**his year the Arkansas Legislature introduced several new acts that overhauled the laws regarding non-consent towing. The new law requires law enforcement agencies to have a non-consent rotation policy. Additionally, the new acts enumerate the violations that tow operators, owners, and drivers may be issued, along with a more defined schedule of fines for violations. Finally, consumer complaints now have a more transparent process. The changes will be codified in the new sections 27-50-1217 and 1218 of the Arkansas Code.

First, Act 1224 now requires law enforcement agencies to create a non-consent rotation policy that is both reasonable and reflects the day-to-day operations of tow operators in the immediate area. Any law enforcement agencies that already have a policy in place, or have a pre-existing contract with a tow operator, are excluded from this requirement. Law enforcement agencies must provide the tow operators on the list with a copy of the new policy, which the tow operators are bound by in addition to the statutes and rules of the board. The tow operators must acknowledge receiving the policy in writing.

Act 1224 further requires that the Arkansas Towing and Recovery Board (ATRB) establish rules setting up a complaint process for the removal of a tow operator from the non-consent rotation list when they violate the policy in question. The removal or suspension of the tow operator will be determined by weighing the reasonableness of the law enforcement agency's policy against the severity of the violation. The penalties for violations increase upon subsequent violations, beginning with an initial suspension of up to 15 days for a first offense to a one-year suspension with a fine for the third offense. Any tow operator that receives a suspension of more than six months must reapply for a position on the non-consent rotation list. Additionally, Act 1224 requires that all tow operators seeking to be on a non-consent rotation obtain a license and permit by the board. Failure to obtain or renew the licenses and/or permits will result

in an immediate suspension of the tow operator and/or storage facility until the permits are obtained.

The director and investigators employed by ATRB now possess the power to issue citations to a tow company, owner-operator, or tow vehicle driver for the following offenses: (1) operating a tow vehicle without a proper permit or license, (2) operating a tow vehicle which has not been permitted or licensed as a tow vehicle by the State of Arkansas, (3) operating a tow vehicle which is out of compliance with the safety and operating regulations prescribed by the board, (4) not responding within a prescribed time frame to a request for information related to a consumer complaint, (5) failure to properly post any required notifications in a conspicuous place as required by the board, or (6) failure to meet the basic criteria for an adequate place of business. All fines for any of the enumerated violations will reflect the severity of the penalty and may be increased for multiple offenses or repeated violations of the same offense. However, no individual fine given by the board will exceed \$200 for these violations. (ACA § 27-50-1218.)

“An adequate place of business” is defined in Act 1195 as a location that the public can easily access, with an appropriate and secure filing system for business records, and clear and visible front and rear signage that is a minimum of 4x6 feet and displays the name, physical address, phone number for the company that can be easily accessed by the public, and towing company's hours of operation. Additionally, Act 1117 now requires tow operators and storage facilities to post signs notifying customers of the consumer complaint process. The sign must be in a visible and central location in the public area, and shall be a minimum of 16x20 inches in size. Any operator or facility found in violation of the signage requirement may be fined between \$50 and \$250 by the state board.

Moreover, Act 387 now requires law enforcement agencies with a non-consent rotation policy to require each tow operator and storage facility in their jurisdiction to annually file a list of the towing and storage firm's current rates of service. It is now an unclassified



violation if a towing and storage firm fails to file the list required under this section or engages in the towing, removal, or storage of a vehicle within the jurisdiction of the entity with which it failed to file the list. A first offense violation is subject to a fine of \$1,000; second and subsequent violations are punishable by a fine of \$2,000.

Act 1117 provides new regulations for the consumer complaint process. When a consumer complaint is filed with the law enforcement agency, the agency must submit the complaint to the board within five days of receiving it. The written complaint must include four things: (1) the complainant's name and contact information, (2) the tow company involved in the dispute, (3) the nature of the consumer's complaint including any important details that show cause for filing a complaint against the tow company, and (4) the contact information for the on-scene officer who initiated the non-consent removal of the vehicle. Additionally, the person filing the complaint must have a vested interest in the vehicle; this interest includes, but is not limited to, being the owner of the towed vehicle or their agent, being the lien holder of the vehicle, or being the company that insures the vehicle. The board must resolve the complaint within 45 days, unless conditions warrant an extension. In order to maintain this time limit, complainant and tow operator are required to respond to any requests from the board for more information within 10 days by either sending the requested information or requesting an extension. If the complainant does not respond within this time period, the claim may be automatically dismissed. If the tow operator does not respond within the time period, they will be fined \$25 a day until they provide the requested information.

In terms of damages, if a complainant's claims are found to be valid, any financial restitution will be considered part of the penalty by the board when determining the fines for the tow company and/or storage facility. Moreover, a complainant can only obtain actual damages, and cannot recover punitive damages. The board is responsible for determining all financial restitution; however, the complainant may still bring suit in court as an alternative to the statutory complaint process. ☰