



## ARKANSAS CODE OF 1987 ANNOTATED

### VOLUME 28B · TITLE 27, CH. 49-117

#### SUBCHAPTER 4 – CONTROL OF JUNKYARDS

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**Preambles.** Acts 1967, No. 640 contained a preamble which read: "Whereas, the Congress of the United States has enacted legislation in the Highway Beautification Act of 1965 which will cause substantial losses in federal-aid highway funds apportioned to Arkansas on or after January 1, 1968, unless the Arkansas General Assembly enacts conforming legislation (a) to regulate the erection and maintenance of outdoor advertising signs, displays and devices in areas adjacent to the federal-aid Interstate and Primary Systems; (b) to regulate the establishment, use and maintenance of junkyards in such areas; and (c) to provide for the payment of full and just compensation upon the removal and relocation of outdoor advertising signs and junkyards; and "Whereas, the Congress of the United States has made available additional federal funds for use in landscape and roadside development within federal-aid highway rights of way and for acquisition of interests and improvement of strips of land necessary for the restoration, preservation and enhancement of scenic beauty adjacent to such federal-aid highways;

"Now, therefore ... ."

**Effective Dates.** Acts 1967, No. 640, Art. 5: emergency failed to pass. Emergency clause provided: "It is hereby found and determined by the General Assembly that recent Federal Highway legislation, particularly Public Law 89-285, approved October 22, 1965, and cited as the 'Highway Beautification Act of 1965' makes it necessary that the State of Arkansas provide for the regulation and control of outdoor advertising and junkyards or lose many millions of dollars of Federal-aid Highway funds greatly needed and required in this state to construct and maintain a suitable and efficient highway system; and it being further found and determined that the erection and maintaining of outdoor advertising and the establishment and maintenance of junkyards along the Federal-aid Interstate and Primary Highways of this state, unless controlled, mar the natural scenic beauty along such highways; and it being further found and determined that landscaping, scenic enhancement and rest and recreation areas adjacent to all Federal aid Highways of this state are needed for the accommodation and enjoyment of our citizens and for the attraction of tourists, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval." Approved Apr. 6, 1967.

Acts 1989, No. 211, § 4: Feb. 24, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effective control of junkyards in the State is essential to the public health, safety, and welfare; that the provisions of this Act are immediately needed for the accomplishment of this purpose and that only by giving immediate effect to this Act can these purposes be realized to the fullest possible extent. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

## CASE NOTES

**Cited:** Arkansas State Hwy. Comm'n v. Roark, 309 Ark. 265, 828 S.W.2d 843 (1992).

### **27-74-401. Policy.**

- (a) The General Assembly finds and declares that the establishment and use and maintenance of outdoor junkyards in areas adjacent to certain sections of the National System of Interstate and Defense Highways, the primary and other state highways designated by the State Highway Commission shall be controlled in order to protect the public interest, to promote the public health, safety, and welfare, and to preserve natural beauty.
- (b) The General Assembly further finds that junkyards which do not conform to the requirements of this chapter are public nuisances.

**History.** Acts 1967, No. 640, Art. 2, § 1; A.S.A. 1947, § 76-2513.

## CASE NOTES

**Cited:** Wright v. Arkansas State Hwy. Comm'n, 255 Ark. 158, 499 S.W.2d 606 (1973).

### **27-74-402. Definitions.**

As used in this subchapter:

- (1) "Automobile graveyard" means any establishment or place of business that is maintained, used, or operated for the storing, keeping, buying, or selling of five (5) or more wrecked, scrapped, ruined, or dismantled motor vehicles;
- (2) "Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, and waste or junked, dismantled, or wrecked automobiles, or parts thereof, or iron, steel, and other old or scrap ferrous or nonferrous materials; and
- (3) (A) "Junkyard" means an establishment or place of business that is maintained, used, or operated for storing, keeping, buying, or selling junk or for the maintenance or operation of an automobile graveyard.  
(B) The term "junkyard" shall also include garbage dumps and sanitary fills.

**History.** Acts 1967, No. 640, Art. 2, § 2; A.S.A. 1947, § 76-2514; Acts 1989, No. 211, § 1; 2005, No. 2147, § 1.

### **27-74-403. Notice.**

Any person contemplating or planning the establishment of a junkyard is charged with notice of the provisions of this subchapter with respect to screening, relocation, removal, or disposal of such junkyards.

**History.** Acts 1967, No. 640, Art. 2, § 5; A.S.A. 1947, § 76-2517.

### **27-74-404. Enforcement.**

- (a) The General Assembly finds and declares that junkyards and automobile graveyards that do not conform to the requirements of this subchapter are public nuisances.
- (b) The provisions of this subchapter may be enforced by means of restraining order, mandatory injunction, or other appropriate remedy for the abatement of these public nuisances by:
  - (1) The State Highway Commission; or
  - (2) The circuit court of the county in which all or part of a junkyard or automobile graveyard is situated upon application by a city or county.

**History.** Acts 1967, No. 640, Art. 2, § 7; A.S.A. 1947, § 76-2519; Acts 2005, No. 2147, § 2.

### **27-74-405. Screening requirement.**

- (a) Except as otherwise herein provided, no junkyards shall be established, operated, or maintained after June 29, 1967, any portion of which is within one thousand feet (1000') of the nearest edge of the right-of-way of any interstate, primary, or other state highway designated by the State Highway Commission in the State of Arkansas unless the junkyards shall be screened by natural objects, plantings fences, or other appropriate means so as not to be visible from the main-traveled way of the highway, or shall be removed from sight.
- (b) The commission is authorized and directed to promulgate rules and regulations governing the location, planting, construction, and maintenance, including materials used therein, of the screening and fencing required under this chapter.

**History.** Acts 1967, No. 640, Art. 2, § 3; A.S.A. 1947, § 76-2515.

## **CASE NOTES**

### **ANALYSIS**

In General.  
Zoning.

#### **In General.**

Acts 1955, No. 212, which imposed a penalty of \$100 a day for each day a person kept or maintained five nonoperative automobiles within one-half mile of any paved highway, regardless of whether they could be seen or not, was held to be arbitrary and unreasonable in that it gave the person involved no opportunity at all to save his business by obstructing it from the view of the persons who travel the highway in attempting to effect the act's intended purpose, which could have only been to protect the traveling public from unsightly views, which was an esthetic consideration. *Bachman v. State*, 235 Ark. 339, 359 S.W.2d 815 (1962) (decision under prior law).

## **Zoning.**

An established junkyard cannot become a permitted junkyard and thereby avoid the screening requirements by subsequent zoning to industrial usage so as to come within the exception in § 27-74-406. *Arkansas State Hwy. Comm'n v. Roark*, 309 Ark. 265, 828 S.W.2d 843 (1992).

### **27-74-406. Permitted junkyards.**

Nothing contained in this subchapter shall prohibit the establishment, maintenance, and operation of outdoor junkyards, automobile graveyards, and scrap metal processing facilities within one thousand feet (1000') of the nearest edge of the right-of-way of interstate or primary state highways:

- (1) Within those areas which are zoned industrial under authority of the laws of this state;
- (2) Within those unzoned industrial areas which may be determined by agreement between the State Highway Commission and the United States Secretary of Transportation; or
- (3) Within other areas, when effectively screened as not to be visible from any point on the main-traveled way of such interstate or primary state highway.

**History.** Acts 1967, No. 640, Art. 2, § 4; A.S.A. 1947, § 76-2516.

## **CASE NOTES**

## **Zoning.**

An established junkyard cannot become a permitted junkyard and thereby avoid the screening requirements of this section by subsequent zoning to industrial usage. *Arkansas State Hwy. Comm'n v. Roark*, 309 Ark. 265, 828 S.W.2d 843 (1992). The exemption for industrial zoning applies to zoning in existence on the effective date of the act. *Arkansas State Hwy Comm'n v. Roark*, 309 Ark. 265, 828 S.W.2d 843 (1992).

### **27-74-407. Screening and removal - Compensation.**

(a)(1) The screening of any junkyard by natural objects, plantings, fences, or other appropriate means, so as not to be visible from the main-traveled way of any interstate or primary state highway, may be required by:

(A) The State Highway Commission;

(B) The circuit court of the county in which all or part of a junkyard or automobile graveyard is situated upon application by a city or county.

(2) The removal from sight of any junkyard not so screened that is visible from the main-traveled way of the interstate or primary state highway may be required by:

(A) The commission; or

(B) The circuit court of the county in which all or part of a junkyard or automobile graveyard is situated upon application by a city or county.

(b) When the commission determines that the topography of the land will not permit adequate screening or that the screening would not be economically feasible, then just compensation shall be paid for the relocation, removal, or disposal of the following junkyards:

(1) Those lawfully in existence on October 22, 1965;

(2) Those lawfully along any highway in this state made a part of the state highway system on or after October 22, 1965, and before June 29, 1967; and

(3) Those lawfully established on or after June 29, 1967.

(c) The commission is:

(1) Given the option of relocation, removal, or disposal of affected junkyards; and

(2) Also authorized to make such payments when in the best interests of the state.

(d) No compensation shall be paid for the relocation, removal, or disposal of any junkyards except those enumerated in this section.

**History.** Acts 1967, No. 640, Art. 2, § 5.; A.S.A. 1947, § 76-2517; Acts 2005, No. 2147, § 3.

## CASE NOTES

### ANALYSIS

Actions.

Compensation.

Evidence.

Interest.

Pleadings.

Screening.

#### **Actions.**

An action under this section is in the nature of an eminent domain proceeding and may constitute the taking of private property rights entitling the affected property owners to just compensation. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

An action under this section requiring a junkyard owner to relocate his junkyard is an action in the nature of an eminent domain proceeding. *Foster v. Arkansas State Hwy. Comm'n*, 263 Ark. 62, 562 S.W.2d 298 (1978).

#### **Compensation.**

Where State Highway Commission brought petition for mandatory injunction, it was proper for landowner to claim compensation, and such an action by the landowner was not in violation of Ark.

Canst., Art. 5, § 20, as being a suit against the state. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

**Evidence.**

Evidence that junkyard owner used his own equipment to relocate his junkyard and that the value of the equipment and labor used to accomplish the relocation was \$23,040, that the owner had no records of out-of-pocket expenses or amount he paid his sons to aid in the relocation, that value of the one acre he owned in his former junkyard was \$3,000 and he paid \$10 rent for the remaining nine acres, award to owner for relocation of \$17,000 was not against the preponderance of the evidence. *Foster v. Arkansas State Hwy. Comm'n*, 263 Ark. 62, 562 S.W.2d 298 (1978).

**Interest.**

Junkyard owner who sought damages for the relocation of his junkyard was not entitled to interest on compensation award where, as of the trial date, he had not completed relocating or removing the debris and old automobiles from the yard and thus had not surrendered possession. *Foster v. Arkansas State Hwy. Comm'n*, 263 Ark. 62, 562 S.W.2d 298 (1978).

**Pleadings.**

In action for mandatory injunction for screening or removal of junk, an answer by landowner is not necessary in order for him to obtain compensation, so long as he is not seeking special damages. *Foster v. Arkansas State Hwy. Comm'n*, 258 Ark. 176, 527 S.W.2d 601 (1975).

**Screening.**

The imposition of the cost of screening a person's junkyard was a deprivation of his vested property rights without just compensation and was unconstitutional as applied to him. *Arkansas State Highway Com. v. Thrk's Auto Corp.*, 254 Ark. 67, 491 S.W.2d 387 (1973).



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**CONTROL OF JUNKYARDS**

**EXCERPTS FROM MINUTE ORDER NO. 69 177 DATED JUNE 25, 1969**

WHEREAS, Article II of Act 640 of the Acts of the General Assembly for the year 1967 (Ark. Stats. 76-2513-2519) directs the Arkansas State Highway Commission to promulgate rules and regulations governing the location, planting, construction, and maintenance, including materials used therein, for the screening and fencing of junkyards as defined by the said Act;

IT IS THEREFORE, CONSIDERED AND ORDERED that the following rules and regulations are hereby adopted for the screening and fencing of junkyards as defined by Act 640 of the Acts of the General Assembly for the year 1967, and are ordered published as prescribed by law.

I. General.

These rules shall apply to all junkyards located on all highways designated by the Arkansas Highway Commission as Interstate Highways or Primary Highways, and which can be screened using natural objects, plantings, fences or other appropriate means. These rules do not apply to junkyards in zoned industrial areas, zoned by an authorized zoning commission or those which exist in an unzoned industrial area as determined by an agreement between Arkansas State Highway Commission and the U.S. Department of Transportation.

II. Screening.

A. Fences.

1. The fencing shall be of permanent materials and constructed so that it will be capable of remaining erect for at least 10 years.
2. The fencing shall be high enough to screen all junk and junked cars from view of the traveled way of the highway. Should the junk pile(s) be increased in height, the fence must also be increased.
3. It shall extend along the frontage of the junkyard parallel to the highway and perpendicular to the highway along the sides of the junkyard to a distance so that all junk and wrecked cars will be screened from view of the traveled way of the highway.
4. The fence must be neat in appearance and of a uniform color and height. Steel signs will not be acceptable as fencing material. If the fence is to be painted, it shall be of a uniform color neatly trimmed in another color. Bright, loud colors will not be acceptable.
5. It is not necessary that the fence be solid. However, the open spaces must be small enough that the junk material is substantially screened.
6. The fence shall be maintained by the owner and/or operator of the junkyard. Should the fence become damaged or destroyed, it must be repaired within 30 days.

B. Plantings.

1. If the plantings are to be used for screening, they must be large enough and placed close enough to screen the junk and junked cars immediately after planting.
2. All plants used must be of evergreen varieties.
3. Plants must be located with the stipulation as fences.
4. In no cases will the planting of young plants or sparse plants with the purpose that in time the screening will be accomplished be acceptable.
5. Should the plants become diseased, die or be damaged in any way so as to cause the junk not to be screened, they must be replaced within 30 days.

C. Natural Objects.

1. Natural occurring rock outcrops, woods, earth mounds, etc., may be utilized for screening if they are of a size such that the junk cannot be seen from the traveled way of the highway.
2. Natural objects may be used in conjunction with plantings, fences or other appropriate objects to screen junkyards.

D. Other Appropriate Objects for Screening.

1. Subject to prior approval by the Arkansas State Highway Commission, other objects for screening such as buildings, houses and occupied house trailers may be used entirely or in part to screen junkyards provided the objects are neat in appearance and properly maintained so as not to mar the natural beauty of the highway and its facilities.

III. Conditions with Regard to Screening.

- A. It shall be the responsibility of the owner and/or operator of the junkyard to see that the screening is erected and maintained.
- B. In no cases may the highway right of way be utilized for the storage of junk or junked vehicles. If the the storage of junk or junked vehicles occurs in front of an erected screen, the yard shall be considered unscreened, and in violation of the provisions of Act 640 of the acts of the General Assembly for the year 1967.

IV. Failure to Screen.

Unscreened junkyards in violation of Act 640 of the Acts of General Assembly for the year 1967 are deemed nuisances, and will be abated as prescribed by law.

SECTION 2 – That the regulations set forth above shall be published in the Arkansas Gazette and the Arkansas Democrat once each week for the consecutive weeks.

SECTION 3 – That two (2) copies of this Minute Order be mailed by certified mail, return receipt requested, to the Circuit Clerk of each County with directions that a copy of this Minute Order be posted immediately at the Courthouse, and one (1) copy of the Minute Order be retained in his office for public information.

SECTION 4 – That the Legal Division shall be charged with the responsibility of seeing that these Rules and Regulations are published according to Law and to maintain the prepared files in connection therewith.