

BILL ANALYSIS

Senate Research Center
78R10059 MXM-F

C.S.S.B. 351
By: Harris
Business & Commerce
4/2/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, persons who engage in the occupation of repossession are not regulated. C.S.S.B. 351 establishes safety standards and procedures for the repossession of motor vehicles. This bill also creates a regulatory commission formed by the Department of Licensing and Regulation and requires entities and individuals engaging in the practice of repossession to obtain an annual license.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1 (Sections 902.051, 902.056, 902.108, 902.110, 902.111, and 902.112, Occupations Code) and to the Texas Commission of Licensing and Regulation in SECTION 1 (Section 902.052, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 5A, Occupations Code, by adding Chapter 902, as follows:

CHAPTER 902. REPOSSESSION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 902.001. DEFINITIONS. Defines “commission,” “department,” “executive director,” “lender,” “motor vehicle,” “repossession,” and “repossession agent,” and “repossession company.”

Sec. 902.002. APPLICABILITY OF OTHER LAW. Provides that Chapter 51 applies to this chapter, including the power to impose an administrative sanction, assess an administrative penalty, or seek a civil penalty, for a violation of this chapter or a rule or order adopted or entered under this chapter.

[Reserves Sections 902.003-902.050 for expansion.]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 902.051. RULES. Authorizes the executive director to adopt rules necessary to administer this chapter.

Sec. 902.052. FEES. Authorizes the commission, by rule, to set fees in the amounts reasonable and necessary to administer this chapter.

Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. (a) Requires the department to annually prepare a directory of license holders.

(b) Requires the department to provide the directory to the public on request without charge.

(c) Authorizes the department to comply with this section by publishing the

directory on-line.

Sec. 902.054. INVESTIGATIONS. (a) Authorizes the department to examine certain records or objects.

(b) Authorizes the department, to administer this chapter, to question a person who meets certain criteria.

Sec. 902.055. AUDIT. Authorizes the department to periodically audit the business records of a license holder.

Sec. 902.056. PROPER TOWING EQUIPMENT. Requires the executive director, with the advice of the Texas Department of Transportation and the Department of Public Safety, to adopt rules as necessary to ensure that a vehicle used for a repossession by a license holder is a tow truck suitable in terms of safety, considering certain factors.

Sec. 902.057. ADVISORY COMMITTEE. (a) Authorizes the executive director to create an advisory committee to advise the executive director regarding regulation under this chapter.

(b) Authorizes the executive director to abolish the advisory committee at any time.

[Reserves Sections 902.058-902.100 for expansion.]

SUBCHAPTER C. LICENSE REQUIREMENTS

Sec. 902.101. LICENSE REQUIRED. (a) Prohibits a person from engaging in a repossession for consideration unless each individual who engages in the recovery holds a repossession agent license.

(b) Prohibits a person from advertising that the person performs repossessions unless the person holds a repossession agent or repossession company license.

(c) Prohibits a person from hiring a person to engage in a repossession unless the person hired holds a license issued under this chapter.

Sec. 902.102. LICENSE CLASSIFICATIONS. Requires the executive director to issue a repossession agent or repossession company license to an eligible applicant.

Sec. 902.103. LICENSE APPLICATION. (a) Requires a license applicant to submit an application on a form prescribed by the department.

(b) Requires the application to specify the class of license for which the applicant is applying.

(c) Requires an application for a repossession agent license to be accompanied by certain fees

(d) Requires an application for a repossession company license to be accompanied by certain items.

(e) Requires the department to deny an application provided under Subsection (d) if the applicant's sales tax permit is cancelled, suspended, or revoked under Chapter 151F, Tax Code (Limited Sales, Excise, and Use Tax).

Sec. 902.104. ELIGIBILITY REQUIREMENTS FOR REPOSSESSION AGENT LICENSE; BACKGROUND CHECK. (a) Requires an applicant for a repossession license to be at least 18 years old.

(b) Requires the department to conduct a criminal background check on the applicant as authorized under Chapter 411, Government Code (Department of Public Safety of the State of Texas).

(c) Provides that the applicant is not eligible for a license if the applicant has been finally convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation.

(d) Authorizes the executive director to deny an application if the applicant previously held a repossession agent license and the license was revoked.

(e) Provides that Chapter 53 applies to this chapter, except as provided by Subsection (c).

Sec. 902.105. EXAMINATION FOR REPOSSESSION AGENT LICENSE. (a) Requires the executive director to require an examination for a repossession agent license.

(b) Requires the executive director to prescribe the method and content of the examination and set compliance requirements for the examination.

(c) Requires the examination to be offered at least annually or more frequently as determined by the executive director.

(d) Requires the examination to be offered at various locations in this state as determined by the executive director.

Sec. 902.106. EXAMINATION RESULTS. (a) Requires the department, not later than the 30th day after the date on which a person takes a licensing examination under this chapter, to notify the person of the results of the examination.

(b) Provides that the department is required to take certain action if the examination is graded or reviewed by a testing service.

(c) Authorizes the department to require a testing service to notify a person of the results of the person's examination.

(d) Requires the department, if requested in writing by a person who fails a licensing examination administered under this chapter, to furnish the person with an analysis of the person's performance on the examination.

Sec. 902.107. ISSUANCE OF LICENSE; TERM. (a) Requires the department, on payment of the license fee, to issue the appropriate license to an applicant who meets certain requirements.

(b) Provides that a license is valid for one year from the date of the issuance.

Sec. 902.108. RULES REGARDING RENEWAL. Authorizes the executive director to adopt rules regarding the renewal of a license, including rules requiring confirmation of the continued eligibility of the license holder before renewal.

Sec. 902.109. LICENSE EXPIRATION AND RENEWAL. (a) Authorizes a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed.

(b) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying to the department a renewal fee that is equal to one

and one half times the normally required renewal fee.

(c) Authorizes a person whose license has been expired for 90 days but less than one year to renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) Prohibits a person whose license has been expired for one year or more from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for two years preceding the date of application to obtain a new license without reexamination. Requires the person to pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(f) Requires the department, not later than the 30th day before the date a person's license is scheduled to expire, to send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Sec. 902.110. BOND AND INSURANCE REQUIREMENTS. Requires the executive director, by rule, to set bond and insurance requirements for license holders.

Sec. 902.111. CONTINUING EDUCATION REQUIREMENTS FOR REPOSSESSION AGENTS. (a) Requires the executive director, by rule, to require continuing education as a condition of renewal of a repossession agent license.

(b) Prohibits the continuing education requirements from exceeding four hours annually.

Sec. 902.112. CONTINUING EDUCATION PROVIDERS AND COURSE APPROVAL. (a) Requires the executive director, by rule, to recognize, prepare, or administer continuing education programs for its license holders.

(b) Requires the executive director, by rule, to recognize and approve continuing education providers.

Sec. 902.113. RECIPROCITY; WAIVER OF LICENSE REQUIREMENT. Authorizes the executive director to waive any prerequisite to obtaining a license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Sec. 902.114. PROVISIONAL REPOSSESSION AGENT LICENSE. (a) Authorizes the executive director to issue a provisional repossession agent license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who meets certain conditions.

(b) Authorizes the executive director to waive the sponsorship requirement under Subsection (a)(3) for an applicant if the executive director determines that compliance with that subsection would be a hardship to the applicant.

(c) Provides that a provisional license is valid until the date the department approves or denies the provisional license holder's application for a repossession agent license.

(d) Requires the executive director to issue a repossession agent license under this

chapter to a provisional license holder if certain conditions apply.

(e) Requires the executive director to approve or deny a provisional license holder's application for a repossession agent license not later than the 180th day after the date on which the provisional license is issued. Authorizes the executive director to extend the 180-day period if the results of an examination have not been received by the department before the end of that period.

(f) Authorizes the commission to establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

[Reserves Sections 902.115-902.150 for expansion.]

SUBCHAPTER D. OPERATION OF REPOSSESSION COMPANY; FACILITY REQUIREMENTS

Sec. 902.151. DEFINITION. Defines "storage facility."

Sec. 902.152. OFFICE; HOURS. Requires a repossession company to maintain a permanent office with regular office hours of not less than eight hours per day Monday through Friday, excluding legal holidays, during which a person is authorized to claim personal property from a repossessed motor vehicle.

Sec. 902.153. STORAGE OF REPOSSESSED MOTOR VEHICLE. Requires a repossession company to store a repossessed motor vehicle inside a storage facility that complies with the requirements of this subchapter.

Sec. 902.154. ENCLOSURE AND SECURITY AT FACILITY. (a) Requires each storage facility to meet certain requirements.

(b) Requires a repossession company to secure a repossessed motor vehicle to prevent theft of the vehicle or its contents, including locking doors, closing windows and hatchbacks, and raising or covering convertible tops.

Sec. 902.155. FACILITY SURFACE. Requires a storage facility to contain an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, or caliche. Requires the surface to enable the safe and effective movement of the vehicle on all portions of the lot, both under the vehicle's own power and under tow, at all times and regardless of weather conditions.

Sec. 902.156. FACILITY LIGHTING. Requires a repossession company to maintain lighting at the storage facility sufficient to allow inspection of a repossessed motor vehicle for damage at the time of the vehicle's release, including at least a 250 watt light bulb for each quarter acre of storage area.

Sec. 902.157. FACILITY SIGNS. Requires a repossession company to post a clearly visible and readable sign at the facility's main entrance. Requires the sign to meet certain conditions.

Sec. 902.158. SHARING OF STORAGE FACILITY PROHIBITED. Prohibits a repossession company from sharing a storage facility with another repossession company.

Sec. 902.159. ENTRY OF TOW TRUCKS. Prohibits a repossession company from permitting a tow truck to enter its storage facility unless the tow truck complies with the rules adopted under Section 902.056.

[Reserves Sections 902.160-902.200 for expansion.]

SUBCHAPTER E. PRACTICE BY LICENSE HOLDER

Sec. 902.201. USE OF PROPER TOWING EQUIPMENT. Prohibits a repossession agent from engaging in a repossession unless the tow truck used by the agent complies with department rules regarding safety.

Sec. 902.202. USE OF FORCE; BREACH OF THE PEACE. Prohibits a repossession agent from using force or breach the peace when engaging in a repossession.

Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT. (a) Prohibits a licensed repossession agent from engaging in a repossession unless the agent is hired or employed by a licensed repossession company or lender.

(b) Prohibits a person from hiring or employing a licensed repossession agent unless the person is a licensed repossession company or a lender.

Sec. 902.204. DUTY TO REPORT REPOSSESSION TO LAW ENFORCEMENT. Requires a repossession agent, not later than two hours after engaging in a repossession, to report the repossession to the police department of the municipality in which the recovery occurred or, if the recovery was not located in a municipality having a police department, to the sheriff of the county in which the recovery occurred. Requires the report to include certain items.

[Reserves Section 902.205-902.250 for expansion.]

SUBCHAPTER F. ENFORCEMENT

Sec. 902.251. CEASE AND DESIST ORDERS. Authorizes the department to issue a cease and desist order.

Sec. 902.252. CIVIL PENALTIES. (a) Provides that a person who violates this chapter is subject to a civil penalty under Section 51.352 of not less than \$2,000 for the first violation and not less than \$4,000 for each subsequent violation, except as provided by Subsection (b).

(b) Provides that a repossession company or lender who violates this chapter is subject to a civil penalty of not less than \$4,000 for the first violation and not less than \$8,000 for each subsequent violation.

Sec. 902.253. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person knowingly engages in a repossession without holding a license issued under this chapter.

(b) Provides that each repossession of a motor vehicle constitutes a separate offense.

(c) Provides that an offense under this section is a Class B misdemeanor.

SECTION 2. Amends Section 411.093(a), Government Code, to provide that the Texas Department of Licensing and Regulation is entitled to obtain a criminal history record about an applicant for a license under Chapter 902, Occupations Code, and Chapter 2052, Occupations Code, rather than the Texas Boxing and Wrestling Act (Article 8501-1, V.T.C.S). Makes conforming and nonsubstantive changes.

SECTION 3. (a) Provides that a person is not required to obtain a license under Chapter 902C, Occupations Code, as added by this Act, until September 1, 2004.

(b) Requires the executive director to adopt rules as required under Chapter 902, Occupations Code, as added by this Act, not later than June 1, 2004.

SECTION 4. (a) Effective date: September 1, 2003, except as provided by Subsection (b) of this

section.

(b) Provides that Chapter 902D, E, and F, Occupations Code, as added by this Act, take effect September 1, 2004.

SUMMARY OF COMMITTEE CHANGES

Differs from original in SECTION 1 by adding Section 902.057. Reserves Sections 902.058-902.100, rather than 902.057-902.100, for expansion.