

BILL ANALYSIS

Senate Research Center

H.B. 2571
By: Gonzales et al. (Hinojosa)
Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Towing companies and vehicle storage facilities take advantage of current towing laws that do not enforce or provide incentives to run clean practices. This bill cracks down on illegal and malicious towing practices to protect victims from unlawful tows, exorbitant fees, and tough vehicle recovery. This legislation aims to protect vehicle owners and penalize towers who disobey the law, while not punishing respectable towing companies.

This bill provides that companies can only charge fees according to their latest fee schedule submitted to the Texas Department of Licensing and Regulation (TDLR). Maximum amounts will be authorized by the Texas Commission of Licensing and Regulation. Municipalities are granted additional authority to impose additional requirements/restrictions that will not conflict with this Act; violation fees will be increased from \$300 to \$1,000 plus three times the amount of fees assessed by victims; current criminal penalty fees would be increased from \$500 to \$1,000, and changed to a Class B misdemeanor; if a court does not find probable cause for the and/or storage of a vehicle, the company will be liable to the court and must reimburse the victim all charges assessed for the removal of the vehicle; vehicle storage facilities are prohibited from collecting a fee if they do not provide or are equipped to accept electronic methods of payment offered; and requires TDLR to suspend the license or permit if the award is not submitted by the 60th day after final judgment.

H.B. 2571 amends current law relating to the licensing and regulation of towing companies and vehicle storage facilities; providing penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 4 (Section 2308.0575, Occupations Code) and SECTION 6 (Section 2308.202, Occupations Code) of this bill.

Rulemaking authority previously granted to TCLR is modified in SECTION 3 (Section 2308.057, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2303.155, Occupations Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Authorizes the operator of a vehicle storage facility or governmental vehicle storage facility, except as provided by Subsection (h), to charge the owner of a vehicle stored or parked at the facility a notification fee set in a reasonable amount for providing notice under this subchapter, including notice under Section 2303.154(c) (relating to the content a notice is required to include if publication is required for notice under this section); an impoundment fee of \$20 for any action that is taken by or at the direction of the owner or operator of the facility, and is necessary to preserve, protect, or service a vehicle stored or parked at the facility; a daily storage fee of not less than \$5 and not more than \$20 for each day or part of a day the vehicle is stored at the facility if the vehicle is not longer than 25 feet, or \$35 for each day or part of a day the vehicle is stored at the facility if the vehicle is longer than 25 feet; any fee that is required to be submitted to a law enforcement agency, the agency's authorized agent, or a governmental entity; and a fee in

an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(h) Prohibits the operator of a vehicle storage facility or governmental vehicle storage facility from charging a fee under Subsection (b) to the owner of a vehicle stored or parked at the facility as a result of recovery of the vehicle after being stolen if the vehicle owner provides the operator with a copy of the police report or similar report prepared by any law enforcement agency showing that the vehicle was reported stolen.

SECTION 2. Amends Section 2308.002, Occupations Code, by amending Subdivisions (3), (6), and (8) and adding Subdivisions (5-a) and (8-a), to redefine "consent tow," "nonconsent tow," and "parking facility owner" and to define "incident management tow" and "private property tow."

SECTION 3. Amends Section 2308.057(a), Occupations Code, to require that the Texas Commission of Licensing and Regulation (TCLR) adopt rules for permitting tow trucks and licensing towing operators and towing companies, including rules for denial of an application or permit if the applicant, a partner, principal, officer, or general manager of the applicant, or a license or permit holder has a criminal conviction or has pled guilty or nolo contendere within five years of the date of the application for a felony, or a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; violated an order of the commission or executive director, including an order for sanctions or administrative penalties; failed to submit a license or permit bond in an amount established by TCLR; knowingly submitted false or incomplete information on a license or permit application; and filed an application to permit a tow truck that is already permitted by another license or permit holder.

SECTION 4. Amends Subchapter B, Chapter 2308, Occupations Code, by adding Section 2308.0575, as follows:

Sec. 2308.0575. RULES ON FEES; STUDY; CONFIDENTIAL INFORMATION. (a) Requires TCLR, to protect the public health and safety, by rule to establish the fees that are authorized to be charged in connection with a private property tow; the maximum amount that is authorized to be charged for fees, other than tow fees, that is authorized to be assessed by a towing company in connection with a private property tow; and a maximum amount that is authorized to be charged for certain private property tows.

(b) Requires TCLR, in adopting rules under Subsection (a), to consider private property towing fee studies conducted by municipalities in this state and to conduct studies of private property towing fees that analyze cost of service by company, the consumer price index, geographic area, and individual cost components.

(c) Authorizes TCLR to structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location.

(d) Requires TCLR to maintain the confidentiality of information contained in a study conducted under this section that is claimed to be confidential for competitive purposes, and prohibits TCLR from releasing information that identifies a person or company. Provides that the confidential information is exempt from disclosure under Chapter 552 (Public Information), Government Code.

(e) Requires TCLR, to protect the confidentiality of the information, to aggregate the information to the maximum extent possible considering the purpose of the study.

SECTION 5. Amends Section 2308.060, Occupations Code, to require the Towing and Storage Advisory Board to provide advice and recommendations to the Texas Department of Licensing and Regulation (TDLR) on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that are authorized to be charged for fees related to private property tows.

SECTION 6. Amends Section 2308.202, Occupations Code, to authorize the governing body of a political subdivision to regulate the fees that are authorized to be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision if the private property tow fees are authorized by TCLR rule and do not exceed the maximum amount authorized by TCLR rule.

SECTION 7. Amends Section 2308.204, Occupations Code, as follows:

Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS. Authorizes a towing company, in an area in which no political subdivision regulates the fees that are authorized to be charged or collected in connection with a nonconsent private property tow, rather than a nonconsent tow from private property, to charge and collect fees for the tow of a motor vehicle in an amount not to exceed the maximum amount authorized by the commissioners court in the county in which the vehicle storage facility is located; or if the commissioners court does not set the maximum amount, the average of the maximum amounts authorized by the three political subdivisions that regulate nonconsent incident management tow fees and that are closest to the facility. Deletes existing text authorizing a towing company to charge and collect a fee for the tow of a motor vehicle from private property in an amount not to exceed an amount equal to 150 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located. Deletes existing Subsection (b) and existing text authorizing a towing company to charge and collect a fee for the tow of a vehicle, with a gross weight rating in excess of 26,000 pounds, from private property in an amount not to exceed an amount equal to 125 percent of the fee that the tow made at the request of a peace officer of the political subdivision in which the private property is located.

SECTION 8. Amends Section 2308.206, Occupations Code, by adding Subsections (f) and (g), as follows:

(f) Prohibits a license or permit holder from charging a fee related to a nonconsent tow that is not listed in the schedule most recently submitted to TDLR under this section.

(g) Authorizes TDLR to require a license or permit holder that has violated Subsection (e) or (f) to reimburse the vehicle owner or operator for the charges.

SECTION 9. Amends the heading to Section 2308.208, Occupations Code, to read as follows:

Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED VEHICLES AND TOWING OF MOTOR VEHICLES.

SECTION 10. Amends Section 2308.252(a), Occupations Code, to authorize a parking facility owner, without the consent of the owner or operator of an unauthorized vehicle, to cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if the parking facility owner has provided to the owner or operator of the vehicle written notice of the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle under certain conditions.

SECTION 11. Amends Section 2308.255(a), Occupations Code, to authorize a towing company that is insured as provided by Subsection (c), without the consent of an owner or operator of an unauthorized vehicle, to remove and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if the parking facility owner has provided to the owner or operator of the vehicle written notice of the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is left in violation of Section 2308.251 (Prohibition Against Unattended Vehicles in Certain Areas); or in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility and the removal is approved by a peace officer.

SECTION 12. Amends Section 2308.404(c), Occupations Code, to provide that a towing company or parking facility owner who intentionally, knowingly, or recklessly violates this

chapter is liable to the owner of the vehicle that is the subject of the violation for \$1,000, rather than \$300, plus three times the amount of fees assessed in the vehicles removal, towing, or storage.

SECTION 13. Amends Section 2308.405, Occupations Code, as follows:

Sec. 2308.405. New heading: CRIMINAL PENALTY. Provides that a person commits an offense if the person violates this chapter. Provides that an offense under this section is a Class B misdemeanor. Deletes existing text providing that a violation of this chapter is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500.

SECTION 14. Amends Section 2308.451(b), Occupations Code, to require the towing company, vehicle storage facility, rather than person, or law enforcement agency that authorized the removal, if in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, to pay the costs of the removal and storage or reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

SECTION 15. Amends Section 2308.453, Occupations Code, to require that a hearing under this chapter be in the justice court having jurisdiction in the precinct from which the motor vehicle was towed, rather than in which the storage facility is located. Makes a nonsubstantive change.

SECTION 16. Amends Section 2308.454, Occupations Code, by adding Subsection (c), to provide that if the towing company or vehicle storage facility that received the payment fails to furnish to the owner or operator of the vehicle the name, address, and telephone number of the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company or vehicle storage facility that received the payment is liable if the court, after a hearing, does not find probable cause for the removal and storage of the vehicle.

SECTION 17. Amends Section 2308.455, Occupations Code, to require that the notice under Section 2308.454 include certain information; including the registered name, street address including city, state, and zip code, and telephone number of the person, parking facility owner, rather than property owner, or law enforcement agency that authorized the removal of the vehicle; and the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the parking facility, rather than vehicle storage facility, is located.

SECTION 18. Amends Section 2308.456, Occupations Code, by amending Subsection (a) and adding Subsection (c-1), as follows:

(a) Requires a person entitled to a hearing under this chapter, except as provided by Subsections (c) (relating to an exception to the 14-day deadline) and (c-1), rather than Subsection (c), to deliver a written request for a hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility, excluding Saturdays, Sundays, and legal holidays.

(c-1) Provides that the 14-day period for requesting a hearing under Subsection (a) does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing required under Subsection (b)(2) through (6) (relating to requiring a request for a hearing to contain certain information).

SECTION 19. Amends Section 2308.458(b), Occupations Code, to require that the court notify the person who requested the hearing, the parking facility owner, rather than person, or law enforcement agency that authorized the removal of the vehicle, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a (Methods of Service), Texas Rules of Civil Procedure. Requires that the notice of the hearing to the parking facility owner, rather than person, or law enforcement agency that authorized the removal of the vehicle include a copy of the request for hearing.

SECTION 20. Amends Section 2308.460, Occupations Code, as follows:

Sec. 2308.460. ENFORCEMENT OF AWARD. (a) Creates this subsection from existing text.

(b) Requires TDLR to suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment.

(c) Requires the owner or operator of the vehicle to submit a certified copy of the final judgment to TDLR.

(d) Requires TDLR, on receipt of the certified copy of the unpaid final judgment, to disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.

(e) Requires TDLR to reinstate the license on submission of evidence satisfactory to TDLR of payment of the final judgment by the person, towing company, or vehicle storage facility.

SECTION 21. Amends Section 2303.159(a), Occupations Code, to prohibit the operator of a vehicle storage facility from refusing to release a vehicle based on the inability of the facility to accept payment by electronic check, debit card, or credit card of a fee or charge associated with delivery or storage of the vehicle. Requires that the facility conspicuously post a sign that states: "This vehicle storage facility must accept payment by an electronic check, credit card, or debit card for any fee or charge associated with delivery or storage of a vehicle."

SECTION 22. Requires TDLR, not later than September 1, 2010, to adopt the rules necessary to implement the changes in law made by this Act, including rules on the maximum amount of fees that are authorized to be charged for private property tows.

SECTION 23. (a) Makes application of Section 2308.405, Occupations Code, as amended by this Act, prospective.

(b) Provides that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and provides that the former law is continued in effect for that purpose.

SECTION 24. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Sections 2308.202 and 2308.204, Occupations Code, as amended by this Act: September 1, 2010.