

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2153
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Transportation & Homeland Security
4/17/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Vehicle immobilization by privately owned booting companies in parking facilities is unregulated by state law in Texas, resulting in unreasonable, inconsistent, fraudulent, and coercive business practices by booting companies acting on behalf of and in collusion with parking facilities.

C.S.S.B. 2153 amends current law relating to booting of vehicles by private entities in parking facilities and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission of Licensing and Regulation is modified in SECTION 7 (Section 2308.057, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading of Chapter 2308, Occupations Code, to read as follows:

CHAPTER 2308. VEHICLE TOWING AND BOOTING

SECTION 2. Amends Section 2308.001, Occupations Code, as follows:

Sec. 2308.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Towing and Booting Act.

SECTION 3. Amends Section 2308.002, Occupations Code, by amending Subdivision (1) and adding Subdivisions (1-a), (1-b), and (1-c), as follows:

(1) Redefines "advisory board."

(1-a) Defines "boot."

(1-b) Defines "booting company."

(1-c) Defines "boot operator."

SECTION 4. Amends Subchapter A, Chapter 2308, Occupations Code, by adding Section 2308.004, as follows:

Sec. 2308.004. EXEMPTION. Provides that this chapter does not apply to a person who, while exercising a statutory or contractual lien right with regard to a vehicle installs or removes a boot, or controls, installs, or directs the installation and removal of one or more boots.

SECTION 5. Amends the heading of Section 2308.051, Occupations Code, to read as follows:

Sec. 2308.051. TOWING, STORAGE, AND BOOTING ADVISORY BOARD.

SECTION 6. Amends Section 2308.051(a), Occupations Code, as follows:

(a) Provides that the Towing, Storage, and Booting Advisory Board (advisory board) consists of certain members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (commission) with the approval of the commission, including one representative of a booting company. Makes a nonsubstantive change.

SECTION 7. Amends Section 2308.057(a), Occupations Code, to require the commission to adopt rules for permitting tow trucks and licensing towing operators, towing companies, booting companies, and boot operators. Makes nonsubstantive changes.

SECTION 8. Amends Section 2308.151, Occupations Code, as follows:

Sec. 2308.151. LICENSE REQUIRED. Prohibits a person, unless the person holds an appropriate license under this subchapter, from performing booting operations or operating a booting company. Makes nonsubstantive changes.

SECTION 9. Amends Subchapter D, Chapter 2308, Occupations Code, by adding Sections 2308.1555 and 2308.1556, as follows:

Sec. 2308.1555. BOOT OPERATOR'S LICENSE. (a) Requires a boot operator's license to install or remove a boot from a vehicle.

(b) Requires an applicant for a boot operator's license to be at least 18 years of age.

Sec. 2308.1556. BOOTING COMPANY LICENSE. (a) Requires a booting company license for a person to operate a booting company.

(b) Requires an applicant, to be eligible for a booting company license, to submit evidence that the applicant is covered by:

(1) a general liability insurance policy on a broad form with a combined single limit for bodily injury and property damage for each occurrence of at least \$500,000 and an aggregate limit for all occurrences for each policy year of at least \$500,000; and

(2) an automobile liability insurance policy covering the applicant and the applicant's employees for vehicles owned, hired, or otherwise used in the applicant's business with a combined single limit for each occurrence of at least \$500,000.

SECTION 10. Amends the heading to Subchapter E, Chapter 2308, Occupations Code, to read as follows:

SUBCHAPTER E. LOCAL REGULATION OF TOWING AND BOOTING

SECTION 11. Amends Subchapter E, Chapter 2308, Occupations Code, by adding Section 2308.2085, as follows:

Sec. 2308.2085. MUNICIPAL ORDINANCE REGULATING BOOTING COMPANIES AND OPERATORS. (a) Authorizes a municipality to adopt an ordinance that is identical to the booting provisions in this chapter or that imposes additional requirements that exceed the minimum standards of the booting provisions in this chapter but prohibits the adoption of an ordinance that conflicts with the booting provisions in this chapter.

(b) Authorizes a municipality to regulate the fees that may be charged in connection with the booting of a vehicle, including associated parking fees.

(c) Authorizes a municipality to require booting companies to obtain a permit to operate in the municipality.

SECTION 12. Amends Subchapter F, Chapter 2308, Occupations Code, by adding Section 2308.257, as follows:

Sec. 2308.257. **BOOTING OF UNAUTHORIZED VEHICLE.** (a) Authorizes the owner of a parking facility, without the consent of the owner or operator of an unauthorized vehicle, to cause a boot to be installed on the vehicle in the parking facility if signs that comply with Subchapter G (Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas) prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting.

(b) Requires a boot operator that installs a boot on a vehicle to affix a conspicuous notice to the vehicle's front windshield or driver's side window stating certain information.

(c) Requires the boot operator, on removal of a boot, to provide a receipt to the vehicle owner or operator stating certain information.

(d) Requires the booting company to maintain a copy of the receipt at its place of business for a period of three years. Provides that a peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.

(e) Requires a booting company to accept payment by electronic check, debit card, or credit card for any fee or charge for removal of a boot. Prohibits a booting company from collecting a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debt card, or credit card form of payment that the booting company is not equipped to accept.

SECTION 13. Amends Section 2308.301, Occupations Code, as follows:

Sec. 2308.301. **GENERAL REQUIREMENTS FOR SIGN PROHIBITING UNAUTHORIZED VEHICLES.** (a) Prohibits an unauthorized vehicle, except as provided by Subsection (a)(2)(B) (relating to signs prohibiting unauthorized vehicles at intervals along the entrance) and Section 2308.304 (Designation of Restricted Parking Spaces on Otherwise Unrestricted Parking Facility) or 2308.305 (Individual Parking Restrictions in Restricted Area), from being towed under Section 2308.252(a)(1) (relating to signs that comply with Subchapter G) or booted under Section 2308.257 unless a sign prohibiting unauthorized vehicles on a parking facility is present and meets certain criteria.

(b) Authorizes an unauthorized vehicle to be towed under Section 2308.252(a)(1) or booted under Section 2308.257, except as provided by Section 2308.305, only if each sign prohibiting unauthorized vehicles meets certain criteria.

SECTION 14. Amends Sections 2308.302(c) and (e), Occupations Code, as follows:

(c) Requires the portion of the sign immediately below the international towing symbol contain the words "Towing And Booting Enforced" in lettering at least two inches in height. Deletes existing text related to the information provided by Section 2308.301(b)(4).

(e) Makes a nonsubstantive change.

SECTION 15. Amends the heading to Subchapter I, Chapter 2308, Occupations Code, to read as follows:

**SUBCHAPTER I. REGULATION OF TOWING COMPANIES, BOOTING COMPANIES,
AND PARKING FACILITY OWNERS**

SECTION 16. Amends Section 2308.401, Occupations Code, as follows:

Sec. 2308.401. New heading: PARKING FACILITY OWNER PROHIBITED FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY OR BOOTING COMPANY. (a) Prohibits a parking facility owner from directly or indirectly accepting anything of value from a booting company in connection with booting a vehicle in a parking facility. Makes a nonsubstantive change.

(b) Prohibits a parking facility owner from having a direct or indirect monetary interest in a booting company that for compensation boots vehicles in a parking facility in which the parking facility owner has an interest. Makes nonsubstantive changes.

SECTION 17. Amends Section 2308.402, Occupations Code, as follows:

Sec. 2308.402. New heading: TOWING COMPANY AND BOOTING COMPANY PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER. (a) Prohibits a towing company or booting company from directly or indirectly giving anything of value to a parking facility owner in connection with the booting of a vehicle in a parking facility. Makes nonsubstantive changes.

(b) Prohibits a towing company or booting company from having a direct or indirect monetary interest in a parking facility in which the booting company for compensation installs boots on unauthorized vehicles. Makes nonsubstantive changes.

SECTION 18. Amends the heading to Section 2308.404, Occupations Code, to read as follows:

Sec. 2308.404. CIVIL LIABILITY OF TOWING COMPANY, BOOTING COMPANY, OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER.

SECTION 19. Amends Sections 2308.404(a), (b), and (c), Occupations Code, as follows:

(a) Provides that a towing company, booting company, or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:

(1) damages arising from the removal, storage, or booting of the vehicle; and

(2) towing, storage, or booting fees assessed in connection with the vehicle's removal, or storage, or booting. Makes nonsubstantive changes.

(b) Makes conforming changes.

(c) Makes conforming changes.

SECTION 20. Amends the heading to Subchapter J, Chapter 2309, Occupations Code, to read as follows:

SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED OR BOOTED VEHICLES

SECTION 21. Amends the heading to Section 2308.451, Occupations Code, to read as follows:

Sec. 2308.451. PAYMENT OF COST OF REMOVAL, STORAGE, AND BOOTING OF VEHICLE.

SECTION 22. Amends Section 2308.451, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Requires the person who requested the hearing, if in a hearing held under this chapter the court finds that a person authorized, with probable cause, the booting of vehicle in a parking facility, to pay the costs of the booting.

(d) Requires the person that authorized the booting, if in a hearing held under this chapter the court does not find that a person authorized, with probable cause, the booting of a vehicle, to pay the costs of the booting and any related parking fees, or reimburse the owner or operator for the cost of the booting and any related parking fees paid by the owner or operator.

SECTION 23. Amends Section 2308.452, Occupations Code, as follows:

Sec. 2308.452. **RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING.** Entitles the owner or operator of a vehicle that has been removed and placed in a vehicle storage facility or booted without the consent of the owner or operator of the vehicle to a hearing on whether probable cause existed for the removal and placement or booting.

SECTION 24. Amends Section 2308.453, Occupations Code, as follows:

Sec. 2308.453. **JURISDICTION.** Requires that a hearing under this chapter for booted vehicles be in the justice court having jurisdiction in the precinct in which the parking facility is located. Makes nonsubstantive changes.

SECTION 25. Amends Section 2308.454, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Requires the booting company, if before a hearing held under this chapter the owner or operator of a vehicle pays the costs for removal of a boot, at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(d) Requires the booting operator that places a notice on a booted vehicle under Section 2308.257 to include with that notice a notice of the person's rights under this chapter.

SECTION 26. Amends Section 2308.455, Occupations Code, as follows:

Sec. 2308.455. **CONTENTS OF NOTICE.** Requires the notice under Section 2308.454 to include a statement of the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove, or install a boot on, the vehicle; the name, address, and telephone number of the towing company that removed the vehicle or the booting company that booted the vehicle; or for booted vehicles, the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the parking facility is located.

SECTION 27. Amends Sections 2308.456(a) and (b), Occupations Code, as follows:

(a) Requires a person, except as provided by Subsection (c) (relating to delivery of a written request for a hearing if notice was not given, and non-applicability of 14-day deadline), entitled to a hearing under this chapter to deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility or booted, excluding Saturdays, Sundays, and legal holidays.

(b) Requires that a request for a hearing contain certain information including the location from which the vehicle was removed or in which the vehicle was booted; the date when the vehicle was removed or booted; the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting; the name address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle; a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and if the vehicle was removed from or booted in a parking facility one or more photographs that show the location and text of any sign

posted at the facility restricting parking of vehicles, or a statement that no sign restricting parking was posted at the parking facility.

SECTION 28. Amends Section 2308.458, Occupations Code, by amending Subsections (b), (c), and (e) and adding Subsections (b-2) and (c-1), as follows:

(b) Requires the court to notify the person who requested the hearing for a towed vehicle, the 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 provide by Rule 21a (Methods of Service), Texas Rules of Civil Procedure. Makes a nonsubstantive change.

(b-2) Requires the court to notify the person who requested the hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. Requires that the notice of the hearing to the person that authorized the booting of the vehicle include a copy of the request for hearing.

(c) Sets forth the issues in a hearing regarding a towed vehicle under this chapter.

(c-1) Provides that the issues in a hearing regarding a booted vehicle under this chapter are whether probable cause existed for the booting of the vehicle, and whether a boot removal charge imposed or collected in connection with the removal of the boot from the vehicle was greater than the amount authorized by the political subdivision under Section 2308.2085.

(e) Authorizes the court to award among other costs an amount equal to the amount that the towing charge or booting removal change and associated parking fees exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303 (Vehicle Storage Facilities), and reimbursement of fees paid for vehicle towing, storage, or removal of a boot. Makes a nonsubstantive change.

SECTION 29. Amends Section 2308.505(a), Occupations Code, to provide that a person commits an offense if the person violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 2308.2085 for which the political subdivision does not prescribe the penalty, or charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 2308.201 (Tow Truck Regulation By Political Subdivisions) or 2308.202 (Regulation By Political Subdivisions of Fees For Nonconsent Tows) or booting under Section 2308.2085 that is not authorized or is greater than the authorized amount of the fee, or violates a rule of the Texas Department of Licensing and Regulation applicable to a tow trunk, towing company, or booting company. Makes nonsubstantive changes.

SECTION 30. Amends Section 2303.058, Occupations Code, as follows:

Sec. 2303.058. **ADVISORY BOARD.** Requires the advisory board under Chapter 2308 to advise the commission in adopting vehicle storage rules under this chapter. Makes nonsubstantive changes.

SECTION 31. Requires the presiding officer of the commission, promptly after this Act takes effect, to appoint to the advisory board one representative of a booting company as required by Section 2308.051(a), Occupations Code, as amended by this Act.

SECTION 32. Effective date: September 1, 2009.