

BILL ANALYSIS

Senate Research Center
85R6486 BEE-F

S.B. 1501
By: Zaffirini
Business & Commerce
3/28/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It is burdensome to licensees and wasteful of public resources to administer licensing programs that do little to protect the public good. For that reason, the Texas Department of Licensing and Regulation (TDLR) has undertaken a strategic initiative to identify licensing programs and activities that could be deregulated without threatening public health, safety, or welfare. One such program is the licensing of vehicle booting companies and operators. "Booting" is an alternative to towing, which involves locking a large metal weight to the tire of an unlawfully parked car, thus rendering it un-drivable until the owner pays to have it removed. Currently, Chapter 2308, Occupations Code, requires persons and companies engaged in the booting of automobiles to be licensed. Companies pay initial and renewal fees of \$250, and operators pay \$75. Both are subject to disciplinary action in the form of administrative penalties and sanctions. Currently, only 11 companies and 54 operators are licensed by the state, and there is little to no enforcement activity. Because the program burdens impose costs on licensees without an obvious benefit to the public, S.B. 1501 repeals the license requirement and preserves the authority of municipalities, political subdivisions, and institutions of higher education to regulate these activities.

As proposed, S.B. 1501 amends current law relating to the regulation of motor vehicle towing, booting, and storage and to the elimination of required state licensing for vehicle booting companies and operators.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2303.058, Occupations Code, as follows:

Sec. 2303.058. ADVISORY BOARD. Requires the Towing and Storage Advisory Board (advisory board), rather than the Towing, Storage, and Booting Advisory Board, under Chapter 2308 (Vehicle Towing and Booting) to advise the Texas Commission of Licensing and Regulation (TCLR) in adopting vehicle storage rules under this chapter.

SECTION 2. Amends Section 2308.002, Occupations Code, by amending Subdivisions (1) and (8-a) and adding Subdivisions (5-b) and (8-b), to redefine "advisory board," define "local authority" and "peace officer," and create a subsection designation for the definition of "private property tow."

SECTION 3. Amends Section 2308.004, Occupations Code, effective September 1, 2018, as follows:

Sec. 2308.004. EXEMPTION. Makes nonsubstantive changes. Provides that Sections 2308.151(b), 2308.2085, 2308.257 (Booting of Unauthorized Vehicle), and 2308.258, rather than this chapter does, not apply to:

(1) a person who, while exercising a statutory or contractual lien right with regard to a vehicle:

(A) installs or removes a boot; or

(B) controls, installs, or directs the installation and removal of one or more boots; or

(2) a commercial office building owner or manager who installs or removes a boot in the building's parking facility. Makes nonsubstantive changes.

SECTION 4. Reenacts and amends Section 2308.051(a), Occupations Code, as amended by Chapters 457 (H.B. 2548) and 845 (S.B. 2153), Acts of the 81st Legislature, Regular Session, 2009, as follows:

(a) Provides that the advisory board consists of the following members appointed by the presiding officer of TCLR with the approval of TCLR:

(1) and (2) makes no changes to these subdivisions;

(3) and (4) changes references to owner of a vehicle storage facility to representative of a vehicle storage facility;

(5) changes reference to owner of a parking facility to representative of a parking facility;

(6) and (7) changes references to law enforcement officer to peace officer;

(8) one representative of a member insurer, as defined by Section 462.004 (General Definitions), Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes automobile insurance in this state, rather than property and casualty insurers who write automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility, rather than one public member. Deletes text of existing Subdivision (9) referring to one representative of a booting company.

SECTION 5. Amends Section 2308.151, Occupations Code, Effective September 1, 2018, as follows:

Sec. 2308.151. New heading: LICENSE OR LOCAL AUTHORIZATION REQUIRED.

(a) Creates this subsection from existing text. Prohibits a person, unless the person holds an appropriate license under this subchapter, from performing towing operations or operating a towing company. Makes nonsubstantive changes.

(b) Prohibits a person, unless authorized by a local authority under Section 2308.2085, from performing booting operations or operating a booting company.

SECTION 6. Amends Section 2308.2085, Occupations Code, as follows:

Sec. 2308.2085. New heading: LOCAL AUTHORITY REGULATION OF BOOTING ACTIVITIES. (a) Authorizes a local authority, rather than municipality, to regulate, in areas in which the entity regulates parking or traffic, rather than adopt an ordinance that is identical to the, booting activities, including:

(1) operation of booting companies and operators that operate on a parking facility;

(2) any permit and sign requirements in connection with the booting of a vehicle; and

(3) redesignates existing Subsection (b) as Subdivision (3); fees that may be charged in connection with the booting of a vehicle. Deletes existing text relating to provisions in this chapter or that impose additional requirements exceeding minimum standards of booting provisions among activities that a local authority is authorized to regulate and providing that a local authority may not adopt an ordinance that conflicts with booting provisions in this chapter.

(b) Requires regulations adopted under this section to meet certain criteria.

SECTION 7. Amends Section 2308.255, Occupations Code, as follows:

Sec. 2308.255. New heading: TOWING COMPANY'S AUTHORITY TO TOW AND STORE UNAUTHORIZED VEHICLE. (a) Authorizes a towing company, rather than a towing company that is insured as provided by Subsection (c), without the consent of an owner or operator of an unauthorized vehicle, to tow the vehicle to, rather than remove, and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) the towing company has received written verification from the parking facility owner that certain requirements were met; or

(2) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to tow and store the vehicle and the vehicle meets certain criteria. Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

(c) Makes a conforming change.

(d) Authorizes a towing company to tow, rather than remove, and store a vehicle under Subsection (a) only if the parking facility owner:

(1) requests that the towing company tow, rather than remove, and store, rather than store or that the boot operator boot, the specific vehicle; or

(2) has a standing written agreement with the towing company, rather than towing company or boot operator, to enforce parking restrictions in the parking facility.

(e) Provides that when a tow truck is sued for a nonconsent tow authorized by a peace officer under Section 545.3051 (Removal of Personal Property from Roadway or Right-of-Way), Transportation Code, the operator of the tow truck and the towing company are agents of the law enforcement agency and are subject to Section 545.3051(e) (relating to an authority or a law enforcement agency not being liable for certain damage), Transportation Code.

SECTION 8. Amends Section 2308.257, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

(a) Authorizes a parking facility owner, without the consent of the owner or operator of an unauthorized vehicle, to cause a boot to be installed on a vehicle in the parking facility if:

(1) the vehicle has been parked, stored, or located on the parking facility continuously for one hour or longer; and

(2) creates Subdivision (2) from existing text and makes no further changes.

(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:

(1) to (4) makes no changes to these subdivisions;

(5) and (6) makes nonsubstantive changes; and

(7) in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for violation of this chapter by a boot operator.

(b-1) Authorizes no more than one boot to be installed on a vehicle at any time.

SECTION 9. Amends Subchapter F, Chapter 2308, Occupations Code, by adding Section 2308.258, as follows:

Sec. 2308.258. BOOT REMOVAL. (a) Requires a booting company responsible for the installation of a boot on a vehicle to remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) Requires a booting company to waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

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

SUBCHAPTER I. REGULATION OF TOWING COMPANIES AND PARKING FACILITY OWNERS

SECTION 11. (a) Repealer: Section 2308.002(9) (relating to the definition of property owners' association), Occupations Code.

Repealer: Section 2308.103 (Requirements for Incident Management Towing Permit), Occupations Code.

(b) Repealer, effective September 1, 2018: Section 2308.1555 (Boot Operator's License) and Section 2308.1556 (Booting Company License) Occupations Code.

SECTION 12. (a) Provides that on September 1, 2018, a license issued under former Section 2308.1555 or 2308.1556, Occupations Code, expires.

(b) Provides the changes in law made by this Act to Section 2308.051(a), Occupations Code, regarding the qualifications for a member of the advisory board do not affect the entitlement of a member serving on the advisory board immediately before the effective date of this Act to continue to serve and function as a member of the advisory board for the remainder of the member's term. Requires the presiding officer of TCLR when board vacancies occur on or after the effective date of this Act, to appoint new members to the advisory board in a manner that reflects the changes in law made by this Act.

(c) Provides that the changes in law made by this Act to Section 2308.255, Occupations Code, do not apply to the booting of a vehicle pursuant to a standing written agreement between a booting company and a parking facility owner entered into before the effective date of this Act. Provides that the booting of a vehicle pursuant to a standing written agreement entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 13. Effective date, except as otherwise provided by this Act: upon passage or September 1, 2017.