

1-1 By: Talton (Senate Sponsor - Jackson) H.B. No. 849  
1-2 (In the Senate - Received from the House April 10, 2003;  
1-3 April 14, 2003, read first time and referred to Committee on  
1-4 Business and Commerce; May 21, 2003, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 9,  
1-6 Nays 0; May 21, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 849 By: Jackson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of tow trucks, to the authority of a  
1-11 political subdivision of this state to regulate tow trucks, and to  
1-12 insurance for commercial motor vehicles; providing penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 2303.151(d), Occupations Code, is  
1-15 amended to read as follows:

1-16 (d) A notice under this section must:

1-17 (1) be correctly addressed;

1-18 (2) carry sufficient postage; and

1-19 (3) be sent by certified mail, return receipt  
1-20 requested or electronic certified mail.

1-21 SECTION 2. Section 2303.155(b), Occupations Code, is  
1-22 amended to read as follows:

1-23 (b) The operator of a vehicle storage facility or  
1-24 governmental vehicle storage facility may charge the owner of a  
1-25 vehicle stored or parked at the facility:

1-26 (1) a notification fee set in a reasonable amount not  
1-27 to exceed \$25 for providing notice under this subchapter;

1-28 (2) an impoundment fee of \$20 [~~\$10~~] for any action  
1-29 that:

1-30 (A) is taken by or at the direction of the owner  
1-31 or operator of the facility; and

1-32 (B) is necessary to preserve, protect, or service  
1-33 a vehicle stored or parked at the facility; and

1-34 (3) a daily storage fee of not less than \$5 and not  
1-35 more than \$15 for each day or part of a day the vehicle is stored at  
1-36 the facility.

1-37 SECTION 3. Section 545.306(a), Transportation Code, is  
1-38 amended to read as follows:

1-39 (a) The commissioners court of a county with a population of  
1-40 3.3 million or more shall by ordinance provide for the licensing of  
1-41 or the granting of a permit to a person to remove or store a vehicle  
1-42 authorized by Section 545.305 to be removed in an unincorporated  
1-43 area of the county. The ordinance must include rules to ensure the  
1-44 protection of the public and the safe and efficient operation of  
1-45 towing and storage services in the county and may not regulate or  
1-46 restrict the use of lighting equipment more than the extent allowed  
1-47 by state and federal law. The sheriff shall determine the rules  
1-48 included in the ordinance with the review and consent of the  
1-49 commissioners court.

1-50 SECTION 4. Section 643.053, Transportation Code, is amended  
1-51 to read as follows:

1-52 Sec. 643.053. FILING OF APPLICATION. An application under  
1-53 Section 643.052 must be filed with the department and accompanied  
1-54 by:

1-55 (1) an application fee of \$100 plus a \$10 fee for each  
1-56 vehicle requiring registration other than a tow truck or a \$25 fee  
1-57 for each tow truck the motor carrier proposes to operate;

1-58 (2) evidence of insurance or financial responsibility  
1-59 as required by Section 643.103(a); and

1-60 (3) any insurance filing fee required under Section  
1-61 643.103(c).

1-62 SECTION 5. Sections 643.057(a), (b), and (d),  
1-63 Transportation Code, are amended to read as follows:

2-1 (a) A motor carrier may not operate an additional vehicle  
 2-2 requiring registration unless the carrier pays a registration fee  
 2-3 of \$10 for each additional vehicle other than a tow truck or \$25 for  
 2-4 each tow truck and shows the department evidence of insurance or  
 2-5 financial responsibility for the vehicle in an amount at least  
 2-6 equal to the amount set by the department under Section 643.101.

2-7 (b) A motor carrier is not required to pay the applicable  
 2-8 [\$10] registration fee under Subsection (a) for a vehicle for which  
 2-9 the same fee is required and that replaces a vehicle for which the  
 2-10 fee has been paid.

2-11 (d) The department may not collect more than \$10 in  
 2-12 equipment registration fees for a vehicle other than a tow truck  
 2-13 registered under both this subchapter and Chapter 645 or more than  
 2-14 \$25 if the vehicle is a tow truck.

2-15 SECTION 6. Section 643.058(c), Transportation Code, is  
 2-16 amended to read as follows:

2-17 (c) A motor carrier may renew a registration under this  
 2-18 subchapter by:

2-19 (1) supplementing the application with any new  
 2-20 information required under Section 643.056;

2-21 (2) paying a \$10 fee for each vehicle requiring  
 2-22 registration other than a tow truck or a fee of \$25 for each tow  
 2-23 truck the carrier operates; and

2-24 (3) providing the department evidence of continuing  
 2-25 insurance or financial responsibility in an amount at least equal  
 2-26 to the amount set by the department under Section 643.101.

2-27 SECTION 7. Section 643.061(b), Transportation Code, is  
 2-28 amended to read as follows:

2-29 (b) A motor carrier applying for registration under this  
 2-30 section must pay:

2-31 (1) a \$20 fee for each vehicle registered other than a  
 2-32 tow truck or a fee of \$50 for each tow truck under Subsection  
 2-33 (a)(1);

2-34 (2) a \$10 fee for each vehicle registered other than a  
 2-35 tow truck or a fee of \$25 for each tow truck under Subsection  
 2-36 (a)(2); and

2-37 (3) application and insurance filing fees the  
 2-38 department by rule adopts in an amount not to exceed \$100 each.

2-39 SECTION 8. Section 643.101, Transportation Code, is amended  
 2-40 by adding Subsections (d) and (e) to read as follows:

2-41 (d) The owner of a tow truck that is used to perform  
 2-42 nonconsent tows, as defined by Section 643.201, shall maintain  
 2-43 on-hook cargo insurance in the amount of at least \$50,000 per truck.

2-44 (e) Unless state law permits a commercial motor vehicle to  
 2-45 be self-insured, any insurance required for a commercial motor  
 2-46 vehicle must be obtained from:

2-47 (1) an insurer authorized to do business in this state  
 2-48 whose aggregate net risk, after reinsurance, under any one  
 2-49 insurance policy is not in excess of 10 percent of the insurer's  
 2-50 policyholders' surplus, and credit for such reinsurance is  
 2-51 permitted by law; or

2-52 (2) an insurer that meets the eligibility requirements  
 2-53 of a surplus lines insurer pursuant to Article 1.14-2, Insurance  
 2-54 Code. Notwithstanding any other provision in law, an insurer in  
 2-55 compliance with this subsection shall be deemed to be in compliance  
 2-56 with any rating or financial criteria established for motor  
 2-57 carriers by any political subdivision of the state.

2-58 SECTION 9. Section 643.201(a), Transportation Code, is  
 2-59 amended to read as follows:

2-60 (a) In addition to the registration requirements of  
 2-61 Subchapter B, a political subdivision of this state may regulate  
 2-62 the operation of a tow truck to the extent allowed by federal law,  
 2-63 except that a political subdivision may not issue a more  
 2-64 restrictive regulation for the use of lighting equipment on a tow  
 2-65 truck than is imposed by this title.

2-66 SECTION 10. Subchapter E, Chapter 643, Transportation Code,  
 2-67 is amended by adding Sections 643.203-643.208 to read as follows:

2-68 Sec. 643.203. REGULATION BY POLITICAL SUBDIVISIONS OF FEES  
 2-69 FOR NONCONSENT TOWS. The governing body of a political subdivision

3-1 may regulate the fees that may be charged or collected in connection  
 3-2 with a nonconsent tow originating in the territory of the political  
 3-3 subdivision.

3-4 Sec. 643.204. TOWING FEE STUDIES. (a) The governing body  
 3-5 of a political subdivision that regulates nonconsent tow fees shall  
 3-6 establish procedures by which a towing company may request that a  
 3-7 towing fee study be performed.

3-8 (b) The governing body of the political subdivision shall  
 3-9 establish or amend the allowable fees for nonconsent tows at  
 3-10 amounts that represent the fair value of the services of a towing  
 3-11 company and are reasonably related to any financial or accounting  
 3-12 information provided to the governing body.

3-13 Sec. 643.205. FEES FOR NONCONSENT TOWS IN OTHER AREAS. (a)  
 3-14 In an area in which no political subdivision regulates the fees that  
 3-15 may be charged or collected for a nonconsent tow from private  
 3-16 property, a towing company may charge and collect a fee for the tow  
 3-17 of a motor vehicle from private property in an amount not to exceed  
 3-18 an amount equal to 150 percent of the fee that the towing company  
 3-19 would have been authorized to charge for a nonconsent tow made at  
 3-20 the request of a peace officer of the political subdivision in which  
 3-21 the private property is located.

3-22 (b) A towing company may charge and collect a fee for the tow  
 3-23 of a vehicle, with a gross vehicle weight rating in excess of 26,000  
 3-24 pounds, from private property in an amount not to exceed an amount  
 3-25 equal to 125 percent of the fee that the towing company would have  
 3-26 been authorized to charge for a nonconsent tow made at the request  
 3-27 of a peace officer of the political subdivision in which the private  
 3-28 property is located.

3-29 Sec. 643.206. STORAGE OF TOWED VEHICLES. (a) A towing  
 3-30 company that makes a nonconsent tow shall tow the vehicle to a  
 3-31 vehicle storage facility that is operated by a person who holds a  
 3-32 license to operate the facility under Chapter 2303, Occupations  
 3-33 Code.

3-34 (b) A storage or notification fee imposed in connection with  
 3-35 a motor vehicle towed to a vehicle storage facility is governed by  
 3-36 Chapter 2303, Occupations Code.

3-37 (c) Except as provided by this chapter or Chapter 2303,  
 3-38 Occupations Code, a fee may not be charged or collected without the  
 3-39 prior written consent of the vehicle owner or operator.

3-40 Sec. 643.207. REQUIRED FILING. (a) Before January 31 of  
 3-41 each year, a towing company shall file with the department a  
 3-42 schedule showing each towing fee that the towing company charges or  
 3-43 collects in connection with a nonconsent tow.

3-44 (b) If a political subdivision begins regulating nonconsent  
 3-45 tow fees, the fees shall be reported to the department by the towing  
 3-46 company before the 30th day after the regulation goes into effect.

3-47 (c) Any changes in nonconsent tow fees regulated by a  
 3-48 political subdivision shall be reported to the department by the  
 3-49 towing company before the 30th day after the effective date of the  
 3-50 change.

3-51 (d) The department shall make towing fee schedules  
 3-52 available on the department's Internet website. The department  
 3-53 shall make no determination as to the reasonableness of a towing fee  
 3-54 schedule.

3-55 Sec. 643.208. REQUIRED POSTING. All towing and storage  
 3-56 fees shall be posted at the licensed vehicle storage facility to  
 3-57 which the motor vehicle has been delivered and shall be posted in  
 3-58 view of the person who claims the vehicle.

3-59 SECTION 11. Section 643.252(a), Transportation Code, is  
 3-60 amended to read as follows:

3-61 (a) The department may suspend or revoke a registration  
 3-62 issued under this chapter or place on probation a motor carrier  
 3-63 whose registration is suspended if a motor carrier:

3-64 (1) fails to maintain insurance or evidence of  
 3-65 financial responsibility as required by Section 643.101(a), (b),  
 3-66 ~~(c)~~ (c), or (d) or 643.153(b);

3-67 (2) fails to keep evidence of insurance in the cab of  
 3-68 each vehicle as required by Section 643.103(b);

3-69 (3) fails to register a vehicle requiring

4-1 registration;

4-2 (4) knowingly provides false information on any form  
4-3 filed with the department under this chapter; or

4-4 (5) violates a rule adopted under Section 643.063.

4-5 SECTION 12. The heading to Section 643.253, Transportation  
4-6 Code, is amended to read as follows:

4-7 Sec. 643.253. OFFENSES AND PENALTIES [~~CRIMINAL PENALTY~~].

4-8 SECTION 13. Section 643.253, Transportation Code, is  
4-9 amended by amending Subsection (c) and adding Subsections (d)-(f)  
4-10 to read as follows:

4-11 (c) Except as provided by Subsection (e), an [An] offense  
4-12 under this section is a Class C misdemeanor.

4-13 (d) A person commits an offense if the person:

4-14 (1) violates an ordinance, resolution, order, rule, or  
4-15 regulation of a political subdivision adopted under Section 643.201  
4-16 or 643.203, for which the political subdivision does not prescribe  
4-17 the penalty;

4-18 (2) charges or collects a fee in a political  
4-19 subdivision that regulates the operation of tow trucks under  
4-20 Section 643.201 or 643.203 that is not authorized or is greater than  
4-21 the authorized amount of the fee;

4-22 (3) charges or collects a fee greater than the amount  
4-23 authorized under Section 643.205;

4-24 (4) charges or collects a fee in excess of the amount  
4-25 filed with the department under Section 643.207;

4-26 (5) violates Section 643.206; or

4-27 (6) violates a rule of the department applicable to a  
4-28 tow truck and towing company.

4-29 (e) An offense under Subsection (d) is a misdemeanor  
4-30 punishable by a fine of not less than \$200 or more than \$1,000 per  
4-31 violation.

4-32 (f) A peace officer may issue a citation for a violation  
4-33 under this section.

4-34 SECTION 14. Section 683.001, Transportation Code, is  
4-35 amended by adding Subdivisions (9) and (10) to read as follows:

4-36 (9) "Abandoned nuisance vehicle" means a motor vehicle  
4-37 that is at least 10 years old and is of a condition only to be  
4-38 junked, crushed, or dismantled.

4-39 (10) "Vehicle storage facility" means a vehicle  
4-40 storage facility, as defined by Section 2303.002, Occupations Code,  
4-41 that is operated by a person who holds a license issued under  
4-42 Chapter 2303 of that code to operate that vehicle storage facility.

4-43 SECTION 15. Section 683.012, Transportation Code, is  
4-44 amended by adding Subsection (e) to read as follows:

4-45 (e) A law enforcement agency is not required to send a  
4-46 notice, as otherwise required by Subsection (a), if the agency has  
4-47 received notice from a vehicle storage facility that an application  
4-48 has or will be submitted to the department for the disposal of the  
4-49 vehicle.

4-50 SECTION 16. Section 683.034(e), Transportation Code, is  
4-51 amended to read as follows:

4-52 (e) If the law enforcement agency does not take the vehicle  
4-53 into custody before the 31st day after the date notice is sent under  
4-54 Section 683.012:

4-55 (1) the law enforcement agency may not take the  
4-56 vehicle into custody; and

4-57 (2) the storage facility may dispose of the vehicle  
4-58 under:

4-59 (A) Chapter 70, Property Code, except that notice  
4-60 under Section 683.012 satisfies the notice requirements of that  
4-61 chapter; or

4-62 (B) Chapter 2303, Occupations Code, if:

4-63 (i) the storage facility is a vehicle  
4-64 storage facility; and

4-65 (ii) the vehicle is an abandoned nuisance  
4-66 vehicle.

4-67 SECTION 17. Sections 685.009(c) and (e), Transportation  
4-68 Code, are amended to read as follows:

4-69 (c) The issues [~~sole issue~~] in a hearing under this chapter

5-1 are:

5-2 (1) [~~is~~] whether probable cause existed for the  
5-3 removal and placement of the vehicle;

5-4 (2) whether a towing charge imposed or collected in  
5-5 connection with the removal or placement of the vehicle was greater  
5-6 than the amount authorized by the political subdivision under  
5-7 Section 643.201 or 643.203;

5-8 (3) whether a towing charge imposed or collected in  
5-9 connection with the removal or placement of the vehicle was greater  
5-10 than the amount authorized under Section 643.204 or 643.205; or

5-11 (4) whether a towing charge imposed or collected in  
5-12 connection with the removal or placement of the vehicle was greater  
5-13 than the amount filed with the department under Section 643.207.

5-14 (e) The court may award:

5-15 (1) court costs to the prevailing party; [~~and~~]

5-16 (2) the reasonable cost of photographs submitted under  
5-17 Section 685.007(b)(8) to a vehicle owner or operator who is the  
5-18 prevailing party; and

5-19 (3) an amount equal to the amount that the towing  
5-20 charge exceeded fees regulated by a political subdivision or  
5-21 authorized by this code or by Chapter 2303, Occupations Code.

5-22 SECTION 18. (a) This Act takes effect September 1, 2003.

5-23 (b) The change in law made by this Act applies only to an  
5-24 offense committed on or after September 1, 2003.

5-25 (c) An offense committed before September 1, 2003, is  
5-26 covered by the law in effect when the offense was committed, and the  
5-27 former law is continued in effect for that purpose. For purposes of  
5-28 this section, an offense was committed before September 1, 2003, if  
5-29 any element of the offense was committed before that date.

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