

BILL ANALYSIS

Senate Research Center
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S.B. 1159
By: Harris
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, people who engage in the repossession of motor vehicles are not regulated in Texas. As proposed, S.B. 1159 establishes safety standards and procedures for the repossession of motor vehicles and creates a regulatory commission formed by the Texas Department of Licensing and Regulation, which will be responsible for the issuing of licenses and monitoring of repossession licensees.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle A, Title 5, 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," "repossession agent," and "repossession company."

Sec. 902.002. ADMINISTRATION OF CHAPTER. Requires the Texas Department of Licensing and Regulation (department) to administer this chapter.

[Reserves Sections 902.003-902.050 for expansion.]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 902.051. RULES. Authorizes the Texas Commission of Licensing and Regulation (commission) to adopt rules necessary to administer this chapter.

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

Sec. 902.053. DIRECTORY OF LICENSE HOLDERS. Requires the department to annually prepare a directory of license holders and to provide the directory to the public on request without charge. Authorizes the department to comply with this section by publishing the directory online.

Sec. 902.054. INVESTIGATIONS. Authorizes the department to examine certain records or objects for the purpose of conducting investigations under this chapter and, to administer this chapter, to question certain persons.

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 commission, with the advice of the Texas Department of Transportation (TxDOT) and the Texas Department of Public Safety (DPS), 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 factors such as size, towing capacity, and the use of other equipment.

Sec. 902.057. **ADVISORY COMMITTEE.** Authorizes the presiding officer of the commission, with the commission's approval, to appoint an advisory committee, which must include persons with experience in the repossession industry, to advise the department in administering this chapter or the commission in adopting rules under this chapter. Requires the presiding officer of the commission to appoint the presiding officer of a committee established under this section. Authorizes the commission 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.** Prohibits a person, except as provided by Subchapter F, from engaging in a repossession for consideration unless each individual who engages in the recovery holds a repossession agent license. Prohibits a person from advertising that the person performs repossessions unless the person holds a license issued under this chapter and from hiring a person to engage in a repossession unless the hired person holds a license issued under this chapter.

Sec. 902.102. **LICENSE CLASSIFICATIONS.** Requires the department 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 the application fee and the examination fee.

(d) Requires an application for a repossession company license to be accompanied by certain information, including the application fee.

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

Sec. 902.104. **ELIGIBILITY REQUIREMENTS FOR REPOSSESSION AGENT LICENSE; BACKGROUND CHECK.** Sets forth eligibility requirements for an applicant for a repossession agent license. Requires the department to conduct a criminal background check on an applicant. Authorizes the executive director to deny an application if the applicant previously held a repossession agent license and the license was revoked, and provides that, except as provided by Subsection (c), Chapter 53, Occupations Code, applies to this chapter.

Sec. 902.105. **EXAMINATION FOR REPOSSESSION AGENT LICENSE.** Requires the executive director to require an examination for a repossession agent license, to prescribe the method and content of the examination, and to set compliance requirements for the examination. Requires the examination to be offered at least annually or more frequently and at various locations in this state, as determined by the executive director.

Sec. 902.106. **EXAMINATION RESULTS.** Requires the department, not later than the 30th day after the date a person takes a licensing examination under this chapter, to notify the person of the results of the examination. Sets forth requirements for notification of

the results of an examination if the examination is graded or reviewed by a testing service. Authorizes the department to require a testing service to notify a person of the results of the person's examination and 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.** Requires the department to issue the appropriate license to an applicant, on payment of the license fee, who meets the requirements of this subchapter, provides evidence of any insurance coverage required by the executive director in accordance with this chapter, and passes the examination, if the application is for a repossession agent license. Provides that a license is valid for one year from the date of issuance.

Sec. 902.108. **RULES REGARDING RENEWAL.** Authorizes the commission 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.** Sets forth guidelines for the renewal of a license based on the length of time, if any, that the license has been expired. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed. 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 the 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. Requires the department, 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 commission, by rule, to set bond and insurance requirements for license holders.

Sec. 902.111. **CONTINUING EDUCATION REQUIREMENTS FOR REPOSSESSION AGENTS.** Requires the commission, by rule, to require continuing education as a condition of renewal of a repossession agent license and prohibits the continuing education requirements from exceeding four hours annually.

Sec. 902.112. **CONTINUING EDUCATION PROVIDERS AND COURSE APPROVAL.** Requires the commission, by rule, to recognize, prepare, or administer continuing education programs for repossession agent license holders and to recognize and approve continuing education providers.

Sec. 902.113. **RECIPROCITY; WAIVER OF LICENSE REQUIREMENT.** Authorizes the commission 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 department 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 specific eligibility requirements, including that the applicant is sponsored by a person licensed by the department under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(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 subdivision 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 department to issue a repossession agent license under this chapter to a provisional license holder if the provisional license holder meets specific eligibility requirements.

(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 prescribe 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 at least eight hours each day Monday through Friday, excluding legal holidays, during which a person may claim personal property from a repossessed motor vehicle.

Sec. 902.153. CUSTODY AND CONTROL OF MOTOR VEHICLE. Authorizes a repossession company to maintain possession of a repossessed motor vehicle until the vehicle is sold at auction or otherwise transferred to a person with the right to possess the vehicle.

Sec. 902.154. 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. 902.155. ENCLOSURE AND SECURITY AT FACILITY. Sets forth specific requirements for each storage facility. Requires a repossession company to secure a repossessed motor vehicle to prevent theft of the vehicle and its contents, including locking doors, closing windows and hatchbacks, and raising or covering convertible tops.

Sec. 902.156. 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. 902.157. 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. 902.158. FACILITY SIGNS. Requires a repossession company to post a clearly visible and readable sign at the storage facility's main entrance. Sets forth specific requirements for information to be included on and the size and visibility of the sign.

Sec. 902.159. SHARING OF STORAGE FACILITY PROHIBITED. Prohibits a repossession storage company from sharing a storage facility with another repossession company.

Sec. 902.160. 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 902.161-902.200 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 breaching the peace when engaging in a repossession.

Sec. 902.203. EMPLOYMENT OR HIRING OF REPOSSESSION AGENT. Prohibits a licensed repossession agent from engaging in a repossession unless the agent is hired or employed by a licensed repossession company or a lender. 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, if the recovery was not in a municipality having a police department, to the sheriff of the county in which the recovery occurred. Sets forth requirements for information to be included in the report.

Sec. 902.205. RETAIL SERVICES PROHIBITED. Prohibits a repossession agent from selling the agent's repossession services directly to the public.

Sec. 902.206. COLLECTION OF MONEY PROHIBITED. Prohibits a repossession agent from accepting an assignment to collect money.

[Reserves Sections 902.207-902.250 for expansion.]

SUBCHAPTER F. ADDITIONAL REPOSSESSION AND STORAGE REQUIREMENTS FOR MOTOR VEHICLE DEALERS AND LENDERS

Sec. 902.251. DEFINITION. Defines "dealer."

Sec. 902.252. LICENSE NOT REQUIRED FOR CERTAIN REPOSSESSIONS BY MOTOR VEHICLE DEALERS OR LENDERS. Authorizes certain repossession agents who are not licensed to engage in a repossession.

Sec. 902.253. STORAGE OF REPOSSESSED MOTOR VEHICLE. Authorizes a dealer or lender to store a motor vehicle repossessed under this subchapter on the property of the dealer or lender. Requires the dealer or lender, before storing the motor vehicle, to inventory the personal property in the vehicle. Authorizes a licensed repossession agent hired or employed by a lender to store a motor vehicle on the lender's property after engaging in a repossession for the lender.

[Reserves Sections 902.254-902.300 for expansion.]

SUBCHAPTER G. ENFORCEMENT

Sec. 902.301. CEASE AND DESIST ORDERS. Authorizes the department to issue a cease and desist order.

Sec. 902.302. CIVIL PENALTIES. Provides that a person, other than a repossession company or lender, 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 and 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. 902.303. CRIMINAL PENALTY. Provides that a person commits an offense if the person knowingly engages in a repossession without holding a license issued under this chapter, each repossession of a motor vehicle constitutes a separate offense, and an offense under this section is a Class B misdemeanor.

SECTION 2. (a) Provides that a person is not required to obtain a license under Subchapter C, Chapter 902, Occupations Code, as added by this Act, until September 1, 2006.

(b) Requires the Texas Commission on Licensing and Regulation to adopt rules as required by Chapter 902, Occupations Code, as added by this Act, not later than June 1, 2006.

SECTION 3. (a) Effective date: September 1, 2005, except as provided by Subsection (b) of this section.

(b) Provides that Section 902.101 and Subchapters D, E, F, and G, Chapter 902, Occupations Code, as added by this Act, take effect September 1, 2006.