

By: Talton

H.B. No. 2799

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the removal of vehicles and property from a roadway in a
3 political subdivision, to the authority of a political subdivision
4 to establish a traffic incident management program, and to
5 procedures regarding the removal and storage of certain vehicles.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Section 542.203(a), Transportation Code, is
8 amended to read as follows:

9 (a) Unless permitted by an agreement between the local
10 authority and the Texas Department of Transportation under Section
11 221.002, a [A] local authority may not:

12 (1) erect or maintain a traffic-control device to
13 direct the traffic on a state highway, including a farm-to-market
14 or ranch-to-market road, to stop or yield before entering or
15 crossing an intersecting highway; or

16 (2) establish a transportation or mobility
17 enhancement program on a state highway, including a farm-to-market
18 or ranch-to-market road, such as a program by which the
19 municipality receives revenue for towing of vehicles located on the
20 highway [~~unless permitted by agreement between the local authority~~
21 ~~and the Texas Department of Transportation under Section 221.002]~~.

22 SECTION 2. Section 545.001, Transportation Code, is amended
23 to read as follows:

24 Sec. 545.001. DEFINITIONS [~~DEFINITION~~]. In this chapter:

1 (1) "Pass" [,"pass"] or "passing" used in reference
2 to a vehicle means to overtake and proceed past another vehicle
3 moving in the same direction as the passing vehicle or to attempt
4 that maneuver.

5 (2) "Safe drop location" means a location that is well
6 lighted, has a public telephone, and has public restrooms.

7 (3) "Towing company" means an individual,
8 corporation, partnership, or other association engaged in the
9 business of towing vehicles on a highway for compensation or with
10 the expectation of compensation for the towing or storage of the
11 vehicles and includes the owner, operator, employee, or agent of a
12 towing company.

13 (4) "Vehicle storage facility" means a garage, parking
14 lot, or other facility that is operated by a person who holds a
15 license issued under Chapter 2303, Occupations Code, to operate the
16 garage, parking lot, or other facility.

17 SECTION 3. Sections 545.305(a) and (b), Transportation
18 Code, are amended to read as follows:

19 (a) A peace officer listed in [~~under~~] Article 2.12, Code of
20 Criminal Procedure, or a license and weight inspector of the
21 department may remove or require the operator or a person in charge
22 of a vehicle to move a vehicle from a highway if the vehicle:

23 (1) is unattended on a bridge, viaduct, or causeway or
24 in a tube or tunnel and the vehicle is obstructing traffic;

25 (2) is unlawfully parked and blocking the entrance to
26 a private driveway;

27 (3) has been reported as stolen;

1 (4) is identified as having been stolen in a warrant
2 issued on the filing of a complaint;

3 (5) is unattended and the officer has reasonable
4 grounds to believe that the vehicle has been abandoned for longer
5 than 48 hours;

6 (6) is disabled so that normal operation is impossible
7 or impractical and the owner or person in charge of the vehicle is:

8 (A) incapacitated and unable to provide for the
9 vehicle's removal or custody; or

10 (B) not in the immediate vicinity of the vehicle;

11 (7) is disabled so that normal operation is impossible
12 or impractical and the owner or person in charge of the vehicle does
13 not designate a particular towing or vehicle storage facility
14 [~~company~~];

15 (8) is operated by a person an officer arrests for an
16 alleged offense and the officer is required by law to take the
17 person into custody; or

18 (9) is, in the opinion of the officer, a hazard,
19 interferes with a normal function of a governmental agency, or
20 because of a catastrophe, emergency, or unusual circumstance is
21 imperiled.

22 (b) An officer acting under Subsection (a) may require that
23 the vehicle be taken to:

24 (1) a safe drop location [~~the nearest garage or other~~
25 ~~place of safety~~];

26 (2) a garage designated or maintained by the
27 governmental agency that employs the officer; [~~or~~]

1 (3) a vehicle storage facility; or

2 (4) a position off the paved or main traveled part of
3 the highway.

4 SECTION 4. Section 545.3051(d), Transportation Code, is
5 amended to read as follows:

6 (d) The owner and any carrier of personal property removed
7 under this section shall reimburse the authority, ~~[or]~~ law
8 enforcement agency, or towing company for any reasonable cost of
9 removal and disposition of the property.

10 SECTION 5. Subchapter G, Chapter 545, Transportation Code,
11 is amended by adding Section 545.309 to read as follows:

12 Sec. 545.309. TRAFFIC INCIDENT MANAGEMENT PROGRAM. (a) In
13 this section, "traffic incident" means a nonrecurrent event that
14 causes a temporary reduction in roadway capacity or an abnormal
15 increase in traffic demand on a roadway or right-of-way.

16 (b) A political subdivision may establish a traffic
17 incident management program to provide for the safe and efficient
18 removal of personal property from a roadway or right-of-way in the
19 political subdivision.

20 (c) As part of its traffic incident management program, a
21 political subdivision:

22 (1) may enter into agreements with towing companies to
23 provide traffic incident management towing;

24 (2) may not impose a fee or charge that exceeds two
25 percent of the annual gross receipts for traffic incident
26 management towing; and

27 (3) shall apply all revenue generated by any fees or

1 charges assessed under Subdivision (2) to the traffic incident
2 management program.

3 (d) A political subdivision may pay a towing company for
4 traffic incident management towing and storage. If a political
5 subdivision does not pay the towing company, the owner of a vehicle
6 that is towed or stored under this section is liable for all
7 reasonable towing and storage fees incurred.

8 (e) In connection with its traffic incident management
9 program, a political subdivision shall comply with Section 643.204
10 and ensure that fees collected from the owner or operator of a
11 vehicle involved in a traffic incident for services provided by a
12 towing company do not exceed the allowable amounts established by
13 the political subdivision under that section.

14 (f) A towing company that provides traffic incident
15 management towing:

16 (1) shall maintain insurance as required by Chapter
17 643 and comply with each fee provision in that chapter;

18 (2) may not use a driver who:

19 (A) is not certified by the National Drivers
20 Certification Program of the Towing and Recovery Association of
21 America for the size tow truck to be driven; or

22 (B) has been convicted of a felony in the
23 preceding seven years;

24 (3) shall provide annual training for drivers in
25 incident practices; and

26 (4) shall provide appropriate equipment for the towing
27 and recovery of light duty or heavy duty vehicles in accordance with

1 the vehicle manufacturer's towing guidelines.

2 (g) To ensure compliance with Subsection (f)(2), a towing
3 company shall verify the criminal record of each driver through the
4 criminal history record information maintained by the Department of
5 Public Safety. A political subdivision may impose stricter
6 limitations on the employment of drivers with felony convictions
7 than the limitation established by this section.

8 (h) A vehicle that is towed in connection with a traffic
9 incident management program must be taken to:

10 (1) a safe drop location;

11 (2) a garage designated or maintained by the political
12 subdivision;

13 (3) a vehicle storage facility; or

14 (4) a position off the paved or main traveled part of
15 the roadway or right-of-way.

16 (i) In connection with its traffic incident management
17 program, a political subdivision shall not enter into any agreement
18 that would:

19 (1) monopolize any part of trade or commerce; or

20 (2) have the effect of lessening competition
21 substantially in any line of trade or commerce.

22 (j) A political subdivision may not enter into an agreement
23 under Subsection (c) exclusively with one towing company.

24 SECTION 6. Section 683.011(b), Transportation Code, is
25 amended to read as follows:

26 (b) A law enforcement agency may use agency personnel,
27 equipment, and facilities or contract for other personnel,

1 equipment, and facilities to remove, preserve, [~~and~~] store, send
2 notice regarding, and dispose of an abandoned motor vehicle,
3 watercraft, or outboard motor taken into custody by the agency
4 under this subchapter.

5 SECTION 7. Section 683.031(c), Transportation Code, is
6 amended to read as follows:

7 (c) The garagekeeper shall report the abandonment of the
8 motor vehicle to a law enforcement agency with jurisdiction where
9 the vehicle is located or to the Department of Public Safety and
10 shall pay a \$10 [~~\$5~~] fee to be used by the law enforcement agency for
11 the cost of the notice required by this subchapter or other cost
12 incurred in disposing of the vehicle. A fee paid to the Department
13 of Public Safety shall be used to administer this chapter.

14 SECTION 8. Sections 683.034(a), (b), and (e),
15 Transportation Code, are amended to read as follows:

16 (a) A law enforcement agency shall take into custody an
17 abandoned vehicle left in a storage facility that has not been
18 claimed in the period provided by the notice under Section 683.012.
19 In this section, a law enforcement agency has custody if the agency:

20 (1) has physical custody of the vehicle;

21 (2) has given notice to the storage facility that the
22 law enforcement agency intends to dispose of the vehicle under this
23 section; or

24 (3) has received a report under Section 683.031(c) and
25 the garagekeeper has met all of the requirements of that
26 subsection.

27 (b) The law enforcement agency may use the vehicle as

1 authorized by Section 683.016 or sell the vehicle at auction as
2 provided by Section 683.014. If a vehicle is sold, the proceeds of
3 the sale shall first be applied to a garagekeeper's charges for
4 providing notice regarding the vehicle and for service, towing,
5 impoundment, storage, and repair of the vehicle.

6 (e) If the law enforcement agency does not take the vehicle
7 into custody before the 31st day after the date the vehicle was
8 reported abandoned under Section 683.031 [~~notice is sent under~~
9 ~~Section 683.012~~]:

10 (1) the law enforcement agency may not take the
11 vehicle into custody; and

12 (2) the storage facility may dispose of the vehicle
13 under:

14 (A) Chapter 70, Property Code, except that notice
15 under Section 683.012 satisfies the notice requirements of that
16 chapter; or

17 (B) Chapter 2303, Occupations Code, if [~~+~~
18 [~~(i)~~] the storage facility is a vehicle
19 storage facility [~~+~~ and
20 [~~(ii)~~ the vehicle is an abandoned nuisance
21 vehicle].

22 SECTION 9. Section 685.004, Transportation Code, is amended
23 to read as follows:

24 Sec. 685.004. JURISDICTION. [~~(a)~~] A hearing under this
25 chapter shall be in the justice court having jurisdiction in the
26 precinct in which the vehicle storage facility is located [~~is~~
27 ~~before the justice of the peace or a magistrate in whose~~

1 ~~jurisdiction is the location from which the vehicle was removed,~~
2 ~~except as provided by Subsection (b)].~~

3 ~~[(b) In a municipality with a population of 1.9 million or~~
4 ~~more, a hearing under this chapter is before a judge of a municipal~~
5 ~~court in whose jurisdiction is the location from which the vehicle~~
6 ~~was removed.]~~

7 SECTION 10. Section 685.006, Transportation Code, is
8 amended to read as follows:

9 Sec. 685.006. CONTENTS OF NOTICE. ~~[(a)]~~ The notice under
10 Section 685.005 must include:

11 (1) a statement of:

12 (A) the person's right to submit a request within
13 14 days for a court hearing to determine whether probable cause
14 existed to remove the vehicle;

15 (B) the information that a request for a hearing
16 must contain; and

17 (C) any filing fee for the hearing;

18 (2) the name, address, and telephone number of the
19 towing company that removed the vehicle;

20 (3) the name, address, and telephone number of the
21 vehicle storage facility in which the vehicle was placed; ~~and~~

22 (4) the name, address, and telephone number of the
23 person, property owner, or law enforcement agency that authorized
24 the removal of the vehicle; and

25 (5) the name, address, and telephone number of the
26 justice court having jurisdiction in the precinct in which the
27 vehicle storage facility is located ~~[one or more of the appropriate~~

1 ~~magistrates as determined under Subsection (b)].~~

2 ~~[(b) The notice must include the name, address, and~~
3 ~~telephone number of:~~

4 ~~[(1) the municipal court of the municipality, if the~~
5 ~~towing company that removed the vehicle or the vehicle storage~~
6 ~~facility in which the vehicle was placed is located in a~~
7 ~~municipality; or~~

8 ~~[(2) the justice of the peace of the precinct in which~~
9 ~~the towing company or the vehicle storage facility is located, if~~
10 ~~the towing company that removed the vehicle or the vehicle storage~~
11 ~~facility in which the vehicle was placed is not located in a~~
12 ~~municipality.]~~

13 SECTION 11. Section 685.008, Transportation Code, is
14 amended to read as follows:

15 Sec. 685.008. FILING FEE AUTHORIZED. The court may charge a
16 filing fee of \$20 [~~\$10~~] for a hearing under this chapter.

17 SECTION 12. Section 685.009, Transportation Code, is
18 amended by amending Subsections (a) and (b) and adding Subsection
19 (b-1) to read as follows:

20 (a) A hearing under this chapter shall be held before the
21 10th [~~seventh~~] working day after the date the court receives the
22 request for the hearing.

23 (b) The court shall notify the person who requested the
24 hearing and the person or law enforcement agency that authorized
25 the removal of the vehicle of the date, time, and place of the
26 hearing by registered or certified mail. The notice of the hearing
27 to the person or law enforcement agency that authorized the removal

1 of the vehicle shall include a copy of the request for hearing.

2 (b-1) At a hearing under this section:

3 (1) the burden of proof is on the person who requested
4 the hearing; and

5 (2) hearsay evidence is admissible if it is considered
6 otherwise reliable by the justice of the peace.

7 SECTION 13. Chapter 685, Transportation Code, is amended by
8 adding Section 685.010 to read as follows:

9 Sec. 685.010. APPEAL. An appeal from a hearing under this
10 chapter is governed by the rules of procedure applicable to civil
11 cases in justice court, except that no appeal bond may be required
12 by the court.

13 SECTION 14. Section 2303.152(a), Occupations Code, is
14 amended to read as follows:

15 (a) Notice to the registered owner and the primary
16 lienholder of a vehicle towed to a vehicle storage facility may be
17 provided by publication in a newspaper of general circulation in
18 the county in which the vehicle is stored if:

19 (1) the vehicle is registered in another state;

20 (2) the operator of the storage facility submits to
21 the governmental entity with which the vehicle is registered a
22 written request for information relating to the identity of the
23 registered owner and any lienholder of record;

24 (3) the identity of the registered owner cannot be
25 determined;

26 (4) the registration does not contain an address for
27 the registered owner; or [~~and~~]

1 (5) the operator of the storage facility cannot
2 reasonably determine the identity and address of each lienholder.

3 SECTION 15. Section 2303.154, Occupations Code, is amended
4 by adding Subsection (a-1) to read as follows:

5 (a-1) If a vehicle is not claimed by a person permitted to
6 claim the vehicle before the 10th day after the date notice is
7 mailed or published under Section 2303.151 or 2303.152, the
8 operator of the vehicle storage facility shall consider the vehicle
9 to be abandoned and send notice of abandonment to a law enforcement
10 agency under Chapter 683, Transportation Code.

11 SECTION 16. Section 2303.155(f), Occupations Code, is
12 amended to read as follows:

13 (f) The operator of a vehicle storage facility or
14 governmental vehicle storage facility may not charge any [an]
15 additional fee related to storage of the vehicle other than those
16 fees set forth in this section or towing fees allowed under Chapter
17 643, Transportation Code [that is similar to a notification,
18 impoundment, or administrative fee].

19 SECTION 17. Section 101.141(a), Government Code, is amended
20 to read as follows:

21 (a) A clerk of a justice court shall collect fees and costs
22 as follows:

23 (1) additional court cost in certain civil cases to
24 establish and maintain an alternative dispute resolution system, if
25 authorized by the commissioners court of a county with a population
26 of at least 2.5 million (Sec. 152.005, Civil Practice and Remedies
27 Code) . . . not to exceed \$3;

1 (2) additional filing fees:

2 (A) to fund Dallas County civil court facilities
3 (Sec. 51.705, Government Code) . . . not more than \$15; and

4 (B) for filing any civil action or proceeding
5 requiring a filing fee, including an appeal, and on the filing of
6 any counterclaim, cross-action, intervention, interpleader, or
7 third-party action requiring a filing fee, to fund civil legal
8 services for the indigent (Sec. 133.153, Local Government
9 Code) . . . \$2;

10 (3) for filing a suit in Comal County (Sec. 152.0522,
11 Human Resources Code) . . . \$1.50; and

12 (4) fee for hearing on probable cause for removal of a
13 vehicle and placement in a storage facility if assessed by the court
14 (Sec. 685.008, Transportation Code) . . . \$20 [~~\$10~~].

15 SECTION 18. Section 101.161, Government Code, is amended to
16 read as follows:

17 Sec. 101.161. MUNICIPAL COURT FEES AND COSTS. The clerk of
18 a municipal court may collect a fee for a hearing on probable cause
19 for removal of a vehicle and placement in a storage facility if
20 assessed by the court (Sec. 685.008, Transportation
21 Code) . . . \$20 [~~\$10~~].

22 SECTION 19. Section 101.181, Government Code, is amended to
23 read as follows:

24 Sec. 101.181. MUNICIPAL COURTS OF RECORD FEES AND COSTS.
25 The clerk of a municipal court of record shall collect the following
26 fees and costs:

27 (1) from an appellant, a transcript preparation fee

1 (Sec. 30.00014, Government Code) . . . \$25; and

2 (2) from an appellant in the City of El Paso, an
3 appellate court docket fee (Sec. 30.00147, Government
4 Code) . . . \$25[~~, and~~

5 [~~(3) fee for hearing on probable cause for removal of a~~
6 ~~vehicle and placement in a storage facility if assessed by the court~~
7 ~~(Sec. 685.008, Transportation Code) . . . \$10].~~

8 SECTION 20. The changes in law made by this Act to Chapters
9 683 and 685, Transportation Code, Chapter 2303, Occupations Code,
10 and Chapter 101, Government Code, take effect September 1, 2005,
11 and apply only to a removal or seizure of a vehicle that occurs on or
12 after that date. The removal or seizure of a vehicle before
13 September 1, 2005, is governed by the law in effect immediately
14 before that date, and the former law is continued in effect for that
15 purpose.

16 SECTION 21. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2005.