

BILL ANALYSIS

C.S.H.B. 2571
By: Gonzales
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During the past several years, a small group of unscrupulous towing companies and parking facility owners have been committing criminal acts against vehicle owners and operators in cities across Texas. Malicious towing practices are prevalent in every part of the state, and it is clear from the number of complaints submitted by vehicle owners that additional legislation is needed to regulate the towing industry. The complaints are about such things as lofty fees, vehicle storage facilities not accepting electronic methods of payment, towing companies wrongfully posting signs to illegally tow vehicles, and the lack of enforcement or penalty if towing companies do not pay the restitution ordered by the courts. In particular, Texas must implement stronger regulation of nonconsent private property towing. Nonconsent tows typically occur when the removal of a vehicle is not authorized by the vehicle owner or the owner of the parking facility from which the vehicle is towed. Once a vehicle is towed, the vehicle owner faces the problem of paying an exorbitantly high towing fee. Towing companies charge upwards of \$300 for a nonconsent tow of a typical car and charge labor, mileage, impound, and notification fees, which can amount to thousands of dollars for commercial grade vehicles. Texans need protection from these unethical and illegal towing practices.

C.S.H.B. 2571 provides additional needed regulation of towing companies and their practices. The bill differentiates between nonconsent and consent towing. The bill increases penalties for towing companies that rely on predatory practices to lure motorists to park in areas where they will be towed. The bill also requires the licenses of towing companies that fail to pay drivers who successfully challenge them in court to be suspended to address the continuing problem of predatory towing practices in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 2, 3, and 21 of this bill.

ANALYSIS

C.S.H.B. 2571 amends the Occupations Code to add provisions relating to nonconsent tows and make other changes to the Texas Towing Act. The bill modifies the definition of "nonconsent tow" to include an incident management tow and a private property tow. The bill defines "incident management tow" as any tow of a vehicle in which the tow truck is summoned to a traffic accident or incident. The bill defines "private property tow" as any tow of a vehicle authorized by a parking facility owner. The bill redefines "parking facility owner" and "consent tow."

C.S.H.B. 2571 requires the Texas Commission on Licensing and Regulation to adopt rules for denial of an application or permit in connection with vehicle towing if the applicant, a partner, principal, officer, or general manager of the applicant, or a license or permit holder has a criminal conviction or has pled guilty or nolo contendere before the date of the application for a felony or a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; violated

an order of the commission or executive director, including an order for sanctions or administrative penalties; failed to submit a license or permit bond in an amount established by the commission; knowingly submitted false or incomplete information on a license or permit application; and filed an application to permit a tow truck that is already permitted by another license or permit holder.

C.S.H.B. 2571 requires the commission, to protect the public health and safety, by rule to establish the fees that may be charged in connection with a private property tow, the maximum amount that may be charged for fees, other than tow fees, that may be assessed by a towing company in connection with a private property tow, and a maximum amount that may be charged for the following private property tows: standard light-duty tows of motor vehicles with a gross weight rating of 10,000 pounds or less; medium-duty tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and heavy-duty tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds. The bill requires the commission, in adopting the rules, to consider private property towing fee studies conducted by municipalities in Texas and to conduct studies of private property towing fees that analyze cost of service by company, the consumer price index, geographic area, and individual cost components. The bill authorizes the commission to structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location. The bill requires the commission to maintain the confidentiality of information contained in such a study that is claimed to be confidential for competitive purposes and prohibits the commission from releasing information that identifies a person or company. The bill establishes that the confidential information is exempt from disclosure under the public information law and requires the commission, to protect the confidentiality of the information, to aggregate the information to the maximum extent possible considering the purpose of the study.

C.S.H.B. 2571 includes providing advice and recommendations to the Texas Department of Licensing and Regulation (TDLR) on maximum amounts that may be charged for fees related to private property tows among the powers and duties of the Towing and Storage Advisory Board. The bill adds conditions to the authority of a political subdivision to regulate fees for nonconsent tows and makes these provisions effective September 1, 2010. The bill specifies that the governing body of the political subdivision is authorized to regulate the fees for private property tows if the fees are authorized by commission rule and do not exceed the maximum amount authorized by commission rule. The bill modifies the fees for nonconsent private property tows in areas in which no political subdivision regulates the fees and makes these provisions effective September 1, 2010. The bill authorizes a towing company to charge and collect fees for a nonconsent private property tow in such an area in an amount not to exceed the maximum amount authorized by the commissioners court in the county in which the vehicle storage facility is located, or, if the commissioners court does not set the maximum amount, the average of the maximum amounts authorized by the three political subdivisions that regulate nonconsent incident management tow fees and that are closest to the facility. The bill removes provisions authorizing a towing company to charge and collect fees based on the charge for a nonconsent tow made at the request of a peace officer or the gross weight of the vehicle being towed. The bill prohibits a license or permit holder from charging a fee related to a nonconsent tow that is not listed in the towing fee schedule most recently submitted to TDLR and authorizes TDLR to require a license or permit holder that has charged an unauthorized fee to reimburse the vehicle owner or operator for the charges. The bill authorizes a parking facility owner or an insured towing company to cause an unauthorized vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense, without the consent of the owner or operator of the vehicle, if the parking facility owner has provided to the owner or operator of the vehicle written notice of the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is left unattended or is obstructing an entrance or exit in violation of the law. The bill makes the authorization for an insured towing company to remove a vehicle that is obstructing an entrance or exit dependent on whether the removal is approved by a peace officer. The bill makes the authorization for a parking facility owner to remove a vehicle also apply to any property on or in the vehicle.

C.S.H.B. 2571 increases from \$300 to \$1000 the amount for which, in addition to three times the amount of fees assessed in the vehicle's removal, towing, or storage, a towing company or parking facility owner who intentionally, knowingly, or recklessly violates provisions for vehicle towing is liable to the owner or operator of the vehicle that is the subject of the violation. The bill increases the penalty for a violation of the Texas Towing Act from a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500 to a Class B misdemeanor.

C.S.H.B. 2571 adds a towing company and a vehicle storage facility to provisions relating to payment for removal and storage of a vehicle that was stored without probable cause. The bill provides that if the towing company or vehicle storage facility that received the payment fails to furnish to the owner or operator of the vehicle the name, address, and telephone number of the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company or vehicle storage facility that received the payment is liable if the court, after a hearing, does not find probable cause for the removal and storage of the vehicle. The bill requires a hearing under the Texas Towing Act to be in the justice court having jurisdiction in the precinct from which the motor vehicle was towed, rather than in the precinct in which the vehicle storage facility is located. The bill requires the written notice of the rights of a vehicle owner or operator under the act to include the registered name, street address, including city, state, and zip code, rather than name and address and telephone number of the parking facility owner if that person authorized the removal of the vehicle; and the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the parking, rather than vehicle storage, facility is located. The bill establishes that the 14-day period for requesting a hearing does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing. The bill adds a parking facility owner to provisions relating to notice of a hearing that is required to be sent to the person who requested the hearing or the law enforcement agency that authorized removal of the vehicle.

C.S.H.B. 2571 requires TDLR to suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment. The bill requires the owner or operator of the vehicle to submit a certified copy of the final judgment to TDLR and requires TDLR, on receipt of the certified copy of the unpaid final judgment, to disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle. The bill requires TDLR to reinstate the license on submission of evidence satisfactory to TDLR of payment of the final judgment by the person, towing company, or vehicle storage facility. The bill prohibits the operator of a vehicle storage facility from refusing to release a vehicle based on the inability of the facility to accept payment by electronic check, debit card, or credit card of a fee or charge associated with delivery or storage of the vehicle. The bill sets forth the required language for a sign related to the prohibition and requires the facility to conspicuously post the sign.

C.S.H.B. 2571 requires the commission, not later than September 1, 2010, to adopt the rules necessary to implement the bill's provisions, including rules on the maximum amount of fees that may be charged for private property tows.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2571 differs from the original by removing a reference in the definition of "incident management tow" to a peace officer that summons a tow truck to a traffic accident or incident

and by removing the definition of "parking facility authorized agent." The substitute differs from the original by requiring the Texas Commission on Licensing and Regulation to adopt rules for denial of an application or permit in connection with vehicle towing if the applicant, a partner, principal, officer, or general manager of the applicant, or a license or permit holder, has committed certain acts. The substitute differs from the original by making provisions relating to the regulation of fees for nonconsent tows in the territory of a political subdivision or in an area in which no political subdivision regulates the fees effective September 1, 2010, rather than May 1, 2010. The substitute prohibits fees charged for the tow of a motor vehicle from private property in an area in which no political subdivision regulates the fees from exceeding certain maximum amounts rather than the maximum amount authorized by commission rule as in the original.

C.S.H.B. 2571 authorizes a parking facility owner or insured towing company to remove a vehicle under certain circumstances without the consent of the owner if the parking facility owner has provided to the owner or operator of the vehicle written notice of the name of the towing company and the vehicle storage facility that will be used, rather than providing to the towing company written notice of the name of the parking facility authorized agent as in the original. The substitute differs from the original by making a change to conform to that authorization. The substitute differs from the original by requiring the notice of the rights of owners and operators of stored vehicles to include the registered name of the person or agency that authorized the removal of the vehicle, rather than the full name. The substitute differs from the original by requiring the notice to include information about the justice court having jurisdiction in the precinct in which the parking facility is located, rather than in which the vehicle storage facility as is located. The substitute prohibits the operator of a vehicle storage facility from refusing to release a vehicle based on the inability of the facility to accept payment by electronic check, debit card, or credit card, whereas the original prohibits the operator from collecting a fee from a person who offers to pay a charge with an electronic check, debit card, or credit card form of payment that the operator is not equipped to accept. The substitute requires the commission to adopt rules by September 1, 2010, rather than April 1, 2010, as in the original.