

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2571
By: Gonzales et al. (Hinojosa)
Administration
5/20/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Towing companies and vehicle storage facilities take advantage of current towing laws that do not enforce or provide incentives to run clean practices. This bill cracks down on illegal and malicious towing practices to protect victims from unlawful tows, exorbitant fees, and tough vehicle recovery. This legislation aims to protect vehicle owners and penalize towers who disobey the law, while not punishing respectable towing companies.

C.S.H.B. 2571 amends current law relating to the licensing and regulation of towing companies and vehicle storage facilities and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 3 (Section 2308.0575, Occupations Code) of this bill.

Rulemaking authority previously granted to TCLR is modified in SECTION 2 (Section 2308.057, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2308.002, Occupations Code, by amending Subdivisions (3), (6), and (8) and adding Subdivisions (5-a), (7-a), and (8-a), to redefine "consent tow," "nonconsent tow," and "parking facility owner" and to define "incident management tow," "parking facility authorized agent," and "private property tow."

SECTION 2. Amends Section 2308.057(a), Occupations Code, to require that the Texas Commission of Licensing and Regulation (TCLR) adopt rules for permitting tow trucks and licensing towing operators and towing companies, including rules for denial of applications and permits if the applicant, a partner, principal, officer, or general manager of the applicant, or other license or permit holder has a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for a felony, or a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$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 TCLR; knowingly submitted false or incomplete information on a license or permit application; and filed an application to permit a tow truck previously permitted by a license or permit holder.

SECTION 3. Amends Subchapter B, Chapter 2308, Occupations Code, by adding Section 2308.0575, as follows:

Sec. 2308.0575. RULES ON FEES; CONTRACT FOR STUDY; CONFIDENTIAL INFORMATION. (a) Requires TCLR, to protect the public health and safety, by rule to establish the fees that are authorized to be charged in connection with a private property tow; the maximum amount that is authorized to be charged for fees, other than tow fees, that is authorized to be assessed by a towing company in connection with a private property tow; and a maximum amount that is authorized to be charged for certain private property tows.

(b) Requires TCLR, in adopting rules under Subsection (a), to contract for the conduct of a study that examines private property towing fee studies conducted by

municipalities in this state and analyzes for private property tows the cost of services by company, the consumer price index, the geographic area, and individual cost components.

(c) Authorizes TCLR to structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location.

(d) Requires TCLR to maintain the confidentiality of information contained in a study conducted under this section that is claimed to be confidential for competitive purposes, and prohibits TCLR from releasing information that identifies a person or company. Provides that the confidential information is exempt from disclosure under Chapter 552 (Public Information), Government Code.

(e) Requires TCLR, to protect the confidentiality of the information, to aggregate the information to the maximum extent possible considering the purpose of the study.

(f) Requires the Texas Department of Licensing and Regulation (TDLR) to contract to conduct a study on private property towing fees under this section at least once every two years.

SECTION 4. Amends Section 2308.060, Occupations Code, to require the Towing and Storage Advisory Board to provide advice and recommendations to TDLR on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that are authorized to be charged for fees related to private property tows.

SECTION 5. Amends Section 2308.204, Occupations Code, as follows:

Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS. Authorizes a towing company, in an area in which no political subdivision regulates the fees that are authorized to be charged or collected in connection with a private property tow, to charge and collect fees for the tow of a motor vehicle in an amount not to exceed the maximum amount authorized by commission rule. Deletes existing text authorizing a towing company, in an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, to charge and collect a fee for the tow of a motor vehicle from private property in an amount not to exceed an amount equal to 150 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located. Deletes existing Subsection (b) and existing text authorizing a towing company to charge and collect a fee for the tow of a vehicle, with a gross weight rating in excess of 26,000 pounds, from private property in an amount not to exceed an amount equal to 125 percent of the fee that the tow made at the request of a peace officer of the political subdivision in which the private property is located.

SECTION 6. Amends Section 2308.206, Occupations Code, by adding Subsections (f) and (g), as follows:

(f) Prohibits a license or permit holder from charging a fee related to a nonconsent tow that is not listed in the schedule most recently submitted to TDLR under this section.

(g) Authorizes TDLR to require a license or permit holder that has violated Subsection (e) or (f) to reimburse the vehicle owner or operator for the charges.

SECTION 7. Amends Section 2308.208, Occupations Code, as follows:

Sec. 2308.208. New heading: MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED VEHICLES AND TOWING OF MOTOR VEHICLES. Makes no changes to this section.

SECTION 8. Amends Section 2308.252(a), Occupations Code, to authorize a parking facility owner, without the consent of the owner or operator of an unauthorized vehicle, to cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense for certain reasons, including if the parking facility owner has provided to the towing company written notice of the name of the parking facility authorized agent and stored the vehicle under certain conditions.

SECTION 9. Amends Section 2308.255(a), Occupations Code, to make conforming changes.

SECTION 10. Amends Section 2308.256(a), Occupations Code, to require a vehicle storage facility accepting a vehicle that is towed under this chapter within two hours after receiving the vehicle to report certain information to the police department of the municipality from which the vehicle was towed, or, if the vehicle was towed from a location that is in a municipality with a police department, to the sheriff of the county from which the vehicle was towed, rather than to the police department of the municipality in which the parking facility is located, or if the parking facility is not located in a municipality having a police department, to the sheriff of the county in which the parking facility is located.

SECTION 11. Amends Section 2308.404(c), Occupations Code, to provide that a towing company or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner of the vehicle that is the subject of the violation for \$1,000, rather than \$300, plus three times the amount of fees assessed in the vehicles removal, towing, or storage.

SECTION 12. Amends Section 2308.405, Occupations Code, as follows:

Sec. 2308.405. New heading: **CRIMINAL PENALTY**. Provides that a person commits an offense if the person violates this chapter. Provides that an offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500 unless it is shown on trial of the offense that the person knowingly or intentionally violated this chapter, in which event the offense is a Class B misdemeanor. Deletes existing text providing that a violation of this chapter is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500.

SECTION 13. Amends Section 2308.451, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the parking facility owner, rather than person, or law enforcement agency that authorized the removal, if in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, to pay the costs of the removal and storage or reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

(c) Requires the towing company, if, in a hearing held under this chapter, regardless of whether the court finds that there was probable cause for the removal and storage of a vehicle, the court finds that the towing charge collected exceeded fees regulated by a political subdivision or authorized by this chapter or Chapter 2303 (Vehicle Storage Facilities), to reimburse the owner or operator of the vehicle an amount equal to the overcharge.

SECTION 14. Amends Section 2308.454, Occupations Code, by adding Subsection (c), to provide 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.

SECTION 15. Amends Section 2308.455, Occupations Code, to require that the notice under Section 2308.454 include certain information, including the name, street address including city,

state, and zip code, and telephone number of the person, parking facility owner, rather than property owner, or law enforcement agency that authorized the removal of the vehicle.

SECTION 16. Amends Section 2308.456, Occupations Code, by amending Subsection (a) and adding Subsection (c-1), as follows:

(a) Requires a person entitled to a hearing under this chapter, except as provided by Subsections (c) (relating to an exception to the 14-day deadline) and (c-1), rather than Subsection (c), to deliver a written request for a hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility, excluding Saturdays, Sundays, and legal holidays.

(c-1) Provides that the 14-day period for requesting a hearing under Subsection (a) 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 required under Subsection (b)(2) through (6) (relating to requiring a request for a hearing to contain certain information).

SECTION 17. Amends Sections 2308.458(a) and (b), Occupations Code, as follows:

(a) Requires that a hearing under this chapter be held before the 21st calendar day, rather than 14th working day, after the date the court receives the request for the hearing.

(b) Requires that the court notify the person who requested the hearing, the parking facility owner, rather than person, or law enforcement agency that authorized the removal of the vehicle, and the vehicle storage facility in which the vehicle was placed of the date, time, and place of the hearing in a manner provided by Rule 21a (Methods of Service), Texas Rules of Civil Procedure. Requires that the notice of the hearing to the parking facility owner, rather than person, or law enforcement agency that authorized the removal of the vehicle include a copy of the request for hearing.

SECTION 18. Amends Section 2308.460, Occupations Code, as follows:

Sec. 2308.460. ENFORCEMENT OF AWARD. (a) Creates this subsection from existing text.

(b) 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.

(c) Requires the owner or operator of the vehicle to submit a certified copy of the final judgment to TDLR.

(d) 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.

(e) 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.

SECTION 19. Amends Section 2303.159(a), Occupations Code, to prohibit the operator of a vehicle storage facility, except as provided by this subsection, from collecting a fee for any charge associated with the delivery or storage of a vehicle from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the operator is not equipped to accept. Provides that this subsection does not apply if the operator, through no fault of the operator, is unable to accept the electronic check, debit card, or credit card because of a power outage or a machine malfunction.

SECTION 20. Requires TCLR, not later than April 1, 2010, to adopt the rules necessary to implement the changes in law made by this Act, including rules on the maximum amount of fees that are authorized to be charged for private property tows.

SECTION 21. (a) Makes application of Section 2308.405, Occupations Code, as amended by this Act, prospective.

(b) Provides that an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and provides that the former law is continued in effect for that purpose.

SECTION 22. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Section 2308.204, Occupations Code, as amended by this Act: May 1, 2010.