

BILL ANALYSIS

C.S.S.B. 702
By: Carona
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Legislation enacted during the 80th Legislature, Regular Session, 2007, moved oversight of the towing and vehicle storage industry from the Texas Department of Transportation to the Texas Department of Licensing and Regulation. The move provided increased oversight and a better regulatory system for the industry. However, several issues have arisen from the transition.

State law provides for several types of licenses for a towing operator, including an incident management license, a private property license, and a consent tow operator's license. In addition to the towing operator license, current law requires a license holder in certain circumstances to also hold a vehicle storage facility license. Therefore, towing operators are required to hold two separate licenses from the department. This is burdensome to both the license applicant and the department, which is required to run two background checks on the same person.

In addition to the towing licenses, certain other licenses relating to towing require an applicant for a towing operator's license to also have a Texas driver's license. There are towing operators who live in bordering states, such as Arkansas, who work in Texas. These operators are required to obtain a Texas driver's license merely for the purpose of applying for a towing license with the department. There is also currently no temporary training license for those who are training to operate a tow truck.

C.S.S.B. 702 requires the Texas Department of Licensing and Regulation to issue a dual towing license for a person who is a vehicle storage facility employee and towing operator, meets certain requirements, and submits to the department the required license application and fee. The bill creates a temporary training license for towing operators and adds alcohol testing to the policy a towing company is required to establish for towing operators.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1, 4, and 8 of this bill.

ANALYSIS

C.S.S.B. 702 amends the Occupations Code to require the Texas Commission of Licensing and Regulation to adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator, which authorizes the license holder to work at a vehicle storage facility and perform towing operations. The bill requires the Texas Department of Licensing and Regulation to issue such a license to an applicant who meets the requirements for a vehicle storage facility license; for either an incident management towing operator's license, private property towing operator's license, or consent towing operator's license; and any applicable rules and who submits to the department an application on a department-approved form and the required license fee. The bill prohibits the license fee from being less than the fee for a vehicle storage facility employee license or a towing operator's license or more than the sum of the fees for those licenses. The bill establishes that these provisions take effect June 1,

2010.

C.S.S.B. 702 requires a vehicle storage facility accepting a vehicle that is towed under provisions of the Vehicle Storage Facility Act, within two hours after receiving the vehicle, to report by telephone or electronically or by delivering notice personally or by facsimile to the local law enforcement agency with jurisdiction over the area from which the vehicle was towed: a general description of the vehicle; the state and number of the vehicle's license plate, if any; the vehicle identification number, if it can be ascertained; the location from which the vehicle was towed; and the name and location of the vehicle storage facility where the vehicle is being stored.

C.S.S.B. 702 specifies that the term "tow truck" does not include a motor vehicle owned and operated by a governmental entity, including a public school district; a motor vehicle towing a race car, a motor vehicle for exhibition, or an antique motor vehicle; a recreational vehicle towing another vehicle; a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise; a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or a vehicle that is owned or operated by an entity the primary business of which is the rental of motor vehicles and only tows vehicles rented by the entity.

C.S.S.B. 702 requires an applicant for an incident management towing operator's license, a private property towing operator's license, or a consent towing operator's license to hold a valid driver's license issued by a state in the United States and removes the requirement that the applicant be a licensed Texas driver. The bill amends the provision requiring an applicant for an incident management towing operator's license and a private property towing operator's license to be certified by a program approved by the department to remove language specifying the National Drivers Certification Program of the Towing and Recovery Association of America as such a program.

C.S.S.B. 702 authorizes the department to issue a training license to an applicant for a towing operator's license if the applicant holds a valid driver's license issued by a state in the United States, meets qualifications established by rule by the commission, and is engaged in the process of learning and assisting in the operation of a tow truck under the supervision of a licensed tow truck operator. The bill authorizes an applicant for an incident management towing operator's license to be supervised by an operator who holds such a license or a private property towing operator's license or consent towing operator's license. The bill provides that a training license expires on the 91st day after the date of issuance and is not renewable, and requires the commission by rule to set the fee, establish the qualifications, and provide for the issuance of a training license. The bill establishes that these provisions take effect June 1, 2010.

C.S.S.B. 702 requires the professional development course an incident management towing operator's license holder is required to complete to renew such a license the first time to relate to incident management towing, and removes the requirement that the course be licensed or certified by the National Safety Council.

C.S.S.B. 702 expands provisions relating to drug testing of towing operators to include alcohol testing. The bill includes in circumstances under which the owner or operator of a vehicle is prohibited from leaving a vehicle unattended on a parking facility that the vehicle is leaking a fluid that presents a hazard or threat to persons or property.

C.S.S.B. 702 requires a law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that has damaged a fence on private property in a rural area and is located on the property to provide the towing company or tow operator with the name and telephone number of the property owner or the owner's agent if such information has been provided to the agency. The bill requires a towing company or tow operator provided with such information to contact the property owner or the owner's agent before entering the property to tow the vehicle.

C.S.S.B. 702 provides that a towing company is not required to comply with the alcohol and drug testing policy as amended by these provisions until January 1, 2010, and requires the commission by rule to adopt a model alcohol and drug testing policy not later than April 1, 2010. The bill requires the commission to adopt rules to implement provisions relating to the vehicle storage facility employee and towing operator dual license and the towing training license not later than April 1, 2010.

C.S.S.B. 702 repeals Section 2308.207, Occupations Code, relating to the posting of towing and storage fee information at a licensed vehicle storage facility, and transfers those provisions to the Vehicle Storage Facility Act. The bill repeals Section 2308.256, Occupations Code, a provision of the Texas Towing Act relating to a vehicle storage facility's duty to make a report to a local law enforcement agency after accepting an unauthorized vehicle.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 702 adds a provision not in the original requiring a vehicle storage facility accepting a vehicle that is towed under the Vehicle Storage Facility Act, within two hours of receiving the vehicle, to report certain descriptive and identifying information about the vehicle by telephone or electronically or to deliver notice personally or by facsimile to the local law enforcement agency with jurisdiction over the area from which the vehicle was towed.

C.S.S.B. 702 amends a provision not amended in the original to require that the professional development course the holder of an incident management towing operator's license is required to complete to renew such a license the first time relate to incident management towing and to remove the requirement that the course be licensed or certified by the National Safety Council.

C.S.S.B. 702 removes a provision in the original that requires the governing body of a political subdivision to regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision.

C.S.S.B. 702 removes a provision in the original that requires a posted sign prohibiting unauthorized vehicles or designating restricted areas to include notice regarding the amount that may be charged for towing a vehicle in violation of such a prohibition.

C.S.S.B. 702 adds a provision not in the original prohibiting the owner or operator of a vehicle from leaving unattended on a parking facility a vehicle that is leaking fluid that presents a hazard or threat to persons or property.

C.S.S.B. 702 add provisions not in the original requiring a law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that has damaged a fence on private property in a rural area and is located on the property to provide the company or operator with the name and telephone number of the property owner or the owner's agent if such information has been provided to the agency and requiring a towing company or tow operator provided such information to contact the property owner or the owner's agent before entering the property to tow the vehicle.

C.S.S.B. 702 repeals provisions not repealed in the original and transfers one of those provisions to the Vehicle Storage Facility Act.