

## **BILL ANALYSIS**

C.S.S.B. 1431  
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Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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 would increase fees and create criminal penalties for rogue towing companies operating outside the current law. 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 towing companies that disobey the law, while not punishing respectable towing companies.

C.S.S.B. 1431 amends current law relating to the licensing and regulation of towing companies and vehicle storage facilities and provides penalties. The bill increases to \$1,000 the amount that a towing company or parking facility owner who intentionally, knowingly, or recklessly violates the Texas Towing Act is liable to the owner or operator of the vehicle that is the subject of the violation. The bill makes an offense under the act a Class B misdemeanor if it is shown at trial that the person knowingly or intentionally violated the act.

### **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.S.B. 1431 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 without the consent of the vehicle owner or operator. The bill redefines "consent tow" and "parking facility owner."

C.S.S.B. 1431 requires Texas Commission of Licensing and Regulation rules for permitting tow trucks and licensing towing operators and towing companies to include rules for denial of an application or permit 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; or filed an application to permit a tow truck that is already permitted by another license or permit holder.

C.S.S.B. 1431 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 contract for the conduct of a study that examines nonconsent towing fee studies conducted by municipalities in Texas and, at least once every two years, for the conduct of a study that analyzes, for private property tows, the cost of service by company, the consumer price index, the 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 the 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.S.B. 1431 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.

C.S.S.B. 1431 authorizes the governing body of a political subdivision to regulate the fees that may be charged or collected with an incident management tow, rather than a nonconsent tow, originating in the territory of the political subdivision and a private property tow originating in the territory of the political subdivision, provided the fees do not exceed the maximum rate authorized by commission rule under this bill. The bill establishes that, in an area in which no political subdivision regulates the fees that may be charged in connection with a private property tow, a towing company may charge and collect fees in an amount not to exceed the maximum amount authorized by commission rule for private property tows. The bill establishes that these provisions take effect September 1, 2010.

C.S.S.B. 1431 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.

C.S.S.B. 1431 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, on request, the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility used to remove and store the vehicle and the vehicle is left unattended in violation of the law or is obstructing an entrance or exit. The bill makes the authorization for an insured towing company to remove the vehicle, if the vehicle 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 the vehicle also apply to any property on or in the vehicle.

C.S.S.B. 1431 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 if it is shown on trial of the offense that the person knowingly or intentionally violated the act.

C.S.S.B. 1431 adds a towing company and a vehicle storage facility to provisions relating to payment to the owner or operator of the vehicle for removal and storage of a vehicle that was removed and stored without probable cause. The bill amends the law relating to jurisdiction of a hearing to require the hearing to be in the justice court having jurisdiction in the precinct from which the vehicle was towed, rather than in which the storage facility is located.

C.S.S.B. 1431 provides that if the owner or operator of a vehicle pays the costs of the vehicle's removal or storage before a hearing and 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 clarifies that the written notice of the rights of a vehicle owner or operator under the act must include the registered name and street address, including the city, state, and zip code, of certain persons, including 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 facility, rather than vehicle storage facility, is located.

C.S.S.B. 1431 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 requires a hearing to be held before the 21st calendar day, rather than the 14th working day, after the date the court receives the request for the hearing. The bill requires the court to notify the parking facility owner or the towing company of the hearing if the facility owner or towing company authorized the removal of the vehicle and makes a conforming change relating to notice of the hearing.

C.S.S.B. 1431 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 TDLR to provide notice of the suspension to the license holder at least 30 days before the date the license is suspended. 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.

C.S.S.B. 1431 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 makes this provision inapplicable if the operator is unable to accept the electronic check, debit card, or credit card because of a power outage or a machine malfunction. The bill requires the facility to conspicuously post a sign regarding the requirement for the facility to accept payment by an electronic check, credit card, or debit card and sets forth the required language for the sign.

C.S.S.B. 1431 requires the commission 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, not later than September 1, 2010.

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1431 removes a provision in the original defining "parking facility authorized agent." The substitute requires the Texas Commission of Licensing and Regulation to contract for a study that examines nonconsent towing fee studies, rather than private property towing fee studies as in the original. The substitute adds a provision not included in the original to authorize the governing body of a political subdivision to regulate fees for an incident management tow and a private property tow, effective September 1, 2010. The substitute makes provisions relating to fees for private property tows in an area in which no political subdivision regulates the fees effective September 1, 2010, rather than May 1, 2010, as in the original.

C.S.S.B. 1431 differs from the original by authorizing a parking facility owner and an insured towing company to remove and store a vehicle if, on request, the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility used to remove and store the vehicle, whereas the original authorizes the removal and storage of the vehicle if the parking facility owner has provided to the towing company written notice of the name of the parking facility authorized agent. The substitute removes a provision in the original relating to a vehicle storage facility's duty to report after accepting an unauthorized vehicle. The substitute replaces references to a parking facility owner in the original with a towing company and vehicle storage facility in provisions relating to payment of the cost of removal and storage of a vehicle. The substitute removes a provision requiring a towing company to reimburse the owner or operator of a vehicle for an overcharge regardless of whether the court finds that there was probable cause for the removal and storage of the vehicle. The substitute adds a provision not included in the original to require a notice of the rights of a vehicle owner or operator to include information about the justice court having jurisdiction in the precinct in which the parking facility, rather than vehicle storage facility, is located. The substitute differs from the original by adding a towing company to provisions relating to notice of a hearing. The substitute adds a provision not included in the original to require the Texas Department of Licensing and Regulation to provide notice to a license holder of a license suspension for failure to pay a final judgment awarded to a vehicle owner or operator at least 30 days before the date the license is suspended.

C.S.S.B. 1431 differs from the original by prohibiting 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 facility operator from collecting a fee from a person who offers to pay with an electronic check, debit card, or credit card that the operator is not equipped to accept. The substitute adds a provision not included in the original to require a vehicle storage facility to post a sign regarding the requirement for the facility to accept payment by electronic check, debit card, or credit card.

C.S.S.B. 1431 requires the Texas Commission of Licensing and Regulation to adopt rules to implement the changes in law made by the bill not later than September 1, 2010, rather than April 1, 2010, as in the original.

C.S.S.B. 1431 differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.