

BILL ANALYSIS

S.B. 2153
By: Whitmire
Transportation
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Vehicle immobilization by privately owned booting companies in parking facilities is unregulated by state law in Texas, resulting in unreasonable, inconsistent, fraudulent, and coercive business practices by booting companies acting on behalf of and in collusion with parking facilities.

S.B. 2153 requires the Texas Commission on Licensing and Regulation to adopt rules for permitting booting companies and boot operators and makes a violation of a commission rule applicable to a booting company an offense under the Texas Towing Act, which is renamed the Texas Towing and Booting Act. The bill authorizes a municipality to adopt an ordinance that is identical to the booting provisions in the act or that imposes additional requirements that exceed the minimum standards of the booting provisions of the act and prohibits a municipality from adopting an ordinance that conflicts with those provisions. The bill establishes that a person commits an offense under the act if the person violates an ordinance or regulation for which the political subdivision does not prescribe the penalty.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 7 of this bill.

ANALYSIS

S.B. 2153 amends the Occupation Code to add provisions relating to the installation and removal of a boot to the Texas Towing Act, which is renamed the Texas Towing and Booting Act. The bill defines "boot" as a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed. The bill establishes that the Texas Towing and Booting Act does not apply to a person who, while exercising a statutory or contractual lien right with regard to a vehicle installs or removes a boot, or controls, installs, or directs the installation and removal of one or more boots, or to a commercial office building owner or manager who installs or removes a boot in the building's parking facility. The bill redefines "advisory board" and defines "booting company" and "boot operator."

S.B. 2153 establishes that a boot operator's license is required to install or remove a boot from a vehicle, and that an applicant for a boot operator's license must be at least 18 years of age. The bill establishes that a booting company license is required for a person to operate a booting company, and that to be eligible for a booting company license, an applicant must submit evidence that the applicant is covered by a general liability insurance policy on a broad form with a combined single limit for bodily injury and property damage for each occurrence of at least \$500,000, and an aggregate limit for all occurrences for each policy year of at least \$500,000, and is covered by an automobile liability insurance policy covering the applicant and the applicant's employees for vehicles owned, hired, or otherwise used in the applicant's business, with a combined single limit for each occurrence of at least \$500,000.

S.B. 2153 requires the Texas Commission of Licensing and Regulation to adopt rules for permitting booting companies and boot operators, and prohibits a person from performing booting operations or operating a booting company unless the person holds an appropriate license.

S.B. 2153 makes provisions that apply to local regulation of towing apply to local regulation of towing and booting. The bill establishes that a municipality may adopt an ordinance that is identical to the booting provisions under the Texas Towing and Booting Act, or that imposes additional requirements that exceed the minimum standards of those provisions, but may not adopt an ordinance that conflicts with them. The bill authorizes a municipality to regulate the fees that may be charged in connection with the booting of a vehicle, including associated parking fees, and to require booting companies to obtain a permit to operate in the municipality. The bill makes a conforming change relating to an offense committed under the act.

S.B. 2153 authorizes a parking facility owner, without the consent of the owner or operator of an unauthorized vehicle, to cause a boot to be installed on the vehicle in the parking facility if signs prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting. The bill makes a conforming change relating to the general requirements for a sign prohibiting unauthorized vehicles. The bill requires the portion of the sign immediately below the international towing symbol to contain the words "Towing and Booting Enforced," rather than a statement describing who may park in the parking facility and prohibiting all others, in lettering at least two inches in height.

S.B. 2153 requires a boot operator that installs a boot on a vehicle to affix a conspicuous notice to the vehicle's front windshield or driver's side window stating that the vehicle has been booted and damage may occur if the vehicle is moved; the date and time the boot was installed; the name, address, and telephone number of the booting company; a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot; the amount of the fee for removal of the boot and any associated parking fees; and notice of the right of a vehicle owner or vehicle operator to a hearing. The bill requires the boot operator, on removal of a boot, to provide a receipt to the vehicle owner or operator stating the name of the person who removed the boot; the date and time the boot was removed; the name of the person to whom the vehicle was released; the amount of fees paid for removal of the boot and any associated parking fees; and the right of the vehicle owner or operator to a hearing. The bill requires the booting company to maintain a copy of the receipt at its place of business for a period of three years, and specifies that a peace officer has the right, on request, to inspect and copy the records to determine compliance with these requirements. The bill requires a booting company to accept payment by an electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot, and prohibits a booting company from collecting a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept.

S.B. 2153 makes provisions that apply to the rights of owners and operators of stored vehicles apply to stored or booted vehicles. The bill establishes that if in a hearing held under the act the court finds that a person authorized, with probable cause, the booting of a vehicle in a parking facility, the person who requested the hearing pays the costs of the booting. The bill establishes that if in a hearing the court does not find that a person authorized, with probable cause, the booting of a vehicle, the person that authorized the booting pays the costs of the booting and any related parking fees or reimburses the owner or operator for the cost of the booting and any related parking fees paid by the owner or operator. The bill makes a conforming change relating to the right of an owner or operator of a vehicle to a hearing.

S.B. 2153 establishes that for booted vehicles, a hearing is held in the justice court having

jurisdiction in the precinct in which the parking facility is located. The bill establishes that if before a hearing the owner or operator of a vehicle pays the costs for removal of a boot, the booting company must at the time of payment give the owner or operator written notice of the person's rights under the act. The bill requires a booting operator that places a notice on a booted vehicle to include with that notice a notice of the person's rights under the act.

S.B. 2153 requires the court to notify the person who requested the hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by provisions for methods of service under the Texas Rules of Civil Procedure. The bill requires the notice of hearing to the person that authorized the booting of the vehicle to include a copy of the request for hearing. The bill makes conforming changes relating to the contents of the notice and a request for a hearing. The bill requires the notice for booted vehicles to include the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the parking facility is located.

S.B. 2153 establishes that the issues in a hearing regarding a booted vehicle are whether probable cause existed for the booting of the vehicle and whether a boot removal charge imposed or collected in connection with the removal of the boot was greater than the amount authorized by a municipal ordinance. The bill authorizes a court to award, in addition to other amounts, an amount equal to the amount that the booting removal charge and associated parking fees exceeded fees regulated by a political subdivision or authorized by law and reimbursement of fees paid for vehicle towing, storage, or removal of a boot.

S.B. 2153 adds a representative of a booting company to the Towing and Storage Advisory Board, which is renamed the Towing, Storage, and Booting Advisory Board. The bill makes a conforming change relating to the duties of the board. The bill requires the presiding officer of the commission to appoint the representative of a booting company promptly after this bill takes effect.

S.B. 2153 makes regulation of towing companies and parking facility owners also apply to booting companies and adds booting companies to provisions prohibiting a parking facility owner from receiving financial gain from a towing company, prohibiting a towing company from financial involvement with a parking facility owner, and establishing civil liability of a towing company or parking facility owner for a violation of the act.

EFFECTIVE DATE

September 1, 2009.