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H.B. No. 2571

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of towing companies and  
vehicle storage facilities; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2303.155, Occupations Code, is amended  
by amending Subsection (b) and adding Subsection (h) to read as  
follows:

(b) Except as provided by Subsection (h), the ~~[The]~~  
operator of a vehicle storage facility or governmental vehicle  
storage facility may charge the owner of a vehicle stored or parked  
at the facility:

(1) a notification fee set in a reasonable amount for  
providing notice under this subchapter, including notice under  
Section 2303.154(c);

(2) an impoundment fee of \$20 for any action that:

(A) is taken by or at the direction of the owner  
or operator of the facility; and

(B) is necessary to preserve, protect, or service  
a vehicle stored or parked at the facility;

(3) a daily storage fee of:

(A) not less than \$5 and not more than \$20 for  
each day or part of a day the vehicle is stored at the facility if  
the vehicle is not longer than 25 feet; or

(B) \$35 for each day or part of a day the vehicle

1 is stored at the facility if the vehicle is longer than 25 feet;

2 (4) any fee that is required to be submitted to a law  
3 enforcement agency, the agency's authorized agent, or a  
4 governmental entity; and

5 (5) a fee in an amount set by the commission for the  
6 remediation, recovery, or capture of an environmental or biological  
7 hazard.

8 (h) The operator of a vehicle storage facility or  
9 governmental vehicle storage facility may not charge a fee under  
10 Subsection (b) to the owner of a vehicle stored or parked at the  
11 facility as a result of recovery of the vehicle after being stolen  
12 if the vehicle owner provides the operator with a copy of the police  
13 report or similar report prepared by any law enforcement agency  
14 showing that the vehicle was reported stolen.

15 SECTION 2. Section 2308.002, Occupations Code, is amended  
16 by amending Subdivisions (3), (6), and (8) and adding Subdivisions  
17 (5-a) and (8-a) to read as follows:

18 (3) "Consent tow" means any tow of a motor vehicle in  
19 which the tow truck is summoned [~~initiated~~] by the owner or operator  
20 of the vehicle or by a person who has possession, custody, or  
21 control of the vehicle. The term does not include an incident  
22 management tow or a private property [~~a] tow [of a motor vehicle~~  
23 ~~initiated by a peace officer investigating a traffic accident or a~~  
24 ~~traffic incident that involves the vehicle]~~.

25 (5-a) "Incident management tow" means any tow of a  
26 vehicle in which the tow truck is summoned to a traffic accident or  
27 incident.

1           (6) "Nonconsent tow" means any tow of a motor vehicle  
2 that is not a consent tow, including:

3                   (A) an incident management tow; and

4                   (B) a private property tow.

5           (8) "Parking facility owner" means:

6                   (A) an individual, corporation, partnership,  
7 limited partnership, limited liability company, association,  
8 trust, or other legal entity owning or operating [~~owner or operator~~  
9 ~~of]~~ a parking facility [~~, including a lessee, employee, or agent of~~  
10 ~~an owner or operator]~~;

11                   (B) a property owners' association having  
12 control under a dedicatory instrument, as that term is defined in  
13 Section 202.001, Property Code, over assigned or unassigned parking  
14 areas; or

15                   (C) a property owner having an exclusive right  
16 under a dedicatory instrument, as that term is defined in Section  
17 202.001, Property Code, to use a parking space.

18                   (8-a) "Private property tow" means any tow of a  
19 vehicle authorized by a parking facility owner.

20           SECTION 3. Section 2308.057(a), Occupations Code, is  
21 amended to read as follows:

22           (a) The commission shall adopt rules for permitting tow  
23 trucks and licensing towing operators and towing companies,  
24 including rules for denial of an application or permit if the  
25 applicant, a partner, principal, officer, or general manager of the  
26 applicant, or a license or permit holder has:

27                   (1) a criminal conviction or has pled guilty or nolo

1 contendere within five years of the date of the application for:

2 (A) a felony; or

3 (B) a misdemeanor punishable by confinement in  
4 jail or by a fine exceeding \$500;

5 (2) violated an order of the commission or executive  
6 director, including an order for sanctions or administrative  
7 penalties;

8 (3) failed to submit a license or permit bond in an  
9 amount established by the commission;

10 (4) knowingly submitted false or incomplete  
11 information on a license or permit application; and

12 (5) filed an application to permit a tow truck that is  
13 already permitted by another license or permit holder.

14 SECTION 4. Subchapter B, Chapter 2308, Occupations Code, is  
15 amended by adding Section 2308.0575 to read as follows:

16 Sec. 2308.0575. RULES ON FEES; STUDY; CONFIDENTIAL  
17 INFORMATION. (a) To protect the public health and safety, the  
18 commission by rule shall establish:

19 (1) the fees that may be charged in connection with a  
20 private property tow;

21 (2) the maximum amount that may be charged for fees,  
22 other than tow fees, that may be assessed by a towing company in  
23 connection with a private property tow; and

24 (3) a maximum amount that may be charged for the  
25 following private property tows:

26 (A) standard light-duty tows of motor vehicles  
27 with a gross weight rating of 10,000 pounds or less;

1           (B) medium-duty tows of motor vehicles with a  
2 gross weight rating of more than 10,000 pounds, but less than 25,000  
3 pounds; and

4           (C) heavy-duty tows of motor vehicles with a  
5 gross weight rating that exceeds 25,000 pounds.

6           (b) In adopting rules under Subsection (a), the commission  
7 shall:

8           (1) consider private property towing fee studies  
9 conducted by municipalities in this state; and

10           (2) conduct studies of private property towing fees  
11 that analyze cost of service by company, the consumer price index,  
12 geographic area, and individual cost components.

13           (c) The commission may structure the maximum amounts that  
14 may be charged for private property tows based on hourly or flat  
15 fees or by geographic location.

16           (d) The commission shall maintain the confidentiality of  
17 information contained in a study conducted under this section that  
18 is claimed to be confidential for competitive purposes and may not  
19 release information that identifies a person or company. The  
20 confidential information is exempt from disclosure under Chapter  
21 552, Government Code.

22           (e) To protect the confidentiality of the information, the  
23 commission shall aggregate the information to the maximum extent  
24 possible considering the purpose of the study.

25           SECTION 5. Section 2308.060, Occupations Code, is amended  
26 to read as follows:

27           Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The

1 advisory board shall provide advice and recommendations to the  
2 department on technical matters relevant to the administration and  
3 enforcement of this chapter, including examination content,  
4 licensing standards, ~~and~~ continuing education requirements, and  
5 maximum amounts that may be charged for fees related to private  
6 property tows.

7 SECTION 6. Section 2308.202, Occupations Code, is amended  
8 to read as follows:

9 Sec. 2308.202. REGULATION BY POLITICAL SUBDIVISIONS OF FEES  
10 FOR NONCONSENT TOWS. The governing body of a political subdivision  
11 may regulate the fees that may be charged or collected in connection  
12 with a nonconsent tow originating in the territory of the political  
13 subdivision if the private property tow fees:

- 14 (1) are authorized by commission rule; and  
15 (2) do not exceed the maximum amount authorized by  
16 commission rule.

17 SECTION 7. Section 2308.204, Occupations Code, is amended  
18 to read as follows:

19 Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS.  
20 ~~[(a)]~~ In an area in which no political subdivision regulates the  
21 fees that may be charged or collected in connection with ~~[for]~~ a  
22 nonconsent private property tow ~~[from private property]~~, a towing  
23 company may charge and collect fees ~~[a fee]~~ for the tow of a motor  
24 vehicle from private property in an amount not to exceed the maximum  
25 amount authorized by:

- 26 (1) the commissioners court in the county in which the  
27 vehicle storage facility is located; or

1           (2) if the commissioners court does not set the  
2 maximum amount, the average of the maximum amounts authorized by  
3 the three political subdivisions that regulate nonconsent incident  
4 management tow fees and that are closest to the facility [~~an amount~~  
5 ~~equal to 150 percent of the fee that the towing company would have~~  
6 ~~been authorized to charge for a nonconsent tow made at the request~~  
7 ~~of a peace officer of the political subdivision in which the private~~  
8 ~~property is located].~~

9           ~~[(b) A towing company may charge and collect a fee for the~~  
10 ~~tow of a vehicle, with a gross vehicle weight rating in excess of~~  
11 ~~26,000 pounds, from private property in an amount not to exceed an~~  
12 ~~amount equal to 125 percent of the fee that the towing company would~~  
13 ~~have been authorized to charge for a nonconsent tow made at the~~  
14 ~~request of a peace officer of the political subdivision in which the~~  
15 ~~private property is located.]~~

16           SECTION 8. Section 2308.206, Occupations Code, is amended  
17 by adding Subsections (f) and (g) to read as follows:

18           (f) A license or permit holder may not charge a fee related  
19 to a nonconsent tow that is not listed in the schedule most recently  
20 submitted to the department under this section.

21           (g) The department may require a license or permit holder  
22 that has violated Subsection (e) or (f) to reimburse the vehicle  
23 owner or operator for the charges.

24           SECTION 9. The heading to Section 2308.208, Occupations  
25 Code, is amended to read as follows:

26           Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED  
27 VEHICLES AND TOWING OF MOTOR VEHICLES.

1 SECTION 10. Section 2308.252(a), Occupations Code, is  
2 amended to read as follows:

3 (a) A parking facility owner may, without the consent of the  
4 owner or operator of an unauthorized vehicle, cause the vehicle and  
5 any property on or in the vehicle to be removed and stored at a  
6 vehicle storage facility at the vehicle owner's or operator's  
7 expense if:

8 (1) signs that comply with Subchapter G prohibiting  
9 unauthorized vehicles are located on the parking facility at the  
10 time of towing and for the preceding 24 hours and remain installed  
11 at the time of towing;

12 (2) the owner or operator of the vehicle has received  
13 actual notice from the parking facility owner that the vehicle will  
14 be towed at the vehicle owner's or operator's expense if it is in or  
15 not removed from an unauthorized space;

16 (3) the parking facility owner gives notice to the  
17 owner or operator of the vehicle under Subsection (b); or

18 (4) the parking facility owner has provided to the  
19 owner or operator of the vehicle written notice of the name of the  
20 towing company and vehicle storage facility that will be used to  
21 remove and store the vehicle and the vehicle is:

22 (A) left in violation of Section 2308.251 or  
23 2308.253; or

24 (B) in or obstructing a portion of a paved  
25 driveway or abutting public roadway used for entering or exiting  
26 the facility.

27 SECTION 11. Section 2308.255(a), Occupations Code, is



1 amended to read as follows:

2 (a) A towing company that is insured as provided by  
3 Subsection (c) may, without the consent of an owner or operator of  
4 an unauthorized vehicle, remove and store the vehicle at a vehicle  
5 storage facility at the expense of the owner or operator of the  
6 vehicle if:

7 (1) the towing company has received written  
8 verification from the parking facility owner that:

9 (A) the parking facility owner has installed the  
10 signs required by Section 2308.252(a)(1); or

11 (B) the owner or operator received notice under  
12 Section 2308.252(a)(2) or the parking facility owner gave notice  
13 complying with Section 2308.252(a)(3); or

14 (2) the parking facility owner has provided to the  
15 owner or operator of the vehicle written notice of the name of the  
16 towing company and vehicle storage facility that will be used to  
17 remove and store the vehicle and the vehicle is:

18 (A) left in violation of Section 2308.251; or

19 (B) in or obstructing a portion of a paved  
20 driveway or abutting public roadway used for entering or exiting  
21 the facility and the removal is approved by a peace officer.

22 SECTION 12. Section 2308.404(c), Occupations Code, is  
23 amended to read as follows:

24 (c) A towing company or parking facility owner who  
25 intentionally, knowingly, or recklessly violates this chapter is  
26 liable to the owner or operator of the vehicle that is the subject  
27 of the violation for \$1,000 [~~\$300~~] plus three times the amount of

1 fees assessed in the vehicle's removal, towing, or storage.

2 SECTION 13. Section 2308.405, Occupations Code, is amended  
3 to read as follows:

4 Sec. 2308.405. CRIMINAL PENALTY [~~VIOLATION OF CHAPTER,~~  
5 ~~FINE~~]. A person commits an offense if the person violates  
6 [~~violation of~~] this chapter. An offense under this section is a  
7 Class B misdemeanor [~~punishable by a fine of not less than \$500 or~~  
8 ~~more than \$1,500~~].

9 SECTION 14. Section 2308.451(b), Occupations Code, is  
10 amended to read as follows:

11 (b) If in a hearing held under this chapter the court does  
12 not find that a person or law enforcement agency authorized, with  
13 probable cause, the removal and storage in a vehicle storage  
14 facility of a vehicle, the towing company, vehicle storage  
15 facility, [~~person~~] or law enforcement agency that authorized the  
16 removal shall:

- 17 (1) pay the costs of the removal and storage; or  
18 (2) reimburse the owner or operator for the cost of the  
19 removal and storage paid by the owner or operator.

20 SECTION 15. Section 2308.453, Occupations Code, is amended  
21 to read as follows:

22 Sec. 2308.453. JURISDICTION. A hearing under this chapter  
23 shall be in the justice court having jurisdiction in the precinct  
24 from [~~in~~] which the motor vehicle was towed [~~storage facility is~~  
25 ~~located~~].

26 SECTION 16. Section 2308.454, Occupations Code, is amended  
27 by adding Subsection (c) to read as follows:

1        (c) If the towing company or vehicle storage facility that  
2 received the payment fails to furnish to the owner or operator of  
3 the vehicle the name, address, and telephone number of the parking  
4 facility owner or law enforcement agency that authorized the  
5 removal of the vehicle, the towing company or vehicle storage  
6 facility that received the payment is liable if the court, after a  
7 hearing, does not find probable cause for the removal and storage of  
8 the vehicle.

9        SECTION 17. Section 2308.455, Occupations Code, is amended  
10 to read as follows:

11        Sec. 2308.455. CONTENTS OF NOTICE. The notice under  
12 Section 2308.454 must include:

13                (1) a statement of:

14                        (A) the person's right to submit a request within  
15 14 days for a court hearing to determine whether probable cause  
16 existed to remove the vehicle;

17                        (B) the information that a request for a hearing  
18 must contain; and

19                        (C) any filing fee for the hearing;

20                (2) the name, address, and telephone number of the  
21 towing company that removed the vehicle;

22                (3) the name, address, and telephone number of the  
23 vehicle storage facility in which the vehicle was placed;

24                (4) the registered name, street address including  
25 city, state, and zip code, and telephone number of the person,  
26 parking facility [~~property~~] owner, or law enforcement agency that  
27 authorized the removal of the vehicle; and

1           (5) the name, address, and telephone number of the  
2 justice court having jurisdiction in the precinct in which the  
3 parking [~~vehicle storage~~] facility is located.

4           SECTION 18. Section 2308.456, Occupations Code, is amended  
5 by amending Subsection (a) and adding Subsection (c-1) to read as  
6 follows:

7           (a) Except as provided by Subsections [~~Subsection~~] (c) and  
8 (c-1), a person entitled to a hearing under this chapter must  
9 deliver a written request for the hearing to the court before the  
10 14th day after the date the vehicle was removed and placed in the  
11 vehicle storage facility, excluding Saturdays, Sundays, and legal  
12 holidays.

13           (c-1) The 14-day period for requesting a hearing under  
14 Subsection (a) does not begin until the date on which the towing  
15 company or vehicle storage facility provides to the vehicle owner  
16 or operator the information necessary for the vehicle owner or  
17 operator to complete the material for the request for hearing  
18 required under Subsections (b)(2) through (6).

19           SECTION 19. Section 2308.458(b), Occupations Code, is  
20 amended to read as follows:

21           (b) The court shall notify the person who requested the  
22 hearing, the parking facility owner [~~person~~] or law enforcement  
23 agency that authorized the removal of the vehicle, and the vehicle  
24 storage facility in which the vehicle was placed of the date, time,  
25 and place of the hearing in a manner provided by Rule 21a, Texas  
26 Rules of Civil Procedure. The notice of the hearing to the parking  
27 facility owner [~~person~~] or law enforcement agency that authorized

1 the removal of the vehicle shall include a copy of the request for  
2 hearing.

3 SECTION 20. Section 2308.460, Occupations Code, is amended  
4 to read as follows:

5 Sec. 2308.460. ENFORCEMENT OF AWARD. (a) An award under  
6 this chapter may be enforced by any means available for the  
7 enforcement of a judgment for a debt.

8 (b) The department shall suspend a license holder's license  
9 on the license holder's failure to pay a final judgment awarded to  
10 an owner or operator of a vehicle before the 60th day after the date  
11 of the final judgment.

12 (c) The owner or operator of the vehicle shall submit a  
13 certified copy of the final judgment to the department.

14 (d) On receipt of the certified copy of the unpaid final  
15 judgment, the department shall disqualify a person from renewing a  
16 license or permit or deny the person the opportunity of taking a  
17 licensing examination on the grounds that the person, towing  
18 company, or vehicle storage facility has not paid a final judgment  
19 awarded to an owner or operator of a vehicle.

20 (e) The department shall reinstate the license on  
21 submission of evidence satisfactory to the department of payment of  
22 the final judgment by the person, towing company, or vehicle  
23 storage facility.

24 SECTION 21. Section 2303.159(a), Occupations Code, is  
25 amended to read as follows:

26 (a) The operator of a vehicle storage facility shall accept  
27 payment by an electronic check, debit card, or credit card for any

1 charge associated with delivery or storage of a vehicle. The  
2 operator of a vehicle storage facility may not refuse to release a  
3 vehicle based on the inability of the facility to accept payment by  
4 electronic check, debit card, or credit card of a fee or charge  
5 associated with delivery or storage of the vehicle. The facility  
6 shall conspicuously post a sign that states: "This vehicle storage  
7 facility must accept payment by an electronic check, credit card,  
8 or debit card for any fee or charge associated with delivery or  
9 storage of a vehicle."

10 SECTION 22. Not later than September 1, 2010, the Texas  
11 Commission of Licensing and Regulation shall adopt the rules  
12 necessary to implement the changes in law made by this Act,  
13 including rules on the maximum amount of fees that may be charged  
14 for private property tows.

15 SECTION 23. (a) The change in law made by this Act to  
16 Section 2308.405, Occupations Code, applies only to an offense  
17 committed on or after the effective date of this Act. For purposes  
18 of this section, an offense is committed before the effective date  
19 of this Act if any element of the offense occurs before that date.

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

23 SECTION 24. (a) Except as provided by Subsection (b) of  
24 this section, this Act takes effect September 1, 2009.

25 (b) Sections 2308.202 and 2308.204, Occupations Code, as  
26 amended by this Act, take effect September 1, 2010.