

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 2308.002, Occupations Code, is amended by amending Subdivisions (3), (6), and (8) and adding Subdivisions (5-a), (7-a), and (8-a) to read as follows:

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

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

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

(A) an incident management tow; and

(B) a private property tow.

(7-a) "Parking facility authorized agent" means an employee or agent of a parking facility owner with the authority to:

(A) authorize the removal of a vehicle from the

1 parking facility on behalf of the parking facility owner; and

2 (B) accept service on behalf of the parking
3 facility owner of a notice of hearing requested under this chapter.

4 (8) "Parking facility owner" means:

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

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

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

17 (8-a) "Private property tow" means any tow of a
18 vehicle authorized by a parking facility owner without the consent
19 of the owner or operator of the vehicle.

20 SECTION 2. 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 applications and permits if the
25 applicant, a partner, principal, officer, or general manager of the
26 applicant, or other license or permit holder has:

27 (1) a criminal conviction, or has pleaded guilty or

1 nolo contendere to an offense, before the date of the application,
2 for:

3 (A) a felony; or

4 (B) a misdemeanor punishable by confinement in
5 jail or by a fine in an amount that exceeds \$500;

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

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

11 (4) knowingly submitted false or incomplete
12 information on the application; or

13 (5) filed an application to permit a tow truck
14 previously permitted by a license or permit holder.

15 SECTION 3. Subchapter B, Chapter 2308, Occupations Code, is
16 amended by adding Section 2308.0575 to read as follows:

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

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

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

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

27 (A) standard light-duty tows of motor vehicles

1 with a gross weight rating of 10,000 pounds or less;

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

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

7 (b) In adopting rules under Subsection (a), the commission
8 shall contract for a study that:

9 (1) examines towing fee studies conducted by
10 municipalities in this state; and

11 (2) analyzes the cost of towing services by company,
12 the consumer price index, the geographic area, and individual cost
13 components.

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

17 (d) The commission shall maintain the confidentiality of
18 information contained in a study conducted under this section that
19 is claimed to be confidential for competitive purposes and may not
20 release information that identifies a person or company. The
21 confidential information is exempt from disclosure under Chapter
22 552, Government Code.

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

26 (f) The department shall contract to conduct a study on
27 private property towing fees under this section at least once every

1 two years.

2 SECTION 4. Section 2308.060, Occupations Code, is amended
3 to read as follows:

4 Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The
5 advisory board shall provide advice and recommendations to the
6 department on technical matters relevant to the administration and
7 enforcement of this chapter, including examination content,
8 licensing standards, ~~and~~ continuing education requirements, and
9 maximum amounts that may be charged for fees related to private
10 property tows.

11 SECTION 5. Section 2308.202, Occupations Code, is amended
12 to read as follows:

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

- 18 (1) are authorized by commission rule; and
19 (2) do not exceed the maximum amount authorized by
20 commission rule.

21 SECTION 6. Section 2308.204, Occupations Code, is amended
22 to read as follows:

23 Sec. 2308.204. FEES FOR PRIVATE PROPERTY ~~[NONCONSENT]~~ TOWS
24 IN OTHER AREAS. ~~[(a)]~~ In an area in which no political subdivision
25 regulates the fees that may be charged or collected in connection
26 with ~~[for]~~ a private property ~~[nonconsent]~~ tow from private
27 property, a towing company may charge and collect fees ~~[a fee]~~ for

1 the tow of a motor vehicle [~~from private property~~] in an amount not
2 to exceed the maximum amount authorized by commission rule [~~an~~
3 ~~amount equal to 150 percent of the fee that the towing company would~~
4 ~~have been authorized to charge for a nonconsent tow made at the~~
5 ~~request of a peace officer of the political subdivision in which the~~
6 ~~private property is located~~].

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

14 SECTION 7. Section 2308.206, Occupations Code, is amended
15 by adding Subsections (f) and (g) to read as follows:

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

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

22 SECTION 8. Section 2308.208, Occupations Code, is amended
23 to read as follows:

24 Sec. 2308.208. MUNICIPAL OR COUNTY ORDINANCE REGULATING
25 UNAUTHORIZED VEHICLES AND TOWING OF MOTOR VEHICLES. The governing
26 body of a [A] municipality or the commissioners court of a county
27 may adopt an ordinance that is identical to this chapter or that

1 imposes additional requirements that exceed the minimum standards
2 of this chapter but may not adopt an ordinance conflicting with this
3 chapter.

4 SECTION 9. Section 2308.252(a), Occupations Code, is
5 amended to read as follows:

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

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

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

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

21 (4) on request the parking facility owner provides to
22 the owner or operator of the vehicle information on the name of the
23 towing company and vehicle storage facility that will be used to
24 remove and store the vehicle and the vehicle is:

25 (A) left in violation of Section 2308.251 or
26 2308.253; or

27 (B) in or obstructing a portion of a paved

1 driveway or abutting public roadway used for entering or exiting
2 the facility.

3 SECTION 10. Section 2308.255(a), Occupations Code, is
4 amended to read as follows:

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

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

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

14 (B) the owner or operator received notice under
15 Section 2308.252(a)(2) or the parking facility owner gave notice
16 complying with Section 2308.252(a)(3); or

17 (2) on request the parking facility owner provides to
18 the owner or operator of the vehicle information on the name of the
19 towing company and vehicle storage facility that will be used to
20 remove and store the vehicle and the vehicle is:

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

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

25 SECTION 11. Section 2308.256(a), Occupations Code, is
26 amended to read as follows:

27 (a) A vehicle storage facility accepting a vehicle that is

1 towed under this chapter shall within two hours after receiving the
2 vehicle report to the police department of the municipality from
3 ~~[in]~~ which the vehicle was towed ~~[parking facility is located]~~, or,
4 if the vehicle was towed from a location that ~~[parking facility]~~ is
5 not ~~[located]~~ in a municipality with ~~[having]~~ a police department,
6 to the sheriff of the county from ~~[in]~~ which the vehicle was towed
7 ~~[parking facility is located]~~:

8 (1) a general description of the vehicle;

9 (2) the state and number of the vehicle's license
10 plate, if any;

11 (3) the vehicle identification number of the vehicle,
12 if it can be ascertained;

13 (4) the location from which the vehicle was towed; and

14 (5) the name and location of the vehicle storage
15 facility where the vehicle is being stored.

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

18 (c) A towing company or parking facility owner who
19 intentionally, knowingly, or recklessly violates this chapter is
20 liable to the owner or operator of the vehicle that is the subject
21 of the violation for \$1,000 ~~[\$300]~~ plus three times the amount of
22 fees assessed in the vehicle's removal, towing, or storage.

23 SECTION 13. Section 2308.405, Occupations Code, is amended
24 to read as follows:

25 Sec. 2308.405. CRIMINAL PENALTY ~~[VIOLATION OF CHAPTER,~~
26 ~~FINE]~~. A person commits an offense if the person violates
27 ~~[violation of]~~ this chapter. An offense under this section is a

1 misdemeanor punishable by a fine of not less than \$500 or more than
2 \$1,500 unless it is shown on trial of the offense that the person
3 knowingly or intentionally violated this chapter, in which event
4 the offense is a Class B misdemeanor.

5 SECTION 14. Section 2308.451, Occupations Code, is amended
6 by amending Subsection (b) and adding Subsection (c) to read as
7 follows:

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

- 14 (1) pay the costs of the removal and storage; or
15 (2) reimburse the owner or operator for the cost of the
16 removal and storage paid by the owner or operator.

17 (c) If, in a hearing held under this chapter, regardless of
18 whether the court finds that there was probable cause for the
19 removal and storage of a vehicle, the court finds that the towing
20 charge collected exceeded fees regulated by a political subdivision
21 or authorized by this chapter or Chapter 2303, the towing company
22 shall reimburse the owner or operator of the vehicle an amount equal
23 to the overcharge.

24 SECTION 15. Section 2308.453, Occupations Code, is amended
25 to read as follows:

26 Sec. 2308.453. JURISDICTION. A hearing under this chapter
27 shall be in the justice court having jurisdiction in the precinct

1 from [~~in~~] which the motor vehicle was towed [~~storage facility is~~
2 ~~located~~].

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

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

13 SECTION 17. Section 2308.455, Occupations Code, is amended
14 to read as follows:

15 Sec. 2308.455. CONTENTS OF NOTICE. The notice under
16 Section 2308.454 must include:

17 (1) a statement of:

18 (A) the person's right to submit a request within
19 14 days for a court hearing to determine whether probable cause
20 existed to remove the vehicle;

21 (B) the information that a request for a hearing
22 must contain; and

23 (C) any filing fee for the hearing;

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

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

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

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

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

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

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

23 SECTION 19. Sections 2308.458(a) and (b), Occupations Code,
24 are amended to read as follows:

25 (a) A hearing under this chapter shall be held before the
26 21st calendar ~~[14th working]~~ day after the date the court receives
27 the request for the hearing.

1 (b) The court shall notify the person who requested the
2 hearing, the parking facility owner [~~person~~] or law enforcement
3 agency that authorized the removal of the vehicle, the towing
4 company, and the vehicle storage facility in which the vehicle was
5 placed of the date, time, and place of the hearing in a manner
6 provided by Rule 21a, Texas Rules of Civil Procedure. The notice of
7 the hearing to the towing company and the parking facility owner
8 [~~person~~] or law enforcement agency that authorized the removal of
9 the vehicle shall include a copy of the request for hearing.

10 SECTION 20. Section 2308.460, Occupations Code, is amended
11 to read as follows:

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

15 (b) The department shall suspend a license holder's license
16 on the license holder's failure to pay a final judgment awarded to
17 an owner or operator of a vehicle before the 60th day after the date
18 of the final judgment. The department must provide notice of the
19 suspension to the license holder at least 30 days before the date
20 the license is to be suspended.

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

23 (d) On receipt of the certified copy of the unpaid final
24 judgment, the department shall disqualify a person from renewing a
25 license or permit or deny the person the opportunity of taking a
26 licensing examination on the grounds that the person, towing
27 company, or vehicle storage facility has not paid a final judgment

1 awarded to an owner or operator of a vehicle.

2 (e) The department shall reinstate the license on
3 submission of evidence satisfactory to the department of payment of
4 the final judgment by the person, towing company, or vehicle
5 storage facility.

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

8 (a) The operator of a vehicle storage facility shall accept
9 payment by an electronic check, debit card, or credit card for any
10 charge associated with delivery or storage of a vehicle. The
11 facility shall conspicuously post a sign that states: "This
12 vehicle storage facility must accept payment by an electronic
13 check, credit card, or debit card for any fee or charge associated
14 with delivery or storage of a vehicle." The operator of a vehicle
15 storage facility may not refuse to release a vehicle based on the
16 inability of the facility to accept payment by electronic check,
17 debit card, or credit card of a fee or charge associated with
18 delivery or storage of the vehicle unless the operator, through no
19 fault of the operator, is unable to accept the electronic check,
20 debit card, or credit card because of a power outage or a machine
21 malfunction.

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

27 SECTION 23. (a) The change in law made by this Act to

1 Section 2308.405, Occupations Code, applies only to an offense
2 committed on or after the effective date of this Act. For purposes
3 of this section, an offense is committed before the effective date
4 of this Act if any element of the offense occurs before that date.

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

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

10 (b) Section 2308.0575, Occupations Code, as added by this
11 Act, and Sections 2308.202 and 2308.204, Occupations Code, as
12 amended by this Act, take effect September 1, 2010.

President of the Senate

Speaker of the House

I certify that H.B. No. 2571 was passed by the House on April 28, 2009, by the following vote: Yeas 147, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2571 on May 25, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2571 on May 31, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 2571

I certify that H.B. No. 2571 was passed by the Senate, with amendments, on May 22, 2009, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2571 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor