

By: Gonzales

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 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 to a traffic accident or incident by a peace officer under Section 545.305 or 545.3051, Transportation Code.

(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:

1 (A) authorize the removal of a vehicle from the
2 parking facility on behalf of the parking facility owner; and

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

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 2. Subchapter B, Chapter 2308, Occupations Code, is
21 amended by adding Section 2308.0575 to read as follows:

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

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

27 (2) the maximum amount that may be charged for fees,

1 other than tow fees, that may be assessed by a towing company in
2 connection with a private property tow; and

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

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

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

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

12 (b) In adopting rules under Subsection (a), the commission
13 shall:

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

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

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

22 (d) The commission shall maintain the confidentiality of
23 information contained in a study conducted under this section that
24 is claimed to be confidential for competitive purposes and may not
25 release information that identifies a person or company. The
26 confidential information is exempt from disclosure under Chapter
27 552, Government Code.

1 (e) To protect the confidentiality of the information, the
2 commission shall aggregate the information to the maximum extent
3 possible considering the purpose of the study.

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

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

13 SECTION 4. Section 2308.202, Occupations Code, is amended
14 to read as follows:

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

- 20 (1) are authorized by commission rule; and
21 (2) for private property tows, do not exceed the
22 maximum amount authorized by commission rule.

23 SECTION 5. Section 2308.204, Occupations Code, is amended
24 to read as follows:

25 Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS.
26 ~~(a)~~ In an area in which no political subdivision regulates the
27 fees that may be charged or collected in connection with ~~for~~ a

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

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

15 SECTION 6. Section 2308.206, Occupations Code, is amended
16 by adding Subsections (f) and (g) to read as follows:

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

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

23 SECTION 7. Section 2308.208, Occupations Code, is amended
24 to read as follows:

25 Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED
26 VEHICLES AND TOWING OF MOTOR VEHICLES. A municipality may adopt an
27 ordinance that is identical to this chapter or that imposes

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

4 SECTION 8. 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) the parking facility owner has provided to the
22 towing company written notice of the name of the parking facility
23 authorized agent and the vehicle is:

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

26 (B) in or obstructing a portion of a paved
27 driveway or abutting public roadway used for entering or exiting

1 the facility.

2 SECTION 9. Section 2308.255(a), Occupations Code, is
3 amended to read as follows:

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

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

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

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

16 (2) the parking facility owner has provided to the
17 towing company written notice of the name of the parking facility
18 authorized agent and the vehicle is:

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

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

23 SECTION 10. Section 2308.404(c), Occupations Code, is
24 amended to read as follows:

25 (c) A towing company or parking facility owner who
26 intentionally, knowingly, or recklessly violates this chapter is
27 liable to the owner or operator of the vehicle that is the subject

1 of the violation for \$1,000 [~~\$300~~] plus three times the amount of
2 fees assessed in the vehicle's removal, towing, or storage.

3 SECTION 11. Section 2308.405, Occupations Code, is amended
4 to read as follows:

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

10 SECTION 12. Section 2308.451(b), Occupations Code, is
11 amended to read as follows:

12 (b) If in a hearing held under this chapter the court does
13 not find that a person or law enforcement agency authorized, with
14 probable cause, the removal and storage in a vehicle storage
15 facility of a vehicle, the parking facility owner [~~person~~] or law
16 enforcement agency that authorized the 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 13. 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 14. 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 15. 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 full name, street address including city,
25 state, and zip code, and telephone number of the person, parking
26 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 vehicle storage facility is located.

4 SECTION 16. 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 17. 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 18. 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 19. 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 collect a fee for any
3 charge associated with delivery or storage of a vehicle from a
4 person who offers to pay the charge with an electronic check, debit
5 card, or credit card form of payment that the operator is not
6 equipped to accept.

7 SECTION 20. Not later than April 1, 2010, the Texas
8 Commission of Licensing and Regulation shall adopt the rules
9 necessary to implement the changes in law made by this Act,
10 including rules on the maximum amount of fees that may be charged
11 for private property tows.

12 SECTION 21. (a) The change in law made by this Act to
13 Section 2308.405, Occupations Code, applies only to an offense
14 committed on or after the effective date of this Act. For purposes
15 of this section, an offense is committed before the effective date
16 of this Act if any element of the offense occurs before that date.

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

20 SECTION 22. (a) Except as provided by Subsection (b) of
21 this section, this Act takes effect September 1, 2009.

22 (b) Sections 2308.202 and 2308.204, Occupations Code, as
23 amended by this Act, take effect May 1, 2010.