

1-1 By: Gonzales, et al. (Senate Sponsor - Hinojosa) H.B. No. 2571  
1-2 (In the Senate - Received from the House April 29, 2009;  
1-3 May 12, 2009, read first time and referred to Committee on  
1-4 Administration; May 21, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;  
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2571 By: Uresti

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the licensing and regulation of towing companies and  
1-11 vehicle storage facilities; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 2308.002, Occupations Code, is amended  
1-14 by amending Subdivisions (3), (6), and (8) and adding Subdivisions  
1-15 (5-a), (7-a), and (8-a) to read as follows:

1-16 (3) "Consent tow" means any tow of a motor vehicle in  
1-17 which the tow truck is summoned ~~[initiated]~~ by the owner or operator  
1-18 of the vehicle or by a person who has possession, custody, or  
1-19 control of the vehicle. The term does not include an incident  
1-20 management tow or a private property ~~[a] tow~~ ~~[of a motor vehicle~~  
1-21 ~~initiated by a peace officer investigating a traffic accident or a~~  
1-22 ~~traffic incident that involves the vehicle]~~.

1-23 (5-a) "Incident management tow" means any tow of a  
1-24 vehicle in which the tow truck is summoned because of a traffic  
1-25 accident or to an incident.

1-26 (6) "Nonconsent tow" means any tow of a motor vehicle  
1-27 that is not a consent tow, including:

1-28 (A) an incident management tow; and

1-29 (B) a private property tow.

1-30 (7-a) "Parking facility authorized agent" means an  
1-31 employee or agent of a parking facility owner with the authority to:

1-32 (A) authorize the removal of a vehicle from the  
1-33 parking facility on behalf of the parking facility owner; and

1-34 (B) accept service on behalf of the parking  
1-35 facility owner of a notice of hearing requested under this chapter.

1-36 (8) "Parking facility owner" means:

1-37 (A) an individual, corporation, partnership,  
1-38 limited partnership, limited liability company, association,  
1-39 trust, or other legal entity owning or operating ~~[owner or operator~~  
1-40 ~~of] a parking facility~~ ~~[, including a lessee, employee, or agent of~~  
1-41 ~~an owner or operator]~~;

1-42 (B) a property owners' association having  
1-43 control under a dedicatory instrument, as that term is defined in  
1-44 Section 202.001, Property Code, over assigned or unassigned parking  
1-45 areas; or

1-46 (C) a property owner having an exclusive right  
1-47 under a dedicatory instrument, as that term is defined in Section  
1-48 202.001, Property Code, to use a parking space.

1-49 (8-a) "Private property tow" means any tow of a  
1-50 vehicle authorized by a parking facility owner without the consent  
1-51 of the owner or operator of the vehicle.

1-52 SECTION 2. Subsection (a), Section 2308.057, Occupations  
1-53 Code, is amended to read as follows:

1-54 (a) The commission shall adopt rules for permitting tow  
1-55 trucks and licensing towing operators and towing companies,  
1-56 including rules for denial of applications and permits if the  
1-57 applicant, a partner, principal, officer, or general manager of the  
1-58 applicant, or other license or permit holder has:

1-59 (1) a criminal conviction, or has pleaded guilty or  
1-60 nolo contendere to an offense, before the date of the application,  
1-61 for:

1-62 (A) a felony; or

1-63 (B) a misdemeanor punishable by confinement in

2-1 jail or by a fine in an amount that exceeds \$500;  
 2-2 (2) violated an order of the commission or executive  
 2-3 director, including an order for sanctions or administrative  
 2-4 penalties;  
 2-5 (3) failed to submit a license or permit bond in an  
 2-6 amount established by the commission;  
 2-7 (4) knowingly submitted false or incomplete  
 2-8 information on the application; or  
 2-9 (5) filed an application to permit a tow truck  
 2-10 previously permitted by a license or permit holder.

2-11 SECTION 3. Subchapter B, Chapter 2308, Occupations Code, is  
 2-12 amended by adding Section 2308.0575 to read as follows:

2-13 Sec. 2308.0575. RULES ON FEES; CONTRACT FOR STUDY;  
 2-14 CONFIDENTIAL INFORMATION. (a) To protect the public health and  
 2-15 safety, the commission by rule shall establish:

2-16 (1) the fees that may be charged in connection with a  
 2-17 private property tow;

2-18 (2) the maximum amount that may be charged for fees,  
 2-19 other than tow fees, that may be assessed by a towing company in  
 2-20 connection with a private property tow; and

2-21 (3) a maximum amount that may be charged for the  
 2-22 following private property tows:

2-23 (A) standard light-duty tows of motor vehicles  
 2-24 with a gross weight rating of 10,000 pounds or less;

2-25 (B) medium-duty tows of motor vehicles with a  
 2-26 gross weight rating of more than 10,000 pounds, but less than 25,000  
 2-27 pounds; and

2-28 (C) heavy-duty tows of motor vehicles with a  
 2-29 gross weight rating that exceeds 25,000 pounds.

2-30 (b) In adopting rules under Subsection (a), the commission  
 2-31 shall contract for the conduct of a study that:

2-32 (1) examines private property towing fee studies  
 2-33 conducted by municipalities in this state; and

2-34 (2) analyzes for private property tows the cost of  
 2-35 services by company, the consumer price index, the geographic area,  
 2-36 and individual cost components.

2-37 (c) The commission may structure the maximum amounts that  
 2-38 may be charged for private property tows based on hourly or flat  
 2-39 fees or by geographic location.

2-40 (d) The commission shall maintain the confidentiality of  
 2-41 information contained in a study conducted under this section that  
 2-42 is claimed to be confidential for competitive purposes and may not  
 2-43 release information that identifies a person or company. The  
 2-44 confidential information is exempt from disclosure under Chapter  
 2-45 552, Government Code.

2-46 (e) To protect the confidentiality of the information, the  
 2-47 commission shall aggregate the information to the maximum extent  
 2-48 possible considering the purpose of the study.

2-49 (f) The department shall contract to conduct a study on  
 2-50 private property towing fees under this section at least once every  
 2-51 two years.

2-52 SECTION 4. Section 2308.060, Occupations Code, is amended  
 2-53 to read as follows:

2-54 Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The  
 2-55 advisory board shall provide advice and recommendations to the  
 2-56 department on technical matters relevant to the administration and  
 2-57 enforcement of this chapter, including examination content,  
 2-58 licensing standards, ~~and~~ continuing education requirements, and  
 2-59 maximum amounts that may be charged for fees related to private  
 2-60 property tows.

2-61 SECTION 5. Section 2308.204, Occupations Code, is amended  
 2-62 to read as follows:

2-63 Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS.  
 2-64 ~~[(a)]~~ In an area in which no political subdivision regulates the  
 2-65 fees that may be charged or collected in connection with ~~[for]~~ a  
 2-66 private property ~~[nonconsent]~~ tow ~~[from private property]~~, a towing  
 2-67 company may charge and collect fees ~~[a fee]~~ for the tow of a motor  
 2-68 vehicle ~~[from private property]~~ in an amount not to exceed the  
 2-69 maximum amount authorized by commission rule ~~[an amount equal to~~

3-1 ~~150 percent of the fee that the towing company would have been~~  
3-2 ~~authorized to charge for a nonconsent tow made at the request of a~~  
3-3 ~~peace officer of the political subdivision in which the private~~  
3-4 ~~property is located].~~

3-5 ~~[(b) A towing company may charge and collect a fee for the~~  
3-6 ~~tow of a vehicle, with a gross vehicle weight rating in excess of~~  
3-7 ~~26,000 pounds, from private property in an amount not to exceed an~~  
3-8 ~~amount equal to 125 percent of the fee that the towing company would~~  
3-9 ~~have been authorized to charge for a nonconsent tow made at the~~  
3-10 ~~request of a peace officer of the political subdivision in which the~~  
3-11 ~~private property is located.]~~

3-12 SECTION 6. Section 2308.206, Occupations Code, is amended  
3-13 by adding Subsections (f) and (g) to read as follows:

3-14 (f) A license or permit holder may not charge a fee related  
3-15 to a nonconsent tow that is not listed in the schedule most recently  
3-16 submitted to the department under this section.

3-17 (g) The department may require a license or permit holder  
3-18 that has violated Subsection (e) or (f) to reimburse the vehicle  
3-19 owner or operator for the charges.

3-20 SECTION 7. Section 2308.208, Occupations Code, is amended  
3-21 to read as follows:

3-22 Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED  
3-23 VEHICLES AND TOWING OF MOTOR VEHICLES. A municipality may adopt an  
3-24 ordinance that is identical to this chapter or that imposes  
3-25 additional requirements that exceed the minimum standards of this  
3-26 chapter but may not adopt an ordinance conflicting with this  
3-27 chapter.

3-28 SECTION 8. Subsection (a), Section 2308.252, Occupations  
3-29 Code, is amended to read as follows:

3-30 (a) A parking facility owner may, without the consent of the  
3-31 owner or operator of an unauthorized vehicle, cause the vehicle and  
3-32 any property on or in the vehicle to be removed and stored at a  
3-33 vehicle storage facility at the vehicle owner's or operator's  
3-34 expense if:

3-35 (1) signs that comply with Subchapter G prohibiting  
3-36 unauthorized vehicles are located on the parking facility at the  
3-37 time of towing and for the preceding 24 hours and remain installed  
3-38 at the time of towing;

3-39 (2) the owner or operator of the vehicle has received  
3-40 actual notice from the parking facility owner that the vehicle will  
3-41 be towed at the vehicle owner's or operator's expense if it is in or  
3-42 not removed from an unauthorized space;

3-43 (3) the parking facility owner gives notice to the  
3-44 owner or operator of the vehicle under Subsection (b); or

3-45 (4) the parking facility owner has provided to the  
3-46 towing company written notice of the name of the parking facility  
3-47 authorized agent and the vehicle is:

3-48 (A) left in violation of Section 2308.251 or  
3-49 2308.253; or

3-50 (B) in or obstructing a portion of a paved  
3-51 driveway or abutting public roadway used for entering or exiting  
3-52 the facility.

3-53 SECTION 9. Subsection (a), Section 2308.255, Occupations  
3-54 Code, is amended to read as follows:

3-55 (a) A towing company that is insured as provided by  
3-56 Subsection (c) may, without the consent of an owner or operator of  
3-57 an unauthorized vehicle, remove and store the vehicle at a vehicle  
3-58 storage facility at the expense of the owner or operator of the  
3-59 vehicle if:

3-60 (1) the towing company has received written  
3-61 verification from the parking facility owner that:

3-62 (A) the parking facility owner has installed the  
3-63 signs required by Section 2308.252(a)(1); or

3-64 (B) the owner or operator received notice under  
3-65 Section 2308.252(a)(2) or the parking facility owner gave notice  
3-66 complying with Section 2308.252(a)(3); or

3-67 (2) the parking facility owner has provided to the  
3-68 towing company written notice of the name of the parking facility  
3-69 authorized agent and the vehicle is:

4-1 (A) left in violation of Section 2308.251; or  
4-2 (B) in or obstructing a portion of a paved  
4-3 driveway or abutting public roadway used for entering or exiting  
4-4 the facility and the removal is approved by a peace officer.

4-5 SECTION 10. Subsection (a), Section 2308.256, Occupations  
4-6 Code, is amended to read as follows:

4-7 (a) A vehicle storage facility accepting a vehicle that is  
4-8 towed under this chapter shall within two hours after receiving the  
4-9 vehicle report to the police department of the municipality from  
4-10 [in] which the vehicle was towed [parking facility is located], or,  
4-11 if the vehicle was towed from a location that [parking facility] is  
4-12 not [located] in a municipality with [having] a police department,  
4-13 to the sheriff of the county from [in] which the vehicle was towed  
4-14 [parking facility is located]:

- 4-15 (1) a general description of the vehicle;
- 4-16 (2) the state and number of the vehicle's license  
4-17 plate, if any;
- 4-18 (3) the vehicle identification number of the vehicle,  
4-19 if it can be ascertained;
- 4-20 (4) the location from which the vehicle was towed; and
- 4-21 (5) the name and location of the vehicle storage  
4-22 facility where the vehicle is being stored.

4-23 SECTION 11. Subsection (c), Section 2308.404, Occupations  
4-24 Code, is amended to read as follows:

4-25 (c) A towing company or parking facility owner who  
4-26 intentionally, knowingly, or recklessly violates this chapter is  
4-27 liable to the owner or operator of the vehicle that is the subject  
4-28 of the violation for \$1,000 [~~\$300~~] plus three times the amount of  
4-29 fees assessed in the vehicle's removal, towing, or storage.

4-30 SECTION 12. Section 2308.405, Occupations Code, is amended  
4-31 to read as follows:

4-32 Sec. 2308.405. CRIMINAL PENALTY [VIOLATION OF CHAPTER,  
4-33 FINE]. A person commits an offense if the person violates  
4-34 [violation of] this chapter. An offense under this section is a  
4-35 misdemeanor punishable by a fine of not less than \$500 or more than  
4-36 \$1,500 unless it is shown on trial of the offense that the person  
4-37 knowingly or intentionally violated this chapter, in which event  
4-38 the offense is a Class B misdemeanor.

4-39 SECTION 13. Section 2308.451, Occupations Code, is amended  
4-40 by amending Subsection (b) and adding Subsection (c) to read as  
4-41 follows:

4-42 (b) If in a hearing held under this chapter the court does  
4-43 not find that a person or law enforcement agency authorized, with  
4-44 probable cause, the removal and storage in a vehicle storage  
4-45 facility of a vehicle, the parking facility owner [~~person~~] or law  
4-46 enforcement agency that authorized the removal shall:

- 4-47 (1) pay the costs of the removal and storage; or
- 4-48 (2) reimburse the owner or operator for the cost of the  
4-49 removal and storage paid by the owner or operator.

4-50 (c) If, in a hearing held under this chapter, regardless of  
4-51 whether the court finds that there was probable cause for the  
4-52 removal and storage of a vehicle, the court finds that the towing  
4-53 charge collected exceeded fees regulated by a political subdivision  
4-54 or authorized by this chapter or Chapter 2303, the towing company  
4-55 shall reimburse the owner or operator of the vehicle an amount equal  
4-56 to the overcharge.

4-57 SECTION 14. Section 2308.454, Occupations Code, is amended  
4-58 by adding Subsection (c) to read as follows:

4-59 (c) If the towing company or vehicle storage facility that  
4-60 received the payment fails to furnish to the owner or operator of  
4-61 the vehicle the name, address, and telephone number of the parking  
4-62 facility owner or law enforcement agency that authorized the  
4-63 removal of the vehicle, the towing company or vehicle storage  
4-64 facility that received the payment is liable if the court, after a  
4-65 hearing, does not find probable cause for the removal and storage of  
4-66 the vehicle.

4-67 SECTION 15. Section 2308.455, Occupations Code, is amended  
4-68 to read as follows:

4-69 Sec. 2308.455. CONTENTS OF NOTICE. The notice under

5-1 Section 2308.454 must include:  
 5-2 (1) a statement of:  
 5-3 (A) the person's right to submit a request within  
 5-4 14 days for a court hearing to determine whether probable cause  
 5-5 existed to remove the vehicle;  
 5-6 (B) the information that a request for a hearing  
 5-7 must contain; and  
 5-8 (C) any filing fee for the hearing;  
 5-9 (2) the name, address, and telephone number of the  
 5-10 towing company that removed the vehicle;  
 5-11 (3) the name, address, and telephone number of the  
 5-12 vehicle storage facility in which the vehicle was placed;  
 5-13 (4) the name, street address including city, state,  
 5-14 and zip code, and telephone number of the person, parking facility  
 5-15 [property] owner, or law enforcement agency that authorized the  
 5-16 removal of the vehicle; and  
 5-17 (5) the name, address, and telephone number of the  
 5-18 justice court having jurisdiction in the precinct in which the  
 5-19 vehicle storage facility is located.

5-20 SECTION 16. Section 2308.456, Occupations Code, is amended  
 5-21 by amending Subsection (a) and adding Subsection (c-1) to read as  
 5-22 follows:  
 5-23 (a) Except as provided by Subsections [Subsection] (c) and  
 5-24 (c-1), a person entitled to a hearing under this chapter must  
 5-25 deliver a written request for the hearing to the court before the  
 5-26 14th day after the date the vehicle was removed and placed in the  
 5-27 vehicle storage facility, excluding Saturdays, Sundays, and legal  
 5-28 holidays.  
 5-29 (c-1) The 14-day period for requesting a hearing under  
 5-30 Subsection (a) does not begin until the date on which the towing  
 5-31 company or vehicle storage facility provides to the vehicle owner  
 5-32 or operator the information necessary for the vehicle owner or  
 5-33 operator to complete the material for the request for hearing  
 5-34 required under Subsections (b)(2)-(6).

5-35 SECTION 17. Subsections (a) and (b), Section 2308.458,  
 5-36 Occupations Code, are amended to read as follows:  
 5-37 (a) A hearing under this chapter shall be held before the  
 5-38 21st calendar [14th working] day after the date the court receives  
 5-39 the request for the hearing.  
 5-40 (b) The court shall notify the person who requested the  
 5-41 hearing, the parking facility owner [person] or law enforcement  
 5-42 agency that authorized the removal of the vehicle, and the vehicle  
 5-43 storage facility in which the vehicle was placed of the date, time,  
 5-44 and place of the hearing in a manner provided by Rule 21a, Texas  
 5-45 Rules of Civil Procedure. The notice of the hearing to the parking  
 5-46 facility owner [person] or law enforcement agency that authorized  
 5-47 the removal of the vehicle shall include a copy of the request for  
 5-48 hearing.

5-49 SECTION 18. Section 2308.460, Occupations Code, is amended  
 5-50 to read as follows:  
 5-51 Sec. 2308.460. ENFORCEMENT OF AWARD. (a) An award under  
 5-52 this chapter may be enforced by any means available for the  
 5-53 enforcement of a judgment for a debt.  
 5-54 (b) The department shall suspend a license holder's license  
 5-55 on the license holder's failure to pay a final judgment awarded to  
 5-56 an owner or operator of a vehicle before the 60th day after the date  
 5-57 of the final judgment.  
 5-58 (c) The owner or operator of the vehicle shall submit a  
 5-59 certified copy of the final judgment to the department.  
 5-60 (d) On receipt of the certified copy of the unpaid final  
 5-61 judgment, the department shall disqualify a person from renewing a  
 5-62 license or permit or deny the person the opportunity of taking a  
 5-63 licensing examination on the grounds that the person, towing  
 5-64 company, or vehicle storage facility has not paid a final judgment  
 5-65 awarded to an owner or operator of a vehicle.  
 5-66 (e) The department shall reinstate the license on  
 5-67 submission of evidence satisfactory to the department of payment of  
 5-68 the final judgment by the person, towing company, or vehicle  
 5-69 storage facility.

6-1 SECTION 19. Subsection (a), Section 2303.159, Occupations  
6-2 Code, is amended to read as follows:

6-3 (a) The operator of a vehicle storage facility shall accept  
6-4 payment by an electronic check, debit card, or credit card for any  
6-5 charge associated with delivery or storage of a vehicle. Except as  
6-6 provided by this subsection, the operator of a vehicle storage  
6-7 facility may not collect a fee for any charge associated with  
6-8 delivery or storage of a vehicle from a person who offers to pay the  
6-9 charge with an electronic check, debit card, or credit card form of  
6-10 payment that the operator is not equipped to accept. This  
6-11 subsection does not apply if the operator, through no fault of the  
6-12 operator, is unable to accept the electronic check, debit card, or  
6-13 credit card because of a power outage or a machine malfunction.

6-14 SECTION 20. Not later than April 1, 2010, the Texas  
6-15 Commission of Licensing and Regulation shall adopt the rules  
6-16 necessary to implement the changes in law made by this Act,  
6-17 including rules on the maximum amount of fees that may be charged  
6-18 for private property tows.

6-19 SECTION 21. (a) The change in law made by this Act to  
6-20 Section 2308.405, Occupations Code, applies only to an offense  
6-21 committed on or after the effective date of this Act. For purposes  
6-22 of this section, an offense is committed before the effective date  
6-23 of this Act if any element of the offense occurs before that date.

6-24 (b) An offense committed before the effective date of this  
6-25 Act is covered by the law in effect when the offense was committed,  
6-26 and the former law is continued in effect for that purpose.

6-27 SECTION 22. (a) Except as provided by Subsection (b) of  
6-28 this section, this Act takes effect September 1, 2009.

6-29 (b) Section 2308.204, Occupations Code, as amended by this  
6-30 Act, takes effect May 1, 2010.

6-31

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