

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 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. Subsection (a), Section 2308.057, Occupations
21 Code, is 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 the conduct of a study that:

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

11 (2) analyzes for private property tows the cost of
12 services by company, the consumer price index, the geographic area,
13 and individual cost 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 2308.204, Occupations Code, is amended
12 to read as follows:

13 Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS.
14 ~~[(a)]~~ In an area in which no political subdivision regulates the
15 fees that may be charged or collected in connection with ~~[for]~~ a
16 private property ~~[nonconsent]~~ tow ~~[from private property]~~, a towing
17 company may charge and collect fees ~~[a fee]~~ for the tow of a motor
18 vehicle ~~[from private property]~~ in an amount not to exceed the
19 maximum amount authorized by commission rule ~~[an amount equal to~~
20 ~~150 percent of the fee that the towing company would have been~~
21 ~~authorized to charge for a nonconsent tow made at the request of a~~
22 ~~peace officer of the political subdivision in which the private~~
23 ~~property is located].~~

24 ~~[(b) A towing company may charge and collect a fee for the~~
25 ~~tow of a vehicle, with a gross vehicle weight rating in excess of~~
26 ~~26,000 pounds, from private property in an amount not to exceed an~~
27 ~~amount equal to 125 percent of the fee that the towing company would~~

1 ~~have been authorized to charge for a nonconsent tow made at the~~
2 ~~request of a peace officer of the political subdivision in which the~~
3 ~~private property is located.]~~

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

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

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

12 SECTION 7. Section 2308.208, Occupations Code, is amended
13 to read as follows:

14 Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED
15 VEHICLES AND TOWING OF MOTOR VEHICLES. A municipality may adopt an
16 ordinance that is identical to this chapter or that imposes
17 additional requirements that exceed the minimum standards of this
18 chapter but may not adopt an ordinance conflicting with this
19 chapter.

20 SECTION 8. Subsection (a), Section 2308.252, Occupations
21 Code, is amended to read as follows:

22 (a) A parking facility owner may, without the consent of the
23 owner or operator of an unauthorized vehicle, cause the vehicle and
24 any property on or in the vehicle to be removed and stored at a
25 vehicle storage facility at the vehicle owner's or operator's
26 expense if:

27 (1) signs that comply with Subchapter G prohibiting

1 unauthorized vehicles are located on the parking facility at the
2 time of towing and for the preceding 24 hours and remain installed
3 at the time of towing;

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

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

10 (4) the parking facility owner has provided to the
11 towing company written notice of the name of the parking facility
12 authorized agent and the vehicle is:

13 (A) left in violation of Section 2308.251 or
14 2308.253; or

15 (B) in or obstructing a portion of a paved
16 driveway or abutting public roadway used for entering or exiting
17 the facility.

18 SECTION 9. Subsection (a), Section 2308.255, Occupations
19 Code, is amended to read as follows:

20 (a) A towing company that is insured as provided by
21 Subsection (c) may, without the consent of an owner or operator of
22 an unauthorized vehicle, remove and store the vehicle at a vehicle
23 storage facility at the expense of the owner or operator of the
24 vehicle if:

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

27 (A) the parking facility owner has installed the

1 signs required by Section 2308.252(a)(1); or

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

5 (2) the parking facility owner has provided to the
6 towing company written notice of the name of the parking facility
7 authorized agent and the vehicle is:

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

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

12 SECTION 10. Subsection (a), Section 2308.256, Occupations
13 Code, is amended to read as follows:

14 (a) A vehicle storage facility accepting a vehicle that is
15 towed under this chapter shall within two hours after receiving the
16 vehicle report to the police department of the municipality from
17 ~~[in]~~ which the vehicle was towed ~~[parking facility is located]~~, or,
18 if the vehicle was towed from a location that ~~[parking facility]~~ is
19 not ~~[located]~~ in a municipality with ~~[having]~~ a police department,
20 to the sheriff of the county from ~~[in]~~ which the vehicle was towed
21 ~~[parking facility is located]~~:

22 (1) a general description of the vehicle;

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

25 (3) the vehicle identification number of the vehicle,
26 if it can be ascertained;

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

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

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

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

10 SECTION 12. Section 2308.405, Occupations Code, is amended
11 to read as follows:

12 Sec. 2308.405. CRIMINAL PENALTY [~~VIOLATION OF CHAPTER,~~
13 ~~FINE~~]. A person commits an offense if the person violates
14 [~~violation of~~] this chapter. An offense under this section is a
15 misdemeanor punishable by a fine of not less than \$500 or more than
16 \$1,500 unless it is shown on trial of the offense that the person
17 knowingly or intentionally violated this chapter, in which event
18 the offense is a Class B misdemeanor.

19 SECTION 13. Section 2308.451, Occupations Code, is amended
20 by amending Subsection (b) and adding Subsection (c) to read as
21 follows:

22 (b) If in a hearing held under this chapter the court does
23 not find that a person or law enforcement agency authorized, with
24 probable cause, the removal and storage in a vehicle storage
25 facility of a vehicle, the parking facility owner [~~person~~] or law
26 enforcement agency that authorized the removal shall:

27 (1) pay the costs of the removal and storage; or

1 (2) reimburse the owner or operator for the cost of the
2 removal and storage paid by the owner or operator.

3 (c) If, in a hearing held under this chapter, regardless of
4 whether the court finds that there was probable cause for the
5 removal and storage of a vehicle, the court finds that the towing
6 charge collected exceeded fees regulated by a political subdivision
7 or authorized by this chapter or Chapter 2303, the towing company
8 shall reimburse the owner or operator of the vehicle an amount equal
9 to the overcharge.

10 SECTION 14. Section 2308.453, Occupations Code, is amended
11 to read as follows:

12 Sec. 2308.453. JURISDICTION. A hearing under this chapter
13 shall be in the justice court having jurisdiction in the precinct
14 from [in] which the motor vehicle was towed [storage facility is
15 located].

16 SECTION 15. Section 2308.454, Occupations Code, is amended
17 by adding Subsection (c) to read as follows:

18 (c) If the towing company or vehicle storage facility that
19 received the payment fails to furnish to the owner or operator of
20 the vehicle the name, address, and telephone number of the parking
21 facility owner or law enforcement agency that authorized the
22 removal of the vehicle, the towing company or vehicle storage
23 facility that received the payment is liable if the court, after a
24 hearing, does not find probable cause for the removal and storage of
25 the vehicle.

26 SECTION 16. Section 2308.455, Occupations Code, is amended
27 to read as follows:

1 Sec. 2308.455. CONTENTS OF NOTICE. The notice under
2 Section 2308.454 must include:

3 (1) a statement of:

4 (A) the person's right to submit a request within
5 14 days for a court hearing to determine whether probable cause
6 existed to remove the vehicle;

7 (B) the information that a request for a hearing
8 must contain; and

9 (C) any filing fee for the hearing;

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

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

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

18 (5) the name, address, and telephone number of the
19 justice court having jurisdiction in the precinct in which the
20 vehicle storage facility is located.

21 SECTION 17. Section 2308.456, Occupations Code, is amended
22 by amending Subsection (a) and adding Subsection (c-1) to read as
23 follows:

24 (a) Except as provided by Subsections [~~Subsection~~] (c) and
25 (c-1), a person entitled to a hearing under this chapter must
26 deliver a written request for the hearing to the court before the
27 14th day after the date the vehicle was removed and placed in the

1 vehicle storage facility, excluding Saturdays, Sundays, and legal
2 holidays.

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

9 SECTION 18. Subsections (a) and (b), Section 2308.458,
10 Occupations Code, are amended to read as follows:

11 (a) A hearing under this chapter shall be held before the
12 21st calendar [~~14th working~~] day after the date the court receives
13 the request for the hearing.

14 (b) The court shall notify the person who requested the
15 hearing, the parking facility owner [~~person~~] or law enforcement
16 agency that authorized the removal of the vehicle, and the vehicle
17 storage facility in which the vehicle was placed of the date, time,
18 and place of the hearing in a manner provided by Rule 21a, Texas
19 Rules of Civil Procedure. The notice of the hearing to the parking
20 facility owner [~~person~~] or law enforcement agency that authorized
21 the removal of the vehicle shall include a copy of the request for
22 hearing.

23 SECTION 19. Section 2308.460, Occupations Code, is amended
24 to read as follows:

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

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

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

7 (d) On receipt of the certified copy of the unpaid final
8 judgment, the department shall disqualify a person from renewing a
9 license or permit or deny the person the opportunity of taking a
10 licensing examination on the grounds that the person, towing
11 company, or vehicle storage facility has not paid a final judgment
12 awarded to an owner or operator of a vehicle.

13 (e) The department shall reinstate the license on
14 submission of evidence satisfactory to the department of payment of
15 the final judgment by the person, towing company, or vehicle
16 storage facility.

17 SECTION 20. Subsection (a), Section 2303.159, Occupations
18 Code, is amended to read as follows:

19 (a) The operator of a vehicle storage facility shall accept
20 payment by an electronic check, debit card, or credit card for any
21 charge associated with delivery or storage of a vehicle. Except as
22 provided by this subsection, the operator of a vehicle storage
23 facility may not collect a fee for any charge associated with
24 delivery or storage of a vehicle from a person who offers to pay the
25 charge with an electronic check, debit card, or credit card form of
26 payment that the operator is not equipped to accept. This
27 subsection does not apply if the operator, through no fault of the

1 operator, is unable to accept the electronic check, debit card, or
2 credit card because of a power outage or a machine malfunction.

3 SECTION 21. Not later than April 1, 2010, the Texas
4 Commission of Licensing and Regulation shall adopt the rules
5 necessary to implement the changes in law made by this Act,
6 including rules on the maximum amount of fees that may be charged
7 for private property tows.

8 SECTION 22. (a) The change in law made by this Act to
9 Section 2308.405, Occupations Code, applies only to an offense
10 committed on or after the effective date of this Act. For purposes
11 of this section, an offense is committed before the effective date
12 of this Act if any element of the offense occurs before that date.

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

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

18 (b) Section 2308.204, Occupations Code, as amended by this
19 Act, takes effect May 1, 2010.