

By: Hinojosa, et al.

S.B. No. 1431

Substitute the following for S.B. No. 1431:

By: Pickett

C.S.S.B. No. 1431

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) 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.

(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.

(8) "Parking facility owner" means:

(A) an individual, corporation, partnership, limited partnership, limited liability company, association,

1 trust, or other legal entity owning or operating ~~[owner or operator~~
2 ~~of]~~ a parking facility~~[, including a lessee, employee, or agent of~~
3 ~~an owner or operator]~~;

4 (B) a property owners' association having
5 control under a dedicatory instrument, as that term is defined in
6 Section 202.001, Property Code, over assigned or unassigned parking
7 areas; or

8 (C) a property owner having an exclusive right
9 under a dedicatory instrument, as that term is defined in Section
10 202.001, Property Code, to use a parking space.

11 (8-a) "Private property tow" means any tow of a
12 vehicle authorized by a parking facility owner without consent of
13 the vehicle owner or operator.

14 SECTION 2. Section 2308.057(a), Occupations Code, is
15 amended to read as follows:

16 (a) The commission shall adopt rules for permitting tow
17 trucks and licensing towing operators and towing companies,
18 including rules for denial of an application or permit if the
19 applicant, a partner, principal, officer, or general manager of the
20 applicant, or a license or permit holder has:

21 (1) a criminal conviction or has pled guilty or nolo
22 contendere before the date of the application for:

23 (A) a felony; or

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

26 (2) violated an order of the commission or executive
27 director, including an order for sanctions or administrative

1 penalties;

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

4 (4) knowingly submitted false or incomplete
5 information on a license or permit application; or

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

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

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

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

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

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

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

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

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

27 (b) In adopting rules under Subsection (a), the commission

1 shall contract:

2 (1) for the conduct of a study that examines
3 nonconsent towing fee studies conducted by municipalities in this
4 state; and

5 (2) at least once every two years, for the conduct of a
6 study that analyzes, for private property tows, the cost of service
7 by company, the consumer price index, the geographic area, and
8 individual cost components.

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

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

18 (e) To protect the confidentiality of the information, the
19 commission shall aggregate the information to the maximum extent
20 possible considering the purpose of the study.

21 SECTION 4. Section 2308.060, Occupations Code, is amended
22 to read as follows:

23 Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The
24 advisory board shall provide advice and recommendations to the
25 department on technical matters relevant to the administration and
26 enforcement of this chapter, including examination content,
27 licensing standards, ~~and~~ continuing education requirements, and

1 maximum amounts that may be charged for fees related to private
2 property tows.

3 SECTION 5. Section 2308.202, Occupations Code, is amended
4 to read as follows:

5 Sec. 2308.202. REGULATION BY POLITICAL SUBDIVISIONS OF FEES
6 FOR CERTAIN ~~[NONCONSENT]~~ TOWS. The governing body of a political
7 subdivision may regulate the fees that may be charged or collected
8 in connection with:

- 9 (1) an incident management ~~[a nonconsent]~~ tow
10 originating in the territory of the political subdivision; and
11 (2) a private property tow originating in the
12 territory of the political subdivision, provided the fees do not
13 exceed the maximum rate authorized under Section 2308.0575.

14 SECTION 6. Section 2308.204, Occupations Code, is amended
15 to read as follows:

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

27 ~~[(b) A towing company may charge and collect a fee for the~~

1 ~~tow of a vehicle, with a gross vehicle weight rating in excess of~~
2 ~~26,000 pounds, from private property in an amount not to exceed an~~
3 ~~amount equal to 125 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 SECTION 7. Section 2308.206, Occupations Code, is amended
8 by adding Subsections (f) and (g) to read as follows:

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

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

15 SECTION 8. The heading to Section 2308.208, Occupations
16 Code, is amended to read as follows:

17 Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED
18 VEHICLES AND TOWING OF MOTOR VEHICLES.

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

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

26 (1) signs that comply with Subchapter G prohibiting
27 unauthorized vehicles are located on the parking facility at the

1 time of towing and for the preceding 24 hours and remain installed
2 at the time of towing;

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

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

9 (4) on request, the parking facility owner provides to
10 the owner or operator of the vehicle information on the name of the
11 towing company and vehicle storage facility used to remove and
12 store the vehicle 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 10. Section 2308.255(a), Occupations Code, is
19 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) on request, the parking facility owner provides to
6 the owner or operator of the vehicle information on the name of the
7 towing company and vehicle storage facility used to remove and
8 store the vehicle and the vehicle is:

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

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

13 SECTION 11. Section 2308.404(c), Occupations Code, is
14 amended to read as follows:

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

20 SECTION 12. Section 2308.405, Occupations Code, is amended
21 to read as follows:

22 Sec. 2308.405. CRIMINAL PENALTY [~~VIOLATION OF CHAPTER,~~
23 ~~FINE~~]. A person commits an offense if the person violates
24 [~~violation of~~] this chapter. An offense under this section is a
25 misdemeanor punishable by a fine of not less than \$500 or more than
26 \$1,500 unless it is shown on trial of the offense that the person
27 knowingly or intentionally violated this chapter, in which event

1 the offense is a Class B misdemeanor.

2 SECTION 13. Section 2308.451(b), Occupations Code, is
3 amended to read as follows:

4 (b) If in a hearing held under this chapter the court does
5 not find that a person or law enforcement agency authorized, with
6 probable cause, the removal and storage in a vehicle storage
7 facility of a vehicle, the towing company, vehicle storage
8 facility, [person] or law enforcement agency that authorized the
9 removal shall:

- 10 (1) pay the costs of the removal and storage; or
11 (2) reimburse the owner or operator for the cost of the
12 removal and storage paid by the owner or operator.

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

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

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

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

1 the vehicle.

2 SECTION 16. Section 2308.455, Occupations Code, is amended
3 to read as follows:

4 Sec. 2308.455. CONTENTS OF NOTICE. The notice under
5 Section 2308.454 must include:

6 (1) a statement of:

7 (A) the person's right to submit a request within
8 14 days for a court hearing to determine whether probable cause
9 existed to remove the vehicle;

10 (B) the information that a request for a hearing
11 must contain; and

12 (C) any filing fee for the hearing;

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

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

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

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

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

27 (a) Except as provided by Subsections [~~Subsection~~] (c) and

1 (c-1), a person entitled to a hearing under this chapter must
2 deliver a written request for the hearing to the court before the
3 14th day after the date the vehicle was removed and placed in the
4 vehicle storage facility, excluding Saturdays, Sundays, and legal
5 holidays.

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

12 SECTION 18. Sections 2308.458(a) and (b), Occupations Code,
13 are amended to read as follows:

14 (a) A hearing under this chapter shall be held before the
15 21st calendar [~~14th working~~] day after the date the court receives
16 the request for the hearing.

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

26 SECTION 19. Section 2308.460, Occupations Code, is amended
27 to read as follows:

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

4 (b) The department shall suspend a license holder's license
5 on the license holder's failure to pay a final judgment awarded to
6 an owner or operator of a vehicle before the 60th day after the date
7 of the final judgment. The department must provide notice of the
8 suspension to the license holder at least 30 days before the date
9 the license is suspended.

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

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

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

22 SECTION 20. Section 2303.159(a), Occupations Code, is
23 amended to read as follows:

24 (a) The operator of a vehicle storage facility shall accept
25 payment by an electronic check, debit card, or credit card for any
26 charge associated with delivery or storage of a vehicle. The
27 operator of a vehicle storage facility may not refuse to release a

1 vehicle based on the inability of the facility to accept payment by
2 electronic check, debit card, or credit card of a fee or charge
3 associated with delivery or storage of the vehicle. This
4 subsection does not apply if the operator, through no fault of the
5 operator, is unable to accept the electronic check, debit card, or
6 credit card because of a power outage or machine malfunction. The
7 facility shall conspicuously post a sign that states: "This vehicle
8 storage facility must accept payment by an electronic check, credit
9 card, or debit card for any fee or charge associated with delivery
10 or storage of a vehicle."

11 SECTION 21. Not later than September 1, 2010, the Texas
12 Commission of Licensing and Regulation shall adopt the rules
13 necessary to implement the changes in law made by this Act,
14 including rules on the maximum amount of fees that may be charged
15 for private property tows.

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

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

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

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