

1-1 By: Hinojosa S.B. No. 1431
1-2 (In the Senate - Filed March 6, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; April 15, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 April 15, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1431 By: Shapleigh

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 by a peace officer under Section 545.305
1-26 or 545.3051, Transportation Code.

1-27 (6) "Nonconsent tow" means any tow of a motor vehicle
1-28 that is not a consent tow, including:

1-29 (A) an incident management tow; and

1-30 (B) a private property tow.

1-31 (7-a) "Parking facility authorized agent" means an
1-32 employee or agent of a parking facility owner with the authority to:

1-33 (A) authorize the removal of a vehicle from the
1-34 parking facility on behalf of the parking facility owner; and

1-35 (B) accept service on behalf of the parking
1-36 facility owner of a notice of hearing requested under this chapter.

1-37 (8) "Parking facility owner" means:

1-38 (A) an individual, corporation, partnership,
1-39 limited partnership, limited liability company, association,
1-40 trust, or other legal entity owning or operating ~~[owner or operator~~
1-41 ~~of] a parking facility~~ ~~[, including a lessee, employee, or agent of~~
1-42 ~~an owner or operator];~~

1-43 (B) a property owners' association having
1-44 control under a dedicatory instrument, as that term is defined in
1-45 Section 202.001, Property Code, over assigned or unassigned parking
1-46 areas; or

1-47 (C) a property owner having an exclusive right
1-48 under a dedicatory instrument, as that term is defined in Section
1-49 202.001, Property Code, to use a parking space.

1-50 (8-a) "Private property tow" means any tow of a
1-51 vehicle authorized by a parking facility owner.

1-52 SECTION 2. Subchapter B, Chapter 2308, Occupations Code, is
1-53 amended by adding Section 2308.0575 to read as follows:

1-54 Sec. 2308.0575. RULES ON FEES; STUDY; CONFIDENTIAL
1-55 INFORMATION. (a) To protect the public health and safety, the
1-56 commission by rule shall establish:

1-57 (1) the fees that may be charged in connection with a
1-58 private property tow;

1-59 (2) the maximum amount that may be charged for fees,
1-60 other than tow fees, that may be assessed by a towing company in
1-61 connection with a private property tow; and

1-62 (3) a maximum amount that may be charged for the
1-63 following private property tows:

2-1 (A) standard light-duty tows of motor vehicles
2-2 with a gross weight rating of 10,000 pounds or less;

2-3 (B) medium-duty tows of motor vehicles with a
2-4 gross weight rating of more than 10,000 pounds, but less than 25,000
2-5 pounds; and

2-6 (C) heavy-duty tows of motor vehicles with a
2-7 gross weight rating that exceeds 25,000 pounds.

2-8 (b) In adopting rules under Subsection (a), the commission
2-9 shall:

2-10 (1) consider private property towing fee studies
2-11 conducted by municipalities in this state; and

2-12 (2) conduct studies of private property towing fees
2-13 that analyze cost of service by company, the consumer price index,
2-14 geographic area, and individual cost components.

2-15 (c) The commission may structure the maximum amounts that
2-16 may be charged for private property tows based on hourly or flat
2-17 fees or by geographic location.

2-18 (d) The commission shall maintain the confidentiality of
2-19 information contained in a study conducted under this section that
2-20 is claimed to be confidential for competitive purposes and may not
2-21 release information that identifies a person or company. The
2-22 confidential information is exempt from disclosure under Chapter
2-23 552, Government Code.

2-24 (e) To protect the confidentiality of the information, the
2-25 commission shall aggregate the information to the maximum extent
2-26 possible considering the purpose of the study.

2-27 SECTION 3. Section 2308.060, Occupations Code, is amended
2-28 to read as follows:

2-29 Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The
2-30 advisory board shall provide advice and recommendations to the
2-31 department on technical matters relevant to the administration and
2-32 enforcement of this chapter, including examination content,
2-33 licensing standards, ~~and~~ continuing education requirements, and
2-34 maximum amounts that may be charged for fees related to private
2-35 property tows.

2-36 SECTION 4. Section 2308.204, Occupations Code, is amended
2-37 to read as follows:

2-38 Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS.
2-39 ~~[(a)]~~ In an area in which no political subdivision regulates the
2-40 fees that may be charged or collected in connection with ~~[for]~~ a
2-41 nonconsent tow ~~[from private property]~~, a towing company may charge
2-42 and collect fees ~~[a fee]~~ for the tow of a motor vehicle ~~[from~~
2-43 ~~private property]~~ in an amount not to exceed the maximum amount
2-44 authorized by commission rule ~~[an amount equal to 150 percent of the~~
2-45 ~~fee that the towing company would have been authorized to charge for~~
2-46 ~~a nonconsent tow made at the request of a peace officer of the~~
2-47 ~~political subdivision in which the private property is located].~~

2-48 ~~[(b) A towing company may charge and collect a fee for the~~
2-49 ~~tow of a vehicle, with a gross vehicle weight rating in excess of~~
2-50 ~~26,000 pounds, from private property in an amount not to exceed an~~
2-51 ~~amount equal to 125 percent of the fee that the towing company would~~
2-52 ~~have been authorized to charge for a nonconsent tow made at the~~
2-53 ~~request of a peace officer of the political subdivision in which the~~
2-54 ~~private property is located.]~~

2-55 SECTION 5. Section 2308.206, Occupations Code, is amended
2-56 by adding Subsections (f) and (g) to read as follows:

2-57 (f) A license or permit holder may not charge a fee related
2-58 to a nonconsent tow that is not listed in the schedule most recently
2-59 submitted to the department under this section.

2-60 (g) The department may require a license or permit holder
2-61 that has violated Subsection (e) or (f) to reimburse the vehicle
2-62 owner or operator for the charges.

2-63 SECTION 6. Section 2308.208, Occupations Code, is amended
2-64 to read as follows:

2-65 Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED
2-66 VEHICLES AND TOWING OF MOTOR VEHICLES. A municipality may adopt an
2-67 ordinance that is identical to this chapter or that imposes
2-68 additional requirements that exceed the minimum standards of this
2-69 chapter but may not adopt an ordinance conflicting with this

3-1 chapter.

3-2 SECTION 7. Subsection (a), Section 2308.252, Occupations
3-3 Code, is amended to read as follows:

3-4 (a) A parking facility owner may, without the consent of the
3-5 owner or operator of an unauthorized vehicle, cause the vehicle and
3-6 any property on or in the vehicle to be removed and stored at a
3-7 vehicle storage facility at the vehicle owner's or operator's
3-8 expense if:

3-9 (1) signs that comply with Subchapter G prohibiting
3-10 unauthorized vehicles are located on the parking facility at the
3-11 time of towing and for the preceding 24 hours and remain installed
3-12 at the time of towing;

3-13 (2) the owner or operator of the vehicle has received
3-14 actual notice from the parking facility owner that the vehicle will
3-15 be towed at the vehicle owner's or operator's expense if it is in or
3-16 not removed from an unauthorized space;

3-17 (3) the parking facility owner gives notice to the
3-18 owner or operator of the vehicle under Subsection (b); or

3-19 (4) the parking facility owner has provided to the
3-20 towing company written notice of the name of the parking facility
3-21 authorized agent and the vehicle is:

3-22 (A) left in violation of Section 2308.251 or
3-23 2308.253; or

3-24 (B) in or obstructing a portion of a paved
3-25 driveway or abutting public roadway used for entering or exiting
3-26 the facility.

3-27 SECTION 8. Subsection (a), Section 2308.255, Occupations
3-28 Code, is amended to read as follows:

3-29 (a) A towing company that is insured as provided by
3-30 Subsection (c) may, without the consent of an owner or operator of
3-31 an unauthorized vehicle, remove and store the vehicle at a vehicle
3-32 storage facility at the expense of the owner or operator of the
3-33 vehicle if:

3-34 (1) the towing company has received written
3-35 verification from the parking facility owner that:

3-36 (A) the parking facility owner has installed the
3-37 signs required by Section 2308.252(a)(1); or

3-38 (B) the owner or operator received notice under
3-39 Section 2308.252(a)(2) or the parking facility owner gave notice
3-40 complying with Section 2308.252(a)(3); or

3-41 (2) the parking facility owner has provided to the
3-42 towing company written notice of the name of the parking facility
3-43 authorized agent and the vehicle is:

3-44 (A) left in violation of Section 2308.251; or

3-45 (B) in or obstructing a portion of a paved
3-46 driveway or abutting public roadway used for entering or exiting
3-47 the facility and the removal is approved by a peace officer.

3-48 SECTION 9. Subsection (c), Section 2308.404, Occupations
3-49 Code, is amended to read as follows:

3-50 (c) A towing company or parking facility owner who
3-51 intentionally, knowingly, or recklessly violates this chapter is
3-52 liable to the owner or operator of the vehicle that is the subject
3-53 of the violation for \$1,000 [~~\$300~~] plus three times the amount of
3-54 fees assessed in the vehicle's removal, towing, or storage.

3-55 SECTION 10. Section 2308.405, Occupations Code, is amended
3-56 to read as follows:

3-57 Sec. 2308.405. CRIMINAL PENALTY [~~VIOLATION OF CHAPTER,~~
3-58 ~~FINE~~]. A person commits an offense if the person violates
3-59 [violation of] this chapter. An offense under this section is a
3-60 Class B misdemeanor [~~punishable by a fine of not less than \$500 or~~
3-61 ~~more than \$1,500~~].

3-62 SECTION 11. Subsection (b), Section 2308.451, Occupations
3-63 Code, is amended to read as follows:

3-64 (b) If in a hearing held under this chapter the court does
3-65 not find that a person or law enforcement agency authorized, with
3-66 probable cause, the removal and storage in a vehicle storage
3-67 facility of a vehicle, the parking facility owner [~~person~~] or law
3-68 enforcement agency that authorized the removal shall:

3-69 (1) pay the costs of the removal and storage; or

4-1 (2) reimburse the owner or operator for the cost of the
4-2 removal and storage paid by the owner or operator.

4-3 SECTION 12. Section 2308.454, Occupations Code, is amended
4-4 by adding Subsection (c) to read as follows:

4-5 (c) If the towing company or vehicle storage facility that
4-6 received the payment fails to furnish to the owner or operator of
4-7 the vehicle the name, address, and telephone number of the parking
4-8 facility owner or law enforcement agency that authorized the
4-9 removal of the vehicle, the towing company or vehicle storage
4-10 facility that received the payment is liable if the court, after a
4-11 hearing, does not find probable cause for the removal and storage of
4-12 the vehicle.

4-13 SECTION 13. Section 2308.455, Occupations Code, is amended
4-14 to read as follows:

4-15 Sec. 2308.455. CONTENTS OF NOTICE. The notice under
4-16 Section 2308.454 must include:

4-17 (1) a statement of:
4-18 (A) the person's right to submit a request within
4-19 14 days for a court hearing to determine whether probable cause
4-20 existed to remove the vehicle;

4-21 (B) the information that a request for a hearing
4-22 must contain; and

4-23 (C) any filing fee for the hearing;

4-24 (2) the name, address, and telephone number of the
4-25 towing company that removed the vehicle;

4-26 (3) the name, address, and telephone number of the
4-27 vehicle storage facility in which the vehicle was placed;

4-28 (4) the name, street address including city, state,
4-29 and zip code, and telephone number of the person, parking facility
4-30 [property] owner, or law enforcement agency that authorized the
4-31 removal of the vehicle; and

4-32 (5) the name, address, and telephone number of the
4-33 justice court having jurisdiction in the precinct in which the
4-34 vehicle storage facility is located.

4-35 SECTION 14. Section 2308.456, Occupations Code, is amended
4-36 by amending Subsection (a) and adding Subsection (c-1) to read as
4-37 follows:

4-38 (a) Except as provided by Subsections [~~Subsection~~] (c) and
4-39 (c-1), a person entitled to a hearing under this chapter must
4-40 deliver a written request for the hearing to the court before the
4-41 14th day after the date the vehicle was removed and placed in the
4-42 vehicle storage facility, excluding Saturdays, Sundays, and legal
4-43 holidays.

4-44 (c-1) The 14-day period for requesting a hearing under
4-45 Subsection (a) does not begin until the date on which the towing
4-46 company or vehicle storage facility provides to the vehicle owner
4-47 or operator the information necessary for the vehicle owner or
4-48 operator to complete the material for the request for hearing
4-49 required under Subsections (b)(2)-(6).

4-50 SECTION 15. Subsection (b), Section 2308.458, Occupations
4-51 Code, is amended to read as follows:

4-52 (b) The court shall notify the person who requested the
4-53 hearing, the parking facility owner [~~person~~] or law enforcement
4-54 agency that authorized the removal of the vehicle, and the vehicle
4-55 storage facility in which the vehicle was placed of the date, time,
4-56 and place of the hearing in a manner provided by Rule 21a, Texas
4-57 Rules of Civil Procedure. The notice of the hearing to the parking
4-58 facility owner [~~person~~] or law enforcement agency that authorized
4-59 the removal of the vehicle shall include a copy of the request for
4-60 hearing.

4-61 SECTION 16. Section 2308.460, Occupations Code, is amended
4-62 to read as follows:

4-63 Sec. 2308.460. ENFORCEMENT OF AWARD. (a) An award under
4-64 this chapter may be enforced by any means available for the
4-65 enforcement of a judgment for a debt.

4-66 (b) The department shall suspend a license holder's license
4-67 on the license holder's failure to pay a final judgment awarded to
4-68 an owner or operator of a vehicle before the 60th day after the date
4-69 of the final judgment.

5-1 (c) The owner or operator of the vehicle shall submit a
5-2 certified copy of the final judgment to the department.

5-3 (d) On receipt of the certified copy of the unpaid final
5-4 judgment, the department shall disqualify a person from renewing a
5-5 license or permit or deny the person the opportunity of taking a
5-6 licensing examination on the grounds that the person, towing
5-7 company, or vehicle storage facility has not paid a final judgment
5-8 awarded to an owner or operator of a vehicle.

5-9 (e) The department shall reinstate the license on
5-10 submission of evidence satisfactory to the department of payment of
5-11 the final judgment by the person, towing company, or vehicle
5-12 storage facility.

5-13 SECTION 17. Subsection (a), Section 2303.159, Occupations
5-14 Code, is amended to read as follows:

5-15 (a) The operator of a vehicle storage facility shall accept
5-16 payment by an electronic check, debit card, or credit card for any
5-17 charge associated with delivery or storage of a vehicle. Except as
5-18 provided by this subsection, the operator of a vehicle storage
5-19 facility may not collect a fee for any charge associated with
5-20 delivery or storage of a vehicle from a person who offers to pay the
5-21 charge with an electronic check, debit card, or credit card form of
5-22 payment that the operator is not equipped to accept. This
5-23 subsection does not apply if the operator, through no fault of the
5-24 operator, is unable to accept the electronic check, debit card, or
5-25 credit card because of a power outage or a machine malfunction.

5-26 SECTION 18. Not later than April 1, 2010, the Texas
5-27 Commission of Licensing and Regulation shall adopt the rules
5-28 necessary to implement the changes in law made by this Act,
5-29 including rules on the maximum amount of fees that may be charged
5-30 for private property tows.

5-31 SECTION 19. (a) The change in law made by this Act to
5-32 Section 2308.405, Occupations Code, applies only to an offense
5-33 committed on or after the effective date of this Act. For purposes
5-34 of this section, an offense is committed before the effective date
5-35 of this Act if any element of the offense occurs before that date.

5-36 (b) An offense committed before the effective date of this
5-37 Act is covered by the law in effect when the offense was committed,
5-38 and the former law is continued in effect for that purpose.

5-39 SECTION 20. (a) Except as provided by Subsection (b) of
5-40 this section, this Act takes effect September 1, 2009.

5-41 (b) Section 2308.204, Occupations Code, as amended by this
5-42 Act, takes effect May 1, 2010.

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