

By: Whitmire

S.B. No. 2153

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the booting of vehicles by private entities in parking
3 facilities; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Chapter 2308, Occupations Code,
6 is amended to read as follows:

7 CHAPTER 2308. VEHICLE TOWING AND BOOTING

8 SECTION 2. Section 2308.001, Occupations Code, is amended
9 to read as follows:

10 Sec. 2308.001. SHORT TITLE. This chapter may be cited as
11 the Texas Towing and Booting Act.

12 SECTION 3. Section 2308.002, Occupations Code, is amended
13 by amending Subdivision (1) and adding Subdivisions (1-a), (1-b),
14 and (1-c) to read as follows:

15 (1) "Advisory board" means the Towing, ~~and~~ Storage,
16 and Booting Advisory Board.

17 (1-a) "Boot" means a lockable road wheel clamp or
18 similar vehicle immobilization device that is designed to
19 immobilize a parked vehicle and prevent its movement until the
20 device is unlocked or removed.

21 (1-b) "Booting company" means a person that controls,
22 installs, or directs the installation and removal of one or more
23 boots.

24 (1-c) "Boot operator" means an individual who installs

1 or removes a boot on or from a vehicle.

2 SECTION 4. Subchapter A, Chapter 2308, Occupations Code, is
3 amended by adding Section 2308.004 to read as follows:

4 Sec. 2308.004. EXEMPTION. (a) This chapter does not apply
5 to a person who, while exercising a statutory or contractual lien
6 right with regard to a vehicle:

7 (1) installs or removes a boot; or

8 (2) controls, installs, or directs the installation
9 and removal of one or more boots.

10 (b) This chapter does not apply to a commercial office
11 building owner or manager who installs or removes a boot in the
12 building's parking facility.

13 SECTION 5. The heading to Section 2308.051, Occupations
14 Code, is amended to read as follows:

15 Sec. 2308.051. TOWING, ~~AND~~ STORAGE, AND BOOTING ADVISORY
16 BOARD.

17 SECTION 6. Subsection (a), Section 2308.051, Occupations
18 Code, is amended to read as follows:

19 (a) The advisory board consists of the following members
20 appointed by the presiding officer of the commission with the
21 approval of the commission:

22 (1) one representative of a towing company operating
23 in a county with a population of less than one million;

24 (2) one representative of a towing company operating
25 in a county with a population of one million or more;

26 (3) one owner of a vehicle storage facility located in
27 a county with a population of less than one million;

1 (4) one owner of a vehicle storage facility located in
2 a county with a population of one million or more;

3 (5) one parking facility owner;

4 (6) one law enforcement officer from a county with a
5 population of less than one million;

6 (7) one law enforcement officer from a county with a
7 population of one million or more; ~~and~~

8 (8) one representative of property and casualty
9 insurers who write automobile insurance in this state; and

10 (9) one representative of a booting company.

11 SECTION 7. Subsection (a), Section 2308.057, Occupations
12 Code, is amended to read as follows:

13 (a) The commission shall adopt rules for permitting tow
14 trucks and licensing towing operators, ~~and~~ towing companies,
15 booting companies, and boot operators.

16 SECTION 8. Section 2308.151, Occupations Code, is amended
17 to read as follows:

18 Sec. 2308.151. LICENSE REQUIRED. Unless the person holds
19 an appropriate license under this subchapter, a person may not:

20 (1) perform towing operations; ~~or~~

21 (2) operate a towing company;

22 (3) perform booting operations; or

23 (4) operate a booting company.

24 SECTION 9. Subchapter D, Chapter 2308, Occupations Code, is
25 amended by adding Sections 2308.1555 and 2308.1556 to read as
26 follows:

27 Sec. 2308.1555. BOOT OPERATOR'S LICENSE. (a) A boot

1 operator's license is required to install or remove a boot from a
2 vehicle.

3 (b) An applicant for a boot operator's license must be at
4 least 18 years of age.

5 Sec. 2308.1556. BOOTING COMPANY LICENSE. (a) A booting
6 company license is required for a person to operate a booting
7 company.

8 (b) To be eligible for a booting company license, an
9 applicant must submit evidence that the applicant is covered by:

10 (1) a general liability insurance policy on a broad
11 form with:

12 (A) a combined single limit for bodily injury and
13 property damage for each occurrence of at least \$500,000; and

14 (B) an aggregate limit for all occurrences for
15 each policy year of at least \$500,000; and

16 (2) an automobile liability insurance policy covering
17 the applicant and the applicant's employees for vehicles owned,
18 hired, or otherwise used in the applicant's business, with a
19 combined single limit for each occurrence of at least \$500,000.

20 SECTION 10. The heading to Subchapter E, Chapter 2308,
21 Occupations Code, is amended to read as follows:

22 SUBCHAPTER E. LOCAL REGULATION OF TOWING AND BOOTING

23 SECTION 11. Subchapter E, Chapter 2308, Occupations Code,
24 is amended by adding Section 2308.2085 to read as follows:

25 Sec. 2308.2085. MUNICIPAL ORDINANCE REGULATING BOOTING
26 COMPANIES AND OPERATORS. (a) A municipality may adopt an
27 ordinance that is identical to the booting provisions in this

1 chapter or that imposes additional requirements that exceed the
2 minimum standards of the booting provisions in this chapter but may
3 not adopt an ordinance that conflicts with the booting provisions
4 in this chapter.

5 (b) A municipality may regulate the fees that may be charged
6 in connection with the booting of a vehicle, including associated
7 parking fees.

8 (c) A municipality may require booting companies to obtain a
9 permit to operate in the municipality.

10 SECTION 12. Subchapter F, Chapter 2308, Occupations Code,
11 is amended by adding Section 2308.257 to read as follows:

12 Sec. 2308.257. BOOTING OF UNAUTHORIZED VEHICLE. (a) A
13 parking facility owner may, without the consent of the owner or
14 operator of an unauthorized vehicle, cause a boot to be installed on
15 the vehicle in the parking facility if signs that comply with
16 Subchapter G prohibiting unauthorized vehicles are located on the
17 parking facility at the time of the booting and for the preceding 24
18 hours and remain installed at the time of the booting.

19 (b) A boot operator that installs a boot on a vehicle must
20 affix a conspicuous notice to the vehicle's front windshield or
21 driver's side window stating:

22 (1) that the vehicle has been booted and damage may
23 occur if the vehicle is moved;

24 (2) the date and time the boot was installed;

25 (3) the name, address, and telephone number of the
26 booting company;

27 (4) a telephone number that is answered 24 hours a day

1 to enable the owner or operator of the vehicle to arrange for
2 removal of the boot;

3 (5) the amount of the fee for removal of the boot and
4 any associated parking fees; and

5 (6) notice of the right of a vehicle owner or vehicle
6 operator to a hearing under Subchapter J.

7 (c) On removal of a boot, the boot operator shall provide a
8 receipt to the vehicle owner or operator stating:

9 (1) the name of the person who removed the boot;

10 (2) the date and time the boot was removed;

11 (3) the name of the person to whom the vehicle was
12 released;

13 (4) the amount of fees paid for removal of the boot and
14 any associated parking fees; and

15 (5) the right of the vehicle owner or operator to a
16 hearing under Subchapter J.

17 (d) The booting company shall maintain a copy of the receipt
18 at its place of business for a period of three years. A peace
19 officer has the right, on request, to inspect and copy the records
20 to determine compliance with the requirements of this section.

21 (e) A booting company shall accept payment by an electronic
22 check, debit card, or credit card for any fee or charge associated
23 with the removal of a boot. A booting company may not collect a fee
24 for any charge associated with the removal of a boot from a person
25 who offers to pay the charge with an electronic check, debit card,
26 or credit card form of payment that the booting company is not
27 equipped to accept.

1 SECTION 13. Section 2308.301, Occupations Code, is amended
2 to read as follows:

3 Sec. 2308.301. GENERAL REQUIREMENTS FOR SIGN PROHIBITING
4 UNAUTHORIZED VEHICLES. (a) Except as provided by Subsection
5 (a)(2)(B) and Section 2308.304 or 2308.305, an unauthorized vehicle
6 may not be towed under Section 2308.252(a)(1) or booted under
7 Section 2308.257 unless a sign prohibiting unauthorized vehicles on
8 a parking facility is:

9 (1) facing and conspicuously visible to the driver of
10 a vehicle that enters the facility;

11 (2) located:

12 (A) on the right or left side of each driveway or
13 curb-cut through which a vehicle can enter the facility, including
14 an entry from an alley abutting the facility; or

15 (B) at intervals along the entrance so that no
16 entrance is farther than 25 feet from a sign if:

17 (i) curbs, access barriers, landscaping, or
18 driveways do not establish definite vehicle entrances onto a
19 parking facility from a public roadway other than an alley; and

20 (ii) the width of an entrance exceeds 35
21 feet;

22 (3) permanently mounted on a pole, post, permanent
23 wall, or permanent barrier;

24 (4) installed on the parking facility; and

25 (5) installed so that the bottom edge of the sign is no
26 lower than five feet and no higher than eight feet above ground
27 level.

1 (b) Except as provided by Section 2308.305, an unauthorized
2 vehicle may be towed under Section 2308.252(a)(1) or booted under
3 Section 2308.257 only if each sign prohibiting unauthorized
4 vehicles:

5 (1) is made of weather-resistant material;

6 (2) is at least 18 inches wide and 24 inches tall;

7 (3) contains the international symbol for towing
8 vehicles;

9 (4) contains a statement describing who may park in
10 the parking facility and prohibiting all others;

11 (5) bears the words "Unauthorized Vehicles Will Be
12 Towed or Booted at Owner's or Operator's Expense";

13 (6) contains a statement of the days and hours of
14 towing and booting enforcement; and

15 (7) contains a number, including the area code, of a
16 telephone that is answered 24 hours a day to enable an owner or
17 operator of a vehicle to locate a towed ~~[the]~~ vehicle or to arrange
18 for removal of a boot from a vehicle.

19 SECTION 14. Subsections (c) and (e), Section 2308.302,
20 Occupations Code, are amended to read as follows:

21 (c) The portion of the sign immediately below the
22 international towing symbol must contain the words "Towing And
23 Booting Enforced" ~~[or the information provided by Section~~
24 ~~2308.301(b)(4)]~~ in lettering at least two inches in height. The
25 lettering on this portion of the sign must consist of white letters
26 on a bright red background.

27 (e) The bottommost portion of the sign must contain the

1 telephone numbers [~~number~~] required by Section 2308.301(b), in
2 lettering at least one inch in height and may, if the facility owner
3 chooses or if an applicable municipal ordinance requires, include
4 the name and address of the storage facility to which an
5 unauthorized vehicle will be removed. The lettering on this
6 portion of the sign must consist of white letters on a bright red
7 background.

8 SECTION 15. The heading to Subchapter I, Chapter 2308,
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER I. REGULATION OF TOWING COMPANIES, BOOTING COMPANIES,
11 AND PARKING FACILITY OWNERS

12 SECTION 16. Section 2308.401, Occupations Code, is amended
13 to read as follows:

14 Sec. 2308.401. PARKING FACILITY OWNER PROHIBITED FROM
15 RECEIVING FINANCIAL GAIN FROM TOWING COMPANY OR BOOTING COMPANY.

16 (a) A parking facility owner may not directly or indirectly accept
17 anything of value from:

18 (1) a towing company in connection with the removal of
19 a vehicle from a parking facility; or

20 (2) a booting company in connection with booting a
21 vehicle in a parking facility.

22 (b) A parking facility owner may not have a direct or
23 indirect monetary interest in:

24 (1) a towing company that for compensation removes
25 unauthorized vehicles from a parking facility in which the parking
26 facility owner has an interest; or

27 (2) a booting company that for compensation boots

1 vehicles in a parking facility in which the parking facility owner
2 has an interest.

3 SECTION 17. Section 2308.402, Occupations Code, is amended
4 to read as follows:

5 Sec. 2308.402. TOWING COMPANY AND BOOTING COMPANY
6 PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER.

7 (a) A towing company or booting company may not directly or
8 indirectly give anything of value to a parking facility owner in
9 connection with:

10 (1) the removal of a vehicle from a parking facility;
11 or

12 (2) the booting of a vehicle in a parking facility.

13 (b) A towing company or booting company may not have a
14 direct or indirect monetary interest in a parking facility:

15 (1) from which the towing company for compensation
16 removes unauthorized vehicles; or

17 (2) in which the booting company for compensation
18 installs boots on unauthorized vehicles.

19 SECTION 18. The heading to Section 2308.404, Occupations
20 Code, is amended to read as follows:

21 Sec. 2308.404. CIVIL LIABILITY OF TOWING COMPANY, BOOTING
22 COMPANY, OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER.

23 SECTION 19. Subsections (a), (b), and (c), Section
24 2308.404, Occupations Code, are amended to read as follows:

25 (a) A towing company, booting company, or parking facility
26 owner who violates this chapter is liable to the owner or operator
27 of the vehicle that is the subject of the violation for:

1 (1) damages arising from the removal, ~~[or]~~ storage, or
2 booting of the vehicle; and

3 (2) towing, ~~[or]~~ storage, or booting fees assessed in
4 connection with the vehicle's removal, ~~[or]~~ storage, or booting.

5 (b) A vehicle's owner or operator is not required to prove
6 negligence of a parking facility owner, ~~[or]~~ towing company, or
7 booting company to recover under Subsection (a).

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

14 SECTION 20. The heading to Subchapter J, Chapter 2308,
15 Occupations Code, is amended to read as follows:

16 SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED OR BOOTED
17 VEHICLES

18 SECTION 21. The heading to Section 2308.451, Occupations
19 Code, is amended to read as follows:

20 Sec. 2308.451. PAYMENT OF COST OF REMOVAL, ~~[AND]~~ STORAGE,
21 AND BOOTING OF VEHICLE.

22 SECTION 22. Section 2308.451, Occupations Code, is amended
23 by adding Subsections (c) and (d) to read as follows:

24 (c) If in a hearing held under this chapter the court finds
25 that a person authorized, with probable cause, the booting of a
26 vehicle in a parking facility, the person who requested the hearing
27 shall pay the costs of the booting.

1 (d) If in a hearing held under this chapter the court does
2 not find that a person authorized, with probable cause, the booting
3 of a vehicle, the person that authorized the booting shall:

4 (1) pay the costs of the booting and any related
5 parking fees; or

6 (2) reimburse the owner or operator for the cost of the
7 booting and any related parking fees paid by the owner or operator.

8 SECTION 23. Section 2308.452, Occupations Code, is amended
9 to read as follows:

10 Sec. 2308.452. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO
11 HEARING. The owner or operator of a vehicle that has been removed
12 and placed in a vehicle storage facility or booted without the
13 consent of the owner or operator of the vehicle is entitled to a
14 hearing on whether probable cause existed for the removal and
15 placement or booting.

16 SECTION 24. Section 2308.453, Occupations Code, is amended
17 to read as follows:

18 Sec. 2308.453. JURISDICTION. A hearing under this chapter
19 shall be in the justice court having jurisdiction in:

20 (1) the precinct in which the vehicle storage facility
21 is located; or

22 (2) for booted vehicles, the precinct in which the
23 parking facility is located.

24 SECTION 25. Section 2308.454, Occupations Code, is amended
25 by adding Subsections (c) and (d) to read as follows:

26 (c) If before a hearing held under this chapter the owner or
27 operator of a vehicle pays the costs for removal of a boot, the

1 booting company shall at the time of payment give the owner or
2 operator written notice of the person's rights under this chapter.

3 (d) The booting operator that places a notice on a booted
4 vehicle under Section 2308.257 shall include with that notice a
5 notice of the person's rights under this chapter.

6 SECTION 26. Section 2308.455, Occupations Code, is amended
7 to read as follows:

8 Sec. 2308.455. CONTENTS OF NOTICE. The notice under
9 Section 2308.454 must include:

10 (1) a statement of:

11 (A) the person's right to submit a request within
12 14 days for a court hearing to determine whether probable cause
13 existed to remove, or install a boot on, the vehicle;

14 (B) the information that a request for a hearing
15 must contain; and

16 (C) any filing fee for the hearing;

17 (2) the name, address, and telephone number of the
18 towing company that removed the vehicle or the booting company that
19 booted the vehicle;

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

22 (4) the name, address, and telephone number of the
23 person, property owner, or law enforcement agency that authorized
24 the removal of the vehicle; and

25 (5) the name, address, and telephone number of the
26 justice court having jurisdiction in the precinct in which the
27 vehicle storage facility is located or, for booted vehicles, the

1 name, address, and telephone number of the justice court having
2 jurisdiction in the precinct in which the parking facility is
3 located.

4 SECTION 27. Subsections (a) and (b), Section 2308.456,
5 Occupations Code, are amended to read as follows:

6 (a) Except as provided by Subsection (c), a person entitled
7 to a hearing under this chapter must deliver a written request for
8 the hearing to the court before the 14th day after the date the
9 vehicle was removed and placed in the vehicle storage facility or
10 booted, excluding Saturdays, Sundays, and legal holidays.

11 (b) A request for a hearing must contain:

12 (1) the name, address, and telephone number of the
13 owner or operator of the vehicle;

14 (2) the location from which the vehicle was removed or
15 in which the vehicle was booted;

16 (3) the date when the vehicle was removed or booted;

17 (4) the name, address, and telephone number of the
18 person or law enforcement agency that authorized the removal or
19 booting;

20 (5) the name, address, and telephone number of the
21 vehicle storage facility in which the vehicle was placed;

22 (6) the name, address, and telephone number of the
23 towing company that removed the vehicle or of the booting company
24 that installed a boot on the vehicle;

25 (7) a copy of any receipt or notification that the
26 owner or operator received from the towing company, the booting
27 company, or the vehicle storage facility; and

1 (8) if the vehicle was removed from or booted in a
2 parking facility:

3 (A) one or more photographs that show the
4 location and text of any sign posted at the facility restricting
5 parking of vehicles; or

6 (B) a statement that no sign restricting parking
7 was posted at the parking facility.

8 SECTION 28. Section 2308.458, Occupations Code, is amended
9 by amending Subsections (b), (c), and (e) and adding Subsections
10 (b-2) and (c-1) to read as follows:

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

19 (b-2) The court shall notify the person who requested the
20 hearing for a booted vehicle, the parking facility in which the
21 vehicle was booted, and the booting company of the date, time, and
22 place of the hearing in a manner provided by Rule 21a, Texas Rules
23 of Civil Procedure. The notice of hearing to the person that
24 authorized the booting of the vehicle must include a copy of the
25 request for hearing.

26 (c) The issues in a hearing regarding a towed vehicle under
27 this chapter are:

1 (1) whether probable cause existed for the removal and
2 placement of the vehicle;

3 (2) whether a towing charge imposed or collected in
4 connection with the removal or placement of the vehicle was greater
5 than the amount authorized by the political subdivision under
6 Section 2308.201 or 2308.202;

7 (3) whether a towing charge imposed or collected in
8 connection with the removal or placement of the vehicle was greater
9 than the amount authorized under Section 2308.203 or 2308.204; or

10 (4) whether a towing charge imposed or collected in
11 connection with the removal or placement of the vehicle was greater
12 than the amount filed with the department under Section 2308.206.

13 (c-1) The issues in a hearing regarding a booted vehicle
14 under this chapter are:

15 (1) whether probable cause existed for the booting of
16 the vehicle; and

17 (2) whether a boot removal charge imposed or collected
18 in connection with the removal of the boot from the vehicle was
19 greater than the amount authorized by the political subdivision
20 under Section 2308.2085.

21 (e) The court may award:

22 (1) court costs to the prevailing party;

23 (2) the reasonable cost of photographs submitted under
24 Section 2308.456(b)(8) to a vehicle owner or operator who is the
25 prevailing party;

26 (3) an amount equal to the amount that the towing
27 charge or booting removal charge and associated parking fees

1 exceeded fees regulated by a political subdivision or authorized by
2 this code or by Chapter 2303; and

3 (4) reimbursement of fees paid for vehicle towing,
4 ~~and~~ storage, or removal of a boot.

5 SECTION 29. Subsection (a), Section 2308.505, Occupations
6 Code, is amended to read as follows:

7 (a) A person commits an offense if the person:

8 (1) violates an ordinance, resolution, order, rule, or
9 regulation of a political subdivision adopted under Section
10 2308.201, ~~or~~ 2308.202, or 2308.2085 for which the political
11 subdivision does not prescribe the penalty;

12 (2) charges or collects a fee in a political
13 subdivision that regulates the operation of tow trucks under
14 Section 2308.201 or 2308.202 or booting under Section 2308.2085
15 that is not authorized or is greater than the authorized amount of
16 the fee;

17 (3) charges or collects a fee greater than the amount
18 authorized under Section 2308.204;

19 (4) charges or collects a fee in excess of the amount
20 filed with the department under Section 2308.206;

21 (5) violates Section 2308.205; or

22 (6) violates a rule of the department applicable to a
23 tow truck, ~~and~~ towing company, or booting company.

24 SECTION 30. Section 2303.058, Occupations Code, is amended
25 to read as follows:

26 Sec. 2303.058. ADVISORY BOARD. The Towing, ~~and~~ Storage,
27 and Booting Advisory Board under Chapter 2308 shall advise the

1 commission in adopting vehicle storage rules under this chapter.

2 SECTION 31. Promptly after this Act takes effect, the
3 presiding officer of the Texas Commission of Licensing and
4 Regulation shall appoint to the Towing, Storage, and Booting
5 Advisory Board one representative of a booting company as required
6 by Subsection (a), Section 2308.051, Occupations Code, as amended
7 by this Act.

8 SECTION 32. This Act takes effect September 1, 2009.