

BILL ANALYSIS

Senate Research Center

H.B. 787
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, a law enforcement agency has the authority to take an abandoned motor vehicle, watercraft, or outboard motor into custody and provide for the public sale of the property if the current owner fails to claim the property. An abandoned aircraft, however, is not included among the motor vehicles a law enforcement agency is authorized to take into custody. Like abandoned motor vehicles and watercraft, abandoned planes and other aircraft are a nuisance and the sites on which the craft is located can become a junkyard if the vessel is not disposed of in a timely manner. These sites are often located near a residential community, consequently devaluing residential property.

H.B. 787 seeks to remedy this situation by adding "aircraft" to the current abandoned motor vehicle statute, authorizing law enforcement to take abandoned aircraft into custody, and amending the "junked vehicle" definition to include aircraft and watercraft.

This bill also amends the Texas Parks and Wildlife Code to authorize the Texas Parks and Wildlife Department to handle abandoned watercraft and vessels through the bonded title process. Currently, the only entity that can deal with abandoned boats is local law enforcement. The handling and disposing of abandoned boats can be time and resource intensive for local agencies, often times resulting in the failure to dispose of such vessels in a timely manner, if at all.

H.B. 787 amends current law relating to abandoned, wrecked, dismantled, discarded, and inoperable aircraft and vessels.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Parks and Wildlife Department in SECTION 2 (Section 31.0466, Parks and Wildlife Code) of this bill.

Rulemaking authority is expressly granted to Parks and Wildlife Commission in SECTION 2 (Section 31.0466, Parks and Wildlife Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.003, Parks and Wildlife Code, by adding Subdivision (17) to define "abandoned vessel or outboard motor."

SECTION 2. Amends Subchapter B-1, Chapter 31, Parks and Wildlife Code, by adding Section 31.0466, as follows:

Sec. 31.0466. TITLE FOR ABANDONED VESSEL; BOND. (a) Authorizes a person to apply for a certificate of title for an abandoned vessel or outboard motor found on the person's property.

(b) Authorizes the Texas Parks and Wildlife Department (TPWD) to cancel the certificate for the abandoned vessel or outboard motor and issue a new certificate to the applicant if the applicant:

(1) executes and files a bond with TPWD:

(A) in the form prescribed by TPWD;

(B) issued by a person authorized to act as a surety business in this state;

(C) in an amount equal to 1-1/2 times the value of the abandoned vessel or outboard motor as determined by TPWD;

(D) conditioned to indemnify all prior owners and lienholders and all subsequent purchasers of the abandoned vessel or outboard motor or persons who acquire a security interest in the vessel or outboard motor, and their successors in interest, against any expense, loss, or damage, including reasonable attorney's fees, resulting from the issuance of the certificate of title for the abandoned vessel or outboard motor; or a defect in or undisclosed security interest in the right, title, or interest of the applicant to or in the abandoned vessel or outboard motor;

(2) proves to the satisfaction of TPWD that:

(A) the abandoned vessel or outboard motor is not stolen;

(B) issuance of a certificate of title would not defraud the owner or a lienholder of the abandoned vessel or outboard motor;

(C) at least 30 days before the applicant applied for the certificate, the applicant contacted the applicant's local law enforcement agency through certified mail to report that the vessel or outboard motor is abandoned; and

(D) the local law enforcement agency has not taken the abandoned vessel or outboard motor into custody or informed the applicant of the agency's intent to take the abandoned vessel or outboard motor into custody; and

(3) posts notice of the certificate of title application in the manner and for a period of time designated by rule by TPWD.

(c) Provides that a person described by Subsection (b)(1)(D) has a right of action to recover on the bond for a breach of a condition of the bond described by Subsection (b)(1)(D). Prohibits the aggregate liability of the surety to all persons from exceeding the amount of the bond.

(d) Provides that a bond filed under this section expires on the third anniversary of the date the bond became effective. Requires TPWD to return an expired bond to the person who filed the bond unless TPWD has been notified of a pending action to recover on the bond.

(e) Requires TPWD, on return of a bond under Subsection (d) to issue a certificate of title to the person to whom the bond is returned.

(f) Provides that if an abandoned vessel or outboard motor is not claimed before TPWD issues a certificate of title under this section, the owner or lienholder waives all rights and interests in the abandoned vessel or outboard motor and consents to the cancellation of the certificate for the abandoned vessel or outboard motor.

(g) Provides that the applicant for the certificate of title for the abandoned vessel or outboard motor takes title free and clear of all liens and claims of ownership.

(h) Authorizes the Parks and Wildlife Commission, in addition to the situation described by Subsection (b)(2), to by rule define acceptable situations in which certificates of title may be issued after the filing of a bond under this section.

(i) Provides that this section does not apply to a vessel or outboard motor that is subject to a contract or lien under Chapter 59 (Self-Service Storage Facility Liens) or 70 (Miscellaneous Liens), Property Code.

SECTION 3. Amends Section 683.001, Transportation Code, by adding Subdivision (11), to define "aircraft."

SECTION 4. Amends Section 683.011, Transportation Code, as follows:

Sec. 683.011. **AUTHORITY TO TAKE ABANDONED MOTOR VEHICLE INTO CUSTODY.** (a) Authorizes a law enforcement agency may take into custody an abandoned motor vehicle, aircraft, watercraft, or outboard motor found on public or private property.

(b) Makes a conforming change.

SECTION 5. Amends Section 683.012, Transportation Code, by amending Subsections (a), (b), (c), and (d) and adding Subsection (a-1) as follows:

(a) Requires a law enforcement agency to send notice of abandonment to:

(1) the last known registered owner of each motor vehicle, aircraft, watercraft, or outboard motor taken into custody by the agency or for which a report is received under Section 683.031 (Garage Keeper's Duty: Abandoned Motor Vehicles); and

(2) each lienholder recorded under Chapter 501 (Certificate of Title Act) for the motor vehicle with the Federal Aviation Administration or the secretary of state for the aircraft; or under Chapter 31 (Water Safety), Parks and Wildlife Code, for the watercraft or outboard motor.

(a-1) Requires that a law enforcement agency that takes into custody an aircraft to contact the Federal Aviation Administration in the manner described by Section 22.901 (Disposal of Abandoned Aircraft) to attempt to identify the owner of the aircraft before sending the notice required by Subsection (a).

(b)-(d) Makes a conforming changes.

SECTION 6. Amends Section 683.013, Transportation Code, as follows:

Sec. 683.013. **STORAGE FEES.** Entitles a law enforcement agency or the agent of a law enforcement agency that takes into custody an abandoned motor vehicle, aircraft, watercraft, or outboard motor to reasonable storage fees:

(1) for not more than 10 days, beginning on the day the item is taken into custody and ending on the day the required notice is mailed; and

(2) beginning on the day after the day the agency mails notice and ending on the day accrued charges are paid and the vehicle, aircraft, watercraft, or outboard motor is removed.

SECTION 7. Amends Sections 683.014(a) and (c), Transportation Code, as follows:

(a) Provides that if an abandoned motor vehicle, aircraft, watercraft, or outboard motor is not claimed under Section 683.012:

(1) the owner or lienholder waives all rights and interests in the item and consents to the sale of the item by public auction or the transfer of the item, if a watercraft, as provided by Subsection (d); and

(2) the law enforcement agency may sell the item at a public auction, transfer the item, if a watercraft, as provided by Subsection (d), or use the item as provided by Section 683.016 (Law Enforcement Agency Use of Certain Abandoned Motor Vehicles).

(c) Provides that the purchaser of a motor vehicle, aircraft, watercraft, or outboard motor:

(1) takes title free and clear of all liens and claims of ownership;

(2) shall receive a sales receipt from the law enforcement agency; and

(3) is entitled to register the motor vehicle, aircraft, watercraft, or outboard motor with and receive a certificate of title from the appropriate authority.

SECTION 8. Amends Sections 683.015(a) and (c), Transportation Code, as follows:

(a) Entitles a law enforcement agency to reimbursement from the proceeds of the sale of an abandoned motor vehicle, aircraft, watercraft, or outboard motor for:

(1) the cost of the auction;

(2) towing, preservation, and storage fees resulting from the taking into custody; and

(3) the cost of notice or publication as required by Section 683.012.

(c) Requires that proceeds unclaimed by the owner or lienholder, after the period provided by Subsection (b) (relating to requiring the proceeds of the sale to be held for 90 days), be deposited in an account that may be used for the payment of auction, towing, preservation, storage, and notice and publication fees resulting from taking other vehicles, aircraft, watercraft, or outboard motors into custody if the proceeds from the sale of the other items are insufficient to meet those fees.

SECTION 9. Amends Section 683.071, Transportation Code, as follows:

Sec. 683.071. New heading: DEFINITION AND APPLICABILITY. (a) Creates this subsection from existing text. Redefines, in this subchapter, "junked vehicle."

(b) Provides that, for purposes of this subchapter, "junked vehicle" includes a motor vehicle, aircraft, or watercraft. Provides that this subchapter applies only to:

(1) a motor vehicle that does not have lawfully attached to it an unexpired license plate, and a valid motor vehicle inspection certificate;

(2) an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or

(3) a watercraft that does not have lawfully on board an expired certificate of number; and is not a watercraft described by Section 31.055 (Exceptions), Parks and Wildlife Code.

SECTION 10. Amends Section 683.074, Transportation Code, by amending Subsection (f) and adding Subsection (h), as follows:

(f) Requires the Texas Department of Motor Vehicles (TxDMV), on receipt of notice of removal of a motor vehicle under Subsection (b)(3) (relating to requiring that a notice identifying the vehicle or part of the vehicle be given to TxDMV not later than the fifth day after the date of removal), to immediately cancel the certificate of title issued for the vehicle.

(h) Requires TxDMV, on receipt of notice of removal of a watercraft under Subsection (b)(3), to notify TPWD of the removal. Requires TPWD, on receipt of the notice from TxDMV, to immediately cancel the certificate of title issued for the watercraft.

SECTION 11. Amends Section 683.076(d), Transportation Code, as follows:

(d) Requires that a resolution or order requiring removal of the nuisance, if the information is available at the location of the nuisance, include:

(1) for a motor vehicle, the vehicle's description, vehicle identification number, and license plate number;

(2) for an aircraft, the aircraft's description, and federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and

(3) for a watercraft, the watercraft's description, and identification number as set forth in the watercraft's certificate of number. Makes nonsubstantive changes.

SECTION 12. Effective date: September 1, 2011.