

## **BILL ANALYSIS**

C.S.H.B. 3510  
By: Hamilton  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A recently enacted law transferred regulation of vehicle towing operators and vehicle storage facilities from the Texas Department of Transportation to the Texas Department of Licensing and Regulation, in an effort to provide increased oversight and a better regulatory system for such businesses. According to interested parties, significant changes made since then to state laws regulating vehicle towing and storage, including statutes relating to vehicle booting, have resulted in the need to update and clarify those laws, as well as streamline certain regulatory processes. The goal of C.S.H.B. 3510 is to provide those revisions.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 5, 7, and 28 of this bill.

### **ANALYSIS**

C.S.H.B. 3510 amends the Occupations Code to exempt a vehicle received as a result of an incident management tow requested by a law enforcement agency, unless the law enforcement agency requests a report of incident management tows within the jurisdiction of the agency, from provisions requiring a vehicle storage facility accepting a towed vehicle to report certain information about the vehicle to local law enforcement. The bill provides for the meaning of "incident management tow" by reference.

C.S.H.B. 3510 establishes that, if a vehicle is not claimed by a person permitted to claim the vehicle or a law enforcement agency has not taken an action in response to a notice under state law relating to a garagekeeper's duty in regard to an abandoned motor vehicle before the 15th day after the date notice is mailed or published in accordance with notification requirements in state law, the vehicle is considered abandoned and the operator of the vehicle storage facility is required to send a second notice to the registered owner and the primary lienholder of the vehicle in compliance with the requirements in state law for a notice of abandonment sent by a law enforcement agency. The bill removes a provision of law requiring the operator of a vehicle storage facility to send a second notice to the registered owner and the primary lienholder of an unclaimed vehicle if the vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under provisions of law relating to abandoned motor vehicles before the 41st day after the date notice is mailed or published in accordance with notification requirements in state law.

C.S.H.B. 3510 specifies among the actions necessary for securing release of a towed vehicle from a vehicle storage facility the payment of charges for services regulated under the Vehicle Storage Facility Act or the Texas Towing and Booting Act, including charges paid for an incident management tow as defined by the Texas Towing and Booting Act. The bill includes a valid photo identification issued by a foreign government among the forms of valid photo identification acceptable for the purpose of securing release of a towed vehicle from a vehicle storage facility. The bill includes in the definition of "incident management tow" the removal of

a vehicle, cargo, and debris from an accident or incident scene. The bill specifies, in the definition of "parking facility," that the inclusion in the term of a parking area serving or adjacent to a home refers to a home that charges a fee for parking.

C.S.H.B. 3510 authorizes the Texas Commission of Licensing and Regulation to adopt different rules applicable to each type of permit or license for tow trucks, towing operators, towing companies, booting companies, and boot operators. The bill requires the commission by rule to adopt requirements for a consent tow, private property tow, and incident management tow. The bill requires a towing company to establish a drug testing policy for towing operators, rather than an alcohol and drug testing policy, and makes conforming changes.

C.S.H.B. 3510 amends the Texas Towing and Booting Act to include among the license renewal requirements for the holder of a towing and booting license submission of an application on a form prescribed by the executive director of the Texas Department of Licensing and Regulation (TDLR) and submission of evidence demonstrating compliance with the requirements for the license type as required by the act or commission rule. The bill makes these requirements applicable only to an application for renewal of a license made on or after September 1, 2011.

C.S.H.B. 3510 prohibits a license or permit holder from charging a fee for a private property tow that is greater than the fee for a private property tow established under the act or a fee for a private property tow authorized by a political subdivision. The bill prohibits a license or permit holder from charging a fee for a service related to a private property tow that is not included in the list of fees established under the act or by a political subdivision. The bill authorizes TDLR to require a license or permit holder to refund to a vehicle owner or operator the amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision or the total amount of the charges for a service not listed in the amounts established by commission rule or by a political subdivision. The bill specifies that provisions authorizing a parking facility owner to cause an unauthorized vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility without the consent of the vehicle's owner or operator at the owner's or operator's expense if certain signs that comply with state laws are posted at a specified time refer to signs that substantially comply with those laws.

C.S.H.B. 3510 authorizes a homeowner or tenant under a written lease agreement who does not charge for parking to authorize the removal of an unauthorized vehicle if the vehicle is blocking entry to or exit from the home or the driveway of the home and exempts such a removal from provisions of law relating to unattended vehicles on a parking facility of an apartment complex and the removal and storage of unauthorized vehicles.

C.S.H.B. 3510 specifies, in provisions authorizing certain insured towing companies to remove and store a vehicle without the owner's consent if on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle, that the vehicle is on a public roadway used for entering or exiting the facility, rather than abutting such a public roadway. The bill makes a provision of law authorizing a towing company to remove and store a vehicle from a parking facility without the vehicle owner's consent under certain conditions applicable to a booting operator's authorization to boot a vehicle. The bill requires a vehicle storage facility accepting a vehicle that is towed under the Texas Towing and Booting Act, within two hours after receiving the vehicle, to report certain information relating to the vehicle to the police department of the municipality from which the vehicle was towed or, if the vehicle was towed from a location that is not in a municipality with a police department, to the sheriff of the county from which the vehicle was towed. The bill exempts from this requirement an incident management tow requested by a law enforcement agency. The bill authorizes a law enforcement agency to request a report, in a manner prescribed by the law enforcement agency, of incident management tows within the jurisdiction of the agency.

C.S.H.B. 3510 includes alternative wording for signage required at a parking facility before an

unauthorized vehicle is authorized to be towed from or booted in a parking facility to reflect the fact that unauthorized vehicles will be towed at the owner's or operator's expense or that such vehicles will be booted at the owner's or operator's expense, as applicable. The bill amends the requirements for the format of related signage to include alternative wording on the signs indicating that towing is enforced or that booting is enforced, as applicable. The bill clarifies that prohibitions against a parking facility owner receiving financial gain from or being financially involved with a towing or booting company do not apply to a required sign provided by a towing or booting company to the parking facility owner.

C.S.H.B. 3510 amends Section 2308.451(c), Occupations Code, as added by Chapter 845 (S.B. 2153), Acts of the 81st Legislature, Regular Session, 2009, and the Occupations Code to include court costs and, at the discretion of the court, attorney's fees among the costs a person who requests a hearing under the act is required to pay if the court finds that a person or law enforcement agency authorized with probable cause a vehicle's removal and storage in a vehicle storage facility or the booting of a vehicle in a parking facility, as applicable.

C.S.H.B. 3510 reenacts and amends Section 2308.453, Occupations Code, as amended by Chapter 845 (S.B. 2153) and 1310 (H.B. 2571), Acts of the 81st Legislature, Regular Session, 2009, to require a hearing under the act relating to the towing of a motor vehicle the justice court having jurisdiction in the precinct in which the vehicle storage facility is located, rather than the precinct from which the motor vehicle was towed.

C.S.H.B. 3510 amends the Occupations Code to establish, in provisions requiring the court to notify certain parties regarding a hearing relating to a towed vehicle, that notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

C.S.H.B. 3510 establishes that failure of a party to participate in a hearing under the Texas Towing and Boating Act constitutes waiver of the party's right to appeal to a higher court. The bill establishes that an offense relating to violations of certain permitting, licensing, certification, and training requirements and an offense relating to towing or booting are enforceable by law enforcement.

C.S.H.B. 3510 requires the Texas Commission of Licensing and Regulation to adopt rules to implement the bill's provisions not later than January 1, 2012.

C.S.H.B. 3510 redesignates Section 2308.257, Occupations Code, as added by Chapter 757 (S.B. 702), Acts of the 81st Legislature, Regular Session, 2009, as Section 2308.2555, Occupations Code.

C.S.H.B. 3510 establishes that, to the extent of any conflict, this bill prevails over another bill of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes. The bill makes conforming changes.

C.S.H.B. 3510 repeals the following provisions of the Occupations Code:

- Section 2303.154(a-1)
- Section 2308.204
- Section 2308.206
- Section 2308.404(d)

The bill repeals Section 2308.256(a), Occupations Code, as amended by Chapter 1310 (H.B. 2571), Acts of the 81st Legislature, Regular Session, 2009, to conform to the repeal of Section 2308.256, Occupations Code, by Chapter 757 (S.B. 702), Acts of the 81st Legislature, Regular Session, 2009.

## **EFFECTIVE DATE**

September 1, 2011.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3510 differs from the original by exempting a vehicle received as a result of an incident management tow requested by a law enforcement agency, unless the law enforcement agency requests a report of incident management tows within the jurisdiction of the agency, from provisions requiring a vehicle storage facility accepting a towed vehicle to report certain information about the vehicle to local law enforcement, whereas the original exempts from such provisions a vehicle received as a result of an incident management tow requested by law enforcement without specifying exception. The substitute contains a provision not included in the original revising the requirements relating to the second notice the operator of a vehicle storage facility is required to meet if a vehicle is not claimed within a certain period of time.

C.S.H.B. 3510 differs from the original, in provisions setting out the actions necessary for securing release of a towed vehicle from a vehicle storage facility, by specifying that the charges paid are charges for services regulated under the Vehicle Storage Facility Act or the Texas Towing and Booting Act, rather than charges associated with delivery or storage of the vehicle, as in the original. The substitute contains provisions not included in the original redefining "incident management tow" and "parking facility."

C.S.H.B. 3510 contains provisions not included in the original authorizing the Texas Commission of Licensing and Regulation to adopt different rules applicable to each type of permit or license for tow trucks, towing operators, towing companies, booting companies, and boot operators and making a conforming change in the evidence submitted for license renewal. The substitute contains a provision not included in the original limiting the requirement that a towing company establish a testing policy for towing operators to establishing a drug testing policy.

C.S.H.B. 3510 contains provisions not included in the original relating to fees for private property tows and refunds of such fees.

C.S.H.B. 3510 contains a provision not included in the original specifying, in provisions authorizing a parking facility to without the consent of the owner or operator of an unauthorized vehicle cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if certain signs that comply with state laws are posted for a specified time, that such signs must substantially comply with state law. The substitute contains provisions not included in the original authorizing a homeowner or tenant under a written lease agreement who does not charge for parking to authorize the removal of an unauthorized vehicle if the vehicle is blocking entry to or exit from the home or the driveway of the home and exempting such a removal from certain provisions of law.

C.S.H.B. 3510 contains a provision not included in the original specifying, in provisions authorizing certain insured towing companies to remove and store a vehicle without the owner's consent under certain conditions, that the vehicle is on a public roadway used for entering or exiting the facility, rather than abutting such a public roadway. The substitute contains provisions not included in the original relating to a vehicle storage facility's duty to report its acceptance of a towed unauthorized vehicle.

C.S.H.B. 3510 contains provisions not included in the original including court costs and, at the discretion of the court, attorney's fees among the costs a person who requested a hearing under the act is required to pay if the court finds that a person or law enforcement agency authorized

with probable cause a vehicle's removal and storage in a vehicle storage facility or the booting of a vehicle in a parking facility.

C.S.H.B. 3510 differs from the original by requiring a hearing under the Texas Towing and Boating Act to be in the justice court having jurisdiction in the precinct in which the vehicle storage facility is located, rather than the precinct from which the motor vehicle was towed, as in the original. The substitute contains a provision not included in the original establishing, in provisions requiring the court to notify certain parties of a hearing regarding a towed vehicle, that notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located. The substitute contains a provision not included in the original establishing that failure of a party to participate in a hearing under the Texas Towing and Boating Act constitutes waiver of the party's right to appeal to a higher court.

C.S.H.B. 3510 contains a provision not included in the original requiring the commission to adopt rules to implement the bill's provisions. The substitute contains saving provisions not included in the original.

C.S.H.B. 3510 differs from the original by repealing a provision of law relating to the schedule of towing fees a towing company is required to file with the Texas Department of Licensing and Regulation, whereas the original amends those provisions. The substitute contains a provision not included in the original repealing certain other provisions of the Occupations Code.

C.S.H.B. 3510 differs from the original in nonsubstantive ways.