

By: Hamilton

H.B. No. 3510

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of the towing, booting, and storage of
3 vehicles.

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

5 SECTION 1. Section 2303.1511, Occupations Code, is amended
6 by adding Subsection (c) to read as follows:

7 (c) This section does not apply to a vehicle received as a
8 result of an incident management tow requested by a law enforcement
9 agency unless the law enforcement agency requests a report of
10 incident management tows within the jurisdiction of the agency. In
11 this subsection, "incident management tow" has the meaning assigned
12 by Section 2308.002.

13 SECTION 2. Section 2303.154(a), Occupations Code, is
14 amended to read as follows:

15 (a) If a vehicle is not claimed by a person permitted to
16 claim the vehicle or ~~[is not taken into custody by]~~ a law
17 enforcement agency has not taken an action in response to a notice
18 under Section 683.031(c) [Chapter 683], Transportation Code,
19 before the 15th [41st] day after the date notice is mailed or
20 published under Section 2303.151 or 2303.152, the vehicle is
21 considered abandoned and the operator of the vehicle storage
22 facility shall send a second notice to the registered owner and the
23 primary lienholder of the vehicle in compliance with the
24 requirements of Section 683.012, Transportation Code, for a notice

1 sent by a law enforcement agency.

2 SECTION 3. Section 2303.160(c), Occupations Code, is
3 amended to read as follows:

4 (c) Subsection (b) does not require a vehicle storage
5 facility to release a vehicle to the owner or operator of the
6 vehicle if the owner or operator of the vehicle does not:

7 (1) pay the charges for services regulated under this
8 chapter or Chapter 2308, including charges for an incident
9 management tow, as defined by Section 2308.002 [~~associated with~~
10 ~~delivery or storage of the vehicle~~]; and

11 (2) present valid photo identification issued by this
12 state, another state, [~~or~~] a federal agency, or a foreign
13 government.

14 SECTION 4. Sections 2308.002(5-a) and (7), Occupations
15 Code, are amended to read as follows:

16 (5-a) "Incident management tow" means any tow of a
17 vehicle in which the tow truck is summoned because of a traffic
18 accident or to an incident, including the removal of a vehicle,
19 cargo, and debris from an accident or incident scene.

20 (7) "Parking facility" means public or private
21 property used, wholly or partly, for restricted or paid vehicle
22 parking. The term includes:

23 (A) a restricted space on a portion of an
24 otherwise unrestricted parking facility; and

25 (B) a commercial parking lot, a parking garage,
26 and a parking area serving or adjacent to a business, church,
27 school, home that charges a fee for parking, apartment complex,

1 property governed by a property owners' association, or
2 government-owned property leased to a private person, including:

3 (i) a portion of the right-of-way of a
4 public roadway that is leased by a governmental entity to the
5 parking facility owner; and

6 (ii) the area between the facility's
7 property line abutting a county or municipal public roadway and the
8 center line of the roadway's drainage way or the curb of the
9 roadway, whichever is farther from the facility's property line.

10 SECTION 5. Section 2308.057, Occupations Code, is amended
11 to read as follows:

12 Sec. 2308.057. RULES. (a) The commission shall adopt rules
13 for permitting tow trucks and licensing towing operators, towing
14 companies, booting companies, and boot operators. The commission
15 may adopt different rules applicable to each type of permit or
16 license.

17 (a-1) The commission shall adopt [~~, including~~] rules for
18 denial of applications and permits if the applicant, a partner,
19 principal, officer, or general manager of the applicant, or other
20 license or permit holder has:

21 (1) a criminal conviction, or has pleaded guilty or
22 nolo contendere to an offense, before the date of the application,
23 for:

24 (A) a felony; or

25 (B) a misdemeanor punishable by confinement in
26 jail or by a fine in an amount that exceeds \$500;

27 (2) violated an order of the commission or executive

1 director, including an order for sanctions or administrative
2 penalties;

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

5 (4) knowingly submitted false or incomplete
6 information on the application; or

7 (5) filed an application to permit a tow truck
8 previously permitted by a license or permit holder.

9 (b) The commission by rule shall adopt:

10 (1) standards of conduct for license and permit
11 holders under this chapter; and

12 (2) requirements for a consent tow, private property
13 tow, and incident management tow.

14 SECTION 6. Section 2308.158, Occupations Code, is amended
15 to read as follows:

16 Sec. 2308.158. [~~ALCOHOL AND~~] DRUG TESTING OF TOWING
17 OPERATORS. (a) A towing company shall establish a [~~an alcohol and~~]
18 drug testing policy for towing operators. A towing company that
19 establishes a [~~an alcohol and~~] drug testing policy under this
20 subsection may adopt the model [~~alcohol and~~] drug testing policy
21 adopted by the commission or may use another [~~alcohol and~~] drug
22 testing policy that the department determines is at least as
23 stringent as the policy adopted by the commission.

24 (b) The commission by rule shall adopt a model [~~alcohol and~~]
25 drug testing policy for use by a towing company. The model [~~alcohol~~
26 ~~and~~] drug testing policy must be designed to ensure the safety of
27 the public through appropriate [~~alcohol and~~] drug testing and to

1 protect the rights of employees. The model [~~alcohol and~~] drug
2 testing policy must:

3 (1) require at least one scheduled drug test each year
4 for each towing operator; and

5 (2) authorize random, unannounced [~~alcohol and~~] drug
6 testing for towing operators.

7 SECTION 7. Section 2308.159(c), Occupations Code, is
8 amended to read as follows:

9 (c) A license holder may renew a license issued under this
10 chapter by:

11 (1) submitting an application on a form prescribed by
12 the executive director;

13 (2) submitting evidence demonstrating compliance with
14 the requirements for the license type as required by this chapter or
15 commission rule;

16 (3) paying a renewal fee; and

17 (4) [~~2~~] completing continuing education as required
18 by Section 2308.157.

19 SECTION 8. Subchapter E, Chapter 2308, Occupations Code, is
20 amended by adding Section 2308.2065 to read as follows:

21 Sec. 2308.2065. FEES FOR PRIVATE PROPERTY TOWS; REFUNDS.

22 (a) A license or permit holder may not charge a fee for a private
23 property tow that is greater than:

24 (1) the fee for a private property tow established
25 under Section 2308.0575; or

26 (2) a fee for a private property tow authorized by a
27 political subdivision.

1 (b) A license or permit holder may not charge a fee for a
2 service related to a private property tow that is not included in
3 the list of fees established:

4 (1) under Section 2308.0575; or

5 (2) by a political subdivision.

6 (c) The department may require a license or permit holder to
7 refund to a vehicle owner or operator the:

8 (1) amount charged to the owner or operator in excess
9 of the amounts established by commission rule or by a political
10 subdivision; or

11 (2) total amount of the charges for a service not
12 listed in the amounts established by commission rule or by a
13 political subdivision.

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

16 (a) A parking facility owner may, without the consent of the
17 owner or operator of an unauthorized vehicle, cause the vehicle and
18 any property on or in the vehicle to be removed and stored at a
19 vehicle storage facility at the vehicle owner's or operator's
20 expense if:

21 (1) signs that substantially comply with Subchapter G
22 prohibiting unauthorized vehicles are located on the parking
23 facility at the time of towing and for the preceding 24 hours and
24 remain installed at the time of towing;

25 (2) the owner or operator of the vehicle has received
26 actual notice from the parking facility owner that the vehicle will
27 be towed at the vehicle owner's or operator's expense if it is in or

1 not removed from an unauthorized space;

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

4 (4) on request the parking facility owner provides to
5 the owner or operator of the vehicle information on the name of the
6 towing company and vehicle storage facility that will be used to
7 remove and store the vehicle and the vehicle is:

8 (A) left in violation of Section 2308.251 or
9 2308.253; 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.

13 SECTION 10. Subchapter F, Chapter 2308, Occupations Code,
14 is amended by adding Section 2308.2545 to read as follows:

15 Sec. 2308.2545. AUTHORITY TO REMOVE VEHICLE FROM HOME. (a)
16 A homeowner or tenant under a written lease agreement who does not
17 charge for parking may authorize the removal of an unauthorized
18 vehicle if the vehicle is blocking entry to or exit from the home or
19 the driveway of the home.

20 (b) Sections 2308.252 and 2308.253 do not apply to a removal
21 authorized under this section.

22 SECTION 11. The heading to Section 2308.255, Occupations
23 Code, is amended to read as follows:

24 Sec. 2308.255. TOWING COMPANY'S OR BOOT OPERATOR'S
25 AUTHORITY TO REMOVE AND STORE OR BOOT UNAUTHORIZED VEHICLE.

26 SECTION 12. Sections 2308.255(a) and (d), Occupations Code,
27 are amended to read as follows:

1 (a) A towing company that is insured as provided by
2 Subsection (c) may, without the consent of an owner or operator of
3 an unauthorized vehicle, remove and store the vehicle at a vehicle
4 storage facility at the expense of the owner or operator of the
5 vehicle if:

6 (1) the towing company has received written
7 verification from the parking facility owner that:

8 (A) the parking facility owner has installed the
9 signs required by Section 2308.252(a)(1); or

10 (B) the owner or operator received notice under
11 Section 2308.252(a)(2) or the parking facility owner gave notice
12 complying with Section 2308.252(a)(3); or

13 (2) on request the parking facility owner provides to
14 the owner or operator of the vehicle information on the name of the
15 towing company and vehicle storage facility that will be used to
16 remove and store the vehicle and the vehicle is:

17 (A) left in violation of Section 2308.251; ~~[or]~~

18 (B) in or obstructing a portion of a paved
19 driveway; or

20 (C) on a ~~[abutting]~~ public roadway used for
21 entering or exiting the facility and the removal is approved by a
22 peace officer.

23 (d) A towing company may remove and store a vehicle under
24 Subsection (a) and a boot operator may boot a vehicle under Section
25 2308.257 only if the parking facility owner:

26 (1) requests that the towing company remove and store
27 or that the boot operator boot the specific vehicle; or

1 (2) has a standing written agreement with the towing
2 company or boot operator to enforce parking restrictions in the
3 parking facility [~~from which the vehicle will be removed~~].

4 SECTION 13. Section 2308.257, Occupations Code, as added by
5 Chapter 757 (S.B. 702), Acts of the 81st Legislature, Regular
6 Session, 2009, is redesignated as Section 2308.2555, Occupations
7 Code, to read as follows:

8 Sec. 2308.2555 [~~2308.257~~]. REMOVAL OF CERTAIN UNAUTHORIZED
9 VEHICLES IN RURAL AREAS. (a) This section applies only to an
10 abandoned vehicle that has damaged a fence on private property in a
11 rural area.

12 (b) A law enforcement agency directing a towing company or
13 tow operator to remove an abandoned vehicle that is located on
14 private property shall provide the towing company or tow operator
15 with the name and telephone number of the property owner or the
16 owner's agent if the owner or agent has provided the information to
17 the law enforcement agency.

18 (c) A towing company or tow operator provided with
19 information under Subsection (b) shall contact the property owner
20 or the owner's agent before entering private property to tow a
21 vehicle described by Subsection (a).

22 SECTION 14. Subchapter F, Chapter 2308, Occupations Code,
23 is amended by adding Section 2308.2565 to read as follows:

24 Sec. 2308.2565. VEHICLE STORAGE FACILITY DUTY TO REPORT
25 AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) Except for an incident
26 management tow requested by a law enforcement agency, a vehicle
27 storage facility accepting a vehicle that is towed under this

1 chapter shall within two hours after receiving the vehicle report
2 to the police department of the municipality from which the vehicle
3 was towed or, if the vehicle was towed from a location that is not in
4 a municipality with a police department, to the sheriff of the
5 county from which the vehicle was towed:

6 (1) a general description of the vehicle;

7 (2) the state and number of the vehicle's license
8 plate, if any;

9 (3) the vehicle identification number of the vehicle,
10 if it can be ascertained;

11 (4) the location from which the vehicle was towed; and

12 (5) the name and location of the vehicle storage
13 facility in which the vehicle is being stored.

14 (b) A law enforcement agency may request a report, in a
15 manner prescribed by the law enforcement agency, of incident
16 management tows within the jurisdiction of the agency.

17 SECTION 15. Section 2308.301(b), Occupations Code, is
18 amended to read as follows:

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

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

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

25 (3) contains the international symbol for towing
26 vehicles;

27 (4) contains a statement describing who may park in

1 the parking facility and prohibiting all others;

2 (5) bears the words, as applicable:

3 (A) "Unauthorized Vehicles Will Be Towed or
4 Booted at Owner's or Operator's Expense";

5 (B) "Unauthorized Vehicles Will Be Towed at
6 Owner's or Operator's Expense"; or

7 (C) "Unauthorized Vehicles Will Be Booted at
8 Owner's or Operator's Expense";

9 (6) contains a statement of the days and hours of
10 towing and booting enforcement; and

11 (7) contains a number, including the area code, of a
12 telephone that is answered 24 hours a day to enable an owner or
13 operator of a vehicle to locate a towed vehicle or to arrange for
14 removal of a boot from a vehicle.

15 SECTION 16. Section 2308.302(c), Occupations Code, is
16 amended to read as follows:

17 (c) The portion of the sign immediately below the
18 international towing symbol must:

19 (1) [~~contain the words "Towing And Booting Enforced"~~]
20 in lettering at least two inches in height, contain the words, as
21 applicable:

22 (A) "Towing and Booting Enforced";

23 (B) "Towing Enforced"; or

24 (C) "Booting Enforced"; and

25 (2) [~~. The lettering on this portion of the sign~~
26 ~~must~~] consist of white letters on a bright red background.

27 SECTION 17. Section 2308.401, Occupations Code, is amended

1 by adding Subsection (c) to read as follows:

2 (c) This section does not apply to a sign required under
3 Section 2308.301 provided by a towing or booting company to a
4 parking facility owner.

5 SECTION 18. Section 2308.402, Occupations Code, is amended
6 by adding Subsection (c) to read as follows:

7 (c) This section does not apply to a sign required under
8 Section 2308.301 provided by a towing or booting company to a
9 parking facility owner.

10 SECTION 19. Section 2308.451(a), Occupations Code, is
11 amended to read as follows:

12 (a) If in a hearing held under this chapter the court finds
13 that a person or law enforcement agency authorized, with probable
14 cause, the removal and storage in a vehicle storage facility of a
15 vehicle, the person who requested the hearing shall pay the costs of
16 the removal and storage, court costs, and, at the discretion of the
17 court, attorney's fees.

18 SECTION 20. Section 2308.451(c), Occupations Code, as added
19 by Chapter 845 (S.B. 2153), Acts of the 81st Legislature, Regular
20 Session, 2009, is amended to read as follows:

21 (c) If in a hearing held under this chapter the court finds
22 that a person authorized, with probable cause, the booting of a
23 vehicle in a parking facility, the person who requested the hearing
24 shall pay the costs of the booting, court costs, and, at the
25 discretion of the court, attorney's fees.

26 SECTION 21. Section 2308.453, Occupations Code, as amended
27 by Chapters 845 (S.B. 2153) and 1310 (H.B. 2571), Acts of the 81st

1 Legislature, Regular Session, 2009, is reenacted and amended to
2 read as follows:

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

5 (1) the precinct in which the vehicle storage facility
6 is located [~~from which the motor vehicle was towed~~]; or

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

9 SECTION 22. The heading to Section 2308.455, Occupations
10 Code, is amended to read as follows:

11 Sec. 2308.455. CONTENTS OF NOTICE FOR NONCONSENT TOWS.

12 SECTION 23. Sections 2308.458(b), (c), and (e), Occupations
13 Code, are amended to read as follows:

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

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 authorized [~~filed with the department~~] under
13 Section 2308.206.

14 (e) The court may award:

15 (1) court costs and attorney's fees to the prevailing
16 party;

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

20 (3) an amount equal to the amount that the towing
21 charge or booting removal charge and associated parking fees
22 exceeded fees regulated by a political subdivision or authorized by
23 this code or by Chapter 2303; and

24 (4) reimbursement of fees paid for vehicle towing,
25 storage, or removal of a boot.

26 SECTION 24. Section 2308.459, Occupations Code, is amended
27 to read as follows:

1 Sec. 2308.459. APPEAL. (a) An appeal from a hearing under
2 this chapter is governed by the rules of procedure applicable to
3 civil cases in justice court, except that no appeal bond may be
4 required by the court.

5 (b) Failure of a party to participate in a hearing under
6 Section 2308.458 constitutes waiver of the party's right to appeal
7 to a higher court.

8 SECTION 25. Section 2308.504(b), Occupations Code, is
9 amended to read as follows:

10 (b) An offense under this section is a Class C misdemeanor.
11 An offense under this section is enforceable by law enforcement.

12 SECTION 26. Section 2308.505(b), Occupations Code, is
13 amended to read as follows:

14 (b) An offense under this section is a misdemeanor
15 punishable by a fine of not less than \$200 or more than \$1,000 per
16 violation. An offense under this section is enforceable by law
17 enforcement.

18 SECTION 27. (a) The following sections of the Occupations
19 Code are repealed:

- 20 (1) Section 2303.154(a-1);
21 (2) Section 2308.204;
22 (3) Section 2308.206; and
23 (4) Section 2308.404(d).

24 (b) Section 2308.256(a), Occupations Code, as amended by
25 Chapter 1310 (H.B. 2571), Acts of the 81st Legislature, Regular
26 Session, 2009, is repealed to conform to the repeal of Section
27 2308.256, Occupations Code, by Chapter 757 (S.B. 702), Acts of the

1 81st Legislature, Regular Session, 2009.

2 SECTION 28. (a) The change in law made by this Act to
3 Section 2308.159, Occupations Code, applies only to an application
4 for renewal of a license made on or after September 1, 2011.

5 (b) An application for renewal of a license made before
6 September 1, 2011, is governed by the law as it existed immediately
7 before September 1, 2011, and that law is continued in effect for
8 that purpose.

9 (c) The Texas Commission of Licensing and Regulation shall
10 adopt rules to implement the changes in law made by this Act to
11 Chapters 2303 and 2308, Occupations Code, not later than January 1,
12 2012.

13 (d) The changes in law made by Section 2303.154, Occupations
14 Code, as amended by this Act, apply to a vehicle accepted by a
15 vehicle storage facility on or after the effective date of this Act.
16 A vehicle accepted before the effective date of this Act is governed
17 by the law in effect at the time the vehicle was accepted, and the
18 former law is continued in effect for that purpose.

19 (e) The changes in law made by Sections 2308.451, 2308.453,
20 2308.455, and 2308.459, Occupations Code, as amended by this Act,
21 apply to a hearing based on a petition filed on or after the
22 effective date of this Act. A hearing based on a petition filed
23 before the effective date of this Act is governed by the law in
24 effect on the date the petition was filed, and the former law is
25 continued in effect for that purpose.

26 SECTION 29. To the extent of any conflict, this Act prevails
27 over another Act of the 82nd Legislature, Regular Session, 2011,

H.B. No. 3510

1 relating to nonsubstantive additions to and corrections in enacted
2 codes.

3 SECTION 30. This Act takes effect September 1, 2011.