

1-1 By: Hamilton (Senate Sponsor - Carona) H.B. No. 3510
1-2 (In the Senate - Received from the House April 26, 2011;
1-3 April 27, 2011, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 16, 2011, reported
1-5 adversely, with favorable Committee Substitute by the following
1-6 vote: Yeas 9, Nays 0; May 16, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3510 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of the towing, booting, and storage of
1-11 vehicles.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 2303.1511, Occupations Code, is amended
1-14 by adding Subsection (c) to read as follows:

1-15 (c) This section does not apply to a vehicle received as a
1-16 result of an incident management tow requested by a law enforcement
1-17 agency unless the law enforcement agency requests a report of
1-18 incident management tows within the jurisdiction of the agency. In
1-19 this subsection, "incident management tow" has the meaning assigned
1-20 by Section 2308.002.

1-21 SECTION 2. Section 2303.154(a), Occupations Code, is
1-22 amended to read as follows:

1-23 (a) If a vehicle is not claimed by a person permitted to
1-24 claim the vehicle or ~~[is not taken into custody by]~~ a law
1-25 enforcement agency has not taken an action in response to a notice
1-26 under Section 683.031(c) [Chapter 683], Transportation Code,
1-27 before the 15th [41st] day after the date notice is mailed or
1-28 published under Section 2303.151 or 2303.152, the operator of the
1-29 vehicle storage facility shall send a second notice to the
1-30 registered owner and the primary lienholder of the vehicle.

1-31 SECTION 3. Section 2303.160(c), Occupations Code, is
1-32 amended to read as follows:

1-33 (c) Subsection (b) does not require a vehicle storage
1-34 facility to release a vehicle to the owner or operator of the
1-35 vehicle if the owner or operator of the vehicle does not:

1-36 (1) pay the charges for services regulated under this
1-37 chapter or Chapter 2308, including charges for an incident
1-38 management tow, as defined by Section 2308.002 [associated with
1-39 delivery or storage of the vehicle]; and

1-40 (2) present valid photo identification issued by this
1-41 state, another state, [or] a federal agency, or a foreign
1-42 government.

1-43 SECTION 4. Sections 2308.002(5-a) and (7), Occupations
1-44 Code, are amended to read as follows:

1-45 (5-a) "Incident management tow" means any tow of a
1-46 vehicle in which the tow truck is summoned to the scene [because]
1-47 a traffic accident or to an incident, including the removal of a
1-48 vehicle, commercial cargo, and commercial debris from an accident
1-49 or incident scene.

1-50 (7) "Parking facility" means public or private
1-51 property used, wholly or partly, for restricted or paid vehicle
1-52 parking. The term includes:

1-53 (A) a restricted space on a portion of an
1-54 otherwise unrestricted parking facility; and

1-55 (B) a commercial parking lot, a parking garage,
1-56 and a parking area serving or adjacent to a business, church,
1-57 school, home that charges a fee for parking, apartment complex,
1-58 property governed by a property owners' association, or
1-59 government-owned property leased to a private person, including:

1-60 (i) a portion of the right-of-way of a
1-61 public roadway that is leased by a governmental entity to the
1-62 parking facility owner; and

1-63 (ii) the area between the facility's

2-1 property line abutting a county or municipal public roadway and the
2-2 center line of the roadway's drainage way or the curb of the
2-3 roadway, whichever is farther from the facility's property line.

2-4 SECTION 5. Section 2308.057, Occupations Code, is amended
2-5 to read as follows:

2-6 Sec. 2308.057. RULES. (a) The commission shall adopt
2-7 rules for permitting tow trucks and licensing towing operators,
2-8 towing companies, booting companies, and boot operators. The
2-9 commission may adopt different rules applicable to each type of
2-10 permit or license.

2-11 (a-1) The commission shall adopt [~~including~~] rules for
2-12 denial of applications and permits if the applicant, a partner,
2-13 principal, officer, or general manager of the applicant, or other
2-14 license or permit holder has:

2-15 (1) a criminal conviction, or has pleaded guilty or
2-16 nolo contendere to an offense, before the date of the application,
2-17 for:

2-18 (A) a felony; or

2-19 (B) a misdemeanor punishable by confinement in
2-20 jail or by a fine in an amount that exceeds \$500;

2-21 (2) violated an order of the commission or executive
2-22 director, including an order for sanctions or administrative
2-23 penalties;

2-24 (3) failed to submit a license or permit bond in an
2-25 amount established by the commission;

2-26 (4) knowingly submitted false or incomplete
2-27 information on the application; or

2-28 (5) filed an application to permit a tow truck
2-29 previously permitted by a license or permit holder.

2-30 (b) The commission by rule shall adopt:

2-31 (1) standards of conduct for license and permit
2-32 holders under this chapter; and

2-33 (2) requirements for a consent tow, private property
2-34 tow, and incident management tow.

2-35 SECTION 6. Section 2308.159(c), Occupations Code, is
2-36 amended to read as follows:

2-37 (c) A license holder may renew a license issued under this
2-38 chapter by:

2-39 (1) submitting an application on a form prescribed by
2-40 the executive director;

2-41 (2) submitting evidence demonstrating compliance with
2-42 the requirements for the license type as required by this chapter or
2-43 commission rule;

2-44 (3) paying a renewal fee; and

2-45 (4) [~~2~~] completing continuing education as required
2-46 by Section 2308.157.

2-47 SECTION 7. Subchapter E, Chapter 2308, Occupations Code, is
2-48 amended by adding Section 2308.2065 to read as follows:

2-49 Sec. 2308.2065. FEES FOR NONCONSENT TOWS; REFUNDS. (a) A
2-50 license or permit holder may not charge a fee for a nonconsent tow
2-51 that is greater than:

2-52 (1) the fee for a nonconsent tow established under
2-53 Section 2308.0575; or

2-54 (2) a fee for a nonconsent tow authorized by a
2-55 political subdivision.

2-56 (b) A license or permit holder may not charge a fee for a
2-57 service related to a nonconsent tow that is not included in the list
2-58 of fees established:

2-59 (1) under Section 2308.0575; or

2-60 (2) by a political subdivision.

2-61 (c) The department may require a license or permit holder to
2-62 refund to a vehicle owner or operator the:

2-63 (1) amount charged to the owner or operator in excess
2-64 of the amounts established by commission rule or by a political
2-65 subdivision; or

2-66 (2) total amount of the charges for a service not
2-67 listed in the amounts established by commission rule or by a
2-68 political subdivision.

2-69 SECTION 8. The heading to Section 2308.255, Occupations

3-1 Code, is amended to read as follows:

3-2 Sec. 2308.255. TOWING COMPANY'S OR BOOT OPERATOR'S
3-3 AUTHORITY TO REMOVE AND STORE OR BOOT UNAUTHORIZED VEHICLE.

3-4 SECTION 9. Sections 2308.255(a) and (d), Occupations Code,
3-5 are amended to read as follows:

3-6 (a) A towing company that is insured as provided by
3-7 Subsection (c) may, without the consent of an owner or operator of
3-8 an unauthorized vehicle, remove and store the vehicle at a vehicle
3-9 storage facility at the expense of the owner or operator of the
3-10 vehicle if:

3-11 (1) the towing company has received written
3-12 verification from the parking facility owner that:

3-13 (A) the parking facility owner has installed the
3-14 signs required by Section 2308.252(a)(1); or

3-15 (B) the owner or operator received notice under
3-16 Section 2308.252(a)(2) or the parking facility owner gave notice
3-17 complying with Section 2308.252(a)(3); or

3-18 (2) on request the parking facility owner provides to
3-19 the owner or operator of the vehicle information on the name of the
3-20 towing company and vehicle storage facility that will be used to
3-21 remove and store the vehicle and the vehicle is:

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

3-23 (B) in or obstructing a portion of a paved
3-24 driveway; or

3-25 (C) on a ~~abutting~~ public roadway used for
3-26 entering or exiting the facility and the removal is approved by a
3-27 peace officer.

3-28 (d) A towing company may remove and store a vehicle under
3-29 Subsection (a) and a boot operator may boot a vehicle under Section
3-30 2308.257 only if the parking facility owner:

3-31 (1) requests that the towing company remove and store
3-32 or that the boot operator boot the specific vehicle; or

3-33 (2) has a standing written agreement with the towing
3-34 company or boot operator to enforce parking restrictions in the
3-35 parking facility ~~[from which the vehicle will be removed]~~.

3-36 SECTION 10. Section 2308.257, Occupations Code, as added by
3-37 Chapter 757 (S.B. 702), Acts of the 81st Legislature, Regular
3-38 Session, 2009, is redesignated as Section 2308.2555, Occupations
3-39 Code, to read as follows:

3-40 Sec. 2308.2555 ~~[2308.257]~~. REMOVAL OF CERTAIN UNAUTHORIZED
3-41 VEHICLES IN RURAL AREAS. (a) This section applies only to an
3-42 abandoned vehicle that has damaged a fence on private property in a
3-43 rural area.

3-44 (b) A law enforcement agency directing a towing company or
3-45 tow operator to remove an abandoned vehicle that is located on
3-46 private property shall provide the towing company or tow operator
3-47 with the name and telephone number of the property owner or the
3-48 owner's agent if the owner or agent has provided the information to
3-49 the law enforcement agency.

3-50 (c) A towing company or tow operator provided with
3-51 information under Subsection (b) shall contact the property owner
3-52 or the owner's agent before entering private property to tow a
3-53 vehicle described by Subsection (a).

3-54 SECTION 11. Subchapter F, Chapter 2308, Occupations Code,
3-55 is amended by adding Section 2308.2565 to read as follows:

3-56 Sec. 2308.2565. VEHICLE STORAGE FACILITY DUTY TO REPORT
3-57 AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) Except for an incident
3-58 management tow requested by a law enforcement agency, a vehicle
3-59 storage facility accepting a vehicle that is towed under this
3-60 chapter shall within two hours after receiving the vehicle report
3-61 to the police department of the municipality from which the vehicle
3-62 was towed or, if the vehicle was towed from a location that is not in
3-63 a municipality with a police department, to the sheriff of the
3-64 county from which the vehicle was towed:

3-65 (1) a general description of the vehicle;

3-66 (2) the state and number of the vehicle's license
3-67 plate, if any;

3-68 (3) the vehicle identification number of the vehicle,
3-69 if it can be ascertained;

4-1 (4) the location from which the vehicle was towed; and
4-2 (5) the name and location of the vehicle storage
4-3 facility in which the vehicle is being stored.

4-4 (b) A law enforcement agency may request a vehicle storage
4-5 facility to provide a report, in a manner prescribed by the law
4-6 enforcement agency, of incident management tows within the
4-7 jurisdiction of the agency. A vehicle storage facility must
4-8 provide the report not later than 48 hours after the time the
4-9 facility receives the request.

4-10 SECTION 12. Section 2308.301(b), Occupations Code, is
4-11 amended to read as follows:

4-12 (b) Except as provided by Section 2308.305, an unauthorized
4-13 vehicle may be towed under Section 2308.252(a)(1) or booted under
4-14 Section 2308.257 only if each sign prohibiting unauthorized
4-15 vehicles:

4-16 (1) is made of weather-resistant material;
4-17 (2) is at least 18 inches wide and 24 inches tall;
4-18 (3) contains the international symbol for towing
4-19 vehicles;

4-20 (4) contains a statement describing who may park in
4-21 the parking facility and prohibiting all others;

4-22 (5) bears the words, as applicable:

4-23 (A) "Unauthorized Vehicles Will Be Towed or
4-24 Booted at Owner's or Operator's Expense";

4-25 (B) "Unauthorized Vehicles Will Be Towed at
4-26 Owner's or Operator's Expense"; or

4-27 (C) "Unauthorized Vehicles Will Be Booted at
4-28 Owner's or Operator's Expense";

4-29 (6) contains a statement of the days and hours of
4-30 towing and booting enforcement; and

4-31 (7) contains a number, including the area code, of a
4-32 telephone that is answered 24 hours a day to enable an owner or
4-33 operator of a vehicle to locate a towed vehicle or to arrange for
4-34 removal of a boot from a vehicle.

4-35 SECTION 13. Section 2308.302(c), Occupations Code, is
4-36 amended to read as follows:

4-37 (c) The portion of the sign immediately below the
4-38 international towing symbol must:

4-39 (1) ~~[contain the words "Towing And Booting Enforced"]~~
4-40 in lettering at least two inches in height, contain the words, as
4-41 applicable:

4-42 (A) "Towing and Booting Enforced";

4-43 (B) "Towing Enforced"; or

4-44 (C) "Booting Enforced"; and

4-45 (2) ~~[. The lettering on this portion of the sign~~
4-46 ~~must] consist of white letters on a bright red background.~~

4-47 SECTION 14. Section 2308.401, Occupations Code, is amended
4-48 by adding Subsection (c) to read as follows:

4-49 (c) This section does not apply to a sign required under
4-50 Section 2308.301 provided by a towing or booting company to a
4-51 parking facility owner.

4-52 SECTION 15. Section 2308.402, Occupations Code, is amended
4-53 by adding Subsection (c) to read as follows:

4-54 (c) This section does not apply to a sign required under
4-55 Section 2308.301 provided by a towing or booting company to a
4-56 parking facility owner.

4-57 SECTION 16. Sections 2308.458(b), (c), and (e), Occupations
4-58 Code, are amended to read as follows:

4-59 (b) The court shall notify the person who requested the
4-60 hearing for a towed vehicle, the parking facility owner or law
4-61 enforcement agency that authorized the removal of the vehicle, the
4-62 towing company, and the vehicle storage facility in which the
4-63 vehicle was placed of the date, time, and place of the hearing in a
4-64 manner provided by Rule 21a, Texas Rules of Civil Procedure. The
4-65 notice of the hearing to the towing company and the parking facility
4-66 owner or law enforcement agency that authorized the removal of the
4-67 vehicle must include a copy of the request for hearing. Notice to
4-68 the law enforcement agency that authorized the removal of the
4-69 vehicle is sufficient as notice to the political subdivision in

5-1 which the law enforcement agency is located.

5-2 (c) The issues in a hearing regarding a towed vehicle under
5-3 this chapter are:

5-4 (1) whether probable cause existed for the removal and
5-5 placement of the vehicle;

5-6 (2) whether a towing charge imposed or collected in
5-7 connection with the removal or placement of the vehicle was greater
5-8 than the amount authorized by the political subdivision under
5-9 Section 2308.201 or 2308.202;

5-10 (3) whether a towing charge imposed or collected in
5-11 connection with the removal or placement of the vehicle was greater
5-12 than the amount authorized under Section 2308.203 [~~or 2308.204~~]; or

5-13 (4) whether a towing charge imposed or collected in
5-14 connection with the removal or placement of the vehicle was greater
5-15 than the amount authorized [~~filed with the department~~] under
5-16 Section 2308.0575 [~~2308.206~~].

5-17 (e) The court may award:

5-18 (1) court costs and attorney's fees to the prevailing
5-19 party;

5-20 (2) the reasonable cost of photographs submitted under
5-21 Section 2308.456(b)(8) to a vehicle owner or operator who is the
5-22 prevailing party;

5-23 (3) an amount equal to the amount that the towing
5-24 charge or booting removal charge and associated parking fees
5-25 exceeded fees regulated by a political subdivision or authorized by
5-26 this code or by Chapter 2303; and

5-27 (4) reimbursement of fees paid for vehicle towing,
5-28 storage, or removal of a boot.

5-29 SECTION 17. Section 2308.504(b), Occupations Code, is
5-30 amended to read as follows:

5-31 (b) An offense under this section is a Class C misdemeanor.
5-32 An offense under this section is enforceable by law enforcement.

5-33 SECTION 18. Section 2308.505(b), Occupations Code, is
5-34 amended to read as follows:

5-35 (b) An offense under this section is a misdemeanor
5-36 punishable by a fine of not less than \$200 or more than \$1,000 per
5-37 violation. An offense under this section is enforceable by law
5-38 enforcement.

5-39 SECTION 19. (a) The following sections of the Occupations
5-40 Code are repealed:

5-41 (1) Section 2308.204;

5-42 (2) Section 2308.206; and

5-43 (3) Section 2308.404(d).

5-44 (b) Section 2308.256(a), Occupations Code, as amended by
5-45 Chapter 1310 (H.B. 2571), Acts of the 81st Legislature, Regular
5-46 Session, 2009, is repealed to conform to the repeal of Section
5-47 2308.256, Occupations Code, by Chapter 757 (S.B. 702), Acts of the
5-48 81st Legislature, Regular Session, 2009.

5-49 SECTION 20. (a) The change in law made by this Act to
5-50 Section 2308.159, Occupations Code, applies only to an application
5-51 for renewal of a license made on or after September 1, 2011.

5-52 (b) An application for renewal of a license made before
5-53 September 1, 2011, is governed by the law as it existed immediately
5-54 before September 1, 2011, and that law is continued in effect for
5-55 that purpose.

5-56 (c) The Texas Commission of Licensing and Regulation shall
5-57 adopt rules to implement the changes in law made by this Act to
5-58 Chapters 2303 and 2308, Occupations Code, not later than January 1,
5-59 2012.

5-60 (d) The changes in law made by Section 2303.154, Occupations
5-61 Code, as amended by this Act, apply to a vehicle accepted by a
5-62 vehicle storage facility on or after the effective date of this Act.
5-63 A vehicle accepted before the effective date of this Act is governed
5-64 by the law in effect at the time the vehicle was accepted, and the
5-65 former law is continued in effect for that purpose.

5-66 SECTION 21. To the extent of any conflict, this Act prevails
5-67 over another Act of the 82nd Legislature, Regular Session, 2011,
5-68 relating to nonsubstantive additions to and corrections in enacted
5-69 codes.

6-1 SECTION 22. This Act takes effect September 1, 2011.

6-2 * * * * *