

By: Gallegos

S.B. No. 1852

A BILL TO BE ENTITLED

AN ACT

relating to the recovery and storage of vessels following natural disasters; providing penalties.

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

SECTION 1. Subtitle B, Title 14, Occupations Code, is amended by adding Chapter 2353 to read as follows:

CHAPTER 2353. VESSEL RECOVERY AND STORAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2353.001. DEFINITION. In this chapter "vessel" has the meaning assigned by Section 31.003, Parks and Wildlife Code.

Sec. 2353.002. APPLICABILITY. This chapter applies only to a vessel that is towed, recovered, stored, or otherwise taken into possession:

(1) in a county in which the governor has declared a state of disaster under Section 418.014, Government Code, in the three months preceding the date the vessel is taken into possession; and

(2) without the consent of the vessel's owner.

[Sections 2353.003-2353.050 reserved for expansion]

SUBCHAPTER B. REGULATION OF VESSEL STORAGE

Sec. 2353.051. DUTY TO REPORT AFTER ACCEPTING VESSEL.

(a) A person taking possession of a vessel under this chapter shall, within two hours after taking possession of the vessel, report to the local law enforcement agency with jurisdiction over

1 the area from which the vessel was taken:

2 (1) a general description of the vessel;

3 (2) the state and number of the vessel's registration,  
4 if any; and

5 (3) the location where the vessel is being stored.

6 (b) The report required by this section must be made  
7 electronically or by telephone or delivered personally or by  
8 facsimile.

9 Sec. 2353.052. REQUIREMENTS FOR WRITTEN NOTICE. (a) A  
10 person who takes possession of a vessel that is registered in this  
11 state shall send a written notice as required by this section to the  
12 registered owner and the primary lienholder of the vessel not later  
13 than the fifth day after the date, but not earlier than 24 hours  
14 after the date, the person takes possession of the vessel.

15 (b) Except as provided by Section 2353.053, a person who  
16 takes possession of a vessel that is registered outside this state  
17 shall send a written notice to the registered owner and each  
18 recorded lienholder of the vessel as required by this section not  
19 later than the 14th day after the date, but not earlier than 24  
20 hours after the date, the person receives the vessel.

21 (c) It is a defense to an action for a violation of this  
22 section that the person taking possession of the vessel  
23 unsuccessfully attempted in writing or electronically to obtain  
24 information from the governmental entity with which the vessel is  
25 registered.

26 (d) The notice required by this section must include:

27 (1) the date the vessel was taken into possession;

1           (2) the type and amount of any charge to be paid when  
2 the vessel is claimed;

3           (3) the full name, street address, and telephone  
4 number of the location where the vessel is being stored; and

5           (4) the hours during which the owner may claim the  
6 vessel.

7           (e) The notice required by this section must:

8                   (1) be correctly addressed;

9                   (2) carry sufficient postage; and

10                   (3) be sent by certified mail, return receipt  
11 requested, or electronic certified mail.

12           (f) A notice under this section is considered to have been  
13 given on the date indicated on the postmark and to be timely filed  
14 if:

15                   (1) the postmark indicates that the notice was mailed  
16 within the period described by Subsection (a) or (b), as  
17 applicable; or

18                   (2) the notice was published as provided by Section  
19 2353.053.

20           Sec. 2353.053. REQUIREMENTS FOR NOTICE BY PUBLICATION.

21           (a) Notice to the registered owner and the primary lienholder of a  
22 vessel may be provided by publication in a newspaper of general  
23 circulation in the county in which the vessel is stored if:

24                   (1) the vessel is registered in another state;

25                   (2) the vessel does not display registration  
26 information indicating the state of registration;

27                   (3) the person possessing the vessel submits to the

1 governmental entity with which the vessel is registered a written  
2 request for information relating to the identity of the registered  
3 owner and each recorded lienholder;

4 (4) the identity of the registered owner cannot be  
5 determined;

6 (5) the registration does not contain an address for  
7 the registered owner; or

8 (6) the person possessing the vessel cannot reasonably  
9 determine the identity and address of each lienholder.

10 (b) The written request described by Subsection (a)(3)  
11 must:

12 (1) be correctly addressed;

13 (2) carry sufficient postage; and

14 (3) be sent by certified mail, return receipt  
15 requested.

16 (c) Notice by publication is not required if each notice  
17 sent as provided by Section 2353.052 is returned because:

18 (1) the notice was unclaimed or refused; or

19 (2) the person to whom the notice was sent moved  
20 without leaving a forwarding address.

21 (d) A notice by publication provided under this section must  
22 include:

23 (1) the vessel description;

24 (2) the total charges to be paid when the vessel is  
25 claimed; and

26 (3) the full name, street address, and telephone  
27 number of the location where the vessel is being stored.

1       (e) A notice by publication is not required to include any  
2 information other than the information required by Subsection (d).

3       (f) A notice by publication may include notice for more than  
4 one vessel.

5       Sec. 2353.054. SECOND NOTICE; CONSENT TO SALE. (a) If a  
6 vessel is not claimed by a person permitted to claim the vessel  
7 before the 10th day after the date notice is mailed or published  
8 under Section 2353.052 or 2353.053, the person possessing the  
9 vessel shall consider the vessel to be abandoned and send notice of  
10 abandonment to a law enforcement agency under Chapter 683,  
11 Transportation Code.

12       (b) If a vessel is not claimed by a person permitted to claim  
13 the vessel or is not taken into custody by a law enforcement agency  
14 under Chapter 683, Transportation Code, before the 41st day after  
15 the date notice is mailed or published under Section 2353.052 or  
16 2353.053, the person in possession of the vessel shall send a second  
17 notice to the registered owner and the primary lienholder of the  
18 vessel.

19       (c) A second notice described by this section must include:

20               (1) the information required by Section 2353.052(d);  
21               (2) a statement of the right of the person to dispose  
22 of the vessel under Section 2353.055; and

23               (3) a statement that the failure of the owner or  
24 lienholder to claim the vessel before the 30th day after the date  
25 the second notice is provided is:

26                       (A) a waiver by that person of all right, title,  
27 or interest in the vessel; and

1                   (B) a consent to the sale of the vessel at a  
2 public sale.

3           (d) Notwithstanding Subsection (c), if publication is  
4 required for a second notice under this section, the notice must  
5 include:

6                   (1) the information required by Section 2353.053(d);  
7 and

8                   (2) a statement that the failure of the owner or  
9 lienholder to claim the vessel before the 30th day after the date  
10 the second notice is published is:

11                   (A) a waiver of all right, title, and interest in  
12 the vessel; and

13                   (B) a consent to the sale of the vessel at a  
14 public sale.

15           Sec. 2353.055. DISPOSAL OF CERTAIN ABANDONED VESSELS.

16 (a) A person may dispose of a vessel for which a second notice is  
17 given under Section 2353.054 if, before the 30th day after the date  
18 notice is mailed, the vessel is not:

19                   (1) claimed by a person permitted to claim the vessel;  
20 or

21                   (2) taken into custody by a law enforcement agency  
22 under Chapter 683, Transportation Code.

23           (b) A person entitled to dispose of a vessel under this  
24 section may sell the vessel at a public sale without obtaining a  
25 release or discharge of any lien on the vessel, regardless of  
26 whether notice was provided by mail or by publication under this  
27 chapter.

1       (c) The proceeds from the sale of the vessel shall be  
2 applied to the charges incurred for the vessel under Section  
3 2353.058. The person shall pay any excess proceeds to the person  
4 entitled to those proceeds.

5       Sec. 2353.056. RELEASE OF VESSEL. (a) A person possessing  
6 a vessel may not refuse to release a vessel to the owner of the  
7 vessel or require a sworn affidavit of the owner of the vessel  
8 solely because the owner presents a valid photographic  
9 identification issued by this state, another state, or a federal  
10 agency that includes a different address than the address contained  
11 in the title and registration records of the vessel.

12       (b) A person possessing a vessel must accept evidence of  
13 insurance of the vessel as an additional form of identification  
14 that establishes the ownership or right of possession or control of  
15 the vessel.

16       (c) Subsection (b) does not require a person to release a  
17 vessel to the owner of the vessel if the owner does not:

- 18               (1) pay a charge authorized under this chapter; and  
19               (2) present valid photographic identification issued  
20 by this state, another state, or a federal agency.

21       Sec. 2353.057. ACCESS TO INTERIOR STORAGE AREA TO ESTABLISH  
22 IDENTITY OR OWNERSHIP. A person must allow a person claiming to be  
23 the owner of a vessel to have access to the vessel's interior  
24 storage area if documents necessary to establish the person's  
25 identity or ownership of the vessel are located in the interior  
26 storage area.

27       Sec. 2353.058. CHARGES RELATED TO STORAGE. (a) Except as

1 provided by this section, a person may not charge the owner of a  
2 vessel any fee for the towing, removal, storage, or release of a  
3 vessel that was obtained without the consent of the owner or insurer  
4 of the vessel.

5 (b) A person may charge the owner of a vessel:

6 (1) a notification fee for providing notice under this  
7 subchapter, including notice under Section 2353.054(d); and

8 (2) any fee that is required to be submitted to a law  
9 enforcement agency, the agency's authorized agent, or a  
10 governmental entity.

11 (c) A notification fee under Subsection (b) may not exceed  
12 \$50, except that if notice by publication is required by this  
13 chapter and the cost of publication exceeds 50 percent of the  
14 notification fee, the person may recover the additional amount of  
15 the cost of publication from the vessel owner.

16 (d) This section controls over any conflicting municipal  
17 ordinance or charter provision.

18 [Sections 2353.059-2353.100 reserved for expansion]

19 SUBCHAPTER C. PENALTIES AND ENFORCEMENT PROVISIONS

20 Sec. 2353.101. INJUNCTION; CIVIL PENALTY. (a) If a  
21 person has violated, is violating, or is threatening to violate  
22 this chapter, the attorney general may institute an action for:

23 (1) injunctive relief;

24 (2) a civil penalty not to exceed \$1,000 for each  
25 violation; or

26 (3) both injunctive relief and the civil penalty.

27 (b) If the attorney general prevails in an action under this



1 section, the attorney general is entitled to recover reasonable  
2 attorney's fees and court costs.

3 Sec. 2353.102. CRIMINAL PENALTIES. (a) A person commits  
4 an offense if the person violates Section 2353.058(a).

5 (b) An offense under this section is a Class C misdemeanor.

6 Sec. 2353.103. AUTHORITY TO ARREST. A peace officer may  
7 make an arrest for a violation of this chapter.

8 SECTION 2. This Act takes effect September 1, 2011.