

BILL ANALYSIS

C.S.H.B. 3131
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Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that recent revisions to state law relating to the disposition of a motor vehicle abandoned in a vehicle storage facility have led to inconsistencies in the law. In order to resolve these inconsistencies, C.S.H.B. 3131 seeks to amend the applicable law.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3131 amends the Occupations Code to specify that the operator of a vehicle storage facility, if a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice of the vehicle's receipt is mailed to the registered vehicle owner and primary lienholder or published in a newspaper of general circulation in the county in which the vehicle is stored, is required to consider the vehicle to be abandoned and report the abandonment by certified mail or electronic certified mail to a law enforcement agency with jurisdiction where the vehicle is located. The bill requires the operator to pay the fee required by Transportation Code provisions relating to a garagekeeper's duty to report the abandonment of a motor vehicle. The bill authorizes the law enforcement agency to take custody of and dispose of the vehicle as provided by Transportation Code provisions relating to abandoned motor vehicles. The bill clarifies that the operator of a vehicle storage facility is required, on or after the 15th day after the date notice of the vehicle's receipt is mailed to the vehicle owner and primary lienholder or published in a newspaper of general circulation in the county in which the vehicle is stored, to send a second notice to the registered owner and the primary lienholder of the vehicle if the facility has been notified that the law enforcement agency will not take custody of the vehicle or the law enforcement agency has not taken custody of the vehicle or has not responded to a report from the operator that the vehicle has been abandoned. The bill requires such second notice to be sent by certified mail or electronic certified mail.

C.S.H.B. 3131 establishes that, to the extent of any conflict between the Vehicle Storage Facility Act in the Occupations Code and Transportation Code provisions relating to abandoned motor vehicles, the Vehicle Storage Facility Act controls.

C.S.H.B. 3131 postpones from the 30th day after the date the second notice is mailed or published to the 31st day after the date the second notice is mailed or published the date after which the operator is authorized to dispose of the vehicle, if the vehicle is not claimed by a

person entitled to claim the vehicle or taken into custody by the appropriate law enforcement agency. The bill establishes that, if the vehicle is not claimed by a person entitled to claim the vehicle within that time period, the owner or primary lienholder waives all rights and interests in the vehicle and consents to the sale of the vehicle at a public sale. The bill establishes that the purchaser of an abandoned vehicle takes title free and clear of all liens and claims of ownership, must receive a sales receipt from the vehicle storage facility, and is entitled to register the vehicle and receive a certificate of title from the appropriate authority. The bill removes a statutory provision requiring the proceeds from the sale of the vehicle at a public sale by an operator entitled to sell the vehicle to be applied to the incurred charges relating to the vehicle's storage and requiring the operator to pay any excess proceeds to the person entitled to those proceeds. The bill instead entitles a vehicle storage facility to reimbursement from the proceeds of the public sale of an abandoned vehicle for the cost of the public sale and for incurred charges for the towing of the vehicle and relating to the vehicle's storage. The bill requires the operator of the vehicle storage facility, after deducting such reimbursement, to hold the proceeds of the sale until the 90th day after the date of the sale for the owner or lienholder of the vehicle. The bill clarifies that the department to which the operator of a vehicle storage facility submits an application for disposal of an abandoned vehicle is the Texas Department of Motor Vehicles (TxDMV).

C.S.H.B. 3131 adds a temporary provision, set to expire September 1, 2016, and applicable only to a vehicle received by a vehicle storage facility before September 1, 2015, to authorize a facility, if an unclaimed abandoned vehicle is not claimed by a person who is entitled to claim the vehicle on or before the 120th day after the date the facility mailed or published the second notice to the registered owner and primary lienholder of the vehicle before September 1, 2015, to submit an application to TxDMV to dispose of the vehicle and to authorize the facility to dispose of the vehicle on approval of the application.

C.S.H.B. 3131 amends the Transportation Code to include an owner or operator of a vehicle storage facility in the definition of "garagekeeper," for purposes of statutory provisions relating to abandoned motor vehicles. The bill establishes that, to the extent of any conflict between Transportation Code provisions relating to abandoned motor vehicles and Occupations Code provisions relating to the practice by a holder of a license under the Vehicle Storage Facility Act, the Occupations Code provisions control for a vehicle stored in a vehicle storage facility.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3131 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 2303, Occupations Code, is amended by adding Section 2303.004 to read as follows:

Sec. 2303.004. CONFLICT WITH OTHER LAW. To the extent of any conflict between this chapter and Chapter 683, Transportation Code, this chapter controls.

SECTION 1. Section 2303.154, Occupations Code, is amended to read as follows:

(a) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

~~[(a) 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 Section 683.031(c), Transportation Code, before the 15th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall send a second notice to the registered owner and the primary lienholder of the vehicle.]~~

(a-1) If a law enforcement agency will not accept notice of abandonment from the vehicle storage facility or will not accept payment as specified in Chapter 683.034 of the Transportation Code then the vehicle storage facility shall assume the responsibility of notice in Chapter 683.012.

(b) Notice under Subsection (a-1) [this section] must include:

(1) the information listed in Section

SECTION 2. Sections 2303.154(a), (a-1), and (b), Occupations Code, are amended to read as follows:

(a) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall consider the vehicle to be abandoned, report the [and send notice of] abandonment by certified mail or electronic certified mail to a law enforcement agency with jurisdiction where the vehicle is located, and pay the fee required by Section 683.031(c), Transportation Code. The law enforcement agency may take custody of and dispose of the vehicle as provided by [under] Chapter 683, Transportation Code.

~~[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 Section 683.031(c), Transportation Code, before the 15th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall send a second notice to the registered owner and the primary lienholder of the vehicle. [(a-1)]~~

(b) On or after the 15th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of a vehicle storage facility shall send a second notice to the registered owner and the primary lienholder of the vehicle if the facility has been notified that the law enforcement agency will not take custody of the vehicle or the law enforcement agency has not taken custody of the vehicle or has not responded to the report sent under Subsection (a). Notice under this subsection [section] must be sent by certified mail or electronic certified mail and include:

(1) the information listed in Section

2303.153(a);

(2) a statement of the right of the facility to dispose of the vehicle under Section 2303.157; and

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

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

(B) a consent to the sale of the vehicle at a public sale.

No equivalent provision.

2303.153(a);

(2) a statement of the right of the facility to dispose of the vehicle under Section 2303.157; and

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

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

(B) a consent to the sale of the vehicle at a public sale.

SECTION 3. Section 2303.157, Occupations Code, is amended to read as follows:

Sec. 2303.157. DISPOSAL OF CERTAIN ABANDONED VEHICLES. (a) The operator of a vehicle storage facility may dispose of a vehicle for which the second notice is given under Section 2303.154(b) or (c) [~~2303.154~~] if, before the 31st [~~30th~~] day after the date notice is mailed or published, the vehicle is not:

(1) claimed by a person entitled to claim the vehicle; or

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

(a-1) If the vehicle is not claimed by a person entitled to claim the vehicle within the period described by Subsection (a), the owner or primary lienholder:

(1) waives all rights and interests in the vehicle; and

(2) consents to the sale of the vehicle at a public sale.

(b) An operator entitled to dispose of a vehicle under this section may sell the vehicle at a public sale without obtaining a release or discharge of any lien on the vehicle, regardless of whether notice was provided by mail or by publication under this chapter. [~~The proceeds from the sale of the vehicle shall be applied to the charges incurred for the vehicle under Section 2303.155. The operator shall pay any excess proceeds to the person entitled to those proceeds.~~]

(b-1) The purchaser of an abandoned vehicle:

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

(2) shall receive a sales receipt from the

vehicle storage facility; and

(3) is entitled to register the vehicle and receive a certificate of title from the appropriate authority.

(b-2) A vehicle storage facility is entitled to reimbursement from the proceeds of the public sale of an abandoned vehicle for:

(1) the cost of the public sale; and

(2) charges incurred for the towing of the vehicle and for storage of the vehicle as provided by Section 2303.155.

(b-3) After deducting the reimbursement allowed under this section, the operator of the vehicle storage facility shall hold the proceeds of the sale until the 90th day after the date of the sale for the owner or lienholder of the vehicle.

(c) Notwithstanding Subsection (a), the operator of a vehicle storage facility may dispose of a vehicle for which notice was given under this subchapter as provided by this section if:

(1) the vehicle is an abandoned nuisance vehicle; and

(2) before the 30th day after the date the notice was sent, the operator [~~facility~~] submits an application to the Texas Department of Motor Vehicles [~~department~~] for disposal of the vehicle.

(d) This subsection applies only to a vehicle received by a vehicle storage facility before September 1, 2015. Notwithstanding any other law, if an unclaimed abandoned vehicle is not claimed by a person who is entitled to claim the vehicle on or before the 120th day after the date the facility mailed or published the second notice to the registered owner and primary lienholder of the vehicle as required by Section 2303.154(a) before September 1, 2015, the facility may submit an application to the Texas Department of Motor Vehicles to dispose of the vehicle. The facility may dispose of the vehicle if the Texas Department of Motor Vehicles approves the application. This subsection expires September 1, 2016.

SECTION 2. Section 683.001, Transportation Code, is amended to read as follows:

Sec. 683.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas

SECTION 4. Section 683.001(2), Transportation Code, is amended to read as follows:

Department of Motor Vehicles.

(2) "Garagekeeper" means an owner or operator of a storage facility or vehicle storage facility.

(3) "Law enforcement agency" means:

- (A) the Department of Public Safety;
- (B) the police department of a municipality;
- (C) the police department of an institution of higher education; or
- (D) a sheriff or a constable.

(4) "Motor vehicle" means a vehicle that is subject to registration under Chapter 501.

(5) "Motor vehicle demolisher" means a person in the business of:

- (A) converting motor vehicles into processed scrap or scrap metal; or
- (B) wrecking or dismantling motor vehicles.

(6) "Outboard motor" means an outboard motor subject to registration under Chapter 31, Parks and Wildlife Code.

(7) "Storage facility" includes a garage, parking lot, or establishment for the servicing, repairing, or parking of motor vehicles.

(8) "Watercraft" means a vessel subject to registration under Chapter 31, Parks and Wildlife Code.

(9) "Abandoned nuisance vehicle" means a motor vehicle that is at least 10 years old and is of a condition only to be junked, crushed, or dismantled.

(10) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, Occupations Code, that is operated by a person who holds a license issued under Chapter 2303 of that code to operate that vehicle storage facility.

(11) "Aircraft" has the meaning assigned by Section 24.001.

SECTION 3. Section 683.003, Transportation Code, is amended to read as follows:

(a) Sections 683.051-683.055 may not be read as conflicting with Sections 683.074-683.078.

(b) This chapter does not affect a law authorizing the immediate removal of a vehicle left on public property that is an obstruction to traffic.

(c) The chapter may not be read as conflicting with Chapter 2303, Occupations Code.

(2) "Garagekeeper" means an owner or operator of a storage facility or a vehicle storage facility.

SECTION 5. Section 683.003, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) To the extent of any conflict between this chapter and Subchapter D, Chapter 2303, Occupations Code, that subchapter

controls for a vehicle stored in a vehicle storage facility.

No equivalent provision.

SECTION 6. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act apply only to a vehicle received in storage on or after the effective date of this Act. A vehicle received in storage, other than a vehicle to which Section 2303.157(d), Occupations Code, as added by this Act, applies, before the effective date of this Act is governed by the law in effect on the date the vehicle was received in storage, and the former law is continued in effect for that purpose.

(b) Section 2303.157(d), Occupations Code, as added by this Act, applies only to a vehicle received by a vehicle storage facility before September 1, 2015.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 7. This Act takes effect September 1, 2015.