

## **BILL ANALYSIS**

C.S.H.B. 3478  
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Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

If a motor carrier believes they have been overcharged for an incident management tow with towing and recovery charges exceeding \$20,000, their only recourse is to file a civil action. Motor carriers cannot immediately request mediation in a fee dispute with a towing company. C.S.H.B. 3478 provides for a motor carrier to request mediation in a fee dispute with a towing company and requires the towing company to participate in the mediation. The bill provides for requirements relating to a mediator and sets out requirements for the Texas Department of Licensing and Regulation relating to the mediation.

### **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. 3478 amends the Occupations Code to authorize a motor carrier to request mediation in a dispute with a towing company relating to an incident management or other nonconsent tow for which towing and recovery fees exceed \$20,000 and to require a towing company to participate in such a mediation. The bill authorizes a motor carrier to submit the request in a manner prescribed by the Texas Department of Licensing and Regulation (TDLR) not later than the 30th day after the later of the date the motor carrier pays the towing and recovery charges or receives notice from the applicable vehicle storage facility regarding the facility's receipt of the vehicle. A motor carrier that does not timely submit the request waives the right to mediation.

C.S.H.B. 3478 requires TDLR, on receipt of a request for fee dispute mediation, to give notice that the motor carrier has requested mediation to the applicable towing company and the applicable operator of the vehicle storage facility and to order the parties to participate in mediation. The bill authorizes a vehicle storage facility operator who receives such notice to continue to charge a daily storage fee but prohibits the operator from selling the vehicle at a public sale or otherwise disposing of the vehicle or reporting to a law enforcement agency that the vehicle is abandoned before the operator receives notice that:

- the mediation has been resolved; and
- if a civil action related to the fee dispute was filed by a party after the end of the mediation process, the civil action has concluded.

C.S.H.B. 3478 does the following with respect to a mediator in a fee dispute mediation:

- requires a person to be qualified as an impartial third party before acting as a mediator;

- requires TDLR to maintain a list of qualified mediators on its website;
- requires the parties by agreement to select and compensate a mediator from the TDLR list, unless by written agreement the parties select a mediator not on that list;
- establishes that statutory provisions relating to standards, duties, and qualified immunity of impartial third parties apply to such a mediator; and
- caps the fee for a mediator employed for a fee dispute mediation at \$750 per party for a half-day mediation or \$1,500 per party for a full-day mediation.

If the parties do not agree on a mediator by the 10th day after the date TDLR orders the parties to participate in the mediation, the motor carrier or the towing company must notify TDLR that a mediator has not been selected and TDLR must select a mediator from the list of qualified mediators based on convenience to the location of each party. Without regard to the outcome of the mediation or subsequent regulatory or judicial proceedings, the bill prohibits costs incurred by a party from being imposed on the opposing party. The bill establishes that TDLR is not liable for compensation paid or to be paid to such a mediator.

C.S.H.B. 3478 prohibits a fee dispute mediation from exceeding one day unless the parties agree to extend mediation and requires the mediation to be completed not later than the 30th day after the date TDLR orders the parties to mediate, except that the deadline may be extended by TDLR by agreement of all parties. The bill provides for the selection of a venue and schedule for mediation.

C.S.H.B. 3478 requires the parties in a fee dispute mediation to evaluate, without limitation, whether the amount charged by the towing company is excessive and to determine the appropriate charges for services rendered if the original amount is determined excessive.

C.S.H.B. 3478, regarding the outcome of a fee dispute mediation, does the following:

- requires the mediator to report to TDLR whether mediation resolves the dispute not later than the 15th day after the date the mediation concludes;
- requires TDLR to notify the operator of the applicable vehicle storage facility of the outcome of the mediation;
- authorizes either party of the mediation to file a civil action if mediation does not resolve the fee dispute;
- prohibits a party from bringing a civil action before the conclusion of the fee dispute mediation process; and
- expressly does not prohibit a motor carrier from filing, before the conclusion of mediation, a request for a hearing to determine whether probable cause existed for the removal and placement of a vehicle in a facility.

If a party in mediation brings a civil action related to the fee dispute after the conclusion of the mediation process, the party bringing the action must give notice to the operator of the applicable vehicle storage facility of the initiation and conclusion of the action. The bill requires such notice to be given on filing the petition with the court, if the motor carrier is the party filing the action, or on service of citation on the motor carrier. The bill authorizes a vehicle storage facility operator who receives notice of the civil action to continue to charge a daily storage fee but prohibits the operator from selling the vehicle at a public sale or otherwise disposing of the vehicle before the party bringing the action gives the operator notice that the action is concluded in favor of the towing company.

C.S.H.B. 3478 requires TDLR to adopt forms and procedures necessary to administer the bill's provisions relating to fee dispute mediation and to establish a portal on its website through which a request to participate in the fee dispute mediation program may be submitted. The bill establishes that Rule 408, Texas Rules of Evidence, and statutory provisions regarding the confidentiality of certain records and communications relating to the subject matter of any civil or criminal dispute made by a participant in an alternative dispute resolution procedure apply to mediation under the bill's provisions.

C.S.H.B. 3478 establishes that a motor vehicle operated by a motor carrier and held in a vehicle storage facility may not be considered abandoned until the 31st day after the date the initial notice of the vehicle's receipt by the facility is mailed or published, as applicable, or if the operator of the storage facility receives notice under the bill's provisions that the vehicle is the subject of a request for mediation or that the vehicle is the subject of a civil action brought by a party to the fee dispute that was the subject of the mediation.

C.S.H.B. 3478 amends the Transportation Code to establish that a motor vehicle operated by a motor carrier and held in a vehicle storage facility may not be considered abandoned in the facility until the 31st day after a specified date or if the operator of the vehicle storage facility receives notice under the bill's provisions that the vehicle is the subject of a request for mediation or that the vehicle is the subject of a civil action brought by a party to the fee dispute that was the subject of the mediation.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 3478 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the introduced authorized a motor carrier to request mediation in a dispute with a towing company relating to an incident management tow, the substitute authorizes a motor carrier to request mediation in a dispute with a towing company relating to an incident management tow or other nonconsent tow.

The substitute includes the following provisions that did not appear in the introduced:

- a requirement for TDLR, on receipt a notice of a request for a fee dispute mediation, to order the parties to participate in mediation; and
- a prohibition against a vehicle storage facility operator who receives notice of a requested fee dispute mediation reporting the vehicle abandoned to a law enforcement agency before receiving notice of a mediation's resolution or the conclusion of a civil action, if applicable.

The substitute includes a clarification absent from the introduced that the notice regarding the conclusion of a civil action applies to a civil action related to the fee dispute that was the subject of the mediation.

The introduced conditioned the requirement for a motor carrier to notify TDLR that a mediator has not been selected and the requirement for TDLR to select a mediator from TDLR's list of qualified mediators on the parties failing to agree on a mediator by the 10th day after the date TDLR gives notice to the towing company of the request for mediation. The substitute conditions those requirements instead on the parties failing to agree on a mediator by the 10th day after the date TDLR orders the parties to participate in the mediation. Furthermore, the substitute includes an option for the towing company to notify TDLR in lieu of the motor carrier that a mediator has not been selected. Finally, the substitute replaces the introduced version's requirement for TDLR to select a mediator based on convenience to the location of the towing company with a requirement for TDLR to select a mediator based on convenience to the location of each party.

The substitute includes a provision absent from the introduced establishing that Rule 408, Texas Rules of Evidence, applies to a fee dispute mediation.

Whereas the introduced authorized the deadline to complete the fee dispute mediation to be extended by TDLR at the request of all parties, the substitute provides for the deadline to be extended by agreement of all parties.

The substitute includes a prohibition absent from the introduced against mediation exceeding one day unless the parties agree to extend the mediation.

The introduced required the parties in a fee dispute mediation to evaluate whether the amount charged by the towing company is excessive. The substitute specifies that the parties may make that evaluation without limitation.

The substitute omits the prohibition from the introduced against a mediator imposing the mediator's own judgment on the issues for that of the parties of the mediation.

The introduced required a motor carrier, if a party in mediation brings a civil action after the conclusion of the mediation process, to give notice to the operator of the applicable vehicle storage facility of the initiation and conclusion of the action. The substitute instead requires a party in the mediation that brings a civil action related to the fee dispute that was the subject of the mediation after the conclusion of the mediation process to give notice to the applicable operator of the initiation and conclusion of the action.

The introduced prohibited a vehicle storage facility operator who receives notice of a civil action from a motor carrier from selling the vehicle at a public sale or otherwise disposing of the vehicle before the motor carrier gives the operator notice of the conclusion of the action. The substitute instead prohibits such an operator who receives notice of a civil action from a party from selling the vehicle at a public sale or otherwise disposing of the vehicle before the party bringing the action gives the operator notice that the action is concluded in favor of the towing company.

The substitute includes provisions absent from the introduced establishing the conditions that must be met before a vehicle that is subject to a fee dispute mediation and stored in a vehicle storage facility may be considered abandoned for certain purposes.