

By: King of Uvalde

H.B. No. 3478

Substitute the following for H.B. No. 3478:

By: Harless

C.S.H.B. No. 3478

A BILL TO BE ENTITLED

AN ACT

relating to mediation of certain fee disputes between towing companies and motor carriers.

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

SECTION 1. Section 2303.154, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), if ~~[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, if required by the law enforcement agency with jurisdiction where the vehicle is located, report the abandonment to the law enforcement agency. If the law enforcement agency notifies the vehicle storage facility that the agency will send notices and dispose of the abandoned vehicle under Subchapter B, Chapter 683, Transportation Code, the vehicle storage facility shall pay the fee required under Section 683.031, Transportation Code.

(a-1) For purposes of this subsection, "motor carrier" has the meaning assigned by Section 643.001, Transportation Code. A motor vehicle operated by a motor carrier and held in a vehicle storage facility may not be considered abandoned under Subsection (a):

1 (1) until the 31st day after the date notice is mailed
2 or published under Section 2303.151 or 2303.152; or

3 (2) if the operator of the vehicle storage facility
4 receives notice:

5 (A) under Section 2308.554(a)(1)(B) that the
6 vehicle is the subject of a request for mediation under Subchapter
7 L, Chapter 2308; or

8 (B) under Section 2308.560(c) that the vehicle is
9 the subject of a civil action brought by a party to the fee dispute
10 that was the subject of a mediation under Subchapter L, Chapter
11 2308.

12 SECTION 2. Subchapter D, Chapter 2303, Occupations Code, is
13 amended by adding Section 2303.1541 to read as follows:

14 Sec. 2303.1541. SALE OR DISPOSAL OF VEHICLE PENDING
15 MEDIATION PROHIBITED. A vehicle storage facility operator who
16 receives notice under Section 2308.554(a)(1)(B) or Section
17 2308.560(c) may not sell at a public sale or otherwise dispose of or
18 report to a law enforcement agency under Section 683.031(c),
19 Transportation Code, the vehicle that is the subject of the notice
20 until the operator receives notice under Section 2308.560 that:

21 (1) the mediation has been resolved; and
22 (2) if a civil action related to the fee dispute that
23 was the subject of the mediation was filed by a party after the end
24 of the mediation process, the civil action has concluded.

25 SECTION 3. Chapter 2308, Occupations Code, is amended by
26 adding Subchapter L to read as follows:

27 SUBCHAPTER L. FEE DISPUTE MEDIATION

BETWEEN TOWING COMPANY AND MOTOR CARRIER

Sec. 2308.551. DEFINITION. In this subchapter, "motor carrier" has the meaning assigned by Section 643.001, Transportation Code.

Sec. 2308.552. FEE DISPUTE MEDIATION REQUIRED ON MOTOR CARRIER REQUEST. (a) A motor carrier may request mediation under this subchapter 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.

(b) A towing company must participate in mediation requested by a motor carrier under this subchapter.

Sec. 2308.553. REQUEST FOR MEDIATION. (a) A motor carrier may submit a request in the manner prescribed by the department not later than the 30th day after the later of the date the motor carrier:

(1) pays the towing and recovery charges; or

(2) receives notice from a vehicle storage facility under Section 2303.151.

(b) A motor carrier that does not timely submit a request under Subsection (a) waives the right to mediation under this subchapter.

Sec. 2308.554. NOTICE OF REQUEST; ORDER. (a) On receipt of a request for mediation under this subchapter, the department shall:

(1) give notice that the motor carrier has requested mediation to:

(A) the towing company that towed the vehicle

1 that is the subject of the request for mediation; and

2 (B) the operator of the vehicle storage facility
3 storing the vehicle that is the subject of the request for
4 mediation; and

5 (2) order the parties to participate in mediation
6 under this subchapter.

7 (b) A vehicle storage facility operator who receives notice
8 under this section:

9 (1) may continue to charge a daily storage fee
10 authorized by Section 2303.155(b)(3); and

11 (2) may not sell the vehicle at a public sale or
12 otherwise dispose of the vehicle under Subchapter D, Chapter 2303,
13 or report the vehicle to a law enforcement agency under Section
14 683.031(c), Transportation Code, before the operator receives
15 notice under Section 2308.560 that:

16 (A) the mediation has been resolved; and

17 (B) if a civil action related to the fee dispute
18 that was the subject of the mediation was filed by a party after the
19 end of the mediation process, the civil action has concluded.

20 Sec. 2308.555. MEDIATOR. (a) A person may not act as a
21 mediator in the mediation program unless the person is qualified as
22 an impartial third party under Section 154.052, Civil Practice and
23 Remedies Code.

24 (b) The parties by agreement shall select and compensate a
25 mediator from the list maintained by the department, except that
26 the parties by written agreement may select a mediator not on the
27 department's list.

1 (c) If the parties do not agree on a mediator by the 10th day
2 after the date the department orders the parties to participate in
3 the mediation:

4 (1) the motor carrier or the towing company shall
5 notify the department that a mediator has not been selected; and

6 (2) the department shall select a mediator from the
7 department's list of qualified mediators based on convenience to
8 the location of each party.

9 (d) Sections 154.053 and 154.055, Civil Practice and
10 Remedies Code, apply to a mediator under this subchapter.

11 Sec. 2308.556. LOCATION AND SCHEDULE OF MEDIATION. (a) The
12 parties by agreement shall select a venue and schedule for
13 mediation under this subchapter. If the parties are unable to agree
14 on a venue and schedule, the mediator shall select a venue and
15 schedule.

16 (b) Mediation must be completed not later than the 30th day
17 after the date the department orders the parties to mediate, except
18 that the deadline may be extended by agreement of all parties.

19 Sec. 2308.557. APPLICABLE LAW. Section 154.073, Civil
20 Practice and Remedies Code, and Rule 408, Texas Rules of Evidence,
21 apply to mediation under this subchapter.

22 Sec. 2308.558. DURATION AND COSTS OF MEDIATION. (a) The
23 fee for a mediator employed under this subchapter may not exceed:

24 (1) \$750 per party, for a half-day mediation; or

25 (2) \$1,500 per party, for a full-day mediation.

26 (b) A mediation may not exceed one day unless the parties
27 agree to extend the mediation.

1 (c) The department is not liable for compensation paid or to
2 be paid to a mediator employed under this subchapter.

3 (d) Without regard to the outcome of mediation or subsequent
4 regulatory or judicial proceedings, costs incurred by a party in
5 mediation required by this subchapter may not be imposed on the
6 opposing party.

7 Sec. 2308.559. MATTERS CONSIDERED IN MEDIATION; AGREED
8 RESOLUTION. In a mediation under this subchapter, the parties
9 shall evaluate, without limitation, whether the amount charged by
10 the towing company is excessive. If the parties determine that the
11 amount charged is excessive, the parties shall determine the
12 appropriate charges for services rendered.

13 Sec. 2308.560. OUTCOME OF MEDIATION; CIVIL ACTION. (a) Not
14 later than the 15th day after the date the mediation concludes, the
15 mediator shall report to the department whether mediation resolves
16 the dispute. The department shall notify the operator of the
17 vehicle storage facility where the vehicle that is the subject of
18 the mediation is being stored of the outcome of the mediation.

19 (b) If mediation does not resolve the dispute, either party
20 may file a civil action. A party in a mediation under this
21 subchapter may not bring a civil action before the conclusion of the
22 mediation process under this subchapter. This subsection does not
23 prohibit a motor carrier from filing a request for a hearing under
24 Subchapter J before the conclusion of mediation.

25 (c) If a party in mediation brings a civil action related to
26 the fee dispute that was the subject of the mediation after the
27 conclusion of the mediation process, the party bringing the action

1 shall give notice to the operator of the vehicle storage facility
2 storing the vehicle that is the subject of the action of the
3 initiation and conclusion of the action. Notice under this
4 subsection must be given:

5 (1) on filing the petition with the court, if the motor
6 carrier is the party filing the action; or

7 (2) on service of citation on the motor carrier.

8 (d) A vehicle storage facility operator who receives notice
9 of a civil action from a party under this section:

10 (1) may continue to charge a daily storage fee
11 authorized by Section 2303.155(b)(3); and

12 (2) may not sell the vehicle at a public sale or
13 otherwise dispose of the vehicle under Subchapter D, Chapter 2303,
14 before the party bringing the action gives the operator notice that
15 the action is concluded in favor of the towing company.

16 Sec. 2308.561. FORMS AND PROCEDURES; REQUEST PORTAL. The
17 department shall:

18 (1) adopt forms and procedures necessary to administer
19 this subchapter;

20 (2) establish a portal on the department's Internet
21 website through which a request to participate in the mediation
22 program may be submitted; and

23 (3) maintain a list of qualified mediators on the
24 department's Internet website.

25 SECTION 4. Section 683.031, Transportation Code, is amended
26 by amending Subsection (a) and adding Subsection (a-1) to read as
27 follows:

1 (a) Except as provided by Subsection (a-1), a [A] motor
2 vehicle is abandoned if the vehicle is left in a storage facility
3 operated for commercial purposes after the 10th day after the date
4 on which:

5 (1) the garagekeeper gives notice by registered or
6 certified mail, return receipt requested, to the last known
7 registered owner of the vehicle and to each lienholder of record of
8 the vehicle under Chapter 501 to remove the vehicle;

9 (2) a contract for the vehicle to remain on the
10 premises of the facility expires; or

11 (3) the vehicle was left in the facility, if the
12 vehicle was left by a person other than the registered owner or a
13 person authorized to have possession of the vehicle under a
14 contract of use, service, storage, or repair.

15 (a-1) For purposes of this subsection, "motor carrier" has
16 the meaning assigned by Section 643.001. A motor vehicle operated
17 by a motor carrier and held at a vehicle storage facility may not be
18 considered abandoned under this subchapter:

19 (1) until the 31st day after the date described by
20 Subsection (a); or

21 (2) if the operator of the vehicle storage facility
22 receives notice:

23 (A) under Section 2308.554(a)(1)(B), Occupations
24 Code, that the vehicle is the subject of a request for mediation
25 under Subchapter L, Chapter 2308, Occupations Code; or

26 (B) under Section 2308.560(c), Occupations Code,
27 that the vehicle is the subject of a civil action brought by a party

1 to the fee dispute that was the subject of a mediation under
2 Subchapter L, Chapter [2308](#), Occupations Code.

3 SECTION 5. This Act takes effect September 1, 2023.