By: _____ H.B. No. 2958

A BILL TO BE ENTITLED

AN ACT

relating to the licensing and regulation of tow trucks, tow truck operators, and vehicle storage facilities; providing penalties.

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

ARTICLE 1. LICENSING AND REGULATION OF TOWING AND VEHICLE STORAGE

SECTION 1.01. Sections 2303.002(2), (3), and (4), Occupations Code, are amended to read as follows:

(2) "Commission" means the Texas [~~Transportation~~] Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation [~~Transportation~~].

(4) "Executive director [~~Director~~]" means the executive director of the department [~~or a person designated by the executive director who is not below the rank of division or special office director~~].

SECTION 1.02. Section 2303.051, Occupations Code, is amended to read as follows:

Sec. 2303.051. RULEMAKING: LICENSE REQUIREMENTS[~~; SANCTIONS~~]. The executive director [~~commission~~] shall adopt rules that:

(1) establish the requirements for a person to be licensed to operate a vehicle storage facility to ensure that the facility maintains adequate standards for the care of stored vehicles; [~~and~~]

(2) relate to the administrative sanctions that may be imposed on a person licensed under this chapter;

(3) require an applicant for a license to submit evidence that the applicant is in compliance with the drug testing requirements of 49 C.F.R. Part 382, as those requirements exist on September 1, 2007, if the requirements are applicable to the applicant;

(4) provide for investigating any criminal conviction of a license applicant or an applicant's employees, including obtaining any criminal history information allowed by law; and

(5) govern the administration of this chapter.

SECTION 1.03. Subchapter B, Chapter 2303, Occupations Code, is amended by adding Sections 2303.055, 2303.056, and 2303.057 to read as follows:

Sec. 2303.055. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect a vehicle storage facility that holds a license under this chapter.

(c) The department shall conduct additional inspections

based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the vehicle storage facility;

(2) the inspection history of the vehicle storage facility;

(3) any history of complaints involving the vehicle storage facility; and

(4) any other factor determined by the commission by rule.

(d) An inspector who discovers a violation of this chapter or a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(e) The vehicle storage facility shall pay a fee for each inspection performed under Subsection (c). The commission by rule shall set the amount of the fee.

Sec. 2303.056. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

Sec. 2303.057. ADVISORY BOARD. The Towing and Storage Advisory Board under Chapter 2308 shall advise the commission, department, and executive director on vehicle storage matters related to administering and enforcing this chapter.

SECTION 1.04. Sections 2303.102(a) and (b), Occupations Code, are amended to read as follows:

(a) The executive director [~~commission~~] by rule shall

determine the types of information to be included in an application for a license under this chapter and shall prescribe the form of the application.

(b) The rules adopted [~~by the commission~~] under this section must require the application to be made under oath and to list:

(1) the name and address of each partner, if the applicant is a partnership;

(2) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation; and

(3) each conviction of a felony, or of a misdemeanor punishable by confinement in jail or by a fine exceeding $200, that was obtained against the applicant or a partner or officer of the applicant in the three years preceding the date of application.

SECTION 1.05. Subtitle A, Title 14, Occupations Code, is amended by adding Chapter 2308 to read as follows:

CHAPTER 2308. VEHICLE TOWING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. This chapter may be cited as the Texas Towing Act.

Sec. 2308.002. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Towing and Storage Advisory Board.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consent tow" means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who

has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.

(6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow.

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

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

(B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

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

(ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(8) "Parking facility owner" means:

(A) an owner or operator of a parking facility, including a lessee, employee, or agent of an owner or operator;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or

(C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

(9) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(10) "Public roadway" means a public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a

person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

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

[Sections 2308.003-2308.050 reserved for expansion]

SUBCHAPTER B. ADVISORY BOARD

Sec. 2308.051. TOWING AND STORAGE ADVISORY BOARD. (a) The advisory board consists of the following members appointed by the presiding officer of the commission with the approval of the commission:

(1) one representative of a towing company operating in a city with a population of less than one million;

(2) one representative of a towing company operating in a city with a population of one million or more;

(3) one owner of a vehicle storage facility located in a city with a population of less than one million;

(4) one owner of a vehicle storage facility located in a city with a population of one million or more;

(5) one parking facility owner;

(6) one law enforcement officer from a city with a population of less than one million;

(7) one law enforcement officer from a city with a

population of one million or more; and

(8) two public members.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2308.052. TERMS; VACANCIES. (a) Advisory board members serve terms of six years, with the terms of three members expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2308.053. PRESIDING OFFICER. The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2308.055. MEETINGS. The advisory board shall meet

twice annually and may meet at other times at the call of the presiding officer of the commission.

Sec. 2308.056. GENERAL POWERS AND DUTIES. The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Sec. 2308.057. RULES. (a) The executive director shall adopt rules for permitting tow trucks and licensing towing operators.

(b) The executive director by rule shall adopt standards of conduct for license and permit holders under this chapter.

Sec. 2308.058. FEES. The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2308.059. PERIODIC AND RISK-BASED INSPECTIONS. (a) The department may enter and inspect at any time during business hours:

(1) the place of business of any person regulated under this chapter; or

(2) any place in which the department has reasonable cause to believe that a license or permit holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

(1) the type and nature of the towing company or operator;

(2) the inspection history;

(3) any history of complaints involving the towing company or operator; and

(4) any other factor determined by the commission by rule.

(c) An inspector who discovers a violation of this chapter or of a rule or order of the commission or executive director shall:

(1) provide written notice of the violation to the license or permit holder on a form prescribed by the department; and

(2) file a complaint with the executive director.

(d) The towing company shall pay a fee for each inspection performed under Subsection (c). The commission shall set the amount of the fee by rule.

Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, and continuing education requirements.

Sec. 2308.061. PERSONNEL. The department may employ personnel necessary to administer and enforce this chapter.

[Sections 2308.062-2308.100 reserved for expansion]

SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

Sec. 2308.101. PERMIT REQUIRED. A tow truck may not be used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter.

Sec. 2308.102. APPLICATION REQUIREMENTS. (a) An applicant

for a permit under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) evidence that the applicant is in compliance with the drug testing requirements of 49 C.F.R. Part 382, as those requirements exist on September 1, 2007;

(3) evidence of insurance or financial responsibility required under this subchapter;

(4) the required fees; and

(5) any other information required by the executive director.

(b) The department shall investigate any criminal conviction of an applicant and may obtain any criminal history record information permitted by law.

Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT. (a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least $500,000 of liability insurance for the tow truck; and

(3) the applicant has at least $50,000 of cargo

insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for private property towing and consent towing.

(d) When a tow truck is used for a nonconsent tow initiated by a peace officer under Section 545.3051, Transportation Code, the permit holder is an agent of law enforcement and is subject to Section 545.3051(e), Transportation Code.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT. (a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter.

(b) To be eligible for a private property towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines;

(2) the applicant has at least $300,000 of liability insurance for the tow truck; and

(3) the applicant has at least $50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for consent towing but not for incident management towing.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. (a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner.

(b) To be eligible for a consent towing permit, an applicant must submit evidence that:

(1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines; and

(2) the applicant has at least $300,000 of liability insurance for the tow truck.

(c) A tow truck permitted under this section may not be used for nonconsent towing, including incident management towing and private property towing.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT. (a) The department shall issue a permit under this subchapter to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under this chapter.

(b) The department shall issue a certificate containing a single permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Sec. 2308.107. CONDITIONAL ACCEPTANCE. (a) The department may conditionally accept an incomplete application for a permit if the towing company complies with Section 2308.112.

(b) The department shall notify an applicant that an application is incomplete and inform the applicant of the information required for completion. If the applicant fails to provide the information on or before the 45th day after the date the department provides the notice, the application is considered withdrawn.

Sec. 2308.108. ADDITIONAL VEHICLES AND FEES. (a) Each tow truck requires a separate permit.

(b) A permit holder is not required to pay a permit fee for a tow truck that is replacing another tow truck that has a valid permit.

Sec. 2308.109. PERMIT RENEWAL. (a) A permit issued under this chapter is valid for one year. The department may adopt a system under which permits expire at different times during the year.

(b) The department shall notify the permit holder at least 30 days before the date a permit expires. The notice must be in writing and sent to the permit holder's last known address according to the records of the department.

(c) A permit holder may renew a permit under this chapter by:

(1) paying a fee for each tow truck; and

(2) providing to the department evidence of continuing insurance or financial responsibility in an amount required by this chapter.

Sec. 2308.110. CAB CARDS. (a) The department shall issue a cab card for each tow truck issued a permit. The cab card must:

(1) show the permit number of the certificate issued under Section 2308.106(b);

(2) show the type of permit issued;

(3) show the vehicle unit number;

(4) show the vehicle identification number; and

(5) contain a statement that the vehicle has been issued a permit under this subchapter.

(b) The department shall issue a cab card when the

department issues or renews a permit under this subchapter.

(c) A permit holder must keep the cab card in the cab of each permitted tow truck.

(d) The department may order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter.

(e) If the department determines that the cab card system described by Subsections (a)-(c) is not an efficient means of enforcing this subchapter, the executive director by rule may adopt an alternative method that is accessible by law enforcement personnel in the field and provides for the enforcement of the permit requirements of this subchapter.

(f) A cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate issued under Section 2308.106.

Sec. 2308.111. DISPLAY OF INFORMATION ON TOW TRUCK. (a) A permit holder shall display on each permitted tow truck:

(1) the permit holder's name;

(2) the permit holder's telephone number;

(3) the city and state where the permit holder is located; and

(4) the permit number for the tow truck.

(b) The information required to be displayed must be:

(1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and

(2) permanently affixed in conspicuous places on both sides of the tow truck.

Sec. 2308.112. FINANCIAL RESPONSIBILITY. (a) A permit holder shall maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Unless state law permits a tow truck to be self-insured, any insurance required for a tow truck must be obtained from:

(1) an insurer authorized to do business in this state whose aggregate net risk, after reinsurance, under any one insurance policy is not in excess of 10 percent of the insurer's policyholders' surplus, and credit for such reinsurance is permitted by law; or

(2) an insurer that meets the eligibility requirements of a surplus lines insurer pursuant to Chapter 981, Insurance Code. Notwithstanding any other provision in law, an insurer in compliance with this subsection shall be deemed to be in compliance with any rating or financial criteria established for motor carriers by any political subdivision of the state.

(c) A tow truck may comply through self-insurance if the towing company demonstrates to the department that the company can satisfy its obligations for liability for bodily injury or property damage. In the interest of public safety, the executive director by rule shall provide for a responsible system of self-insurance for a tow truck.

(d) An applicant or permit holder must file with the department evidence of insurance as required by this subchapter or evidence of financial responsibility in a form prescribed by the department. The form must be filed:

(1) at the time of the initial application;

(2) at the time of a subsequent application if the applicant was required to be continuously permitted and failed to maintain continuous permitting;

(3) at the time a permit holder changes insurers; and

(4) at the time a permit holder changes ownership, as determined by rules adopted by the executive director.

(e) A permit holder shall keep evidence of insurance in a form approved by the department in the cab of each vehicle requiring registration the carrier operates.

[Sections 2308.113-2308.150 reserved for expansion]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2308.151. LICENSE REQUIRED. A person may not perform towing operations unless the person holds an appropriate license under this subchapter.

Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a license under this subchapter must submit to the department:

(1) a completed application on a form prescribed by the executive director;

(2) the required fees; and

(3) any other information required by executive director rule.

Sec. 2308.153. INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE. (a) An incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103.

(b) An applicant for an incident management towing operator's license must:

(1) be a licensed Texas driver;

(2) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department;

(3) have completed a truck and bus driver/commercial vehicle operation course approved by the department; and

(4) pass an examination.

Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE. (a) A private property towing operator's license is required to operate a tow truck permitted under Section 2308.104.

(b) An applicant for a private property towing operator's license must:

(1) be a licensed Texas driver;

(2) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department; and

(3) pass an examination.

Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE. (a) A consent towing operator's license is required to operate a tow truck permitted under Section 2308.105.

(b) An applicant for a consent towing operator's license must:

(1) be a licensed Texas driver; and

(2) pass an examination.

Sec. 2308.156. EXAMINATIONS. (a) Examinations required by this subchapter shall be conducted at locations throughout the state.

(b) The department may accept, develop, or contract for the examinations required by this subchapter, including the administration of the examinations. Each examination must test the knowledge of the applicant about equipment and procedures used in the types of towing authorized by the applicable license.

(c) The executive director shall determine uniform standards for acceptable performance on an examination.

Sec. 2308.157. EXAMINATION RESULTS. (a) The department shall notify an applicant of the results of an examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the department shall notify an applicant of the result of the examination not later than the 14th day after the date on which the department receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 60 days after the examination date, the department shall notify each applicant of the reason for the delay before the 60th day after the examination date.

(c) If requested in writing by a person who fails an examination administered under this chapter, the department shall provide to the person an analysis of the person's performance on the examination.

Sec. 2308.158. LICENSE ISSUANCE; NONTRANSFERABILITY. (a) Not later than the 30th day after the date on which the department determines that an applicant has passed an examination required under this subchapter, the executive director shall issue a license to the applicant if the applicant has paid the fees and complied

with the other requirements of this subchapter.

(b) A license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2308.159. LICENSE RENEWAL. (a) Except as provided by Subsection (b), a license expires annually on December 31 and may be renewed on payment of the required renewal fee.

(b) The executive director by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, renewal fees payable on or before December 31 shall be prorated on a monthly basis so that each license holder pays only that portion of the renewal fee that is applicable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is due.

(c) The department shall notify a license holder in writing at the license holder's last known mailing address not later than the 30th day before the date the license holder's license expires. A person may renew an unexpired license by paying the renewal fee to the department before the license expiration date.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department the required renewal fee and a late fee in an amount equal to half of the license fee. A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the department all unpaid renewal fees and a late fee in an amount equal to the license fee. A person whose license has been expired for more than two years may not renew the license. The person may

obtain a new license by complying with the requirements and procedures for obtaining an original license.

Sec. 2308.160. CONTINUING EDUCATION. To renew an incident management towing operators license, the license holder must complete a professional development-truck and bus driver/commercial vehicle operation course approved by the department.

ARTICLE 2. CONSOLIDATION OF LAWS RELATED TO TOWING

SECTION 2.01. Sections 643.201 and 643.203 through 643.208, Transportation Code, are transferred to Chapter 2308, Occupations Code, redesignated as Subchapter E, Chapter 2308, Occupations Code, renumbered as Sections 2308.201 through 2308.207, Occupations Code, and amended to read as follows:

SUBCHAPTER E. LOCAL REGULATION OF TOWING

Sec. 2308.201 [~~643.201~~]. TOW TRUCK REGULATION BY POLITICAL SUBDIVISIONS. (a) In addition to the registration requirements of Subchapter B, Chapter 643, Transportation Code, a political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a tow truck than is imposed by Title 7, Transportation Code [~~this title~~].

(b) A political subdivision may not require the registration of a tow truck that performs consent tows in the political subdivision unless the owner of the tow truck has a place of business in the territory of the political subdivision.

(c) A political subdivision may require the registration of

a tow truck that performs a nonconsent tow in the political subdivision, regardless of whether the owner of the tow truck has a place of business in the territory of the political subdivision.

(d) A political subdivision may not require a person who holds a driver's license or commercial driver's license to obtain a license or permit for operating a tow truck unless the person performs nonconsent tows in the territory of the political subdivision. A fee charged for a license or permit may not exceed $15.

[~~(e) In this section:~~

[~~(1) "Commercial driver's license" has the meaning assigned by Section 522.003.~~

[~~(2) "Consent tow" means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.~~

[~~(3) "Driver's license" has the meaning assigned by Section 521.001.~~

[~~(4) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow.~~]

Sec. 2308.202 [~~643.203~~]. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS. The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision.

Sec. 2308.203 [~~643.204~~]. TOWING FEE STUDIES. (a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

Sec. 2308.204 [~~643.205~~]. FEES FOR NONCONSENT TOWS IN OTHER AREAS. (a) In an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, a towing company may charge and collect a fee for the tow of a motor vehicle from private property in an amount not to exceed an amount equal to 150 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located.

(b) A towing company may charge and collect a fee for the tow of a vehicle, with a gross vehicle weight rating in excess of 26,000 pounds, from private property in an amount not to exceed an amount equal to 125 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located.

Sec. 2308.205 [~~643.206~~]. STORAGE OF TOWED VEHICLES. (a) A towing company that makes a nonconsent tow shall tow the vehicle to

a vehicle storage facility that is operated by a person who holds a license to operate the facility under Chapter 2303, [~~Occupations Code,~~] unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner.

(b) A storage or notification fee imposed in connection with a motor vehicle towed to a vehicle storage facility is governed by Chapter 2303[~~, Occupations Code~~].

(c) Except as provided by this chapter, Article 18.23, Code of Criminal Procedure, or Chapter 2303[~~, Occupations Code~~], a fee may not be charged or collected without the prior written consent of the vehicle owner or operator.

Sec. 2308.206 [~~643.207~~]. REQUIRED FILING. (a) Before January 31 of each year, a towing company shall file with the department a schedule showing each towing fee that the towing company charges or collects in connection with a nonconsent tow.

(b) If a political subdivision begins regulating nonconsent tow fees, the fees shall be reported to the department by the towing company before the 30th day after the regulation goes into effect.

(c) Any changes in nonconsent tow fees regulated by a political subdivision shall be reported to the department by the towing company before the 30th day after the effective date of the change.

(d) The department shall make towing fee schedules available on the department's Internet website. The department shall make no determination as to the reasonableness of a towing fee schedule.

Sec. 2308.207 [~~643.208~~]. REQUIRED POSTING. All towing and

storage fees shall be posted at the licensed vehicle storage facility to which the motor vehicle has been delivered and shall be posted in view of the person who claims the vehicle.

SECTION 2.02. Section 684.101, Transportation Code, is transferred to Subchapter E, Chapter 2308, Occupations Code, and renumbered as Section 2308.208, Occupations Code, to read as follows:

Sec. 2308.208 [~~684.101~~]. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED VEHICLES. A municipality may adopt an ordinance that is identical to this chapter or that imposes additional requirements that exceed the minimum standards of this chapter but may not adopt an ordinance conflicting with this chapter.

SECTION 2.03. Sections 684.011, 684.012, 684.0125, 684.013, 684.014, and 684.015, Transportation Code, are transferred to Chapter 2308, Occupations Code, redesignated as Subchapter F, Chapter 2308, Transportation Code, renumbered as Sections 2308.251 through 2308.256, Occupations Code, and amended to read as follows:

SUBCHAPTER F. UNAUTHORIZED VEHICLES

Sec. 2308.251 [~~684.011~~]. PROHIBITION AGAINST UNATTENDED VEHICLES IN CERTAIN AREAS. (a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;

(2) prevents a vehicle from exiting a parking space in the facility;

(3) is in or obstructs a fire lane marked according to

Subsection (c); or

(4) does not display the special license plates issued under Section 504.201, Transportation Code, or the disabled parking placard issued under Chapter 681, Transportation Code, for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person.

(b) Subsection (a) does not apply to an emergency vehicle that is owned by, or the operation of which is authorized by, a governmental entity.

(c) If a government regulation governing the marking of a fire lane applies to a parking facility, a fire lane in the facility must be marked as provided by the regulation. If a government regulation on the marking of a fire lane does not apply to the parking facility, all curbs of fire lanes must be painted red and be conspicuously and legibly marked with the warning "FIRE LANE--TOW AWAY ZONE" in white letters at least three inches tall, at intervals not exceeding 50 feet.

Sec. 2308.252 [~~684.012~~]. REMOVAL AND STORAGE OF UNAUTHORIZED VEHICLE. (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

(1) signs that comply with Subchapter G [~~C~~] prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and

remain installed at the time of towing;

(2) the owner or operator of the vehicle has received actual notice from the parking facility owner that the vehicle will be towed at the vehicle owner's or operator's expense if it is in or not removed from an unauthorized space;

(3) the parking facility owner gives notice to the owner or operator of the vehicle under Subsection (b); or

(4) the vehicle is:

(A) left in violation of Section 2308.251 [~~684.011~~] or 2308.253 [~~684.0125~~]; or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility and the removal is approved by a peace officer.

(b) A parking facility owner is considered to have given notice under Subsection (a)(3) if:

(1) a conspicuous notice has been attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:

(A) that the vehicle is in a parking space in which the vehicle is not authorized to be parked;

(B) a description of all other unauthorized areas in the parking facility;

(C) that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and

(D) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the

vehicle; and

(2) a notice is mailed after the notice is attached to the vehicle as provided by Subdivision (1) to the owner of the vehicle by certified mail, return receipt requested, to the last address shown for the owner according to the vehicle registration records of the Texas Department of Transportation, or if the vehicle is registered in another state, the appropriate agency of that state.

(c) The notice under Subsection (b)(2) must:

(1) state that the vehicle is in a space in which the vehicle is not authorized to park;

(2) describe all other unauthorized areas in the parking facility;

(3) contain a warning that the unauthorized vehicle will be towed at the expense of the owner or operator of the vehicle if it is not removed from the parking facility before the 15th day after the postmark date of the notice; and

(4) state a telephone number that is answered 24 hours a day to enable the owner or operator to locate the vehicle.

(d) The mailing of a notice under Subsection (b)(2) is not required if after the notice is attached under Subsection (b)(1) the owner or operator of the vehicle leaves the vehicle in another location where parking is unauthorized for the vehicle according to the notice.

Sec. 2308.253 [~~684.0125~~]. UNATTENDED VEHICLES ON PARKING FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES. (a) This section applies only to a parking facility serving or

adjacent to an apartment complex consisting of one or more residential apartment units and any adjacent real property serving the apartment complex.

(b) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

(1) obstructs a gate that is designed or intended for the use of pedestrians or vehicles;

(2) obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;

(3) is in or obstructs a restricted parking area or parking space designated under Subchapter G [~~C~~], including a space designated for the use of employees or maintenance personnel of the parking facility or apartment complex;

(4) is in a tow away zone, other than a fire lane covered by Section 2308.251(c) [~~684.011(c)~~], that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;

(5) is a semitrailer, trailer, or truck-tractor, as defined by Chapter 502, Transportation Code, unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or

(6) is leaking a fluid that presents a hazard or threat to persons or property.

(c) A parking facility owner may not have an emergency vehicle described by Section 2308.251(b) [~~684.011(b)~~] removed from

the parking facility.

(d) Except as provided by a contract described by Subsection (e), a parking facility owner may not have a vehicle removed from the parking facility merely because the vehicle does not display:

(1) an unexpired license plate or registration insignia issued for the vehicle under Chapter 502, Transportation Code, or the vehicle registration law of another state or country; or

(2) a valid vehicle inspection certificate issued under Chapter 548, Transportation Code, or the vehicle inspection law of another state or country.

(e) A contract provision providing for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia or a valid inspection certificate is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must be:

(1) delivered in person to the owner or operator of the vehicle; or

(2) sent by certified mail, return receipt requested, to that owner or operator.

(f) This section may not be construed:

(1) to authorize the owner or operator of a vehicle to leave an unattended vehicle on property that is not designed or intended for the parking of vehicles; or

(2) to limit or restrict the enforcement of Chapter 683, Transportation Code, the abandoned motor vehicle law.

(g) A provision of an apartment lease or rental agreement entered into or renewed on or after January 1, 2004, that is in conflict or inconsistent with this section is void and may not be enforced.

Sec. 2308.254 [~~684.013~~]. LIMITATION ON PARKING FACILITY OWNER'S AUTHORITY TO REMOVE UNAUTHORIZED VEHICLE. A parking facility owner may not have an unauthorized vehicle removed from the facility except:

(1) as provided by this chapter or a municipal ordinance that complies with Section 2308.208 [~~684.101~~]; or

(2) under the direction of a peace officer or the owner or operator of the vehicle.

Sec. 2308.255 [~~684.014~~]. TOWING COMPANY'S AUTHORITY TO REMOVE AND STORE UNAUTHORIZED VEHICLE. (a) A towing company that is insured as provided by Subsection (c) may, without the consent of an owner or operator of an unauthorized vehicle, remove and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

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

(A) the parking facility owner has installed the signs required by Section 2308.252(a)(1) [~~684.012(a)(1)~~]; or

(B) the owner or operator received notice under Section 2308.252(a)(2) [~~684.012(a)(2)~~] or the parking facility owner gave notice complying with Section 2308.252(a)(3)

[~~684.012(a)(3)~~]; or

(2) the vehicle is:

(A) left in violation of Section 2308.251 [~~684.011~~]; or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility and the removal is approved by a peace officer.

(b) A towing company may not remove an unauthorized vehicle except under:

(1) this chapter;

(2) a municipal ordinance that complies with Section 2308.208 [~~684.101~~]; or

(3) the direction of a peace officer or the owner or operator of the vehicle.

(c) Only a towing company that is insured against liability for property damage incurred in towing a vehicle may remove and store an unauthorized vehicle under this section.

(d) A towing company may remove and store a vehicle under Subsection (a) only if the parking facility owner:

(1) requests that the towing company remove and store the specific vehicle; or

(2) has a standing written agreement with the towing company to enforce parking restrictions in the parking facility from which the vehicle will be removed.

Sec. 2308.256 [~~684.015~~]. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) A vehicle storage facility accepting a vehicle that is towed under this

chapter shall within two hours after receiving the vehicle report to the police department of the municipality in which the parking facility is located, or, if the parking facility is not located in a municipality having a police department, to the sheriff of the county in which the parking facility is located:

(1) a general description of the vehicle;

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

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

(4) the location from which the vehicle was towed; and

(5) the name and location of the vehicle storage facility where the vehicle is being stored.

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

SECTION 2.04. Subchapter C, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code, redesignated as Subchapter G, Chapter 2308, Occupations Code, renumbered as Sections 2308.301 through 2308.305, Occupations Code, and amended to read as follows:

SUBCHAPTER G [~~C~~]. SIGNS PROHIBITING UNAUTHORIZED VEHICLES AND DESIGNATING RESTRICTED AREAS

Sec. 2308.301 [~~684.031~~]. GENERAL REQUIREMENTS FOR SIGN PROHIBITING UNAUTHORIZED VEHICLES. (a) Except as provided by Subsection (a)(2)(B) and Section 2308.304 [~~684.034~~] or 2308.305 [~~684.035~~] an unauthorized vehicle may not be towed under Section 2308.252(a)(1) [~~684.012(a)(1)~~] unless a sign prohibiting

unauthorized vehicles on a parking facility is:

(1) facing and conspicuously visible to the driver of a vehicle that enters the facility;

(2) located:

(A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an entry from an alley abutting the facility; or

(B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:

(i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

(ii) the width of an entrance exceeds 35 feet;

(3) permanently mounted on a pole, post, permanent wall, or permanent barrier;

(4) installed on the parking facility; and

(5) installed so that the bottom edge of the sign is no lower than five feet and no higher than eight feet above ground level.

(b) Except as provided by Section 2308.305 [~~684.035~~], an unauthorized vehicle may be towed under Section 2308.252(a)(1) [~~684.012(a)(1)~~] only if each sign prohibiting unauthorized vehicles:

(1) is made of weather-resistant material;

(2) is at least 18 inches wide and 24 inches tall;

(3) contains the international symbol for towing

vehicles;

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

(5) bears the words "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense";

(6) contains a statement of the days and hours of towing enforcement; and

(7) contains a number, including the area code, of a telephone that is answered 24 hours a day to enable an owner or operator of a vehicle to locate the vehicle.

Sec. 2308.302 [~~684.032~~]. COLOR, LAYOUT, AND LETTERING HEIGHT REQUIREMENTS. (a) Except as provided by Section 2308.305 [~~684.035~~], each sign required by this chapter must comply with the color, layout, and lettering height requirements of this section.

(b) A bright red international towing symbol, which is a solid silhouette of a tow truck towing a vehicle on a generally rectangular white background, at least four inches in height, must be on the uppermost portion of a sign or on a separate sign placed immediately above the sign.

(c) The portion of the sign immediately below the international towing symbol must contain the words "Towing Enforced" or the information provided by Section 2308.301(b)(4) [~~684.031(b)(4)~~] in lettering at least two inches in height. The lettering on this portion of the sign must consist of white letters on a bright red background.

(d) Except as provided by Subsection (e), the next lower portion of the sign must contain the remaining information required

by Section 2308.301(b) [~~684.031(b)~~] displayed in bright red letters at least one inch in height on a white background.

(e) The bottommost portion of the sign must contain the telephone number required by Section 2308.301(b) [~~684.031(b)~~], in lettering at least one inch in height and may, if the facility owner chooses or if an applicable municipal ordinance requires, include the name and address of the storage facility to which an unauthorized vehicle will be removed. The lettering on this portion of the sign must consist of white letters on a bright red background.

Sec. 2308.303 [~~684.033~~]. TELEPHONE NUMBER FOR LOCATING TOWED VEHICLE REQUIRED. If a parking facility owner posts a sign described by Sections 2307.301 [~~684.031~~] and 2308.302 [~~684.032~~], the owner of a vehicle that is towed from the facility under this chapter must be able to locate the vehicle by calling the telephone number on the sign.

Sec. 2308.304 [~~684.034~~]. DESIGNATION OF RESTRICTED PARKING SPACES ON OTHERWISE UNRESTRICTED PARKING FACILITY. A parking facility owner may designate one or more spaces as restricted parking spaces on a portion of an otherwise unrestricted parking facility. Instead of installing a sign at each entrance to the parking facility as provided by Section 2308.301(a)(2) [~~684.031(a)(2)~~], an owner may place a sign that prohibits unauthorized vehicles from parking in designated spaces and that otherwise complies with Sections 2308.301 [~~684.031~~] and 2308.302 [~~684.032~~]:

(1) at the right or left side of each entrance to a

designated area or group of parking spaces located on the restricted portion of the parking facility; or

(2) at the end of a restricted parking space so that the sign, the top of which must not be higher than seven feet above the ground, is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

Sec. 2308.305 [~~684.035~~]. INDIVIDUAL PARKING RESTRICTIONS IN RESTRICTED AREA. (a) A parking facility owner who complies with Sections 2308.301 [~~684.031~~] and 2308.302 [~~684.032~~] may impose further specific parking restrictions in an area to which the signs apply for individual spaces by installing or painting a weather-resistant sign or notice on a curb, pole, post, permanent wall, or permanent barrier so that the sign is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

(b) The top of the sign or notice may not be higher than seven feet above the ground.

(c) The sign or notice must include an indication that the space is reserved for a particular unit number, person, or type of person.

(d) The letters on the sign or notice must be at least two inches in height and must contrast to the color of the curb, wall, or barrier so they can be read during the day and at night. The letters are not required to be illuminated or made of reflective material.

SECTION 2.05. Subchapter D, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code,

redesignated as Subchapter H, Chapter 2308, Occupations Code, renumbered as Sections 2308.351 through 2308.354, Occupations Code, and amended to read as follows:

SUBCHAPTER H [~~D~~]. REGULATION OF PARKING ON CERTAIN PUBLIC ROADWAY AREAS

Sec. 2308.351 [~~684.051~~]. REMOVAL OF UNAUTHORIZED VEHICLE FROM LEASED RIGHT-OF-WAY. Unless prohibited by the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in a leased area described by Section 2308.002(7)(B)(i) [~~684.001(1)(B)(i)~~] if the owner or towing company gives notice under Section 2308.252(a)(1), (2), or (3) [~~684.012(a)(1), (2), or (3)~~] and otherwise complies with this chapter.

Sec. 2308.352 [~~684.052~~]. REMOVAL OF UNAUTHORIZED VEHICLE FROM AREA BETWEEN PARKING FACILITY AND PUBLIC ROADWAY. Unless prohibited by a municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle any part of which is in an area described by Section 2308.002(7)(B)(ii) [~~684.001(1)(B)(ii)~~] if notice provided by Section 2308.252(a)(2) or (3) [~~684.012(a)(2) or (3)~~] is given and the owner or towing company has otherwise complied with this chapter.

Sec. 2308.353 [~~684.053~~]. REMOVAL UNDER GOVERNMENTAL ENTITY'S AUTHORITY OF UNAUTHORIZED VEHICLE PARKED IN RIGHT-OF-WAY. (a) A governmental entity that has jurisdiction over a public roadway and that has posted one or more signs in the right-of-way stating that parking is prohibited in the right-of-way may:

(1) remove or contract with a towing company to remove

an unauthorized vehicle parked in the right-of-way of the public roadway; or

(2) grant written permission to an abutting parking facility owner to:

(A) post one or more "No parking in R.O.W." signs along a common property line of the facility and the roadway; and

(B) remove vehicles from the right-of-way of the public roadway under this chapter.

(b) A sign under Subsection (a)(2) must:

(1) state that a vehicle parked in the right-of-way may be towed at the expense of the owner or operator of the vehicle;

(2) be placed facing the public roadway:

(A) on the parking facility owner's property not more than two feet from the common boundary line; and

(B) at intervals so that no point in the boundary line is less than 25 feet from a sign posted under this subsection; and

(3) in all other respects comply with Subchapter G [~~C~~].

(c) After signs have been posted under Subsection (b), the parking facility owner or a towing company may remove an unauthorized vehicle from the right-of-way subject to the governmental entity's written permission given under Subsection (a)(2).

Sec. 2308.354 [~~684.054~~]. AUTHORITY FOR REMOVAL OF VEHICLE FROM PUBLIC ROADWAY. (a) Under an ordinance of a municipality regulating the parking of vehicles in the municipality, to aid in

the enforcement of the ordinance, an employee designated by the municipality may be authorized to:

(1) immobilize a vehicle parked in the municipality; and

(2) remove an immobilized vehicle from a public roadway in the municipality.

(b) A parking facility owner or towing company may not remove a vehicle from a public roadway except under:

(1) this chapter or a municipal ordinance that complies with Section 2308.208 [~~684.101~~]; or

(2) the direction of a peace officer or the owner or operator of the vehicle.

SECTION 2.06. Subchapter E, Chapter 684, Transportation Code, is transferred to Chapter 2308, Occupations Code, redesignated as Subchapter I, Chapter 2308, Occupations Code, and renumbered as Sections 2308.401 through 2308.407, Occupations Code, to read as follows:

SUBCHAPTER I [~~E~~]. REGULATION OF TOWING COMPANIES AND PARKING FACILITY OWNERS

Sec. 2308.401 [~~684.081~~]. PARKING FACILITY OWNER PROHIBITED FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY. (a) A parking facility owner may not directly or indirectly accept anything of value from a towing company in connection with the removal of a vehicle from a parking facility.

(b) A parking facility owner may not have a direct or indirect monetary interest in a towing company that for compensation removes unauthorized vehicles from a parking facility

in which the parking facility owner has an interest.

Sec. 2308.402 [~~684.082~~]. TOWING COMPANY PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER. (a) A towing company may not directly or indirectly give anything of value to a parking facility owner in connection with the removal of a vehicle from a parking facility.

(b) A towing company may not have a direct or indirect monetary interest in a parking facility from which the towing company for compensation removes unauthorized vehicles.

Sec. 2308.403 [~~684.083~~]. LIMITATION ON LIABILITY OF PARKING FACILITY OWNER FOR REMOVAL OR STORAGE OF UNAUTHORIZED VEHICLE. A parking facility owner who causes the removal of an unauthorized vehicle is not liable for damages arising from the removal or storage of the vehicle if the vehicle:

(1) was removed in compliance with this chapter; and

(2) is:

(A) removed by a towing company insured against liability for property damage incurred in towing a vehicle; and

(B) stored by a vehicle storage facility insured against liability for property damage incurred in storing a vehicle.

Sec. 2308.404 [~~684.084~~]. CIVIL LIABILITY OF TOWING COMPANY OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER. (a) A towing company or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:

(1) damages arising from the removal or storage of the

vehicle; and

(2) towing or storage fees assessed in connection with the vehicle's removal or storage.

(b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner or towing company to recover under Subsection (a).

(c) A towing company or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for $300 plus three times the amount of fees assessed in the vehicle's removal, towing, or storage.

(d) In a suit brought under this chapter, the prevailing party is entitled to recover reasonable attorney's fees.

Sec. 2308.405 [~~684.085~~]. VIOLATION OF CHAPTER; FINE. A violation of this chapter is a misdemeanor punishable by a fine of not less than $500 or more than $1,500.

Sec. 2308.406 [~~684.086~~]. VIOLATION OF CHAPTER; INJUNCTION. A violation of this chapter may be enjoined under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 2308.407 [~~684.087~~]. MINOR SIGN OR LETTERING HEIGHT VARIATIONS. A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

SECTION 2.07. Sections 685.002 through 685.010, Transportation Code, are transferred to Chapter 2308, Occupations Code, redesignated as Subchapter J, Chapter 2308, Occupations Code, renumbered as Sections 2308.451 through 2308.459, Occupations Code, and amended to read as follows:

SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED VEHICLES

Sec. 2308.451 [~~685.002~~]. PAYMENT OF COST OF REMOVAL AND STORAGE OF VEHICLE. (a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person or law enforcement agency that authorized the removal shall:

(1) pay the costs of the removal and storage; or

(2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

Sec. 2308.452 [~~685.003~~]. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING. The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement.

Sec. 2308.453 [~~685.004~~]. JURISDICTION. A hearing under this chapter shall be in the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.

Sec. 2308.454 [~~685.005~~]. NOTICE TO VEHICLE OWNER OR OPERATOR. (a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's

removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, [~~Occupations Code,~~] shall include with that notice a notice of the person's rights under this chapter.

Sec. 2308.455 [~~685.006~~]. CONTENTS OF NOTICE. The notice under Section 2308.454 [~~685.005~~] must include:

(1) a statement of:

(A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove the vehicle;

(B) the information that a request for a hearing must contain; and

(C) any filing fee for the hearing;

(2) the name, address, and telephone number of the towing company that removed the vehicle;

(3) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(4) the name, address, and telephone number of the person, property owner, or law enforcement agency that authorized the removal of the vehicle; and

(5) the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.

Sec. 2308.456 [~~685.007~~]. REQUEST FOR HEARING. (a) Except as provided by Subsection (c), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility, excluding Saturdays, Sundays, and legal holidays.

(b) A request for a hearing must contain:

(1) the name, address, and telephone number of the owner or operator of the vehicle;

(2) the location from which the vehicle was removed;

(3) the date when the vehicle was removed;

(4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal;

(5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(6) the name, address, and telephone number of the towing company that removed the vehicle;

(7) a copy of any receipt or notification that the owner or operator received from the towing company or the vehicle storage facility; and

(8) if the vehicle was removed from a parking facility:

(A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or

(B) a statement that no sign restricting parking was posted at the parking facility.

(c) If notice was not given under Section 2308.454 [~~685.005~~], the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.

(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.

Sec. 2308.457 [~~685.008~~]. FILING FEE AUTHORIZED. The court may charge a filing fee of $20 for a hearing under this chapter.

Sec. 2308.458 [~~685.009~~]. HEARING. (a) A hearing under this chapter shall be held before the 10th working day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing and the person or law enforcement agency that authorized the removal of the vehicle of the date, time, and place of the hearing by registered or certified mail. The notice of the hearing to the person or law enforcement agency that authorized the removal of the vehicle shall include a copy of the request for hearing.

(b-1) At a hearing under this section:

(1) the burden of proof is on the person who requested the hearing; and

(2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

(c) The issues in a hearing under this chapter are:

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

(2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater

than the amount authorized by the political subdivision under Section 2308.201 [~~643.201~~] or 2308.202 [~~643.203~~];

(3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section 2308.203 [~~643.204~~] or 2308.204 [~~643.205~~]; or

(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount filed with the department under Section 2308.206 [~~643.207~~].

(d) The court shall make written findings of fact and a conclusion of law.

(e) The court may award:

(1) court costs to the prevailing party;

(2) the reasonable cost of photographs submitted under Section 2308.456(b)(8) [~~685.007(b)(8)~~] to a vehicle owner or operator who is the prevailing party; and

(3) an amount equal to the amount that the towing charge exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303[~~, Occupations Code~~].

Sec. 2308.459 [~~685.010~~]. APPEAL. An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

SECTION 2.08. Chapter 2308, Occupations Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. ENFORCEMENT

Sec. 2308.501. ADMINISTRATIVE PENALTY. (a) The executive director may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

(1) this chapter or a rule adopted under this chapter; or

(2) a rule or order of the executive director or commission.

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. (a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Sec. 2308.503. CRIMINAL PENALTY; LICENSING. (a) A person commits an offense if the person:

(1) violates the permitting or licensing requirements of this chapter;

(2) performs towing without a license to perform towing in this state;

(3) employs an individual who does not hold the appropriate license required by this chapter; or

(4) falsifies a certification or training.

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

SECTION 2.09. Section 643.253(d), Transportation Code, is transferred to Subchapter K, Chapter 2308, Occupations Code, renumbered as Section 2308.504, Occupations Code, and amended to read as follows:

Sec. 2308.504. CRIMINAL PENALTY; TOWING. (a) [~~(d)~~] A person commits an offense if the person:

(1) violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 2308.201 [~~643.201~~] or 2308.202 [~~643.203~~], for which the political subdivision does not prescribe the penalty;

(2) charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 2308.201 [~~643.201~~] or 2308.202 [~~643.203~~] that is not authorized or is greater than the authorized amount of the fee;

(3) charges or collects a fee greater than the amount authorized under Section 2308.204 [~~643.205~~];

(4) charges or collects a fee in excess of the amount filed with the department under Section 2308.206 [~~643.207~~];

(5) violates Section 2308.205 [~~643.206~~]; or

(6) violates a rule of the department applicable to a tow truck and towing company.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $200 or more than $1,000 per

violation.

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. Article 18.23(e), Code of Criminal Procedure, is amended to read as follows:

(e) Subchapter J, Chapter 2308, Occupations Code [~~Chapter 685, Transportation Code~~], does not apply to a motor vehicle directed by a law enforcement agency to be towed and stored for an evidentiary or examination purpose.

SECTION 3.02. Section 101.141(a), Government Code, is amended to read as follows:

(a) A clerk of a justice court shall collect fees and costs as follows:

(1) additional court cost in certain civil cases to establish and maintain an alternative dispute resolution system, if authorized by the commissioners court of a county with a population of at least 2.5 million (Sec. 152.005, Civil Practice and Remedies Code) . . . not to exceed $3;

(2) additional filing fees:

(A) to fund Dallas County civil court facilities (Sec. 51.705, Government Code) . . . not more than $15; and

(B) for filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee, to fund civil legal services for the indigent (Sec. 133.153, Local Government Code) . . . $2;

(3) for filing a suit in Comal County (Sec. 152.0522,

Human Resources Code) . . . $1.50;

(4) fee for hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court (Sec. 2308.457, Occupations Code [~~685.008, Transportation Code~~]) . . . $20;

(5) court fees and costs, if ordered by the court, for a suit filed by an inmate in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser of:

(A) 20 percent of the preceding six months' deposits to the inmate's trust account administered by the Texas Department of Criminal Justice under Section 501.014, Government Code; or

(B) the total amount of court fees and costs;

(6) monthly payment for remaining court fees and costs after the initial payment for a suit in which an affidavit or unsworn declaration of inability to pay costs is filed by the inmate (Sec. 14.006, Civil Practice and Remedies Code) . . . the lesser of:

(A) 10 percent of that month's deposit to the inmate's trust account administered by the Texas Department of Criminal Justice under Section 501.014, Government Code; or

(B) the total amount of court fees and costs that remain unpaid;

(7) the following costs not otherwise charged to the inmate under Section 14.006, Civil Practice and Remedies Code, if the inmate has previously filed an action dismissed as malicious or

frivolous (Sec. 14.007, Civil Practice and Remedies Code):

(A) expenses of service of process;

(B) postage; and

(C) transportation, housing, or medical care incurred in connection with the appearance of the inmate in the court for any proceeding; and

(8) the cost of a special program that a court may order a child to attend after a finding that the child committed an offense, if ordered by the court (Art. 45.057, Code of Criminal Procedure) . . . costs of the program not to exceed $100.

SECTION 3.03. Section 101.161, Government Code, is amended to read as follows:

Sec. 101.161. MUNICIPAL COURT FEES AND COSTS. The clerk of a municipal court shall collect:

(1) a fee for a hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court (Sec. 2308.457, Occupations Code [~~685.008, Transportation Code~~]) . . . $20; and

(2) the cost of a special program that a court may order a child to attend after finding that the child committed an offense, if ordered by the court (Art. 45.057, Code of Criminal Procedure) . . . costs of the program not to exceed $100.

SECTION 3.04. Section 2303.155(f), Occupations Code, is amended to read as follows:

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized

by this section or a towing fee authorized by Chapter 2308 [~~Chapter 643, Transportation Code~~].

SECTION 3.05. Section 643.101(d), Transportation Code, is amended to read as follows:

(d) The owner of a tow truck that is used to perform nonconsent tows, as defined by Section 2308.201, Occupations Code [~~643.201~~], shall maintain on-hook cargo insurance in the amount of at least $50,000 per truck.

SECTION 3.06. Section 643.253(e), Transportation Code, is amended to read as follows:

(e) An offense under Subsection (b) [~~or (d)~~] is a misdemeanor punishable by a fine of not less than $200 or more than $1,000 per violation.

SECTION 3.07. Section 1(1), Chapter 528, Acts of the 76th Legislature, Regular Session, 1999 (Article 178d-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Parking facility," "parking facility owner," and "vehicle" have the meanings assigned by Section 2308.002, Occupations Code [~~684.001, Transportation Code~~].

ARTICLE 4. TRANSITION AND EFFECTIVE DATE

SECTION 4.01. The following provisions of the Transportation Code are repealed:

(1) Section 643.202;

(2) Section 684.001;

(3) Section 685.001;

(4) the heading to Subchapter E, Chapter 643;

(5) the heading to Chapter 684;

(6) the headings to Subchapters A, B, and F, Chapter 684; and

(7) the heading to Chapter 685.

SECTION 4.02. As soon as practicable after the effective date of this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall make the initial appointments to the Towing and Storage Advisory Board. The presiding officer shall appoint three members to terms expiring February 1, 2009, three members to terms expiring February 1, 2011, and three members to terms expiring February 1, 2013.

SECTION 4.03. (a) All rules of the Texas Transportation Commission and the Texas Department of Transportation relating to the administration of Chapter 2303, Occupations Code, are continued in effect as rules of the Texas Commission of Licensing and Regulation or the executive director of the Texas Department of Licensing and Regulation until superseded by a rule of the Texas Commission of Licensing and Regulation or the executive director of the Texas Department of Licensing and Regulation. A license issued under Chapter 2303, Occupations Code, by the Texas Department of Transportation is continued in effect as provided by the law in effect immediately before the effective date of this Act. A complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act. An inspection or other activity under Chapter 2303, Occupations Code, that is conducted by the Texas Transportation Commission or the Texas Department of Transportation is considered to be an

inspection or activity conducted by the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation.

(b) A reference in another law or an administrative rule to the powers and duties under Chapter 2303, Occupations Code, of the Texas Transportation Commission or the Texas Department of Transportation means the Texas Commission of Licensing and Regulation or the Texas Department of Licensing and Regulation.

SECTION 4.04. The executive director of the Texas Department of Licensing and Regulation and the Texas Commission of Licensing and Regulation, as appropriate, shall adopt rules under Chapter 2308, Occupations Code, as added by this Act, relating to:

(1) an original application for a permit or license under that chapter not later than March 1, 2008; and

(2) renewal of a license or permit and continuing education requirements not later than January 1, 2009.

SECTION 4.05. The Texas Department of Licensing and Regulation shall issue an incident management towing permit, private property towing permit, consent towing permit, incident management towing operator's license, private property towing operator's license, or consent towing operator's license to a qualified applicant under this section who:

(1) applies for a license under this section not later than June 1, 2008;

(2) submits to the department the information required by rules adopted by the executive director of the department under this section; and

(3) pays the application fee.

SECTION 4.06. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2007.

(b) Except as provided by Subsection (c) of this section, Section 2308.453, Occupations Code, as added by this Act, and Subchapters C and D, Chapter 2308, Occupations Code, as added by this Act, take effect September 1, 2008.

(c) Section 2308.160, Occupations Code, as added by this Act, takes effect September 1, 2009.

80TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form in lieu of the front or the back of the original bill)

Bill or Resolution Number: HB2958

signature of **primary** author | printed name of **primary** author: Jackson | Date: MAR - 7 2007

PERMISSION TO SIGN HB 2958 (bill or resolution #) HAS BEEN GIVEN TO **(check only one of the following)**:

X ALL REPRESENTATIVES

_____ THE FOLLOWING REPRESENTATIVE(S): _____

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

A2100 Allen	Date	A2450 Cook, Byron	Date	A2795 Farabee	Date
A2125 Alonzo	Date	A2565 Cook, Robby	Date	A2820 Farias	Date
A2150 Anchia	Date	A2595 Corte	Date	A2810 Farrar	Date
A2155 Anderson	Date	A2605 Crabb	Date	A2840 Flores	Date
A2145 Aycock	Date	A2610 Craddick	Date	A2850 Flynn	Date
A2160 Bailey	Date	A2615 Creighton	Date	A2860 Frost	Date
A2205 Berman	Date	A2640 Crownover	Date	A2920 Gallego	Date
A2230 Bohac	Date	A2645 Darby	Date	A2915 Garcia	Date
A2240 Bolton	Date	A2620 Davis, John	Date	A2960 Gattis	Date
A2250 Bonnen	Date	A2625 Davis, Yvonne	Date	A2945 Geren	Date
A2280 Branch	Date	A2680 Delisi	Date	A2935 Giddings	Date
A2265 Brown, Betty	Date	A2690 Deshotel	Date	A2910 Gonzales	Date
A2270 Brown, Fred	Date	A2705 Driver	Date	A4660 Gonzalez Toureilles	Date
A2255 Burnam	Date	A2665 Dukes	Date	A2990 Goolsby	Date
A2295 Callegari	Date	A2660 Dunnam	Date	A3045 Guillen	Date
A2495 Castro	Date	A2650 Dutton	Date	A3035 Haggerty	Date
A2585 Chavez	Date	A2775 Eiland	Date	A3050 Hamilton	Date
A2480 Chisum	Date	A2780 Eissler	Date	A3100 Hancock	Date
A2525 Christian	Date	A2785 Elkins	Date	A3160 Hardcastle	Date
A2425 Cohen	Date	A2805 England	Date	A3150 Harless	Date
A2435 Coleman	Date	A2800 Escobar	Date	A3165 Harper-Brown	Date

Bill or Resolution Number: HB 2958

A3170 Hartnett	Date	A3730 Mallory Caraway	Date	A4185 Pitts	Date
A3175 Heflin	Date	A3780 Martinez	Date	A4200 Puente	Date
A3155 Hernandez	Date	A2835 Martinez Fischer	Date	A4230 Quintanilla	Date
A3140 Herrero	Date	A3665 McCall	Date	A4215 Raymond	Date
A3250 Hilderbran	Date	A3650 McClendon	Date	A4220 Riddle	Date
A3275 Hill	Date	A3845 McReynolds	Date	A4250 Ritter	Date
A3305 Hochberg	Date	A3830 Menendez	Date	A4270 Rodriguez	Date
A3290 Hodge	Date	A3840 Merritt	Date	A4350 Rose	Date
A3325 Homer	Date	A3825 Miles	Date	A4525 Smith, Todd	Date
A3330 Hopson	Date	A3835 Miller	Date	A4540 Smith, Wayne	Date
A3315 Howard, Charlie	Date	A3860 Moreno	Date	A4530 Smithee	Date
A3310 Howard, Donna	Date	A3870 Morrison	Date	A4505 Solomons	Date
A3340 Hughes	Date	A3865 Mowery	Date	A4545 Strama	Date
A3375 Isett	Date	A3875 Murphy	Date	A4565 Straus	Date
A3350 Jackson	Date	A3885 Naishtat	Date	A4570 Swinford	Date
A3405 Jones	Date	A3900 Noriega	Date	A4585 Talton	Date
A3480 Keffer	Date	A3890 O'Day	Date	A4600 Taylor	Date
A3470 King, Phil	Date	A3880 Oliveira	Date	A4630 Thompson	Date
A3460 King, Susan	Date	A3886 Olivo	Date	A4650 Truitt	Date
A3465 King, Tracy	Date	A3930 Orr	Date	A4685 Turner	Date
A3495 Kolkhorst	Date	A3940 Ortiz, Jr.	Date	A4700 Van Arsdale	Date
A3485 Krusee	Date	A3945 Otto	Date	A4780 Vaught	Date
A3450 Kuempel	Date	A4090 Parker	Date	A4725 Veasey	Date
A3520 Latham	Date	A4050 Patrick	Date	A4800 Villarreal	Date
A3540 Laubenberg	Date	A4100 Paxton	Date	A4900 Vo	Date
A3560 Leibowitz	Date	A4140 Pena	Date	A4995 West	Date
A3610 Lucio, III	Date	A4160 Phillips	Date	A5005 Woolley	Date
A3705 Macias	Date	A4180 Pickett	Date	A5150 Zedler	Date
A3715 Madden	Date	A3240 Pierson	Date	A5170 Zerwas	Date

3-22-07

H.B. No. _____ By _____

A BILL TO BE ENTITLED
AN ACT

relating to the licensing and regulation of tow trucks, tow truck operators, and vehicle storage facilities; providing penalties.

MAR - 7 2007 Filed with the Chief Clerk

MAR 1 5 2007 Read first time and referred to Committee on Transportation

_____ Reported ____favorably (as amended)
(as substituted)

_____ Sent to Committee on (Calendars)
(Local & Consent Calendars)

_____ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

_____ Read third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Engrossed

_____ Sent to Senate

_____
CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

_____ Received from the House

_____ Read and referred to Committee on _____

_____ Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

_____ Ordered not printed

_____ Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)

_____ Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

_____ Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

_____ Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

_____ Returned to the House

_____
SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,

_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;

_____, _____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)