

BILL ANALYSIS

C.S.H.B. 3306
By: Kuempel
Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note a recent strategic planning process undertaken by the Texas Department of Licensing and Regulation indicated that certain regulations and licensing requirements involving vehicle towing, booting, and storage could be eliminated without endangering public health, safety, or welfare. C.S.H.B. 3306 seeks to remove some of these regulations and revise certain authority to conduct booting and towing activities.

CRIMINAL JUSTICE IMPACT

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

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 3306 amends the Occupations Code to change the persons excepted from the prohibition against a person performing booting operations or operating a booting company from a person who holds an appropriate license under the Texas Towing and Booting Act to a person who is authorized by a local authority, defined by the bill as a state or local governmental entity, an institution of higher education, or a political subdivision of the state authorized to regulate traffic or parking. The bill repeals certain statutory provisions relating to a boot operator's license and booting company license. The bill revises the scope of the exemption from the Texas Towing and Booting Act applicable to certain persons as regards the installation or removal of a boot by removing the specification that those persons are exempt from the entirety of the act and instead specifying that those persons are exempted from certain specified provisions of the act, as amended or added by the bill, that relate to the booting of vehicles. The bill makes these provisions effective September 1, 2018, and establishes that a boot operator's license and a booting company license expire on that date.

C.S.H.B. 3306 replaces Texas Towing and Booting Act provisions authorizing a municipality to adopt an ordinance that is identical to the booting provisions in that act or that imposes additional requirements that exceed the minimum standards of, but does not conflict with, those provisions, to regulate the fees that may be charged in connection with the booting of a vehicle, and to require booting companies to obtain a permit to operate in the municipality with a provision authorizing a local authority to regulate, in areas in which the entity regulates parking or traffic, booting activities, including operation of booting companies and operators that operate on a parking facility, any permit and sign requirements in connection with the booting of a vehicle, and fees that may be charged in connection with the booting of a vehicle. The bill requires regulations adopted under that bill provision to incorporate the requirements of provisions relating to the booting of an unauthorized vehicle and the bill's provisions relating to boot removal, include procedures for vehicle owners and operators to file a complaint with the local

authority regarding a booting company or operator, and to provide for the imposition of a penalty on a booting company or operator for a violation of the bill's provisions relating to boot removal.

C.S.H.B. 3306 includes among the statements required to be included in a notice a boot operator who installs a boot on an unauthorized vehicle must affix to the vehicle, in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for a violation of the Texas Towing and Booting Act by a boot operator. The bill requires a booting company responsible for the installation of a boot on a vehicle to remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot and requires a booting company that fails to have the boot removed within that prescribed time to waive the amount of the fee for the boot removal, excluding any associated parking fees. The bill prohibits a booting company responsible for the installation of more than one boot on a vehicle from charging a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

C.S.H.B. 3306 authorizes an individual designated by a university, defined by the bill as a certain public senior college or university or a certain private or independent institution of higher education, to request that a vehicle parked at a university parking facility be towed to another location on the university campus to facilitate a special event. The bill prohibits a vehicle from being towed from a university to facilitate a special event unless signs meeting specified criteria are installed on the parking facility for the 72 hours preceding towing enforcement for the special event and for 48 hours after the conclusion of the special event. The bill requires personnel to be available if a vehicle is towed from a university to facilitate a special event to release the vehicle within two hours after a request for release of the vehicle and to accept any payment required for the release of the vehicle. The bill prohibits a university from charging a fee for such a tow that exceeds 75 percent of the private property tow fee established by rule of the Texas Commission of Licensing and Regulation. The bill specifies that a vehicle towed from a university to facilitate a special event that is not claimed by the vehicle owner or operator within 48 hours after the conclusion of the special event may only be towed without further expense to the vehicle owner or operator and to another location on the university campus. The bill requires the university to notify the owner or operator of a vehicle towed to facilitate a special event of the right of the vehicle owner or operator to a hearing. The bill exempts a vehicle towed from a university to facilitate a special event from a provision requiring a towing company making a nonconsent tow to tow the vehicle to a vehicle storage facility operated by a person licensed to operate the facility.

C.S.H.B. 3306 replaces the authorization for a towing company, without the consent of an owner or operator of an unauthorized vehicle, to remove and store the vehicle at a vehicle storage facility at the expense of the vehicle's owner or operator if the towing company, in addition to other applicable statutory requirements, has received written verification from the parking facility owner that the parking facility owner has installed certain required signs with an authorization for a towing company, without such consent, to tow the vehicle to and store the vehicle at a vehicle storage facility at the expense of the vehicle's owner or operator if the towing company, in addition to other applicable statutory requirements, has received written verification from the parking facility owner that the signs required under those statutory provisions are posted. The bill establishes that when a tow truck is used for a nonconsent tow authorized by a peace officer under Transportation Code provisions relating to the removal of personal property from a roadway or right-of-way the tow truck operator and the towing company are agents of the law enforcement agency and are subject to those provisions as regards immunity from liability for certain damages and certain exceptions to that immunity. These bill provisions relating to the towing of an unauthorized vehicle expressly do not apply to the booting of a vehicle pursuant to a standing written agreement between a booting company and a parking facility owner entered into before the bill's effective date.

C.S.H.B. 3306 renames the Towing, Storage, and Booting Advisory Board as the Towing and Storage Advisory Board and revises the composition of the board. These bill provisions expressly do not affect the entitlement of a member serving on the board immediately before the bill's effective date to continue to serve and function as a member of the board for the remainder

of the member's term.

C.S.H.B. 3306 repeals the following provisions of the Occupations Code:

- Section 2308.002(9)
- Section 2308.103(d)
- effective September 1, 2018, Section 2308.1555
- effective September 1, 2018, Section 2308.1556

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3306 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 2303.058, Occupations Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 2308.002, Occupations Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Effective September 1, 2018, Section 2308.004, Occupations Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 2308.051(a), Occupations Code, as amended by Chapters 457 (H.B. 2548) and 845 (S.B. 2153), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended.	SECTION 4. Same as introduced version.
SECTION 5. Effective September 1, 2018, Section 2308.151, Occupations Code, is amended.	SECTION 5. Same as introduced version.
No equivalent provision.	SECTION 6. Section 2308.205(a), Occupations Code, is amended to read as follows: (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, unless: <u>(1) the towing company agrees to take the vehicle to a location designated by the vehicle's owner; or</u> <u>(2) the vehicle is towed under Section 2308.259(b).</u>

SECTION 6. Section 2308.2085, Occupations Code, is amended to read as follows:

Sec. 2308.2085. LOCAL AUTHORITY REGULATION OF [MUNICIPAL ORDINANCE REGULATING] BOOTING ACTIVITIES [COMPANIES AND OPERATORS]. (a) A local authority [municipality] may regulate, in areas in which the entity regulates parking or traffic, [adopt an ordinance that is identical to the] booting activities, including:

- (1) operation of booting companies and operators that operate on a parking facility;
- (2) any permit and sign requirements in connection with the booting of a vehicle;
and
- ~~(3) [provisions in this chapter or that imposes additional requirements that exceed the minimum standards of the booting provisions in this chapter but may not adopt an ordinance that conflicts with the booting provisions in this chapter.~~

~~[(b) A municipality may regulate the] fees that may be charged in connection with the booting of a vehicle [,- including associated parking fees].~~

(b) Regulations adopted under this section must:

- (1) incorporate the requirements of Sections 2308.257 and 2308.258;
- (2) include procedures for vehicle owners and operators to file a complaint with the local authority regarding a booting company or operator;
- (3) provide for the imposition of a penalty on a booting company or operator for a violation of Section 2308.258; and
- (4) provide for the revocation of any permit, license, or other authority of a booting company or operator to boot vehicles if the company or operator violates Section 2308.258 more than twice in a five-year period

~~[(c) A municipality may require booting companies to obtain a permit to operate in the municipality].~~

SECTION 7. Section 2308.255, Occupations Code, is amended.

SECTION 8. Section 2308.257, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) A parking facility owner may, without

SECTION 7. Section 2308.2085, Occupations Code, is amended to read as follows:

Sec. 2308.2085. LOCAL AUTHORITY REGULATION OF [MUNICIPAL ORDINANCE REGULATING] BOOTING ACTIVITIES [COMPANIES AND OPERATORS]. (a) A local authority [municipality] may regulate, in areas in which the entity regulates parking or traffic, [adopt an ordinance that is identical to the] booting activities, including:

- (1) operation of booting companies and operators that operate on a parking facility;
- (2) any permit and sign requirements in connection with the booting of a vehicle;
and
- ~~(3) [provisions in this chapter or that imposes additional requirements that exceed the minimum standards of the booting provisions in this chapter but may not adopt an ordinance that conflicts with the booting provisions in this chapter.~~

~~[(b) A municipality may regulate the] fees that may be charged in connection with the booting of a vehicle [,- including associated parking fees].~~

(b) Regulations adopted under this section must:

- (1) incorporate the requirements of Sections 2308.257 and 2308.258;
- (2) include procedures for vehicle owners and operators to file a complaint with the local authority regarding a booting company or operator; and
- (3) provide for the imposition of a penalty on a booting company or operator for a violation of Section 2308.258

~~[(c) A municipality may require booting companies to obtain a permit to operate in the municipality].~~

SECTION 8. Same as introduced version.

SECTION 9. Section 2308.257(b), Occupations Code, is amended to read as follows:

the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle in the parking facility if:

(1) the vehicle has been parked, stored, or located on the parking facility continuously for one hour or longer; and

(2) signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting.

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

(1) that the vehicle has been booted and damage may occur if the vehicle is moved;

(2) the date and time the boot was installed;

(3) the name, address, and telephone number of the booting company;

(4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;

(5) the amount of the fee for removal of the boot and any associated parking fees; ~~and~~

(6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J; and

(7) in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for violation of this chapter by a boot operator.

(b-1) No more than one boot may be installed on a vehicle at any time.

SECTION 9. Subchapter F, Chapter 2308, Occupations Code, is amended by adding Section 2308.258 to read as follows:

Sec. 2308.258. BOOT REMOVAL. (a) A booting company responsible for the installation of a boot on a vehicle shall remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) A booting company shall waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

(1) that the vehicle has been booted and damage may occur if the vehicle is moved;

(2) the date and time the boot was installed;

(3) the name, address, and telephone number of the booting company;

(4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;

(5) the amount of the fee for removal of the boot and any associated parking fees; ~~and~~

(6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J; and

(7) in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for violation of this chapter by a boot operator.

SECTION 10. Subchapter F, Chapter 2308, Occupations Code, is amended by adding Sections 2308.258 and 2308.259 to read as follows:

Sec. 2308.258. BOOT REMOVAL. (a) A booting company responsible for the installation of a boot on a vehicle shall remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) A booting company shall waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(c) A booting company responsible for the installation of more than one boot on a

vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

No equivalent provision.

Sec. 2308.259. TOWING COMPANY'S AUTHORITY TO TOW VEHICLE FROM UNIVERSITY PARKING FACILITY. (a)

In this section:

(1) "Special event" means a university-sanctioned, on-campus activity, including parking lot maintenance.

(2) "University" means:

(A) a public senior college or university, as defined by Section 61.003, Education Code; or

(B) a private or independent institution of higher education, as defined by Section 61.003, Education Code.

(b) Subject to Subsection (c), an individual designated by a university may, to facilitate a special event, request that a vehicle parked at a university parking facility be towed to another location on the university campus.

(c) A vehicle may not be towed under Subsection (b) unless signs complying with this section are installed on the parking facility for the 72 hours preceding towing enforcement for the special event and for 48 hours after the conclusion of the special event.

(d) Each sign required under Subsection (c) must:

(1) contain:

(A) a statement of:

(i) the nature of the special event; and

(ii) the dates and hours of towing enforcement; and

(B) the number, including the area code, of a telephone that is answered 24 hours a day to identify the location of a towed vehicle;

(2) face and be conspicuously visible to the driver of a vehicle that enters the facility;

(3) be 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;

- (4) be made of weather-resistant material;
- (5) be at least 18 inches wide and 24 inches tall;
- (6) be mounted on a pole, post, wall, or free-standing board; and
- (7) be installed so that the bottom edge of the sign is no lower than two feet and no higher than six feet above ground level.
- (e) If a vehicle is towed under Subsection (b), personnel must be available to:
 - (1) release the vehicle within two hours after a request for release of the vehicle; and
 - (2) accept any payment required for the release of the vehicle.
- (f) A university may not charge a fee for a tow under Subsection (b) that exceeds 75 percent of the private property tow fee established under Section 2308.0575.
- (g) A vehicle towed under Subsection (b) that is not claimed by the vehicle owner or operator within 48 hours after the conclusion of the special event may only be towed:
 - (1) without further expense to the vehicle owner or operator; and
 - (2) to another location on the university campus.
- (h) The university must notify the owner or operator of a vehicle towed under Subsection (b) of the right of the vehicle owner or operator to a hearing under Subchapter J.

SECTION 10. The heading to Subchapter I, Chapter 2308, Occupations Code, is amended.

SECTION 11. (a) The following provisions of the Occupations Code are repealed:

- (1) Section 2308.002(9); and
- (2) Section 2308.103.

(b) Effective September 1, 2018, Sections 2308.1555 and 2308.1556, Occupations Code, are repealed.

SECTION 12. (a) On September 1, 2018, a license issued under former Section 2308.1555 or 2308.1556, Occupations Code, expires.

(b) The changes in law made by this Act to Section 2308.051(a), Occupations Code, regarding the qualifications for a member of the Towing and Storage Advisory Board do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to

SECTION 11. Same as introduced version.

SECTION 12. (a) The following provisions of the Occupations Code are repealed:

- (1) Section 2308.002(9); and
- (2) Section 2308.103(d).

(b) Effective September 1, 2018, Sections 2308.1555 and 2308.1556, Occupations Code, are repealed.

SECTION 13. Same as introduced version.

serve and function as a member of the board for the remainder of the member's term. When board vacancies occur on or after the effective date of this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint new members to the board in a manner that reflects the changes in law made by this Act. (c) The changes in law made by this Act to Section 2308.255, Occupations Code, do not apply to the booting of a vehicle pursuant to a standing written agreement between a booting company and a parking facility owner entered into before the effective date of this Act. The booting of a vehicle pursuant to a standing written agreement entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 13. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 14. Same as introduced version.