

- SUBJECT:** Expanding regulation of nonconsent towing and fees
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 9 ayes — Krusee, Phillips, Hamric, Edwards, Garza, Harper-Brown, Hill, Laney, Mercer
- 0 nays
- WITNESSES:** For — Larry Cernosek and Jeanette Rash, Texas Towing and Storage Association; Lt. Michael A. Dirden, Houston Police Department; Les Findeisen, Texas Motor Transportation Association; Stephen H. Smith, WHW Towing Cos.
- Against — None
- BACKGROUND:** Transportation Code, chapter 643 regulates motor carriers in Texas. Sec. 643.201(e) defines a nonconsent tow as the towing of any vehicle that is not initiated by its owner, operator, or the person having possession, custody, or control of the vehicle. “On-hook” cargo insurance covers damage to towed vehicles.
- DIGEST:** CSHB 1808 would expand political subdivisions’ authority to regulate nonconsent tows. It would change provisions on towing fees and would add consumer protections for owners of towed vehicles.
- Political subdivisions could regulate fees for any nonconsent tow originating within their boundaries. Fees for nonconsent tows from private property in unregulated areas where no political subdivision regulates fees could not exceed 150 percent of the fee that the towing company could have charged for a nonconsent tow requested by a peace officer of the political subdivision where the private property was located.
- Governing bodies of political subdivisions regulating nonconsent tows would have to establish procedures for towing companies to request fee studies. Fees set or changed would have to represent fair value and be reasonably related to financial or accounting information provided to the governing bodies.

Towing companies would have to file nonconsent towing fee schedules annually with the Texas Department of Transportation (TxDOT). Companies would have to report to TxDOT any new fees set or changes in fees made by political subdivisions within 30 days after they took effect. TxDOT would have to post the schedules on its Internet website but would not have to determine their reasonableness.

The bill would raise from \$10 to \$25 the registration fee that tow truck operators must pay for each truck when initially applying for or renewing registration required to operate tow trucks in Texas. An operator would have to maintain at least \$50,000 in on-hook cargo insurance.

A towing company would have to take a nonconsent-towed vehicles to a licensed vehicle storage facility. Storage or notification fees imposed on such vehicles would be governed by the Vehicle Storage Facility Act (Occupations Code, ch. 2303).

The bill would add three new issues that could be adjudicated in municipal or justice of the peace courts: whether a towing charge exceeded the amount filed with TxDOT, whether a charge exceeded the amount authorized by a political subdivision, or whether a charge exceeded the amount set by the law governing unregulated areas. A court could order a monetary award equal to the amount by which a towing charge exceeded a fee regulated by a political subdivision or authorized by state law.

Violations of applicable TxDOT rules; of reporting, storage, or fee provisions, including collecting or charging unauthorized fees or fees greater than the amounts set by political subdivisions; or of a political subdivision's towing ordinances, resolutions, orders, rules, or regulations for which the subdivision did not prescribe a penalty would be misdemeanors punishable by fines ranging from \$200 to \$1,000 per violation.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1808 would provide much-needed common-sense regulation of nonconsent towing, including rate limitations, law enforcement tools, grounds for judicial hearings, criminal penalties, vehicle owner compensation, and other consumer protections.

Eight years ago, Congress deregulated the trucking industry, including tow trucks and wreckers. This measure virtually eradicated the Texas Tow Act and created at least a partial federal preemption of local governments' authority to regulate vehicle towing from private property. Litigation ensued over what kinds of regulation municipalities could place on nonconsent tows, creating uncertainty among local government officials. Recent federal court decisions, however, have clarified political subdivisions' authority to regulate nonconsent tows and towing matters affecting public safety.

Nevertheless, some towing companies are operating in Texas as if local governments have no authority over them whatsoever. These firms charge exorbitant and inconsistent rates as high as \$500 per automobile and thousands of dollars for some large long-haul trucks. Unscrupulous firms sometimes engage in the towing version of "cherry picking" by trying to extract huge profits from a few tows. Some operators are taking advantage of counties' lack of ordinance-making power by towing vehicles from and to locations outside city limits.

Small cities that may be unaware of their regulatory authority would benefit from CSHB 1808. The state's major towing and trucking trade associations favor its self-policing approach, an important step toward reregulating abuses among tow truck operators.

Fees charged for nonconsent tows in unregulated areas should be capped at 150 percent of the fees for law-enforcement tows because that standard is identical to the standard in a California law that has passed federal court muster twice. Making such rates equal to law-enforcement tow rates probably would expose Texas to federal litigation in which the state likely would not prevail.

**OPPONENTS
SAY:**

HB 1808 is unnecessary. Transportation Code, Sec. 643.201 already allows political subdivisions to regulate towing companies.

Enacting this bill would be premature. Rather than take a piecemeal approach, the Legislature should wait until all towing industry matters have been litigated and resolved at the federal level before making major changes to state law.

**OTHER
OPPONENTS
SAY:**

Allowing towing companies operating in unregulated areas to charge half again as much for nonconsent tows as for law-enforcement tows would be too generous. If the charges would not be equal, the bill should set them closer to a 1:1 ratio.

The bill would rely too much on self-policing and reporting. It should require more stringent compliance that would weed out bad actors but not be onerous on responsible operators.

NOTES:

The committee substitute would delete a prohibition against licensed storage facilities charging fees to owners or operators of nonconsent-towed vehicles without prior written consent, along with a requirement that such facilities post all towing and storage fees. The substitute also would delete a provision allowing any peace officer to write tickets and TxDOT to suspend or revoke permits for violations of tow-truck regulations. It also would create misdemeanor penalties for excessive towing charges and for violations of TxDOT rules and local government regulations.