

SUBJECT: Restrictions on towing and storage of certain vehicles

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Hodge, Pena, Raymond, Reyna

0 nays

3 absent — Denny, Escobar, P. Moreno

WITNESSES: For — Steve Hamblin; Pat Johnson

Against — Larry Cernosek, Rick Chron, Texas Towing and Storage Association; George Milhim, Big A Towing; Allan Miller, Allan's Wrecker Service Inc. and Texas Towing and Storage Association; Jeannette Rash, Texas Towing and Storage Association.

On — Ann Del Llano, ACLU of Texas; David Mintz, Texas Apartment Association

BACKGROUND: Law enforcement has the right to impound a vehicle for the purpose of an evidentiary exam. These vehicles may be held at a government or private facility. The owner may be required to pay for the storage and towing fees if the vehicle is held in a private facility, regardless of whether the owner is charged with a crime.

Before a vehicle is released from a storage facility, most facilities require the owner to provide proof of ownership. If material showing proof of ownership is stored in the vehicle, facilities usually require the owner to provide a signed and notarized affidavit indicating right of possession before the individual can access the material in the automobile.

Occupations Code, ch. 2303 governs vehicle storage facilities. Current law sets limitations on the amount a facility owner may charge the owner of a vehicle for storage. These charges include a maximum notification fee of \$32 for non-published notifications, a daily storage fee of between \$5 and \$15 for each day vehicles no longer than 25 feet are stored, and \$30 for each day vehicles longer than 25 feet are stored.

Transportation Code, ch. 684 regulates motor carriers such as tow trucks and the removal of unauthorized vehicles from parking facilities. A parking facility owner may have a vehicle towed from the facility without the consent of the owner and stored at the owner's expense if the facility owner meets certain requirements of the code.

Under ch. 684, an insured towing company under certain circumstances may remove and store an unauthorized vehicle without consent of the owner and at the owner's expense. A towing company also may tow a unauthorized unattended vehicle or a vehicle that obstructs a paved driveway or abutting public roadway used for entering or exiting a facility. Once towed, the vehicle must be taken to a licensed storage facility. A violation of ch. 684 is punishable by a fine of between \$200 and \$500.

Ch. 685 provides the owner of a towed vehicle the right to a hearing if the owner believes that the vehicle was towed without probable cause or the towing company charged an excessive fee. The court may award court costs and other expenses, including the amount the towing charge exceeded the authorized fees.

DIGEST:

CSHB 480 would require law enforcement agencies to pay the cost of towing and storing for evidentiary or examination purposes, regardless of whether the vehicle was stored on property owned by the law enforcement agency or a vehicle storage facility. Law enforcement would not have to pay the cost of towing or storing a vehicle for any other purpose, including storage costs that accrued after the law enforcement agency released the vehicle to the owner. Storage facilities could not refuse to release a vehicle to the owner because law enforcement had not paid the towing and storage costs. The owner of a vehicle towed and stored by law enforcement for evidentiary or examination purposes would have no right to a hearing under ch. 685.

The bill also would increase the maximum daily storage fee a facility could charge the owner to \$20 for a vehicle not longer than 25 feet and \$35 for a vehicle 25 feet or longer. The bill also would increase the notification fee for a non-published notification to a maximum of \$50.

Storage facility owners would be required to give the vehicle's owner access to the glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle were located there.

Finally, CSHB 480 would require towing companies and parking facility owners to get approval from a peace officer before towing a car that was obstructing a public roadway or the entrance or exit to a facility. In addition, for a towing company to tow a vehicle parked in an unauthorized space, the parking facility expressly would have to request that the towing company remove the vehicle, or the towing companies would have to have a standing written agreement to tow with the parking facility owner. Once towed, the vehicle would have to be taken to a licensed storage facility, unless the towing company agreed to take the vehicle to a location designated by the vehicle's owner.

A violation of ch. 684 would be a misdemeanor, punishable by a fine of between \$500 and \$1,500.

The bill would take effect on September 1, 2005, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 480 would protect vehicle owners from illegal and unnecessary towing. Under current law, a towing company may perform a nonconsent tow from a parking facility without the facility owner's request. This encourages tow-truck drivers to seek out vehicles to tow and results in the illegal towing of vehicles. The bill would discourage illegal towing in parking facilities by requiring either that the facility owner request the tow or that the towing company have a written agreement to tow vehicles parked in unauthorized spaces. It also would reduce unnecessary towing by requiring a peace officer's approval to tow vehicles allegedly blocking a driveway or roadway.

CSHB 480 would facilitate the process of removing a vehicle from a storage facility. The bill would allow vehicle owners to gain access to documents within their vehicles to show proof of ownership without having to go through the burdensome process of providing a notarized affidavit. In addition, the bill would require law enforcement to pay the towing and storage fees for an evidentiary hold provided that the vehicle had not been abandoned, illegally parked, in an accident, or recovered after being stolen.

Finally, the increased fine would protect vehicle owners by helping to ensure that wrecker drivers comply with the law. As long as tow drivers complied, they easily could avoid the increased fine.

OPPONENTS
SAY:

This bill is unnecessary. In most circumstances, a storage or towing facility will not charge an owner for a vehicle that is held due to an evidentiary exam.

The increase in the fine also is unnecessary and would make it more difficult for wrecker drivers to earn a living. Current law has sufficient deterrents to illegal towing. The problem is not that the fine is too low but that it is not strictly enforced. In addition, current law protects vehicle owners by granting them the right to a hearing and possible redress if the owner believes the vehicle was towed illegally.

Finally, it would be unnecessarily burdensome to require a facility or towing company to contact a peace officer before towing a vehicle that was blocking a facility's entrance or exit. A merchant can lose business when a vehicle blocking a business is not moved immediately. Law enforcement has more pressing duties on which to devote its limited time and resources than the approval of routine towing.

NOTES:

The committee substitute changed the penalty for violation of ch. 684 to a misdemeanor fine of between \$500 and \$1,500. It also removed a section that dealt with a towing company breaking into a vehicle and added a section that would allow vehicle owners to access a stored vehicle to establish proof of ownership. Finally, the substitute removed the phrase "or a related purpose" from the section requiring law enforcement to pay the cost of towing and storing for evidentiary or examination purposes, and clarified that law enforcement would not have to pay the cost of towing and storage of a recovered stolen vehicle.

The fiscal note projects that the bill would cost the State Highway Fund \$251,635 per year for towing and storage costs from fiscal 2006-2010.