

- SUBJECT:** Revising licensing and regulation of towing and vehicle storage companies
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 6 ayes — Pickett, Phillips, Y. Davis, Harper-Brown, Merritt, W. Smith
0 nays
5 absent — Callegari, Dunnam, Guillen, McClendon, T. Smith
- WITNESSES:** For — Andy Chesney and Jeanette Rash, Texas Towing and Storage Association; Jess Horton and Joann Mesina, Southwest Tow Operators; Patrick Johnson, Texas Towing Compliance; Victor Rodriguez, McAllen Police Department (*Registered, but did not testify*: Ed Lopez, United Road Towing, Inc.)

Against — Carlos Contreras, City of San Antonio

On — William Kuntz, Texas Department of Licensing and Regulation; Deborah Parrish
- BACKGROUND:** Occupations Code, ch. 2308 regulates towing. A “consent tow” is any tow of a motor vehicle initiated by the owner, operator, or person with the possession, custody, or control of the vehicle, not including a tow initiated by a peace officer investigating a traffic accident. A “nonconsent tow” is any tow that is not a consent tow. The Commission on Licensing and Regulation adopts rules for tow truck permits and licensing of towing operators and towing companies, and adopts standards of conduct for towing license and permit holders.

Sec. 2308.202 allows a municipality to regulate fees relating to a nonconsent tow in its jurisdiction. If no governing body regulates the fees, a towing company can charge no more than either 125 or 150 percent of the fee that could have been charged for a nonconsent tow requested by a peace officer in the jurisdiction, based on the vehicle’s gross weight.
- DIGEST:** CSHB 2571 would make changes regarding the establishment of maximum fines for private property tows, fees, and charges that may be assessed for towing, responsibilities of towing companies and owners of

vehicle storage facilities, and actions the state could take against them for violations.

Fees for towing. CSHB 2571 would charge the Commission on Licensing and Regulation to adopt rules regarding fees and other charges that may be assessed for private property tows of light-duty, medium-duty, and heavy-duty vehicles. The commission would have to consider private property towing fee studies conducted by municipalities and would have to conduct studies of towing fees that analyzed the cost of service by company, the consumer price index, geographic area, and other individual cost components. Maximum fees could be structured based on hourly or flat fees by geographic region. Information used in a study of towing fees would be confidential.

Under the bill, local governments would be able to regulate fees and other charges for nonconsent tows if the authorized did not exceed the maximum allowable amount. In an area where no local government regulated nonconsent fees, the fees could not exceed the maximum authorized by the county commissioners court in which the company's vehicle storage facility was located, or the average of the maximum amounts authorized by the three closest political subdivisions that regulated nonconsent fees.

The bill would define a private property tow as any tow of a vehicle authorized by a parking facility owner, and incident management tow as the tow of a vehicle in which the tow truck was summoned to a traffic accident or incident. A nonconsent tow would be defined as an incident management tow and a private property tow. A consent tow would be any tow of a vehicle in which the tow truck was summoned by the vehicle's owner or operator.

Legal responsibilities of tow and storage companies. CSHB 2571 would restrict towing license or permit holders from charging a fee related to a nonconsent tow not listed in the schedule of fees the company most recently submitted to the Department of Licensing and Regulation (TDLR). The bill would require a parking facility owner that removed and stored a vehicle to provide to the owner or operator of the vehicle written notice of the name of the towing company and the storage facility used to hold the vehicle. The bill would prohibit the operator of a vehicle storage facility from refusing to release a vehicle based on an inability to accept

payment by electronic check, debit card, or credit card, and would have to post a sign stating that such forms of payment were accepted.

If a towing company or vehicle storage facility receiving payment from the towed party did not provide identifying information about the facility owner or law enforcement agency that authorized the vehicle's removal, then the company would be liable if a court did not find probable cause for the removal and storage of the vehicle.

Actions against tow companies. TDLR could require a license holder that violated maximum fee provisions to reimburse the vehicle owner or operator for the charges. The Commission on Licensing and Regulation would adopt rules for denying the application of a person who had:

- a criminal conviction or pled guilty for a felony or a misdemeanor punishable by confinement in jail or a fine greater than \$500;
- violated an order of the Commission of TDLR, including administrative penalties;
- failed to submit the required license or permit bond;
- knowingly submitted false or incomplete information on an application; or
- filed an application for a permit for a tow truck for which a permit already was held by another operator.

The bill would add provisions relating to an award from the court with jurisdiction over the area from which the vehicle was towed. A vehicle owner subject to tow would have 14 days to request a hearing from the date on when the towing or storage company provided necessary information to complete the request for hearing. An owner of a towed vehicle that received a court judgment would have to submit to TDLR a certified copy of any judgment.

The bill would require TDLR to suspend a tow company's license if the tow company did not pay an award owed by the 60th day after a final judgment for a vehicle owner. On receiving a certified copy of an unpaid judgment, TDLR would disqualify a person from renewing a license or permit. Upon receiving evidence that the judgment had been satisfied, TDLR would reinstate the towing company's license.

The bill would make violations of the provisions regarding towing a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

A fine for anyone who intentionally, knowingly, or recklessly violated a towing provision would be raised from \$300 to \$1,000, in addition to other fees currently assessed.

Effective date. The Commission of Licensing and Regulation would have to adopt rules governing towing fees by September 1, 2010. Changes made by the bill would apply to an offense made after the effective date of the bill. Provisions governing municipal regulation of nonconsent fees and fees for nonconsent tows in other areas would take effect September 1, 2010. Other provisions in the bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

CSHB 2571 would provide long overdue revisions to the fees and conduct of towing companies that hold vehicles without an owner's consent. The conduct of nonconsent towing companies has been a recurring problem, and was recently brought to light by a mass incident at the 2008 Red River Rivalry football game at the Cotton Bowl stadium, when many fans returned from the game to find their cars had been towed. The incident highlighted a number of nonconsent towing issues — excessive towing fees and other charges, insufficient information about the towing company and the storage facility, questionable signs posted by towing companies, storage facilities that accept only cash, and the state's inability to take decisive action against towing operators engaged in questionable business practices.

The lack of regulation of nonconsent towing companies has allowed a small minority of predatory companies to profit through questionable practices. Currently, municipalities and commissioners' courts may regulate fees for nonconsent towing, which this led to great variability of towing fees and has left unchecked other assessed charges that may inflate the overall bill. Statewide regulation of towing fees is necessary to ensure fair practices across the state. The bill would provide for consistency in towing rates while allowing the Texas Commission on Licensing and Regulation to place maximum caps on fees that currently vary geographically and by the size of vehicle being towed.

Capping fees statewide would create consistency. Leaving fee regulation to local governments would allow a lack of uniformity across jurisdictions. Further, certain local governments have not been actively regulating towing companies and have vague or permissive ordinances. State oversight is necessary to address the gaps in towing regulation.

CSHB 2571 also would provide TDLR authority critical to enforcing actions against noncompliant towing operators, such as the ability to suspend licenses and permits for failure to pay an administrative penalty or court award for a wrongful towing or excessive fees. Expanded enforcement authority for TDLR would allow the state to take action against companies involved in scams.

OPPONENTS
SAY:

CSHB 2571 would preempt municipalities' ability to establish maximum towing rates in their jurisdictions by establishing statewide rate caps. This measure would represent overregulation on the part of the state, since incorporated areas presently regulate towing companies and are able to thwart effectively the majority of rogue companies through criminal and civil action. The bill's companion, SB 1431 by Hinojosa, would not restrict the ability of municipalities to establish maximum fees for towing in their jurisdictions.

The bill does not address towing companies and vehicle storage facilities that owe property and other taxes to the state in arrears. Some predatory towing and storage companies operate scams wherein they accumulate large overdue taxes while operating and then close, only to reopen under another name or in a new partnership. The bill should be amended to require towing and storage companies to submit a certified note from the comptroller showing they and other major participants in the company are solvent with the state on tax dues.

NOTES:

The committee substitute added a provision requiring the Commission on Licensing and Regulation to adopt rules to deny an application or permit if the primary applicant met certain criteria enumerated in the bill. The substitute also specified that if no political subdivision regulated fees and other charges for nonconsent towing, the fees could not exceed the maximum authorized by the county commissioners' court in which the company's vehicle storage facility was located or the average of the maximum amounts authorized by the three closest political subdivisions that regulate nonconsent incident management towing fees.

The companion bill, SB 1431 by Hinojosa, passed the Senate by 30-0 on April 20 and has been referred to the House Transportation Committee.