

**SUBJECT:** Creating a mediation program for certain vehicle towing disputes

**COMMITTEE:** Licensing & Administrative Procedures — committee substitute recommended

**VOTE:** 9 ayes — K. King, Walle, Goldman, Harless, Hernandez, T. King, Patterson, Shaheen, S. Thompson

0 nays

2 absent — Herrero, Schaefer

**WITNESSES:** For — Todd Johnston, Jeanette Rash, LouAnn Wagner, Texas Towing and Storage Association; Dana Moore, Texas Trucking Association

Against — James Bennett Jr., Beards Towing, Southwest Tow Operators; Jason Ward, Collin County VSF; Geoff Nirenstedt, Southwest Tow Operators; David Walters (*Registered, but did not testify*: Mike Phillips, All American Towing; James Bennett, Chloe Borden, Brendan Borden, Katelyn Dunn, Keith Yancey, Beards Towing; Gary Hoffman, Classic Towing & Recovery; Jonathan Cleaver, Commercial Towing Services LLC; James Lindgren, Gritten Wrecker Service; Marcus Arvie, Curtis Jordan, Jordan Towing; William Rice, Lindy Lott Wrecker; Mark Denson, On Site Towing; RoadSync Inc, RoadSync; Joel Allen, Susan Allen, Tommy Anderson, Fidel Cortez, David Escalara, Barbara Perales, James Peterson, Charles Sizemore, Tasha Mora, Timothy Ward, Southwest Tow Operators; Linda Lindgren, Tow King; Julie Short; Stoney Short; Brian Walters)

On — (*Registered, but did not testify*: Steve Bruno, Texas Department of Licensing and Regulation)

**BACKGROUND:** Under Transportation Code sec. 643.001, "motor carrier" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a road or highway.

Under Occupations Code sec. 2303.154, if a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the notice is mailed or published, the operator of the vehicle storage facility must consider the vehicle to be abandoned. If required by the law enforcement agency where the vehicle is located, the operator of the vehicle storage facility must report the abandonment to the law enforcement agency. If the law enforcement agency notifies the vehicle storage facility to dispose of the abandoned vehicle, the vehicle storage facility must pay a fee.

Under Transportation Code sec. 683.031, a motor vehicle is abandoned if the vehicle is left in a storage facility operated for commercial purposes for 10 days after the date which:

- the garagekeeper gives notice to the last known registered owner of the vehicle and to each lienholder of record of the vehicle to remove the vehicle;
- a contract for the vehicle to remain on the premises of the facility expires; or
- the vehicle was left in the facility, if the vehicle was left by a person other than the registered owner or a person authorized to have possession of the vehicle under a contract of use, service, storage, or repair.

**DIGEST:**

CSHB 3478 would allow motor carriers to request mediation against a towing company under certain conditions and would revise certain provisions regarding the storage of the vehicle in question.

CSHB 3478 would allow a motor carrier to request mediation in a dispute with a towing company regarding a tow for which towing and recovery fees exceeded \$20,000. The towing company would be required to participate in the requested mediation.

CSHB 3478 would provide exceptions to Occupations Code sec. 2303.154 and Transportation Code sec. 683.031, establishing that a motor vehicle held in a vehicle storage facility by a motor carrier would not be considered abandoned until 31 days after the notice was mailed or

published or if the operator of the vehicle storage facility received notice that the vehicle was the subject of a mediation or a request for civil action.

A motor carrier could request mediation no later than 30 days after either the motor carrier paid the towing and recovery charges or received notice to consider a vehicle abandoned, whichever date came later.

Upon receiving a request for mediation, the Texas Department of Licensing and Regulation (TDLR) would be required to notify the towing company and the vehicle storage facility operator storing the vehicle in question and order both parties' participation in mediation. The bill would require mediation to be completed within 30 days of the date TDLR ordered participation unless all parties agreed to extend the deadline.

In a mediation, under Texas Rules of Evidence, the parties would be required to evaluate, without limitation, whether the amount charged by the towing company was excessive. If the parties determined that the amount was excessive, the parties would have to determine the appropriate charges for services rendered.

The parties by agreement would select and compensate a qualified mediator from the list maintained by TDLR unless the parties by written agreement selected a mediator not on the list. If the parties did not agree on a mediator by the 10th day after TDLR ordered participation in the mediation, the motor carrier or towing company would be required to notify TDLR that a mediator had not been selected, and TDLR would select a mediator from the list based on convenience to the location of each party.

The fee for a mediator could not exceed \$750 per party for a half-day of mediation or \$1,500 per party for a full-day mediation. A mediation could not exceed one day unless all parties agreed to extend the mediation. Without regard to the outcome of mediation or subsequent proceedings, costs incurred by a party in mediation could not be imposed on the opposing party.

The bill would require both parties to by agreement select a venue and schedule for mediation. If the parties were unable to agree on a venue and schedule, the mediator would make the selections.

No later than 15 days after mediation concluded, the mediator would be required to report to TDLR whether mediation resolved the dispute. TDLR would notify the vehicle storage facility operator of the outcome of the mediation. If the mediation did not resolve the dispute, either party could file civil action. A party in a mediation could not bring a civil action before the mediation had concluded, but the motor carrier could file a request for a hearing prior to the conclusion.

If a party in mediation brought a civil action related to the fee dispute after the conclusion of the mediation process, the party bringing the action would have to give notice to the vehicle storage facility operator of the initiation and conclusion of the action. Notice would have to be given on filing the petition with the court, if the motor carrier was the party filing the action, or on service of citation on the motor carrier.

A vehicle storage facility operator who received notice of a mediation or civil action could continue charging a daily storage fee but could not sell or otherwise dispose of the vehicle involved in the fee dispute until the mediation or civil action was concluded and the party bringing the action notified the operator that the action was concluded in favor of the towing company.

The bill would require TDLR to:

- adopt forms and procedures necessary to administer the changes made in CSHB 3478;
- establish a portal on TDLR's website through which a request to participate in the mediation program could be submitted; and
- maintain a list of qualified mediators on TDLR's website.

The bill would take effect September 1, 2023.

**SUPPORTERS  
SAY:**

By establishing a mediation program, CSHB 3478 would allow motor carriers and towing companies to regulate themselves and avoid court, which could save time and money for the involved parties. Currently, civil action is the only option for motor carriers to hold towing companies accountable for overcharging. Mediation also could lead to increased cooperation between motor carriers and towing companies, ultimately leading to faster and less expensive resolutions.

Since there are no statewide standards for towing rates, there is little to prevent towing companies from overcharging. Additionally, motor carriers are often at a disadvantage, as they do not have advance notice of what the charges will be. Although some cities and counties have established rates, these charges only apply to companies who have contracts with the cities or counties. By establishing a mediation program that would give towing companies the opportunity to explain their prices and, if deemed unfair, lower them, the bill could help to discourage towing companies from overcharging.

TDLR is currently limited in the types of grievances that it can address, as current law does not allow towing bills to be reduced through tow hearings. A fee dispute under \$20,000 can be considered in small claims court, but fees under \$20,000 are not typically disputed by motor carriers. CSHB 3478 would not prevent anyone in the process from suing, but would allow certain disputes to be resolved more quickly and without costly civil action. Other state agencies have successful mediation programs to resolve disputes in other industries.

**CRITICS  
SAY:**

CSHB 3478 would require towing companies to engage in and pay for a mediation process in which they may not wish to participate. The required mediation fees established by the bill could cause towing companies to lose up to \$1,500 every time a motor carrier requested mediation. This could hurt small Texas towing businesses, as the bill would apply to anyone licensed to perform towing services without consideration of a towing company's ability to pay for mediation. During certain vehicle recoveries, towing companies act as agents of law enforcement and charge fees set by a city or county. The bill would allow motor carriers to require

mediation for a fee dispute in which a towing company had no choice but to participate. Towing companies already cooperate with motor carries when resolving claims through insurance carriers and within tow hearings; CSHB 3478 would impose an additional and unnecessary burden on towing companies.

Towing companies are responsible for clearing highways as quickly as possible to keep the public safe, without always knowing if the company will be paid. Maintaining high standards for public safety can be expensive, as towing companies have to pay for quality equipment, disposal of cargo, hazmat operations, labor, and insurance. CSHB 3478 could require towing companies to defend prices for their expertise and services through an expensive mediation process and would place an additional burden on towing companies in obtaining the money they were owed. The bill also could require towing companies to pay for mediation before they received payment for their services.

CSHB 3478 could be interpreted to infringe on individuals' right to file a lawsuit as well as the open courts provision of the Texas Constitution, which prohibits any form of tax as a condition to access the courts. Provisions of CSHB 3478, including the payment of up to \$1,500 before a litigant could pursue a civil suit, could be interpreted as impeding one's right to open court.

OTHER  
CRITICS  
SAY:

CSHB 3478 could be improved by increasing the minimum fee that could be mediated from \$20,000 to \$35,000. Additionally, unless the towing company was found to be in the wrong, the financial burden should be placed on the motor carrier bringing forth the action.