

BILL ANALYSIS

Senate Research Center
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H.B. 2630
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Criminal Justice
5/20/2005
Committee Report (Amended)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Since the last legislative session, three issues relating to vehicle towing and storage have arisen that require legislative action to protect the public and reputable business owners.

Recently, Texas Department of Transportation (TxDOT) staff reinterpreted some provisions of Chapter 683 (Abandoned Motor Vehicles), Transportation Code, allowing law enforcement to only auction abandoned vehicles that have been towed and stored by the law enforcement agency. Under current law, abandoned vehicles are towed and stored by both public and private entities. When a private company tows or stores an abandoned vehicle the company notifies the owner of the vehicle and the appropriate law enforcement agency. If the abandoned vehicle is not claimed in a specified period of time the law enforcement agency takes custody of the vehicle and is responsible for disposal. The law enforcement agency may then auction off the abandoned vehicles. The process was established to not only insure adequate notification of the vehicle owner but also to ensure that auctions are properly conducted. Under the new TxDOT interpretation, auctions will have to be conducted privately. H.B. 2630 restores the original intent of the law by clarifying that law enforcement agencies may auction abandoned vehicles towed and stored by both public and private entities.

Recently, the attorney general has been asked to issue an opinion on the constitutionality of provisions in Chapter 685 (Rights of Owners and Operators of Stored Vehicles), Transportation Code relating to towing and storage hearings in municipal court where there is no appeals process. H.B. 2630 provides that all such hearings be in justice of the peace courts where there is an appeals process.

Current law specifies the amount that may be charged for storage and notification and prohibits "an additional fee that is similar to a notification, impoundment, or administrative fee." Nevertheless, a creative storage facility operator has found a loophole in the law and is now accessing something called a "post-tow hookup fee." An administrative hearings officer at TxDOT ruled that such a fee can be charged because it is not "a notification, impoundment or administrative fee." HB. 2630 closes the loophole by clearly stating that a facility may not charge any additional fee related to storage of the vehicle other than those fees set forth in statute.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 683.011(b), Transportation Code, to authorize a law enforcement agency to use agency resources to send notice regarding and dispose of an abandoned motor vehicle, watercraft, or outboard motor taken into custody by the agency under this subchapter.

SECTION 2. Amends Section 683.031(c), Transportation Code, to require the garagekeeper to report the abandonment of the motor vehicle to a law enforcement agency with jurisdiction where the vehicle is located or to the Department of Public Safety and to pay a \$10, rather than \$5, fee, to be used by the law enforcement agency for cost of the notice or other cost incurred in disposing of the vehicle.

SECTION 3. Amends Sections 683.034(a), (b), and (e), Transportation Code, as follows:

- (a) Provides that, in this section, a law enforcement agency has custody if the agency has met certain requirements.
- (b) Requires the proceeds of the sale of a vehicle to first be applied to the garagekeeper's charges for providing notice regarding the vehicle and for service, towing, impoundment, storage, and repair of the vehicle.
- (e) Makes conforming changes.

SECTION 4. Amends Section 685.004, Transportation Code, to require a hearing under this chapter to be in the justice court having jurisdiction in the precinct in which the vehicle storage facility is located. Deletes existing text relating to a hearing before a justice of the peace or magistrate or, in a county with a certain population, before a judge of a municipal court. Makes a nonsubstantive change.

SECTION 5. Amends Section 685.006, Transportation Code, to set forth modified requirements for a notice under Section 685.006 (Notice to Vehicle Owner or Operator).

SECTION 6. Amends Section 685.008, Transportation Code, to authorize the court to charge a filing fee of \$20, rather than \$10, for a hearing under this chapter.

SECTION 7. Amends Section 685.009, Transportation Code, by amending Subsections (a) and (b) and adding Subsection (b-1), as follows:

- (a) Requires a hearing under this chapter to be held before the 10th, rather than seventh, working day after the date the court receives the request for the hearing.
- (b) Requires the court to notify the person who requested the hearing and the person or law enforcement agency that authorized the removal of the vehicle of the date, time, and place of the hearing by registered or certified mail. Requires the notice of the hearing to the person or law enforcement agency that authorized the removal of the vehicle to include a copy of the request for hearing.
- (b-1) Provides that, at a hearing under this section, the burden of proof is on the person who requested the hearing and hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

SECTION 8. Amends Chapter 685, Transportation Code, by adding Section 685.010, as follows:

Sec. 685.010. APPEAL. Provides that an appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond is authorized to be required by the court.

SECTION 9. Amends Section 2303.152(a), Occupations Code, to authorize notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility to be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if one of certain circumstances apply, rather than if all circumstances apply.

SECTION 10. Amends Section 2303.154, Occupations Code, by adding Subsection (a-1), to require the operator of a vehicle storage facility, if a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under Section 2303.151 (Notice to Vehicle Owner or Lienholder) or 2303.152 (Notice by Publication), to consider the vehicle to be abandoned and to send notice of abandonment to a law enforcement agency under Chapter 683 (Abandoned Motor Vehicles), Transportation Code.

SECTION 11. Amends Section 2302.155(f), Occupations Code, to prohibit the operator of a vehicle storage facility or governmental vehicle storage facility from charging any additional fee related to storage of the vehicle other than those fees set forth in this section or towing fees

allowed under Chapter 643 (Motor Carrier Registration), Transportation Code. Deletes existing text relating to prohibited fees.

SECTION 12. Amends Section 101.141(a), Government Code, require a clerk of a justice court to collect a fee of \$20, rather than \$10, for a hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court.

SECTION 13. Amends Section 101.161, Government Code, require the clerk of a municipal court to collect a fee of \$20, rather than \$10, for a hearing on probable cause for removal of a vehicle and placement in a storage facility if assessed by the court.

SECTION 14. Amends Section 101.181, Government Code, by deleting text require the clerk of a municipal court of record to collect a fee for hearing on probably cause for removal of a vehicle and placement in a storage facility if assessed by the court.

SECTION 15. Makes application of this Act prospective.

SECTION 16. Effective date: September 1, 2005.

SUMMARY OF COMMITTEE CHANGES

COMMITTEE AMENDMENT NO. 1:

(1) Strike the prefatory language to SECTION 9 of the bill (House engrossment, page 5, lines 24 and 25) and substitute:

Amends Section 2302.152, Occupations Code, by amending Subsection (a) and adding Subsection (e), as follows:

(2) In SECTION 9 of the bill (House engrossment, page 6, between lines 13 and 14), insert:

(e) Authorizes notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility to be provided by publication in a newspaper of general circulation in the count in which the vehicle is stored if certain circumstances apply.

(3) Strike SECTION 11 of the bill (House engrossment, page 6, line 22 through page 7, line 2) and substitute:

SECTION 11. Amends Sections 2303.155(e) and (f), Occupations Code, as follows:

(e) Authorizes the operator of a vehicle storage facility or governmental vehicle storage facility to charge certain daily storage fees under Subsection (b).

(f) Prohibits the operator of a vehicle storage facility or governmental vehicle storage facility from charging any additional fee related to storage of the vehicle other than those fees set forth in this section or towing fees allowed under Chapter 643 (Motor Carrier Registration), Transportation Code. Deletes existing text relating to prohibited fees.

(4) Add the following appropriately number SECTION to the bill and renumber existing SECTIONS accordingly:

SECTION _____. Amends Subchapter D, Chapter 2302, Occupations Code, by adding Section 2303.158, as follows:

Sec. 2303.158. FORMS OF PAYMENT OF CHARGES. Requires the operator of a vehicle storage facility to accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. Defines "vehicle storage facility."