

BILL ANALYSIS

Senate Research Center
80R6874 BEF-F

S.B. 1118
By: Carona
Transportation & Homeland Security
4/5/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 1118 consolidates laws relating to the towing and storage industry under the Occupations Code. The bill transfers the regulation of the towing and storage industry to the Texas Department of Licensing and Regulation, the state's umbrella occupational regulatory agency that currently regulates 22 occupations and industries. Also, the bill provides for the permitting of three classes of tow trucks, the licensing of three classes of towing operators, and the licensing of vehicle storage facility employees. S.B. 1118 mandates criminal background checks and drug testing for all licensees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive director of the Texas Department of Licensing and Regulation in SECTION 1.02 (Section 2303.051, Occupations Code), SECTION 1.04 (Section 2303.102(a), Occupations Code), and SECTION 1.05 (Sections 2308.057, 2308.110(e), 2308.112(c), and 2308.159(b), Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 1.03 (Section 2303.055(e), Occupations Code), and SECTION 1.05 (Section 2308.059(d), Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends Sections 2303.002(2), (3), and (4), Occupations Code, to redefine "commission," "department," and "executive director" rather than "director."

SECTION 1.02. Amends Section 2303.051, Occupations Code, as follows:

Sec. 2303.051. New heading: RULEMAKING: LICENSE REQUIREMENTS. Requires the executive director of the Texas Department of Licensing and Regulation (executive director), rather than the Texas Transportation Commission, to adopt rules that meet certain criteria. Includes the requirement that an applicant for a license submit evidence that the applicant is in compliance with the drug testing requirements of 49 C.F.R. Part 382, as those requirements exist on September 1, 2007, if the requirements are applicable to the applicant, provide for investigating any criminal conviction of a license applicant or an applicant's employees, including obtaining any criminal history information allowed by law; and govern the administration of this chapter, to the list of requirements that the rules adopted must meet.

SECTION 1.03. Amends Subchapter B, Chapter 2303, Occupations Code, by adding Sections 2303.055, 2303.056, and 2303.057, to read as follows:

Sec. 2303.055. PERIODIC AND RISK-BASED INSPECTIONS. (a) Authorizes the Texas Department of Licensing and Regulation (TDLR) to enter and inspect certain locations at any time during business hours.

(b) Requires TDLR to inspect a vehicle storage facility that holds a license under this chapter at least once every two years.

(c) Requires TDLR to conduct additional inspections based on a schedule of risk-based inspections using certain criteria.

(d) Requires an inspector who discovers a violation of this chapter or a rule or order of the commission or executive director to provide written notice of the violation to the license holder on a form prescribed by TDLR and file a complaint with the executive director.

(e) Requires the vehicle storage facility to pay a fee for each inspection performed under Subsection (c). Requires the Texas Commission of Licensing and Regulation (commission) by rule to set the amount of the fee.

Sec. 2303.056. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer and enforce this chapter.

Sec. 2303.057. ADVISORY BOARD. Requires the Towing and Storage Advisory Board (board) under Chapter 2308 to advise the commission, TDLR, and executive director on vehicle storage matters related to administering and enforcing this chapter.

SECTION 1.04. Amends Sections 2303.102(a) and (b), Occupations Code, to require the executive director, rather than commission, by rule, to prescribe the form of the application for a license under this chapter. Makes a conforming change.

SECTION 1.05. Amends Subtitle A, Title 14, Occupations Code, by adding Chapter 2308, to read as follows:

CHAPTER 2308. VEHICLE TOWING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Towing Act.

Sec. 2308.002. DEFINITIONS. Defines "advisory board," "commission," "consent tow," "department," "driver's license," "nonconsent tow," "parking facility," "parking facility owner," "property owners' association," "public roadway," "tow truck," "towing company," "unauthorized vehicle," "vehicle," and "vehicle storage facility."

[Reserves Sections 2308.003–2308.050 for expansion.]

SUBCHAPTER B. ADVISORY BOARD

Sec. 2308.051. TOWING AND STORAGE ADVISORY BOARD. Sets forth certain persons, to be appointed by the presiding officer of the commission (presiding officer) with the approval of the commission, that the advisory board consists of. Provides that the advisory board must include representation for each classification of towing. Requires an appointment to the advisory board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2308.052. TERMS; VACANCIES. Provides that advisory board members serve terms of six years, with the terms of three members expiring on February of each odd-numbered year. Prohibits a member from serving more than two full consecutive terms. Requires the presiding officer to appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term if a vacancy occurs during a term.

Sec. 2308.053. PRESIDING OFFICER. Requires the presiding officer to appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. Authorizes the presiding officer of the advisory board to vote on any matter before the advisory board.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. Prohibits advisory board members from receiving compensation but entitles advisory board

members to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2308.055. MEETINGS. Requires the advisory board to meet twice annually and authorizes the advisory board to meet at other times at the call of the presiding officer.

Sec. 2308.056. GENERAL POWERS AND DUTIES. Authorizes the executive director or commission, as appropriate, to take action as necessary to administer and enforce this chapter.

Sec. 2308.057. RULES. Requires the executive director to adopt rules for permitting tow trucks and licensing towing operators. Requires, by rule, the executive director to adopt standards of conduct for license and permit holders under this chapter.

Sec. 2308.058. FEES. Requires the commission to establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2308.059. PERIODIC AND RISK-BASED INSPECTIONS. (a) Authorizes TDLR to enter and inspect certain locations at any time during business hours.

(b) Requires TDLR to conduct additional inspections based on a schedule of risk-based inspections using certain criteria.

(c) Requires an inspector who discovers a violation of this chapter or of a rule or order of the commission or executive director to provide written notice of the violation to the license or permit holder on a form prescribed by TDLR and to file a written complain with the executive director.

(d) Requires the towing company to pay a fee for each inspection performed under Subsection (c). Requires the commission by rule to set the amount of the fee.

Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD. Requires the advisory board to provide advice and recommendations to TDLR on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, and continuing education requirements.

Sec. 2308.061. PERSONNEL. Authorizes TDLR to employ personnel necessary to administer and enforce this chapter.

[Reserves Sections 2308.062–2308.100 for expansion.]

SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

Sec. 2308.101. PERMIT REQUIRED. Prohibits a tow truck from being used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter.

Sec. 2308.102. APPLICATION REQUIREMENTS. Provides that an applicant for a permit under this subchapter must submit certain information to TDLR. Requires TDLR to investigate any criminal conviction of an applicant and authorizes TDLR to obtain any criminal history record information permitted by law.

Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT. (a) Provides that an incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051 (Removal of Personnel Property from Roadway or Right of Way), Transportation Code.

(b) Requires an applicant to submit certain evidence to be eligible for an incident management towing permit.

(c) Authorizes a tow truck permitted under this section to also be used for private property towing and consent towing.

(d) Provides that when a tow truck is used for a nonconsent tow initiated by a peace officer under Section 545.3051 (Removal of Personnel Property from Roadway or Right of Way), Transportation Code, the permit holder is an agent of law enforcement and is subject to Section 545.3051(e) (setting forth that an authority or law enforcement agent is not liable for certain damages, notwithstanding any other provision of law), Transportation Code.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT. Provides that a private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter. Requires an applicant to submit certain evidence to be eligible for a private property towing permit. Authorizes a tow truck permitted under this section to also be used for consent towing but not for incident management towing.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT. Provides that a consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner. Requires an applicant to submit certain evidence to be eligible for a consent towing permit. Prohibits a tow truck permitted under this section from being used for nonconsent towing, including incident management towing and private property towing.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT. Requires TDLR to issue a permit under this subchapter to an applicant who meets the requirements for a permit. Authorizes TDLR to deny an application if the applicant has had a permit revoked under this subchapter. Requires TDLR to issue a certificate containing a single permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Sec. 2308.107. CONDITIONAL ACCEPTANCE. Authorizes TDLR to conditionally accept an incomplete application for a permit if the towing company complies with Section 2308.112 (Financial Responsibility), Occupations Code. Requires TDLR to notify an applicant that an application is incomplete and inform the applicant of the information required for completion. Provides that the application is considered withdrawn if the applicant fails to provide the information on or before the 45th day after the date of notice.

Sec. 2308.108. ADDITIONAL VEHICLES AND FEES. Provides that each tow truck requires a separate permit. Provides that a permit holder is not required to pay a permit fee for a tow truck that is replacing another tow truck that has a valid permit.

Sec. 2308.109. PERMIT RENEWAL. Provides that a permit issued under this chapter is valid for one year. Authorizes TDLR to adopt a system under which permits expire at different times during the year. Requires TDLR to notify the permit holder at least 30 days before the date a permit expires. Provides that the notice must be in writing and sent to the permit holder's last known address according to TDLR's records. Authorizes a permit holder to renew a permit under this chapter through certain means.

Sec. 2308.110. CAB CARDS. (a) Requires TDLR to issue a cab card containing certain information for each tow truck issued a permit.

(b) Requires TDLR to issue a cab card when TDLR issues or renews a permit under this subchapter.

(c) Requires a permit holder to keep the cab card in the cab of each permitted tow truck.

(d) Authorizes TDLR to order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter.

(e) Authorizes the executive director by rule to adopt an alternative method that is accessible by law enforcement personnel and provides for the enforcement of the permit requirements of this subchapter if TDLR determines that the cab card system described by Subsections (a)–(c) is not an efficient means of enforcing this subchapter.

(f) Provides that a cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate used under Section 2308.106 (Department Approval; Issuance of Permit), Occupations Code.

Sec. 2308.111. **DISPLAY OF INFORMATION ON TOW TRUCK.** Sets forth certain information that a permit holder is required to display on each permitted tow truck. Requires this information to be displayed in a certain manner.

Sec. 2308.112. **FINANCIAL RESPONSIBILITY.** (a) Requires a permit holder to maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Requires any insurance required for a tow truck be obtained from certain insurers, unless state law permits a tow truck to be self-insured.

(c) Authorizes a tow truck to comply through self-insurance if the towing company demonstrates to TDLR that the company can satisfy its obligations for liability for bodily injury or property damage. Requires the executive director by rule to provide for a responsible system of self-insurance for a tow truck.

(d) Requires an applicant or permit holder to file a form, prescribed by TDLR, with TDLR that provides evidence of insurance or evidence of financial responsibility as required by this subchapter at certain times.

(e) Requires a permit holder to keep evidence of insurance in a form approved by TDLR in the cab of each vehicle requiring registration the carrier operates.

[Reserves Sections 2308.113–2308.150 for expansion.]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2308.151. **LICENSE REQUIRED.** Prohibits a person from performing towing operations unless the person holds an appropriate license under this subchapter.

Sec. 2308.152. **GENERAL LICENSE APPLICATION REQUIREMENTS.** Requires an applicant for a license under this subchapter to submit to TDLR certain information.

Sec. 2308.153. **INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE.** Provides that an incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103 (Requirements for Incident Management Towing Permit), Occupations Code. Requires an applicant for an incident management towing operator's license to meet certain conditions.

Sec. 2308.154. **PRIVATE PROPERTY TOWING OPERATOR'S LICENSE.** Provides that a private property towing operator's license is required to operate a tow truck permitted under Section 2308.104 (Requirements for Private Property Towing Permit), Occupations Code. Requires an applicant for a private property towing operator's license to meet certain conditions.

Sec. 2308.155. **CONSENT TOWING OPERATOR'S LICENSE.** Provides that a consent towing operator's license is required to operate a tow truck permitted under Section

2308.105 (Requirements for Consent Towing Permit). Requires an applicant for a consent towing operator's license to meet certain conditions.

Sec. 2308.156. EXAMINATIONS. (a) Requires examinations required by this subchapter to be conducted at locations throughout the state.

(b) Authorizes TDLR to accept, develop, or contract for the examinations required by this subchapter, including the administration of the examinations. Provides that each examination must test the knowledge of the applicant about equipment and procedures used in the types of towing authorized by the applicable license.

(c) Requires the executive director to determine uniform standards for acceptable performance on an examination.

Sec. 2308.157. EXAMINATION RESULTS. (a) Requires TDLR to notify an applicant of the results of an examination within 30 days of the date the examination is administered. Requires, if an examination is graded or reviewed by a national testing service, TDLR to notify an applicant of the result of the examination with 14 days of TDLR receiving the results from the testing service.

(b) Requires TDLR, if the notice of examination results will be delayed more than 60 days after the examination date, to notify each applicant of the reason for the delay within 60 days of the examination date.

(c) Requires TDLR, if requested in writing by a person who fails an examination administered under this chapter, to provide to the person an analysis of the person's performance on the examination.

Sec. 2308.158. LICENSE ISSUANCE; NONTRANSFERABILITY. Requires the executive director to issue a license to an applicant that has paid the fees and complied with other requirements of this chapter within 30 days of TDLR determining that an applicant has passed an examination required under this subchapter. Provides that a license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2308.159. LICENSE RENEWAL. (a) Provides that a license expires annually on December 31 and is authorized for renewal on payment of the required renewal fee, except as provided by Subsection (b).

(b) Authorizes the executive director by rule to adopt a system under which licenses expire on various dates throughout the year. Requires renewal fees payable on or before December 31 to be prorated on monthly basis for the year in which the license expiration date is changed, so that each license holder pays only that portion of the renewal fee that is applicable to the number of months during which the license is valid. Provides that on renewal of the license on the new expiration date the total renewal fee is due.

(c) Requires TDLR to notify a license holder in writing at the license holder's last known mailing address not later than 30 days before the license holder's license expires. Authorizes a person to renew an unexpired license by paying the renewal fee to TDLR before the license expiration date.

(d) Authorizes a person whose license has been expired for 90 days or less to renew the license by paying TDLR the required renewal fee and a late fee in an amount equal to half of the license fee. Authorizes a person whose license has been expired for more than 90 days but less than two years to renew the license by paying TDLR all unpaid renewal fees and a late fee in an amount equal to the license fee. Prohibits a person whose license has been expired for more than two years from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures for obtaining an original license.

Sec. 2308.160. CONTINUING EDUCATION. Provides that a license holder must complete a professional development-truck and bus driver/commercial vehicle operation course approved by TDLR to renew an incident management towing operator's license.

ARTICLE 2. CONSOLIDATION OF LAWS RELATED TO TOWING

SECTION 2.01. Transfers Sections 643.201 and 643.203 through 643.208, Transportation Code, to Chapter 2308, Occupations Code, redesignated as Subchapter E, Chapter 2308, Occupations Code, renumbered as Sections 2308.201 through 2308.207, Occupations Code, and amended to delete existing text defining "commercial driver's license," "consent tow," "driver's license," and "nonconsent tow," and to make conforming changes.

SECTION 2.02. Transfers Section 684.101, Transportation Code, to Subchapter E, Chapter 2308, Occupations Code, and renumbers it as Section 2308.208.

SECTION 2.03. Transfers Sections 684.011, 684.012, 684.0125, 684.013, 684.014, and 684.015, Transportation Code, to Chapter 2308, Occupations Code, redesignates them as Subchapter F, Chapter 2308, Transportation Code, renumbers them as Sections 2308.251 through 2308.256, Occupations Code, and makes conforming changes.

SECTION 2.04. Transfers Subchapter C, Chapter 684, Transportation Code, to Chapter 2308, Occupations Code, redesignates it as Subchapter G, Chapter 2308, Occupations Code, renumbers it as Sections 2308.301 through 3208.305, Occupations Code, and makes conforming changes.

SECTION 2.05. Transfers Subchapter D, Chapter 684, Transportation Code, to Chapter 2308, Occupations Code, redesignates it as Subchapter H, Chapter 2308, Occupations Code, renumbers it as Sections 2308.351 through 2308.354, Occupations Code, and makes conforming changes.

SECTION 2.06. Transfers Subchapter E, Chapter 684, Transportation Code, to Chapter 2308, Occupations Code, redesignates it as Subchapter I, Chapter 2308, Occupations Code, and renumbers it as Sections 2308.401 through 2308.407, Occupations Code, and makes conforming changes.

SECTION 2.07. Transfers Sections 685.002 through 685.010, Transportation Code, to Chapter 2308, Occupations Code, redesignates them as Subchapter J, Chapter 2308, Occupations Code, renumbers the Sections 2308.451 through 2308.459, Occupations Code, and makes conforming changes.

SECTION 2.08. Amends Chapter 2308, Occupations Code, by adding Subchapter K, to read as follows:

SUBCHAPTER K. ENFORCEMENT

Sec. 2308.501. ADMINISTRATIVE PENALTY. Authorizes the executive director to impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates certain rules or orders. Prohibits an administrative penalty from being imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY. Authorizes the executive director to issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety. Authorizes the attorney general or executive director to institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352 (Injunctive Relief; Civil Penalty), Occupations Code.

Sec. 2308.503. CRIMINAL PENALTY; LICENSING. Provides that a person commits an offense if the person engages in certain actions. Provides that an offense under this section is a Class C misdemeanor.

SECTION 2.09. Transfers Section 643.253(d), Transportation Code, to Subchapter K, Chapter 2308, Occupations Code, renumbers it as Section 2308.504, Occupations Code, and amends as follows:

Sec. 2308.504. New heading: CRIMINAL PENALTY; TOWING. Provides that an offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 per violation. Makes conforming changes.

ARTICLE 3. CONFORMING AMENDMENTS

SECTION 3.01. Amends Article 18.23(e) (providing that Subchapter J, Chapter 2308, Occupations Code, does not apply to motor vehicles stored for certain purposes), Code of Criminal Procedure, to make conforming changes.

SECTION 3.02. Amends Section 101.141(a) (setting forth certain instances in which a clerk of a justice court is required to collect fees and costs), Government Code, to make conforming changes.

SECTION 3.03. Amends Section 101.161 (Municipal Court Fees and Costs), Government Code, to make a conforming change.

SECTION 3.04. Amends Section 2303.155(f) (prohibiting certain persons from charging certain fees), Occupations Code, to make a conforming change.

SECTION 3.05. Amends Section 643.101(d) (requiring certain insurance for certain tow trucks), Transportation Code, to make a conforming change.

SECTION 3.06. Amends Section 643.253(e) (providing that a certain offense is a misdemeanor), Transportation Code, to make a conforming change.

SECTION 3.07. Amends Section 1(1), Chapter 528, Acts of the 76th Legislature, Regular Session, 1999 (Article 178d-1, V.T.C.S.), to make a conforming change.

ARTICLE 4. TRANSITION AND EFFECTIVE DATE

SECTION 4.01. Repealer: Sections 643.202 (Rules Advisory Committee); 684.001 (Definitions); 685.001 (Definitions); the heading to Subchapter E (Tow Trucks) Chapter 643; the heading to Chapter 684 (Removal of Unauthorized Vehicles from Parking Facility or Public Roadway); the headings to Subchapters A (General Provisions), B (Unauthorized Vehicles, and F (Miscellaneous Provisions), Chapter 684; and the heading to Chapter 685 (Rights of Owners and Operators of Stored Vehicles), Transportation Code.

SECTION 4.02. Requires the presiding officer to make the initial appointments to the board as soon as practicable after the effective date of this Act. Sets forth certain expiration dates for members the presiding officer is required to appoint.

SECTION 4.03. (a) Provides that all rules of the Texas Transportation Commission (TTC) and Texas Department of Transportation (TxDOT) relating to the administration of Chapter 2303 (Vehicle Storage Facilities), Occupations Code, are continued in effect as rules of the commission or the executive director until superseded by a rule of TDLR or the executive director. Provides that a license issued under Chapter 2303 (Vehicle Storage Facilities), Occupations Code, by TxDOT is prospective to this Act. Provides that a complaint, investigation, contested case, or other proceeding pending on the effective date of this Act is prospective to this Act. Provides that an inspection or other activity under Chapter 2303 (Vehicle Storage Facilities), Occupations Code, that is conducted by TTC or TxDOT is considered to be an inspection or activity conducted by the commission or TDLR.

(b) Provides that a reference in another law or an administrative rule to the powers and duties under Chapter 2303 (Vehicle Storage Facilities), Occupations Code, of TTC or TxDOT means the commission or TDLR.

SECTION 4.04. Requires, as appropriate, the executive director and the commission to adopt rules under Chapter 2308 (Stevedores), Occupations Code, as added by this act, relating to an original application for a permit or license under that chapter not later than March 1, 2008, and a renewal of a license or permit and continuing educations requirements not later than January 1, 2009.

SECTION 4.05. Requires TDLR to issue certain permits and licenses to a qualified applicant under this section who meets certain conditions.

SECTION 4.06. (a) Provides that except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2007.

(b) Provides that except as provided by Subsection (c) of this section, Section 2308.453, Occupations Code, as added by this Act, and Subchapters C and D, Chapter 2308, Occupations Code, as added by this Act, take effect September 1, 2008.

(c) Provides that Section 2308.160, Occupations Code, as added by this Act, takes effect September 1, 2009.