

BILL ANALYSIS

Senate Research Center
82R19977 SLB-F

H.B. 3510
By: Hamilton (Carona)
Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, the Texas Department of Licensing and Regulation (TDLR) oversees the vehicle towing, booting, and storage program. These duties were transferred to TDLR during the 80th Legislature. The 81st Legislature passed a number of bills that made significant changes to the towing and vehicle storage facility laws including providing for the regulation of vehicle booting under the same chapters of the Occupations Code.

H.B. 3510 provides language to clarify current law and streamline the regulation of vehicle towing, booting, and storage.

H.B. 3510 amends current law relating to the regulation of the towing, booting, and storage of vehicles.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 5 (Section 2308.057, Occupations Code) of this bill.

Rulemaking authority previously granted to TCLR is modified in SECTION 6 (Section 2308.158, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2303.1511, Occupations Code, by adding Subsection (c), to provide that this section does not apply to a vehicle received as a result of an incident management tow requested by a law enforcement agency unless the law enforcement agency requests a report of incident management tows within the jurisdiction of the agency. Defines in this subsection, "incident management tow."

SECTION 2. Amends Section 2303.154(a), Occupations Code, as follows:

(a) Provides that a vehicle is considered abandoned and requires the operator of a vehicle storage facility, if a vehicle is not claimed by a person permitted to claim the vehicle or a law enforcement agency has not taken an action in response to a notice under Section 683.031(c) (relating to requiring the garagekeeper to report the abandonment of the motor vehicle), Transportation Code, before the 15th date 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 send a second notice to the registered owner and the primary lienholder of the vehicle in compliance with the requirements of Section 683.012 (Taking Abandoned Motor Vehicle Into Custody: Notice), Transportation Code, for a notice sent by a law enforcement agency.

Deletes existing text requiring the operator of the vehicle storage facility, if a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683 (Abandoned Motor Vehicles), Transportation Code, before the 41st day after the date notice is mailed or published under Section 2303.151 or 2303.152, to send a second notice to the registered owner and the primary lienholder of the vehicle.

SECTION 3. Amends Section 2303.160(c), Occupations Code, as follows:

(c) Provides that Subsection (b) (relating to requiring a storage facility to accept evidence of financial responsibility as an additional identification of ownership or right of possession or control of the vehicle) does not require a vehicle storage facility to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(1) pay the charges for services regulated under this chapter or Chapter 2308 (Vehicle Towing and Booting), including charges for an incident management tow, as defined by Section 2308.002 (Definitions), rather than pay the charges associated with delivery or storage of the vehicle; and

(2) present valid photo identification issued by this state, another state, a federal agency, or a foreign government.

SECTION 4. Amends Sections 2308.002(5-a) and (7), Occupations Code, to redefine, respectively, "incident management tow" and "parking facility."

SECTION 5. Amends Section 2308.057, Occupations Code, as follows:

Sec. 2308.057. RULES. (a) Authorizes the Texas Commission of Licensing and Regulation (TCLR) to adopt different rules applicable to each type of permit or license.

(a-1) Creates this subsection from existing text. Requires TCLR to adopt rules for denial of applications and permits if the applicant, a partner, principal, officer, or general manager of the applicant, or other license or permit holder meets certain criteria set forth in this subsection.

(b) Requires TCLR by rule to adopt:

(1) standards of conduct for license and permit holders under this chapter; and

(2) requirements for a consent tow, private property tow, and incident management tow.

SECTION 6. Amends Section 2308.158, Occupations Code, as follows:

Sec. 2308.158. New heading: DRUG TESTING OF TOWING OPERATORS. (a) Requires a towing company to establish a drug testing policy, rather than an alcohol and drug testing policy, for towing operators. Authorizes a towing company that establishes a drug testing policy under this subsection to adopt the model drug testing policy adopted by TCLR or to use another drug testing policy that the Texas Department of Licensing and Regulation (TDLR) determines is at least as stringent as the policy adopted by TCLR. Makes conforming changes.

(b) Makes conforming changes.

SECTION 7. Amends Section 2308.159(c), Occupations Code, as follows:

(c) Authorizes a license holder to renew a license issued under this chapter by:

(1) submitting an application on a form prescribed by the executive director of TDLR (executive director);

(2) submitting evidence demonstrating compliance with the requirements for the license type as required by this chapter or TCLR rule;

(3) paying a renewal fee; and

(4) completing continuing education as required by Section 2308.157 (Continuing Education).

SECTION 8. Amends Subchapter E, Chapter 2308, Occupations Code, by adding Section 2308.2065, as follows:

Sec. 2308.2065. FEES FOR PRIVATE PROPERTY TOWS; REFUNDS. (a) Prohibits a license or permit holder from charging a fee for a private property tow that is greater than:

(1) the fee for a private property tow established under Section 2308.0575 (Rules On Fees; Contract For Study; Confidential Information); or

(2) a fee for a private property tow authorized by a political subdivision.

(b) Prohibits a license or permit holder from charging a fee for a service related to a private property tow that is not included in the list of fees established:

(1) under Section 2308.0575; or

(2) by a political subdivision.

(c) Authorizes TDLR to require a license or permit holder to refund to a vehicle owner or operator the:

(1) amount charged to the owner or operator in excess of the amounts established by TCLR rule or by a political subdivision; or

(2) total amount of the charges for a service not listed in the amounts established by TCLR rule or by a political subdivision.

SECTION 9. Amends Section 2308.252(a), Occupations Code, as follows:

(a) Authorizes a parking facility owner to, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

(1) signs that substantially comply with Subchapter G (Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas) prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and remain installed at the time of towing; or

(2)-(4) Makes no changes to these subdivisions.

SECTION 10. Amends Subchapter F, Chapter 2308, Occupations Code, by adding Section 2308.2545, as follows:

Sec. 2308.2545. AUTHORITY TO REMOVE VEHICLE FROM HOME. (a) Authorizes a homeowner or tenant under a written lease agreement who does not charge for parking to authorize the removal of an unauthorized vehicle if the vehicle is blocking entry to or exit from the home or the driveway of the home.

(b) Provides that Sections 2308.252 and 2308.253 do not apply to a removal authorized under this section.

SECTION 11. Amends the heading to Section 2308.255, Occupations Code, to read as follows:

Sec. 2308.255. TOWING COMPANY'S OR BOOT OPERATOR'S AUTHORITY TO REMOVE AND STORE OR BOOT UNAUTHORIZED VEHICLE.

SECTION 12. Amends Sections 2308.255(a) and (d), Occupations Code, as follows:

(a) Authorizes a towing company that is insured as provided by Subsection (c) (relating to authorizing only a towing company that is insured against liability for property damage to remove and store an unauthorized vehicle), without the consent of an owner or operator of an unauthorized vehicle, to remove and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) Makes no changes to this subdivision; and

(2) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251;

(B) in or obstructing a portion of a paved driveway; or

(C) on a public roadway, rather than abutting public roadway, used for entering or exiting the facility and the removal is approved by a peace officer.

(d) Authorizes a towing company to remove and store a vehicle under Subsection (a) and authorizes a boot operator to boot a vehicle under Section 2308.257 only if the parking facility owner:

(1) requests that the towing company remove and store or that the boot operator boot the specific vehicle; or

(2) has a standing written agreement with the towing company or boot operator to enforce parking restrictions in the parking facility, rather than has a standing written agreement with the towing company to enforce parking restrictions in the parking facility from which the vehicle will be removed.

SECTION 13. Redesignates Section 2308.257, Occupations Code, as added by Chapter 757 (S.B. 702), Acts of the 81st Legislature, Regular Session, 2009, as Section 2308.2555, Occupations Code, as follows:

Sec. 2308.2555. REMOVAL OF CERTAIN UNAUTHORIZED VEHICLES IN RURAL AREAS. Redesignates existing Section 2308.257 as Section 2308.2555. Makes no further changes to this section.

SECTION 14. Amends Subchapter F, Chapter 2308, Occupations Code, by adding Section 2308.2565, as follows:

Sec. 2308.2565. VEHICLE STORAGE FACILITY DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE. (a) Requires a vehicle storage facility accepting a vehicle that is towed under this chapter, except for an incident management tow requested by a law enforcement agency, to within two hours after receiving the vehicle report to the police department of the municipality from which the vehicle was towed or, if the vehicle was towed from a location that is not in a municipality with a police department, to the sheriff of the county from which the vehicle was towed:

(1) a general description of the vehicle;

(2) the state and number of the vehicle's license plate, if any;

- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility in which the vehicle is being stored.

(b) Authorizes a law enforcement agency to request a report, in a manner prescribed by the law enforcement agency, of incident management tows within the jurisdiction of the agency.

SECTION 15. Amends Section 2308.301(b), Occupations Code, as follows:

(b) Authorizes an unauthorized vehicle, except as provided by Section 2308.305, to be towed under Section 2308.252(a)(1) or booted under Section 2308.257 only if each sign prohibiting unauthorized vehicles:

(1)-(4) Makes no changes to these subdivisions;

(5) bears the words, as applicable, "Unauthorized Vehicles Will Be Towed or Booted at Owner's or Operator's Expense"; "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense"; or "Unauthorized Vehicles Will Be Booted at Owner's or Operator's Expense";

(6)-(7) Makes no changes to these subdivisions.

SECTION 16. Amends Section 2308.302(c), Occupations Code, to set forth the required format and language on the portion of the sign immediately below the international towing symbol.

SECTION 17. Amends Section 2308.401, Occupations Code, by adding Subsection (c), to provide that this section does not apply to a sign required under Section 2308.301 (General Requirements for Sign Prohibiting Unauthorized Vehicles) provided by a towing or booting company to a parking facility owner.

SECTION 18. Amends Section 2308.402, Occupations Code, by adding Subsection (c) to provide that this section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

SECTION 19. Amends Section 2308.451(a), Occupations Code, to require the person who requested the hearing, if in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, to pay the costs of the removal and storage, court costs, and, at the discretion of the court, attorney's fees.

SECTION 20. Amends Section 2308.451(c), Occupations Code, as added by Chapter 845 (S.B. 2153), Acts of the 81st Legislature, Regular Session, 2009, to require the person who requested the hearing, if in a hearing held under this chapter the court finds that a person authorized, with probable cause, the booting of a vehicle in a parking facility, to pay the costs of the booting, court costs, and, at the discretion of the court, attorney's fees.

SECTION 21. Reenacts Section 2308.453, Occupations Code, as amended by Chapters 845 (S.B. 2153) and 1310 (H.B. 2571), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

Sec. 2308.453. JURISDICTION. Requires that a hearing under this chapter be in the justice court having jurisdiction in:

(1) the precinct in which the vehicle storage facility is located, rather than the precinct from which the motor vehicle was towed; or

(2) for booted vehicles, the precinct in which the parking facility is located.

SECTION 22. Amends the heading to Section 2308.455, Occupations Code, to read as follows:

Sec. 2308.455. CONTENTS OF NOTICE FOR NONCONSENT TOWS.

SECTION 23. Amends Sections 2308.458(b), (c), and (e), Occupations Code, as follows:

(b) Provides that notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

(c) Provides that the issues in a hearing regarding a towed vehicle under this chapter are:

(1) Make no changes to these subdivisions; or

(4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized, rather than the amount filed with TDLR, under Section 2308.206.

(e) Authorizes the court to award:

(1) court costs and attorney's fees to the prevailing party; and

(2)-(4) Makes no changes to these subdivisions.

SECTION 24. Amends Section 2308.459, Occupations Code, as follows:

Sec. 2308.459. APPEAL. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that failure of a party to participate in a hearing under Section 2308.458 (Hearing) constitutes waiver of the party's right to appeal to a higher court.

SECTION 25. Amends Section 2308.504(b), Occupations Code, to provide that an offense under this section is enforceable by law enforcement.

SECTION 26. Amends Section 2308.505(b), Occupations Code, to make a conforming change.

SECTION 27. (a) Repealers: (1) Section 2303.154(a-1) (relating to notifying a law enforcement agency if a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date the notice mailed or published), Occupations Code;

(2) Section 2308.204 (Fees for Private Property Tows in Other Areas), Occupations Code;

(3) Section 2308.206 (Required Filing), Occupations Code; and

(4) Section 2308.404(d) (relating to entitling a prevailing party to recover reasonable attorney's fees in a suit brought under this chapter), Occupations Code.

(b) Repeals Section 2308.256(a) (relating to requiring a vehicle storage facility that accepts a vehicle under this chapter to report certain criteria to a police department within two hours), Occupations Code, as amended by Chapter 1310 (H.B. 2571), Acts of the 81st Legislature, Regular Session, 2009, to conform to the repeal of Section 2308.256 (Vehicle Storage Facility's Duty to Report After Accepting Unauthorized Vehicle),

Occupations Code, by Chapter 757 (S.B. 702), Acts of the 81st Legislature, Regular Session, 2009.

SECTION 28. (a) Provides that the change in law made by this Act to Section 2308.159, Occupations Code, applies only to an application for renewal of a license made on or after September 1, 2011.

(b) Provides that an application for renewal of a license made before September 1, 2011, is governed by the law as it existed immediately before September 1, 2011, and that law is continued in effect for that purpose.

(c) Requires TCLR to adopt rules to implement the changes in law made by this Act to Chapters 2303 and 2308, Occupations Code, not later than January 1, 2012.

(d) Provides that the changes in law made by Section 2303.154, Occupations Code, as amended by this Act, apply to a vehicle accepted by a vehicle storage facility on or after the effective date of this Act. Provides that a vehicle accepted before the effective date of this Act is governed by the law in effect at the time the vehicle was accepted, and the former law is continued in effect for that purpose.

(e) Provides that the changes in law made by Sections 2308.451, 2308.453, 2308.455, and 2308.459, Occupations Code, as amended by this Act, apply to a hearing based on a petition filed on or after the effective date of this Act. Provides that a hearing based on a petition filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and the former law is continued in effect for that purpose.

SECTION 29. Provides that to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 30. Effective date: September 1, 2011.