

## **BILL ANALYSIS**

Senate Research Center

S.B. 1501  
By: Zaffirini  
Business & Commerce  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It is burdensome to licensees and wasteful of public resources to administer licensing programs that do little to protect the public good. For that reason, the Texas Department of Licensing and Regulation (TDLR) has undertaken a strategic initiative to identify licensing programs and activities that could be deregulated without threatening public health, safety, or welfare. One such program is the licensing of vehicle booting companies and operators. "Booting" is an alternative to towing, which involves locking a large metal weight to the tire of an unlawfully parked car, thus rendering it undrivable until the owner pays to have it removed. Currently, Chapter 2308, Occupations Code, requires persons and companies engaged in the booting of automobiles to be licensed. Companies pay initial and renewal fees of \$250, and operators pay \$75. Both are subject to disciplinary action in the form of administrative penalties and sanctions. Currently, only 11 companies and 54 operators are licensed by the state, and there is little to no enforcement activity. Because the program burdens impose costs on licensees without an obvious benefit to the public, S.B. 1501 repeals the license requirement and preserves the authority of municipalities, political subdivisions, and institutions of higher education to regulate these activities. (Original Author's / Sponsor's Statement of Intent)

S.B. 1501 amends current law relating to the regulation of motor vehicle towing, booting, and storage and to the elimination of required state licensing for vehicle booting companies and operators, and creates a criminal offense.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation (TCLR) in SECTION 5 (Section 2303.1551, Occupations Code) and SECTION 12 (Section 2308.205, Occupations Code) of this bill.

Rulemaking authority previously granted to TCLR is rescinded in SECTION 20 (Sections 2303.056, 2308.059, and 2308.1551, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 2303.056, Occupations Code, to read as follows:

Sec. 2303.056. PERIODIC INSPECTIONS.

SECTION 2. Amends Section 2303.058, Occupations Code, as follows:

Sec. 2303.058. ADVISORY BOARD. Requires the Towing and Storage Advisory Board (advisory board), rather than the Towing, Storage, and Booting Advisory Board, under Chapter 2308 (Vehicle Towing and Booting) to advise the Texas Commission of Licensing and Regulation (TCLR) in adopting vehicle storage rules under this chapter (Vehicle Storage Facilities).

SECTION 3. Amends Section 2303.151, Occupations Code, by adding Subsections (f) and (g), as follows:

(f) Provides that if the operator of a vehicle storage facility sends a notice required under this section after the time prescribed by Subsection (a) (relating to requiring the operator of a vehicle storage facility to send a written notice to the registered owner and primary lienholder of the vehicle) or (b) (relating to a written notice being sent by a certain date) the deadline for sending any subsequent notice is determined based on the date notice required by this section is actually sent, the operator is prohibited from beginning to charge the daily storage fee authorized under Section 2303.155(b)(3) (relating to the authorized daily storage fees of certain vehicle storage facility operators) for the vehicle that is the subject of the notice until 24 hours after the operator sends the notice required under this section, and the ability of the operator to seek foreclosure of a lien for storage charges on the vehicle that is the subject of the notice is not affected.

(g) Prohibits a state agency or county office, notwithstanding any other law, from requiring proof of delivery of a notice sent under this section in order to issue a title for the vehicle that is the subject of the notice if proof is provided that the notice was mailed in accordance with this section.

SECTION 4. Amends Sections 2303.154, Occupations Code, by amending Subsections (a) and (a-1) and adding Subsections (d), (e), (f), and (g), as follows:

(a) Requires the operator of the 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, if required by the law enforcement agency with jurisdiction where the vehicle is located, report, rather than send notice of, the abandonment to the law enforcement agency. Requires the vehicle storage facility, if the law enforcement agency notifies the vehicle storage facility that the agency will send notices and dispose of the abandoned vehicle under Subchapter B (Abandoned Motor Vehicles: Seizure and Auction), Chapter 683 (Abandoned Motor Vehicles), Transportation Code, to pay the fee required under Section 683.031 (Garagekeeper's Duty: Abandoned Motor Vehicles), Transportation Code. Redesignates existing Subsection (a-1) as Subsection (a). 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 a law enforcement agency has not taken an action in response to a notice under Section 683.031(c), Transportation Code, before the 15th 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.

(d) Requires the operator of a vehicle storage facility, not earlier than the 15th day and before the 21st 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 each recorded lienholder of the vehicle if the facility meets certain criteria.

(e) Provides that if the operator of a vehicle storage facility sends a notice required under this section outside of the time described by Subsection (d), the deadline for sending any subsequent notice is determined based on the date notice under this section is actually sent, the operator is prohibited from charging the daily storage fee authorized under Section 2303.155(b)(3) for the vehicle that is the subject of the notice during the period beginning on the 21st day after the date that notice under Section 2303.151 is sent and ending 24 hours after notice under this section is sent, and the ability of the operator to seek foreclosure of a lien for storage charges on the vehicle that is the subject of the notice is not affected.

(f) Prohibits a state agency or county office, notwithstanding any other law, from requiring proof of delivery of a notice sent under this section in order to issue a title for the vehicle that is the subject of the notice if proof is provided that the notice was mailed in accordance with this section.

(g) Authorizes a report sent under Subsection (a) to, at the discretion of the law enforcement agency, contain a list of more than one vehicle, watercraft, or outboard motor.

SECTION 5. Amends Section 2303.1551(b), Occupations Code, to require a vehicle storage facility accepting a nonconsent towed vehicle to post a sign that complies with TCLR rules and states, rather than post a sign in one inch letters stating, "Nonconsent tow fees schedules available on request." Requires TCLR to adopt rules for signs required under this subsection.

SECTION 6. Amends Section 2308.002, Occupations Code, by amending Subdivisions (1) and (8-a) and adding Subdivisions (5-b) and (8-b), to redefine "advisory board," define "local authority" and "peace officer," and make a nonsubstantive change.

SECTION 7. Amends Section 2308.004, Occupations Code, effective September 1, 2018, as follows:

Sec. 2308.004. EXEMPTION. Deletes existing designations of Subsections (a) and (b) and makes nonsubstantive changes. Provides that Sections 2308.151(b), 2308.2085, 2308.257 (Booting of Unauthorized Vehicle), and 2308.258, rather than this chapter does, do not apply to:

(1) a person who, while exercising a statutory or contractual lien right with regard to a vehicle:

(A) installs or removes a boot; or

(B) controls, installs, or directs the installation and removal of one or more boots; or

(2) a commercial office building owner or manager who installs or removes a boot in the building's parking facility.

SECTION 8. Reenacts and amends Section 2308.051(a), Occupations Code, as amended by Chapters 457 (H.B. 2548) and 845 (S.B. 2153), Acts of the 81st Legislature, Regular Session, 2009, as follows:

(a) Provides that the advisory board consists of the following members appointed by the presiding officer of TCLR with the approval of TCLR:

(1) and (2) makes no changes to these subdivisions;

(3) and (4) changes references to owner of a vehicle storage facility to representative of a vehicle storage facility;

(5) changes a reference to owner of a parking facility to representative of a parking facility;

(6) and (7) changes references to law enforcement officer to peace officer;

(8) one representative of a member insurer, as defined by Section 462.004 (General Definitions), Insurance Code, of the Texas Property and Casualty Insurance Guaranty Association who writes automobile insurance in this state, rather than property and casualty insurers who write automobile insurance in this state; and

(9) one person who operates both a towing company and a vehicle storage facility, rather than one public member. Deletes text of existing Subdivision (9) referring to one representative of a booting company.

SECTION 9. Amends the heading to Section 2308.059, Occupations Code, to read as follows:

Sec. 2308.059. PERIODIC INSPECTIONS.

SECTION 10. Amends Section 2308.151, Occupations Code, effective September 1, 2018, as follows:

Sec. 2308.151. New heading: LICENSE OR LOCAL AUTHORIZATION REQUIRED.

(a) Creates this subsection from existing text. Prohibits a person, unless the person holds an appropriate license under this subchapter (License Requirements), from performing towing operations or operating a towing company. Makes nonsubstantive changes.

(b) Authorizes a person, unless prohibited by a local authority under Section 2308.2085, to perform booting operations and operate a booting company. Makes nonsubstantive changes.

SECTION 11. Amends the heading to Section 2308.205, Occupations Code, to read as follows:

Sec. 2308.205. TOWING OF VEHICLES TO LICENSED VEHICLE STORAGE FACILITIES OR OTHER LOCATIONS ON PARKING FACILITIES.

SECTION 12. Amends Section 2308.205, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires a towing company that makes a nonconsent tow to tow the vehicle to a vehicle storage facility that is operated by a person who holds a license to operate the facility under Chapter 2303, unless:

(1) the towing company agrees to take the vehicle to a location designated by the vehicle's owner; or

(2) the vehicle is towed under rules adopted under Subsection (a-1), or Section 2308.259(b).

(a-1) Requires TCLR to adopt rules authorizing a towing company that makes a nonconsent tow from a parking facility to tow the vehicle to another location on the same parking facility under the direction of the parking facility owner, a parking facility authorized agent, or a peace officer.

SECTION 13. Amends Section 2308.2085, Occupations Code, as follows:

Sec. 2308.2085. New heading: LOCAL AUTHORITY REGULATION OF BOOTING ACTIVITIES. (a) Authorizes a local authority, rather than municipality, to regulate, in areas in which the entity regulates parking or traffic, rather than adopt an ordinance that is identical to the, booting activities, including:

(1) operation of booting companies and operators that operate on a parking facility;

(2) any permit and sign requirements in connection with the booting of a vehicle; and

(3) redesignates existing Subsection (b) as Subdivision (3); fees that may be charged in connection with the booting of a vehicle. Deletes existing text relating to provisions in this chapter or that impose additional requirements exceeding minimum standards of booting provisions among activities that a municipality is authorized to regulate and providing that a municipality may not adopt an ordinance that conflicts with booting provisions in this chapter. Deletes existing Subsection (c) authorizing a municipality to require booting companies to obtain a permit to operate in the municipality.

(b) Requires that regulations adopted under this section meet certain criteria.

SECTION 14. Amends Subchapter E, Chapter 2308, Occupations Code, by adding Section 2308.210, as follows:

Sec. 2308.210. ROADWAY CLEARANCE PROGRAM IN CERTAIN COUNTIES; OFFENSE. (a) Defines "freeway."

(b) Authorizes the commissioners court of a county adjacent to a county with a population of more than 3.3 million by order to establish a program:

(1) for maintaining the safe movement of traffic on county freeways; and

(2) under which a peace officer designated by the sheriff's office or the commissioners court is authorized to direct, at the scene of an incident or remotely, a towing company, only for the purpose of the program, to remove from a freeway, including the shoulder of a freeway, a vehicle that is impeding the safe movement of traffic and relocate the vehicle to the closest safe location for the vehicle to be stored.

(c) Requires that an order under Subsection (b) ensure the protection of the public and the safe and efficient operation of towing and storage services in the county.

(d) Authorizes the commissioners court of a county operating a program under this section to enter into an agreement with a federal agency, state agency, municipality, adjacent county, metropolitan rapid transit authority, or regional planning organization or any other governmental entity for the purpose of carrying out the program and to apply for grants and other funding to carry out the program.

(e) Provides that a towing company or towing operator commits an offense if the company or operator violates a provision of an order establishing a program under this section relating to the presence of a tow truck at the scene of an incident on a freeway or other area under the jurisdiction of the program or the offering of towing or related services on a freeway or other area under the jurisdiction of the program.

(f) Provides that an offense under Subsection (e) is a misdemeanor punishable by a fine of not less than \$1 or more than \$200.

SECTION 15. Amends Sections 2308.253(c), (d), and (e), Occupations Code, as follows:

(c) and (d) Changes references to removed to towed.

(e) Provides that a contract provision providing for the towing, rather than removal, from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia is valid only if the provision requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the parking facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. Requires that the notice:

(1) state that the vehicle does not display an unexpired license plate or registration insignia, that the vehicle will be towed at the expense of the owner or operator of the vehicle if the vehicle does not display an unexpired license plate or registration insignia, and a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) be:

(A) delivered in person to the owner or operator of the vehicle. Redesignates existing Subdivision (1) as Paragraph (A);

(B) sent by certified mail, return receipt requested, to that owner or operator. Redesignates existing Subdivision (2) as Paragraph (B); or

(C) attached to the vehicles front windshield, to the vehicle's driver's side window, or, if the vehicle has no front windshield or driver's side window, to a conspicuous part of the vehicle.

SECTION 16. Amends Section 2308.255, Occupations Code, as follows:

Sec. 2308.255. New heading: TOWING COMPANY'S AUTHORITY TO TOW AND STORE UNAUTHORIZED VEHICLE. (a) Authorizes a towing company, rather than a towing company that is insured as provided by Subsection (c), without the consent of an owner or operator of an unauthorized vehicle, to tow the vehicle to, rather than remove, and store the vehicle at a vehicle storage facility at the expense of the owner or operator of the vehicle if:

(1) the towing company has received written verification from the parking facility owner that certain requirements were met; or

(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 tow and store the vehicle and the vehicle meets certain criteria. Makes conforming changes.

(b) Makes conforming and nonsubstantive changes.

(c) Makes a conforming change.

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

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

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

(e) Provides that when a tow truck is used for a nonconsent tow authorized by a peace officer under Section 545.3051 (Removal of Personal Property from Roadway or Right-of-Way), Transportation Code, the operator of the tow truck and the towing company are agents of the law enforcement agency and are subject to Section 545.3051(e) (relating to an authority or a law enforcement agency not being liable for certain damage), Transportation Code.

SECTION 17. Amends Section 2308.257(b), Occupations Code, as follows:

(b) Requires a boot operator that installs a boot on a vehicle to affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

(1) through (4) makes no changes to these subdivisions;

(5) and (6) makes nonsubstantive changes; and

(7) in the manner prescribed by the local authority, notice of the procedure to file a complaint with the local authority for violation of this chapter by a boot operator.

SECTION 18. Amends Subchapter F, Chapter 2308, Occupations Code, by adding Sections 2308.258 and 2308.259, as follows:

Sec. 2308.258. BOOT REMOVAL. (a) Requires a booting company responsible for the installation of a boot on a vehicle to remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) Requires a booting company to waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(c) Prohibits a booting company responsible for the installation of more than one boot on a vehicle from charging a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

Sec. 2308.259. TOWING COMPANY'S AUTHORITY TO TOW VEHICLE FROM UNIVERSITY PARKING FACILITY. (a) Defines "special event" and "university."

(b) Authorizes an individual designated by a university, to, subject to Subsection (c), to facilitate a special event, request that a vehicle parked at a university parking facility be towed to another location on the university campus.

(c) Prohibits a vehicle from being towed under Subsection (b) unless signs complying with this section are installed on the parking facility for the 72 hours preceding towing enforcement for the special event and for 48 hours after the conclusion of the special event.

(d) Requires that each sign required under Subsection (c) meet certain criteria.

(e) Requires personnel, if a vehicle is towed under Subsection (b), to be made available to release the vehicle within two hours after a request for release of the vehicle and accept any payment required for the release of the vehicle.

(f) Prohibits a university from charging a fee for a tow under Subsection (b) that exceeds 75 percent of the private property tow fee established under Section 2308.0575.

(g) Provides that a vehicle towed under Subsection (b) that is not claimed by the vehicle owner or operator within 48 hours after the conclusion of the special event is authorized to only be towed without further expense to the vehicle owner or operator and to another location on the university campus.

(h) Requires the university to notify the owner or operator of a vehicle towed under Subsection (b) of the right of the vehicle owner or operator to a hearing under Subchapter J (Rights of Owner and Operators of Stored or Booted Vehicles).

SECTION 19. Amends the heading to Subchapter I, Chapter 2308, Occupations Code, to read as follows:

SUBCHAPTER I. REGULATION OF TOWING COMPANIES AND  
PARKING FACILITY OWNERS

SECTION 20. (a) Repealers: Sections 2303.056(c) (relating to the Texas Department of Licensing and Regulation (TDLR) to conduct additional inspections based on a schedule of risk-based inspections using certain criteria) and (d) (relating to requiring the vehicle storage facility

to pay a fee set by TCLR by rule for each risk-based inspection), 2308.002(9) (relating to the definition of property owners' association), 2308.059(b) (relating to requiring TDLR to conduct additional inspections based on a schedule of risk-based inspections using certain criteria) and (c) (relating to requiring the towing company to pay a fee set by TCLR by rule for each risk-based inspection), and 2308.103(d) (relating to the use of a tow truck for a nonconsent tow initiated by a peace officer), Occupations Code.

(b) Repealers, effective September 1, 2018: Sections 2308.1551 (Training License), 2308.1555 (Boot Operator's License), and 2308.1556 (Booting Company License), Occupations Code.

SECTION 21. Makes application of Sections 2303.151 and 2303.154, Occupations Code, as amended by this Act, prospective.

SECTION 22. (a) Provides that on September 1, 2018, a license issued under former Section 2308.1551, 2308.1555, or 2308.1556, Occupations Code, expires.

(b) Provides the changes in law made by this Act to Section 2308.051(a), Occupations Code, regarding the qualifications for a member of the advisory board do not affect the entitlement of a member serving on the advisory board immediately before the effective date of this Act to continue to serve and function as a member of the advisory board for the remainder of the member's term. Requires the presiding officer of TCLR, when advisory board vacancies occur on or after the effective date of this Act, to appoint new members to the advisory board in a manner that reflects the changes in law made by this Act.

(c) Requires TCLR to adopt rules to implement Section 2308.205(a-1), Occupations Code, as added by this Act, as soon as practicable after the effective date of this Act.

(d) Provides that Section 2308.253(e), Occupations Code, as amended by this Act, applies only to a contract, including a lease or rental agreement, entered into on or after the effective date of this Act. Provides that a contract entered into before that date is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

(e) Provides that the changes in law made by this Act to Section 2308.255, Occupations Code, do not apply to the booting of a vehicle pursuant to a standing written agreement between a booting company and a parking facility owner entered into before the effective date of this Act. Provides that the booting of a vehicle pursuant to a standing written agreement entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 23. Effective date, except as otherwise provided by this Act: upon passage or September 1, 2017.