

SUBJECT: Eliminating release of lien requirement for sale of abandoned vehicles

COMMITTEE: Transportation — favorable, without amendment

VOTE: 7 ayes — Alexander, Bosse, Alonzo, Clemons, Moreno, Price, Siebert

0 nays

2 absent — Edwards, Uher

SENATE VOTE: On final passage, March 1 — 29-0

WITNESSES: For — Jeannette Rash and Donald McClure, Texas Towing and Storage Association; Donald Dawson, Mesquite Towing Service

Against — Charles Pitts, Texas Independent Automobile Dealers Association.

BACKGROUND: A lienholder who retains possession of a stored motor vehicle, motor boat, vessel or outboard motor for more than 30 days is required by Property Code sec. 70.006 to give notice to the owner and each holder of a lien recorded on the certificate of title.

If accrued charges are not paid before the 31st day after the notice is mailed, the lienholder may sell the vehicle, motorboat, vessel or outboard motor at a public sale and apply the proceeds to the towing and storage charges. The lienholder must pay excess proceeds to a person entitled to them.

DIGEST: SB 1360 would specify that a possessory lienholder is not required as a condition of sale to obtain a release of any lien held by a person to whom notice was sent. The bill also would establish requirements for notification of the person responsible for a lien if excess money could be claimed from the sale.

A possessory lienholder would not be required as a condition of sale of a motor vehicle, motorboat, vessel, or outboard motor to obtain the release of a lien held by a person who had received notice.

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If the person entitled to the proceeds was unknown or had moved, the holder of the proceeds would have to send notice to the last known address of the person entitled to the proceeds. The notice would state the sale date, the proceeds from the sale, the amount of the proceeds applied to charges, and that excess proceeds could be claimed from the county treasurer.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

SB 549 would establish a uniform method for resolving possessory liens involving motor and other titled vehicles left in storage. Under current Texas Department of Transportation rules, vehicle storage facilities must obtain a release of lien for charges due before proceeding to sale. Vehicle repair facilities, on the other hand, face no such requirement.

At most towing and storage facilities, the vehicles that amass unpaid charges are those no one wants — old, wrecked, or irreparable vehicles abandoned illegally in parking lots, fields or side streets by their owners as an easy way to dispose of them. These rusting heaps pose an environmental and health hazard and cause storage facility owners to incur costs and liability to store them a long time.

The towing services that drag away these cars perform a valuable public service. They should not be subjected to unreasonable requirements to secure a release of lien before they can sell the cars to a junkyard. In many instances, liens have been paid off, but the owner never took the time to legally record the lien's release. In other cases, where financing liens have not been satisfied, lienholders refuse to sign off just to avoid jeopardizing their chances to win a judgment against the owner of the vehicle, not because of any intrinsic value left in the automobile.

Current pre-sale notification requirements already constitute adequate notice to all lienholders of record. The post-sale requirements proposed in this legislation would provide even more protection and ensure that any other lienholder could collect on the excess from the sale.

**OPPONENTS
SAY:**

A lien is a well-established legal right, and the Legislature should not remove lienholder protections in the law. Auto parts have real value, despite a vehicle's outward appearance, and unscrupulous operators might

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take advantage of unpaid towing charges to make a good profit off an abandoned car.

NOTES:

In 1993 the House and the Senate approved a bill similar to SB 549, HB 711 by Blackwood, but the bill was not finally enacted due to a clerical oversight.