

- SUBJECT:** Allowing law enforcement agencies to remove vehicles from roadway
- COMMITTEE:** Law Enforcement — committee substitute recommended
- VOTE:** 5 ayes — Driver, Garza, Hupp, Hegar, Keel
1 nay — Y. Davis
1 absent — Burnam
- WITNESSES:** For — Cris Andersen, San Antonio Police Officers Association; Ron Hickman, Justice of the Peace and Constables Association; Jeanette Rash, Texas Towing and Storage Association
Against — None
- BACKGROUND:** Transportation Code, chapter 472 authorizes the Texas Department of Transportation (TxDOT) to order the removal of damaged or disabled vehicles, spilled cargo, or hazardous materials from the roadway or right-of-way of the state highway system if that vehicle or spill blocks the highway or endangers public safety. TxDOT officials may remove the vehicle or spill without the owner's or carrier's consent, and the owner or carrier must pay the costs of removal and disposition.
Sec. 472.014 relieves TxDOT and its officers or employees of liability for any damage to the vehicle or spilled cargo, unless that removal or disposal is carried out recklessly or in a grossly negligent manner, or for any damage resulting from the failure to exercise authority granted under this statute.
- DIGEST:** CSHB 647 would authorize a law enforcement agency to remove a damaged or disabled vehicle, spilled cargo, or hazardous materials from the roadway or right-of-way if those types of personal property block the highway or endanger public safety. Law enforcement officials could remove the personal property without the owner's or carrier's consent, and the owner or carrier would have to pay the costs of removal and disposition. The law enforcement agency or its officers or employees would not be liable for any damage to the personal property, unless the removal or disposal was carried out recklessly or

in a grossly negligent manner, or for any damage resulting from the failure to exercise authority granted under the bill.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 647 would remove the uncertainty about a local law enforcement agency's liability in deciding to remove a wrecked vehicle or cargo spill. The bill would give law enforcement agencies the same authority and protection from liability in removing vehicles or cargo spills that state law already grants TxDOT. Police, sheriffs, and constables also should be immune from liability for damage to vehicles or cargo, unless the removal is done recklessly or with gross negligence.

Local law enforcement officers sometimes delay ordering a vehicle to be towed until a TxDOT representative is available. This delay can create additional dangers for officers and others on the scene if TxDOT officials cannot respond in a timely manner. Wrecks on congested state highways in major cities can back traffic up for miles, waste money, cause stress, and contribute to air pollution. Cargo spills can involve anything from computers to cattle, as well as hazardous materials. The bill would encourage quick decision-making in these situations and would require that all applicable state laws on handling hazardous materials and substances be followed.

CSHB 647 would apply only to cases when a law enforcement officer determined that a vehicle or spill was blocking the roadway or endangering public safety. Cities and counties already have established procedures to contact privately owned wreckers, either through a rotation system or an exclusive towing contract. Non-consent towing, as compared to removing vehicles from the private parking lot of an apartment complex or a shopping center, already is subject to stringent state and local laws. Wreckers would respond only if asked by local law enforcement or TxDOT officials.

CSHB 647 would provide protection for all local law enforcement agencies, rather than for the narrow list proposed in HB 516, a similar bill. HB 516 would define a law enforcement agency as TxDOT, a local police department, or a county sheriff's office. The broader language of CSHB 647 would cover constable's offices and metropolitan transit authorities as well.

OPPONENTS
SAY:

CSHB 647 could encourage wreckers to troll for disabled vehicles on public roadways and could lead to an unregulated “open season” for towing companies seeking additional revenue. Municipalities also would reap a windfall in administrative fees and other charges for towing vehicles.

The protection from liability when ordering the towing of disabled vehicles or spilled cargo should not be extended to constable’s offices or should be limited to larger counties. Constable deputies, particularly those in rural counties, should not be involved in removing wrecked vehicles or spilled cargo. Those departments are not trained or equipped adequately to handle such situations.

OTHER
OPPONENTS
SAY:

CSHB 647 should extend the same kind of liability protection provided to TxDOT or local law enforcement officers to privately owned wrecker services and their employees when they respond to emergencies. Removing a disabled vehicle or cargo spill is hazardous, and wreckers that answer these calls assume these risks at the request of law enforcement officers. Currently, a Houston wrecker service is being sued for actions it took at the direction of a law enforcement agency. Wrecker services seek protection only when they respond to law enforcement calls, not from damages caused when they respond to discretionary and less dangerous requests for towing.

The bill specifically should list the law enforcement agencies that would receive the same level of liability protection as TxDOT and should include constable’s offices. This type of expanded list is a better approach than using a generic reference to all law enforcement agencies.

NOTES:

The committee substitute added a damaged or disabled vehicle to the list of personal property that could be moved without liability for damages.

During the 77th Legislature’s 2001 regular session, the House passed HB 2750 by E. Jones, identical to the filed version of HB 647, on the Local, Consent, and Resolutions Calendar. HB 2750 died in the Senate State Affairs Committee.

HB 516 by J. Jones, similar to CSHB 647 except that it would apply specifically to TxDOT, local police departments, and county sheriff’s offices, has been referred to the Law Enforcement Committee. On March 5, the

Senate by 28-2 passed SB 165 by Carona, et al., the companion to HB 516. The Senate-passed version of SB 165 would include county constable's offices in the list of those that could remove a vehicle or spilled cargo with immunity from liability. SB 165 was referred to the House Law Enforcement Committee on March 10.