

SUBJECT: Impounding a vehicle when driver fails to furnish license, insurance proof

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Krusee, Phillips, Harper-Brown, Deshotel, Haggerty, Harless, Hill, Macias, Murphy

0 nays

WITNESSES: For — (*Registered, but did not testify*: Angela Roper)

Against — Larry Cernosek, Texas Towing and Storage Association; David Gonzales, Texas Criminal Defense Lawyers Association; Jeanette Rash, Texas Towing and Storage Association; (*Registered, but did not testify*: Steve Smith, Greater Dallas Emergency Wrecker Association)

On — (*Registered, but did not testify*: John W. Madden, Texas Department of Public Safety)

BACKGROUND: Transportation Code, sec. 601.051 requires a person establish financial responsibility before operating a motor vehicle through:

- a motor vehicle liability insurance policy;
- filing a surety bond;
- a deposit of \$55, 000 in cash or securities with the comptroller;
- a deposit of \$55,000 in cash or a cashier's check with the county judge in the county in which the vehicle is registered; or
- self-insurance.

Transportation code, sec. 601.052 exempts from the financial responsibility requirements:

- operation of a former military vehicle or a vehicle at least 25 years old for which the owner files an affidavit stating the item is a collector's item and is used only for exhibitions and not regular transportation;
- operation of a golf cart not required to be registered; or
- a motor vehicle operated by a volunteer fire department titled in its name.

Transportation Code, sec. 601.053 requires a motor vehicle operator required to establish financial responsibility to furnish a peace officer or a person involved in an accident with the operator:

- a vehicle liability insurance policy, or a photocopy thereof, covering the vehicle;
- a standard proof of motor vehicle liability insurance form prescribed by the Texas Department of Insurance and issued by a liability insurer for the motor vehicle;
- an insurance binder confirming the operator is in compliance;
- a surety bond certificate;
- a certificate of a deposit with the comptroller covering the vehicle;
- a copy of a certificate of a deposit with the appropriate county judge covering the vehicle; or
- a certificate of self-insurance covering the vehicle, or a photocopy of the certificate.

A person who cannot exhibit evidence of financial responsibility is presumed to have operated the vehicle in violation of Transportation Code, sec. 601.051. Operating a motor vehicle in violation of sec. 601.051 is an offense under Transportation Code, sec. 601.191, unless the person charged produces to the court one of the documents described above establishing proof of financial responsibility, in which case the charge is dismissed.

Transportation Code, sec. 601.261 requires the county sheriff to impound the motor vehicle of a person who is convicted twice under sec. 601.191.

DIGEST:

CSHB 2908 would add Transportation Code, sec. 601.0535, allowing a peace officer to impound a vehicle if the driver operated it without establishing financial responsibility and failed to display a driver's license on demand, as required by Transportation Code, sec. 521.025. The peace officer would be required to issue to the driver a form designed by the officer's law enforcement agency that explained how the operator or owner could recover the vehicle.

A law enforcement agency could release the vehicle to the owner or operator only if the owner or operator paid for the cost of impoundment, showed the agency a valid driver's license, and provided evidence consistent with:

- documents eligible as proof of insurance to a peace officer under sec. 601.053, showing that on the date the vehicle was impounded, the operator had established financial responsibility under sec. 601.051;
- those same documents if financial responsibility had been established since the date of the impoundment; or
- information required under sec. 601.052 to show that on the date of impoundment, the vehicle was exempt from financial responsibility requirements.

The bill would take effect September 1, 2007, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2908 would allow a peace officer to impound a vehicle operated by a person who did not abide by the simple requirements that entitle a person to drive in Texas. The bill would improve road safety and could reduce a political subdivision's liability that might stem from an uninsured, unlicensed driver causing a serious accident after being allowed by local law enforcement to return to the road.

The state requires drivers to carry a driver's license and proof of insurance to ensure that drivers operate according to the rules and have made provisions to cover some or all of the damages that could result from an accident. Driving is not a right but a privilege granted to those who have successfully met both standards, and people who, for whatever reason, cannot meet one or both requirements should not be allowed to drive on Texas roads. Allowing people who repeatedly violate the law, regardless of their particular situation, to continue to drive creates a safety concern.

The state already allows local authorities to impound vehicles for a number of reasons. Current law provides for vehicle impoundment after an offender twice has been convicted on a charge of failing to maintain financial responsibility. In addition, a vehicle may be impounded indefinitely under other conditions, such as following intoxication assault by the driver. CSHB 2908 simply would allow officers to impound a vehicle whose owner lacked even the most basic documentation required by law. However, it would not require the impoundment of a vehicle under such circumstances, giving the officer discretion to respond appropriately to individual situations.

The committee substitute addressed the concerns of the towing industry by eliminating a provision that would have waived impoundment fees under certain circumstances, which could have caused significant financial problems for towers.

OPPONENTS
SAY:

By denying drivers their vehicles to work and earn money needed to establish financial responsibility, this bill would punish not only the drivers, but also their families — some of whom could be legal drivers and citizens — and the businesses for which they work. This bill could have the additional impact of officers targeting minorities and others who might appear to be illegal immigrants.

Although the state is within its rights to add additional punishments for current offenses, this bill would be excessively harsh and does not contain provisions for the vehicle to be returned to another driver or sold by the owner to another party. An impounded vehicle remains a person's property, and the state should tread lightly before taking it away, especially for a first offense.

NOTES:

The original version of HB 2908 would have waived the impoundment cost for an owner who showed proof of financial responsibility, or an exemption thereof, on the date of the impoundment.