

SUBJECT: Licensing, regulating tow trucks, vehicle storage facilities

COMMITTEE: Transportation — committee substitute recommended

VOTE: 6 ayes — Krusee, Phillips, Harper-Brown, Harless, Hill, Murphy
0 nays
3 absent — Deshotel, Haggerty, Macias

SENATE VOTE: On final passage, May 3 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2958 by Jackson:*)
For — Jeanette Rash, Texas Towing & Storage Association; Thomas P. Washburn; (*Registered, but did not testify:* D. Gregor Arens, Arens Services; Les Findeisen, Texas Motor Transportation Association; Rose Goode, Goode Towing & Recovery; Donald McClure, Texas Auto Title & Registration Consultant; Joann Messina, South West Tow Operations; Anne O’Ryan, AAA Texas; Steve Smith, Greater Dallas Emergency Wrecker Association; Ken W. Ulmer, Safetow)

Against — None

On — William H. Kuntz Jr., Texas Department of Licensing and Regulation; (*Registered, but did not testify:* Carol Davis, Texas Department of Transportation)

BACKGROUND: Occupations Code, ch. 2303 – the Vehicle Storage Facility Act – requires a person operating a vehicle storage facility to obtain a license for each facility to ensure adequate standards of care are given to stored vehicles. It provides penalties for facility owners who fail to meet the standards.

Transportation Code, ch. 643, subch. E, regulates towing by local authorities, sets rules for fee limits for certain types of tows and storage of towed vehicles, and establishes a rules advisory committee to consult with the Texas Department of Transportation (TxDOT) regarding measures for the towing and vehicle storage industries.

Sec. 643.253(d) establishes an offense for a person who:

- violates an ordinance, resolution, order, rule, or regulation of a local authority adopted under ch. 643 for which the authority does not prescribe a penalty;
- charges or collects a fee in violation of certain state statutes or local limits in jurisdictions that regulate tow truck operations;
- violates statutes governing storage of towed vehicles; or
- violates other established rules applicable to a tow truck and towing company.

Transportation Code, ch. 684, subchs. A and B provide for removal of unauthorized vehicles from parking facilities and public roads. Subch. C establishes requirements for signs that prohibit unauthorized vehicles and those that designate restricted areas. Subch. D regulates parking on certain areas of public roads. Subch. E regulates towing companies and parking facility owners. Sec. 684.101 allows a municipality to adopt identical or additional requirements but prohibits it from adopting conflicting ones.

Transportation Code, ch. 685, grants certain rights to vehicle owners and operators of stored vehicles, governs payment of costs for removal and storage, and establishes a hearing process for vehicle owners regarding whether probable cause existed to remove and store the vehicle.

DIGEST:

CSSB 1118 would establish Occupations Code, ch. 2308 — the Texas Towing Act — creating permitting and licensing procedures for tow truck operators and owners. It would move all towing oversight and enforcement from TxDOT and its governing body, the Texas Transportation Commission (TTC), to the Texas Department of Licensing and Regulation (TDLR) and its governing body, the Texas Commission of Licensing and Regulation (TCLR). The bill would add new provisions for vehicle storage facilities and create penalties for its employees and towing owners and operators. It would create an advisory board to make recommendations on rules governing the towing and vehicle storage industries and would require TDLR to publish a study exploring fees, licenses, and permits in the towing industry.

Tow truck permits. Each tow truck used for consent or nonconsent towing on a public roadway would need an appropriate permit. TDLR would be required to issue a permit to any applicant who met the requirements but could deny an application if the applicant's permit had

been revoked. The agency also would be required to issue a cab card for each permitted tow truck that would detail prescribed information. The tow truck driver would be required to keep the card in the tow truck.

A permit holder would be required to display, in a manner and location prescribed in the bill, on each permitted tow truck:

- the permit holder's name;
- the permit holder's telephone number;
- the city and state in which the permit holder was located; and
- the permit number for the tow truck.

A permit applicant would be subject to a criminal history background check. The applicant also would be required to send TDLR:

- a completed application on a form prescribed by the executive director;
- evidence that the applicant was in compliance with TDLR drug testing requirements;
- evidence of insurance or financial responsibility;
- required fees; and
- any other information required by the executive director.

Certain requirements, such as vehicle type and maintenance of financial responsibility, would need to be met to obtain:

- an incident management towing permit for a tow truck used to perform any nonconsent tow initiated by a peace officer;
- a private property towing permit for a tow truck used to perform a nonconsent tow authorized by a parking facility owner; and
- a consent towing permit for a tow truck used to perform a consent tow authorized by the vehicle owner.

A tow truck permitted for a private property towing permit also could be used for consent towing but not for incident management towing. A tow truck permitted for a consent towing permit could not be used for nonconsent towing, including incident management towing and private property towing.

A permit would last one year. TDLR would be required to notify the permit holder at least 30 days prior to a permit's expiration, and the holder

could renew the permit by paying a specified fee and providing evidence of financial responsibility.

The bill would repeal requirements that the owner of a tow truck performing nonconsent tows maintain at least \$50,000 in insurance per truck owned (Transportation Code, sec. 643.101 (d))

Towing licenses. All towers and towing company operators would be required to hold an appropriate license. The same three categories used for permits would apply to licenses, and the bill would provide for prerequisites needed, such as certification and an examination, to obtain each type of license. TDLR could accept, develop, or contract for the creation and administration of the examinations, which would have to test an applicant's knowledge of:

- equipment and procedures used for the specific type of license for which the applicant applied; and
- state laws, including TDLR rules, relating to towing.

The executive director would determine what would constitute an acceptable performance on the examination. A license could not be transferred. Renewal of a license would be dependant on the completion of a TCLR-approved training course.

Vehicle storage facility provisions. CSSB 1118 would amend the Vehicle Storage Facility Act to create new provisions regarding background checks, facility inspection, drug testing, penalties, and other administrative tasks. Anyone working at a vehicle storage facility would be required to have a license issued under this program. TCLR would develop rules for application and issuance of this license and could develop any additional rules needed to govern the program.

TDLR would be authorized to enter and inspect the business of any person regulated under this program and any place in which it had reasonable cause to believe a license holder was violating rules or orders issued under the program. TDLR would be required to inspect a licensed vehicle storage facility at least once every two years. Additional risk-based inspections, for which the vehicle storage facility would pay a fee under a TCLR rule, would be conducted using a schedule based on:

- the type and nature of the vehicle storage facility;
- the inspection and violation history of the vehicle storage facility; and
- any other factor determined by TCLR rule.

A licensed owner of a vehicle storage facility would have to establish a drug testing policy modeled on, or at least as stringent as, one created by TCLR. Each employee of a vehicle storage facility with direct contact with the public would have to undergo at least one annual scheduled drug test but could be subject to additional random, unannounced tests.

TDLR would be authorized to perform a criminal history background check of any applicant and employ personnel necessary to administer and enforce this chapter.

Enforcement. TCLR could impose an administrative penalty under Occupations Code, ch. 51 on a person, regardless of whether the person was registered, permitted, or licensed under the Texas Towing Act or the Vehicle Storage Facility Act, for a violation of the respective chapter, a rule adopted under the chapter, or a rule or order imposed by the TDLR executive director or the commission. The penalty could not be imposed without providing the accused offender an opportunity for a hearing. The executive director could issue a cease and desist order if it was deemed necessary both to prevent a violation of the chapter and to protect health and safety. The attorney general or executive director could issue an action for an injunction or a civil penalty under Occupations Code, sec. 51.352.

Additional penalties under the Texas Towing Act could include sanctions under sec. 51.353 or a class C misdemeanor (maximum fine of \$500) if a person:

- violated permitting or licensing requirements;
- towed without a license;
- employed an unlicensed tower; or
- falsified certification or training.

Current provisions governing disciplinary action and procedures (Occupations Code, subch. E) and providing for imposition of administrative penalties (Occupations Code, subch. F) for vehicle storage facilities would be repealed.

Advisory board. CSSB 1118 would create the Towing and Storage Advisory Board, which would make recommendations to TDLR regarding the administration, development, and enforcement of rules governing the towing and vehicle storage industries. The eight-member board would comprise of two representatives each from towing companies, vehicle storage facilities, and law enforcement; one parking facility owner; and one auto insurance representative. The board would be required to meet twice a year, but could meet at other times at the request of the TCLR presiding officer or TDLR executive director.

The TCLR presiding officer, with approval from the commission, would appoint members to serve staggered six-year terms but no more than two full consecutive terms. One member would be appointed presiding officer of the board for a one-year term. As soon as practicable after the effective date, the TCLR presiding officer would make initial appointments to the board, appointing two members to terms expiring February 1, 2009; three members to terms expiring February 1, 2011; and three members to terms expiring February 1, 2013. If a vacancy occurred, the TCLR presiding officer would fill the opening for the remainder of the term.

Fee study. TDLR would be required to study fees charged by license and permit holders for nonconsent tows, compliance of license and permit holders with local regulations governing towing fees, and consumer complaints related to fees for nonconsent tows. The agency would report its findings and any recommendations for state regulation of towing fees to the Legislature by January 1, 2009. The provision requiring the study would expire September 1, 2009.

Reorganizing statutes and conforming changes. The bill would move several sections from the Transportation Code to the Occupations Code, making conforming changes and redesignating:

- Transportation Code, ch. 643, subch. E as Occupations Code, ch. 2308, subch. E, but repealing sec. 643.202 governing the rules advisory board;
- Transportation Code, sec. 643.253(d) as Occupations Code, sec. 2308.505, amending the provision to note an offense would be a misdemeanor subject to a fine between \$200 and \$1,000;
- Transportation Code, ch. 684, subch. B as Occupations Code, ch. 2308, subch. F, but repealing ch. 684, subch. A providing definitions for the section;

- Transportation Code, ch. 684, subchs. C-E as Occupations Code, ch. 2308, subchs. G-I;
- Transportation code, sec. 684.101 as Occupations Code, sec. 2308.208; and
- Transportation Code, ch. 685 as Occupations Code, ch. 2308, subch. J, but repealing sec. 685.001 providing definitions for the chapter and amending certain hearing procedures.

The bill would make changes in other statutes necessary to conform with the redesignation of Transportation Code statutes as Occupations Code statutes.

Effective date/transfer of duties. The bill would take effect September 1, 2007. Provisions requiring tow truck permits and licenses would take effect September 1, 2008, except for continuing education requirements for license holders, which would take effect September 1, 2009.

As soon as practicable after the effective date, TxDOT and TDLR would be required to enter into a memorandum of understanding that would include a transition plan with a timetable for specific steps and deadlines needed to complete the transfer. TxDOT and the TTC would continue to perform all functions and activities related to tow trucks from the effective date until December 31, 2007. By January 1, 2008, all towing-related duties would be transferred to TDLR. All rules, forms, complaints, investigations, employees, financial engagements, and property related to towing would be continued and relocated to TDLR. TDLR would be required to adopt rules related to permit or license applications by April 1, 2008. TDLR would be required to start issuing permits to qualified applicants who met all requirements by July 1, 2008.

**SUPPORTERS
SAY:**

CSSB 1118 would restore regulation to the towing industry that inadvertently had been eliminated by federal action and would be welcomed by tow truck operators and owners as a way to ensure a higher level of service to consumers. The bill would move towing oversight and regulation from TxDOT, an agency more geared toward highway projects than oversight, to TDLR, which currently regulates 22 occupations and industries.

The Texas Tow Act regulated the towing industry prior to 1995, when the federal government's deregulation of trucking and motor carriers nullified the state statute. Piecemeal efforts in the interim have restored some of the

requirements in state and federal law, but regulation of the towing industry is not a high priority for TxDOT. By creating additional towing regulations and consolidating them with vehicle storage statutes within the Occupations Code, this bill appropriately would grant TDLR the authority to create and enforce uniform industry standards.

Creating licensing and permitting standards would allow the towing and vehicle storage industries to establish a level of professionalism they cannot currently attain. Although criminal background checks and drug testing would eliminate certain people from the pool of eligible employees, such a process would go a long way toward creating a more secure image in the mind of the public. For most people, their interaction with this industry is in a time of great stress and desperation. The bill would ensure people calling a tow truck operator in the middle of the night could feel safe that the driver was a responsible member of society instead of fearing that the operator would take advantage of them or the situation. Licensing and regulation would serve to weed out those whose actions cast a pall over the vehicle storage and towing industries while creating a higher level of accountability for all employees.

The bill would create an acceptable form of background checks for employees and would disqualify only those convicted of certain crimes within the previous five years. More advanced levels of checks at this point would be excessive, as would the idea of removing the eligibility of a person whose offense could have dated back several decades.

CSSB 1118 would not create additional costs for towing operators because of the removal of certain financial responsibility requirements. Any fees imposed under this bill would be more than covered by such an action. Any other concerns this bill could raise within the industry would be addressed by the slow rollout of its provisions, which would not take full effect until the next legislative session, at which time any necessary adjustments could be made.

**OPPONENTS
SAY:**

This bill would go too far in regulating all towing operators and applying criminal background checks. Certain tow truck drivers have little or no interaction with the public and would not need to be so extensively regulated. Car dealerships, for instance, contract with towers or employ their own, whose main duty is to move cars on the lot. The small businesses that work chiefly in this capacity or in repossession efforts should not fall under this provision and could decide to leave the business

instead of following onerous new requirements. The impact of this bill could result in industry consolidation and higher costs for consumers, who also could face higher prices if operators passed new fees along to customers.

Additionally, some of the background checks would be duplicative. Dealership owners and operators already are required to undergo checks by TxDOT. It makes more sense for these entities to continue to be regulated under TxDOT, unlike the towing and vehicle storage industries, who want to be regulated by TDLR.

OTHER
OPPONENTS
SAY:

This bill should clarify certain sections and address oversights made through the consolidation of the towing and vehicle storage regulations.

The class C misdemeanor that would be imposed on offenders under the Texas Towing Act would not apply to vehicle storage operators. Although the Texas Towing Act alludes to drug testing requirements necessary for permit eligibility, it would not specify these drug testing provisions, which are delineated only in the Vehicle Storage Facility Act. The towing operators licensing procedures also should provide for the same renewal procedures specified for towing permits.

Requirements for TxDOT to transfer all contracts to TDLR could include agency-specific contracts covering large commercial vehicles, which would not fall under the licensing and regulation program TDLR would be running. Although this would not be the intent of the legislation, such a provision could be construed in this manner and applied accordingly.

Background check requirements should be stricter and provide for FBI fingerprinting tests on all applicants. Other similar professions undergo this type of check. Locksmiths, for instance, who perform some of the same duties and are in direct competition with tow drivers on occasions when a driver is locked out of a vehicle, must undergo a fingerprint check to be licensed.

NOTES:

The Legislative Budget Board does not anticipate any fiscal impact from SB 1118 because the bill would authorize TDLR to collect fees sufficient to offset costs, which the agency estimates would be \$9.4 million during fiscal 2008-09 to cover 66 new employees and other operating expenses and equipment.

HB 2958 by Jackson, the identical companion, was heard and left pending in the House Transportation Committee.

The House committee substitute made several clarifying and conforming changes to the Senate-passed version. Unlike the Senate version, the House committee substitute would:

- require a license for any person working at a vehicle storage facility;
- require vehicle storage facilities have a drug testing policy;
- allow TCLR to impose penalties regardless of whether the offender held a permit or license;
- require TDLR to perform a study;
- contain more details and requirements for the transition process, and
- not require an inspector who discovered a violation to undertake specific reporting procedures.