

TEXAS OCCUPATIONS CODE

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SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2308.001. SHORT TITLE.

This chapter may be cited as the Texas Towing Act.

Sec. 2308.002. DEFINITIONS.

In this chapter:

- (1) "Advisory board" means the Towing and Storage Advisory Board.
- (2) "Commission" means the Texas Commission of Licensing and Regulation.
- (3) "Consent tow" means any tow of a motor vehicle initiated by the owner or operator of the vehicle or by a person who has possession, custody, or control of the vehicle. The term does not include a tow of a motor vehicle initiated by a peace officer investigating a traffic accident or a traffic incident that involves the vehicle.
- (4) "Department" means the Texas Department of Licensing and Regulation.
- (5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.
- (6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow.
- (7) "Parking facility" means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:
 - (A) a restricted space on a portion of an otherwise unrestricted parking facility; and
 - (B) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home,

apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

- (i) a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and
- (ii) the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

(8) "Parking facility owner" means:

- (A) an owner or operator of a parking facility, including a lessee, employee, or agent of an owner or operator;
- (B) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or
- (C) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

(9) "Property owners' association" has the meaning assigned by Section 202.001, Property Code.

(10) "Public roadway" means a public street, alley, road, right-of-way, or

other public way, including paved and unpaved portions of the right-of-way.

(11) "Tow truck" means a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle.

(12) "Towing company" means an individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(13) "Unauthorized vehicle" means a vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(14) "Vehicle" means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(15) "Vehicle owner" means a person:

- (A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;
- (B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;
- (C) who holds the vehicle through a lease agreement;
- (D) who is an unrecorded lienholder entitled to possess

the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(16) "Vehicle storage facility" means a vehicle storage facility, as defined by Section 2303.002, that is operated by a person who holds a license issued under Chapter 2303 to operate the facility.

Sec. 2308.003. STUDY OF NONCONSENT TOWING FEES.

(a) The department shall study the 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. Not later than January 1, 2009, the department shall report to the legislature the findings of the study, including any recommendations for state regulation of towing fees.

(b) This section expires September 1, 2009.

SUBCHAPTER B. ADVISORY BOARD

Sec. 2308.051. TOWING AND STORAGE ADVISORY BOARD.

(a) The advisory board consists of the following members appointed by the presiding officer of the commission with the approval of the commission:

- (1) one representative of a towing company operating in a county with a population of less than one million;
- (2) one representative of a towing company operating in a county with a population of one million or more;
- (3) one owner of a vehicle storage facility located in a county with a population of less than one million;
- (4) one owner of a vehicle storage facility located in a county with a population of one million or more;

- (5) one parking facility owner;
- (6) one law enforcement officer from a county with a population of less than one million;
- (7) one law enforcement officer from a county with a population of one million or more; and
- (8) one representative of property and casualty insurers who write automobile insurance in this state.

(b) The advisory board must include representation for each classification of towing.

(c) An appointment to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 2308.052. TERMS; VACANCIES.

(a) Advisory board members serve terms of six years, with the terms of two or three members, as appropriate, expiring on February 1 of each odd-numbered year.

(b) A member may not serve more than two full consecutive terms.

(c) If a vacancy occurs during a term, the presiding officer of the commission shall appoint a replacement who meets the qualifications of the vacated position to serve for the remainder of the term.

Sec. 2308.053. PRESIDING OFFICER.

The presiding officer of the commission shall appoint one of the advisory board members to serve as presiding officer of the advisory board for a term of one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

Sec. 2308.054. COMPENSATION; REIMBURSEMENT OF EXPENSES.

Advisory board members may not receive compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing the functions of the advisory board, subject to the General Appropriations Act.

Sec. 2308.055. MEETINGS.

The advisory board shall meet twice annually and may meet at other times at the call of the presiding officer of the commission or the executive director.

Sec. 2308.056. GENERAL POWERS AND DUTIES.

The executive director or commission, as appropriate, may take action as necessary to administer and enforce this chapter.

Sec. 2308.057. RULES.

(a) The commission shall adopt rules for permitting tow trucks and licensing towing operators and towing companies.

(b) The commission by rule shall adopt standards of conduct for license and permit holders under this chapter.

Sec. 2308.058. FEES.

The commission shall establish and collect reasonable and necessary fees in amounts sufficient to cover the costs of administering this chapter.

Sec. 2308.059. PERIODIC AND RISK-BASED INSPECTIONS.

(a) The department may enter and inspect at any time during business hours:

- (1) the place of business of any person regulated under this chapter; or
- (2) any place in which the department has reasonable cause to believe that a license or permit holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) The department shall conduct additional inspections based on a schedule of risk-based inspections using the following criteria:

- (1) the type and nature of the towing company or operator;
- (2) the inspection history;
- (3) any history of complaints involving the towing company or operator; and

- (4) any other factor determined by the commission by rule.

(c) The towing company shall pay a fee for each risk-based inspection performed under this section. The commission by rule shall set the amount of the fee.

(d) In conducting an inspection under this section, the department may inspect a vehicle, a facility, business records, or any other place or thing reasonably required to enforce this chapter or a rule or order adopted under this chapter.

Sec. 2308.060. POWERS AND DUTIES OF ADVISORY BOARD.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, and continuing education requirements.

Sec. 2308.061. PERSONNEL.

The department may employ personnel necessary to administer and enforce this chapter.

SUBCHAPTER C. TOW TRUCK PERMIT REQUIREMENTS

Sec. 2308.101. PERMIT REQUIRED.

A tow truck may not be used for consent towing or nonconsent towing on a public roadway in this state unless an appropriate permit has been issued for the tow truck under this subchapter. Each tow truck requires a separate permit.

Sec. 2308.102. APPLICATION REQUIREMENTS.

(a) An applicant for a permit under this subchapter must submit to the department:

- (1) a completed application on a form prescribed by the executive director;
- (2) evidence of insurance or financial responsibility required under this subchapter;

- (3) the required fees; and

- (4) any other information required by the executive director.

(b) The department may conduct an examination of any criminal conviction of an applicant, including by obtaining any criminal history record information permitted by law.

Sec. 2308.103. REQUIREMENTS FOR INCIDENT MANAGEMENT TOWING PERMIT.

(a) An incident management towing permit is required for a tow truck used to perform any nonconsent tow initiated by a peace officer, including a tow authorized under Section 545.3051, Transportation Code.

(b) To be eligible for an incident management towing permit, an applicant must submit evidence that:

- (1) the tow truck is equipped to tow light duty or heavy-duty vehicles according to the manufacturer's towing guidelines;
- (2) the applicant has at least \$500,000 of liability insurance for the tow truck; and
- (3) the applicant has at least \$50,000 of cargo insurance for the tow truck.

(c) A tow truck permitted under this section may also be used for private property towing and consent towing.

(d) When a tow truck is used for a nonconsent tow initiated by a peace officer under Section 545.3051, Transportation Code, the permit holder is an agent of law enforcement and is subject to Section 545.3051(e), Transportation Code.

Sec. 2308.104. REQUIREMENTS FOR PRIVATE PROPERTY TOWING PERMIT.

(a) A private property towing permit is required for a tow truck used to perform a nonconsent tow authorized by a parking facility owner under this chapter.

(b) To be eligible for a private property towing permit, an applicant must submit evidence that:

- (1) the tow truck is equipped to tow light duty or heavy-duty vehicles according to the manufacturer's towing guidelines;**
- (2) the applicant has at least \$300,000 of liability insurance for the tow truck; and**
- (3) the applicant has at least \$50,000 of cargo insurance for the tow truck.**

(c) A tow truck permitted under this section may also be used for consent towing but not for incident management towing.

Sec. 2308.105. REQUIREMENTS FOR CONSENT TOWING PERMIT.

(a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner.

(b) To be eligible for a consent towing permit, an applicant must submit evidence that:

- (1) the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's towing guidelines; and**
- (2) the applicant has at least \$300,000 of liability insurance for the tow truck.**

(c) A tow truck permitted under this section may not be used for nonconsent towing, including incident management towing and private property towing.

Sec. 2308.106. DEPARTMENT APPROVAL; ISSUANCE OF PERMIT.

(a) The department shall issue a permit under this subchapter to an applicant who meets the requirements for a permit. The department may deny an application if the applicant has had a permit revoked under this chapter.

(b) The department shall issue a certificate containing a single unique permit number for each tow truck, regardless of whether the permit holder holds more than one permit.

Sec. 2308.107. PERMIT RENEWAL.

(a) A permit issued under this chapter is valid for one year. The department may adopt a system under which permits expire at different times during the year.

(b) The department shall notify the permit holder at least 30 days before the date a permit expires. The notice must be in writing and sent to the permit holder's last known address according to the records of the department.

(c) A permit holder may renew a permit under this chapter by:

- (1) paying a fee for each tow truck; and**
- (2) providing to the department evidence of continuing insurance or financial responsibility in an amount required by this chapter.**

Sec. 2308.108. CAB CARDS.

(a) The department shall issue a cab card for each tow truck issued a permit. The cab card must:

- (1) show the permit number of the certificate issued under Section 2308.106(b);**
- (2) show the type of permit issued;**
- (3) show the vehicle unit number;**
- (4) show the vehicle identification number; and**
- (5) contain a statement that the vehicle has been issued a permit under this subchapter.**

(b) The department shall issue a cab card when the department issues or renews a permit under this subchapter.

(c) A permit holder must keep the cab card in the cab of each permitted tow truck.

(d) The department may order a permit holder to surrender a cab card if the permit is suspended or revoked under this chapter.

(e) If the department determines that the cab card system described by Subsections (a)

through (c) is not an efficient means of enforcing this subchapter, the executive director by rule may adopt an alternative method that is accessible by law enforcement personnel in the field and provides for the enforcement of the permit requirements of this subchapter.

(f) A cab card or a permit issued under the alternative method described in Subsection (e) must be valid for the same duration as a certificate issued under Section 2308.106.

Sec. 2308.109. DISPLAY OF INFORMATION ON TOW TRUCK.

(a) A permit holder shall display on each permitted tow truck:

- (1) the permit holder's name;
- (2) the permit holder's telephone number;
- (3) the city and state where the permit holder is located; and
- (4) the permit number for the tow truck.

(b) The information required to be displayed must be:

- (1) printed in letters and numbers that are at least two inches high and in a color that contrasts with the color of the background surface; and
- (2) permanently affixed in conspicuous places on both sides of the tow truck.

Sec. 2308.110. FINANCIAL RESPONSIBILITY.

(a) A permit holder shall maintain liability insurance for each tow truck according to the requirements under this subchapter.

(b) Unless state law permits a tow truck to be self-insured, any insurance required for a tow truck must be obtained from an insurer authorized to do business in this state.

(c) An applicant or permit holder must file with the department evidence of insurance as required by this subchapter.

(d) A permit holder shall keep evidence of insurance in a form approved by the

department in the cab of each permitted tow truck.

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 2308.151. LICENSE REQUIRED. Unless the person holds an appropriate license under this subchapter, a person may not:

- (1) perform towing operations; or
- (2) operate a towing company.

Sec. 2308.152. GENERAL LICENSE APPLICATION REQUIREMENTS.

An applicant for a license under this subchapter must submit to the department:

- (1) a completed application on a form prescribed by the executive director;
- (2) the required fees; and
- (3) any other information required by commission rule.

Sec. 2308.153. INCIDENT MANAGEMENT TOWING OPERATOR'S LICENSE.

(a) An incident management towing operator's license is required to operate a tow truck permitted under Section 2308.103.

(b) An applicant for an incident management towing operator's license must:

- (1) be a licensed Texas driver; and
- (2) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department.

Sec. 2308.154. PRIVATE PROPERTY TOWING OPERATOR'S LICENSE.

(a) A private property towing operator's license is required to operate a tow truck permitted under Section 2308.104.

(b) An applicant for a private property towing operator's license must:

- (1) be a licensed Texas driver; and

- (2) be certified by the National Drivers Certification Program of the Towing and Recovery Association of America or another certification program approved by the department.

Sec. 2308.155. CONSENT TOWING OPERATOR'S LICENSE.

(a) A consent towing operator's license is required to operate a tow truck permitted under Section 2308.105.

(b) An applicant for a consent towing operator's license must be a licensed Texas driver.

Sec. 2308.156. NONTRANSFERABILITY OF LICENSE.

A license issued by the executive director is valid throughout this state and is not transferable.

Sec. 2308.157. CONTINUING EDUCATION.

(a) The commission by rule shall recognize, prepare, or administer continuing education programs for license holders. Except as provided by Subsection (c), each license holder must complete a continuing education program before the license holder may renew the license holder's license.

(b) A person recognized by the commission to offer a continuing education program must:

- (1) register with the department; and
- (2) comply with rules adopted by the commission relating to continuing education.

(c) To renew an incident management towing operator's license the first time, a license holder must complete a professional development course relating to towing that is licensed or certified by the National Safety Council or another course approved and administered by the department under this section.

Sec. 2308.158. DRUG TESTING OF TOWING OPERATORS.

(a) A towing company shall establish a drug testing policy for towing operators. A towing company that establishes a drug testing policy under this subsection may adopt the model

drug testing policy adopted by the commission or may use another drug testing policy that the department determines is at least as stringent as the policy adopted by the commission.

(b) The commission by rule shall adopt a model drug testing policy for use by a towing company. The model drug testing policy must be designed to ensure the safety of the public through appropriate drug testing and to protect the rights of employees. The model drug testing policy must:

- (1) require at least one scheduled drug test each year for each towing operator; and
- (2) authorize random, unannounced drug testing for towing operators.

Sec. 2308.159. LICENSE RENEWAL.

(a) A license issued under this subchapter is valid for one year. The department may adopt a system under which licenses expire at different times during the year.

(b) The department shall notify the license holder at least 30 days before the date a license expires. The notice must be in writing and sent to the license holder's last known address according to the records of the department.

(c) A license holder may renew a license issued under this chapter by:

- (1) paying a renewal fee; and
- (2) completing continuing education as required by Section 2308.157.

SUBCHAPTER E. LOCAL REGULATION OF TOWING

Sec. 2308.201. TOW TRUCK REGULATION BY POLITICAL SUBDIVISIONS.

(a) A political subdivision of this state may regulate the operation of a tow truck to the extent allowed by federal law, except that a political subdivision may not issue a more restrictive regulation for the use of lighting equipment on a

tow truck than is imposed by **Title 7, Transportation Code.**

(b) A political subdivision may not require the registration of a tow truck that performs consent tows in the political subdivision unless the owner of the tow truck has a place of business in the territory of the political subdivision.

(c) A political subdivision may require the registration of a tow truck that performs a nonconsent tow in the political subdivision, regardless of whether the owner of the tow truck has a place of business in the territory of the political subdivision.

(d) A political subdivision may not require a person who holds a driver's license or commercial driver's license to obtain a license or permit for operating a tow truck unless the person performs nonconsent tows in the territory of the political subdivision. A fee charged for a license or permit may not exceed \$15.

Sec. 2308.202. REGULATION BY POLITICAL SUBDIVISIONS OF FEES FOR NONCONSENT TOWS.

The governing body of a political subdivision may regulate the fees that may be charged or collected in connection with a nonconsent tow originating in the territory of the political subdivision.

Sec. 2308.203. TOWING FEE STUDIES.

(a) The governing body of a political subdivision that regulates nonconsent tow fees shall establish procedures by which a towing company may request that a towing fee study be performed.

(b) The governing body of the political subdivision shall establish or amend the allowable fees for nonconsent tows at amounts that represent the fair value of the services of a towing company and are reasonably related to any financial or accounting information provided to the governing body.

Sec. 2308.204. FEES FOR NONCONSENT TOWS IN OTHER AREAS.

(a) In an area in which no political subdivision regulates the fees that may be charged or collected for a nonconsent tow from private property, a towing company may charge and collect a fee for the tow of a motor vehicle from

private property in an amount not to exceed an amount equal to 150 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located.

(b) A towing company may charge and collect a fee for the tow of a vehicle, with a gross vehicle weight rating in excess of 26,000 pounds, from private property in an amount not to exceed an amount equal to 125 percent of the fee that the towing company would have been authorized to charge for a nonconsent tow made at the request of a peace officer of the political subdivision in which the private property is located.

Sec. 2308.205. STORAGE OF TOWED VEHICLES.

(a) A towing company that makes a nonconsent tow shall 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 the towing company agrees to take the vehicle to a location designated by the vehicle's owner.

(b) A storage or notification fee imposed in connection with a motor vehicle towed to a vehicle storage facility is governed by Chapter 2303.

(c) Except as provided by this chapter, Article 18.23, Code of Criminal Procedure, or Chapter 2303, a fee may not be charged or collected without the prior written consent of the vehicle owner or operator.

Sec. 2308.206. REQUIRED FILING.

(a) Before January 31 of each year, a towing company shall file with the department a schedule showing each towing fee that the towing company charges or collects in connection with a nonconsent tow.

(b) If a political subdivision begins regulating nonconsent tow fees, the fees shall be reported to the department by the towing company before the 30th day after the regulation goes into effect.

(c) Any changes in nonconsent tow fees regulated by a political subdivision shall be reported to the department by the towing company before the 30th day after the effective date of the change.

(d) The department shall make towing fee schedules available on the department's Internet website. The department shall make no determination as to the reasonableness of a towing fee schedule.

(e) A license or permit holder may not charge a fee for a nonconsent tow that is greater than the fee listed in the schedule most recently submitted to the department under this section.

Sec. 2308.207. REQUIRED POSTING.

(a) All storage fees shall be posted at the licensed vehicle storage facility to which the motor vehicle has been delivered and shall be posted in view of the person who claims the vehicle.

(b) A vehicle storage facility accepting a nonconsent towed vehicle shall post a sign in one inch letters stating "Nonconsent tow fees schedules available on request." The vehicle storage facility shall provide a copy of a nonconsent towing fees schedule on request.

Sec. 2308.208. MUNICIPAL ORDINANCE REGULATING UNAUTHORIZED VEHICLES.

A municipality may adopt an ordinance that is identical to this chapter or that imposes additional requirements that exceed the minimum standards of this chapter but may not adopt an ordinance conflicting with this chapter.

SUBCHAPTER F. UNAUTHORIZED VEHICLES

Sec. 2308.251. PROHIBITION AGAINST UNATTENDED VEHICLES IN CERTAIN AREAS.

(a) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

- (1) is in or obstructs a vehicular traffic aisle, entry, or exit of the parking facility;
- (2) prevents a vehicle from exiting a parking space in the facility;

- (3) is in or obstructs a fire lane marked according to Subsection (c); or
- (4) does not display the special license plates issued under Section 504.201, **Transportation Code**, or the disabled parking placard issued under Chapter 681, **Transportation Code**, for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person.

(b) Subsection (a) does not apply to an emergency vehicle that is owned by, or the operation of which is authorized by, a governmental entity.

(c) If a government regulation governing the marking of a fire lane applies to a parking facility, a fire lane in the facility must be marked as provided by the regulation. If a government regulation on the marking of a fire lane does not apply to the parking facility, all curbs of fire lanes must be painted red and be conspicuously and legibly marked with the warning "FIRE LANE--TOW AWAY ZONE" in white letters at least three inches tall, at intervals not exceeding 50 feet.

Sec. 2308.252. REMOVAL AND STORAGE OF UNAUTHORIZED VEHICLE.

(a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

- (1) signs that comply with Subchapter G prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and remain installed at the time of towing;
- (2) the owner or operator of the vehicle has received actual notice from the parking facility owner that the vehicle will be towed at the vehicle owner's or operator's expense if it is in or not removed from an unauthorized space;

- (3) the parking facility owner gives notice to the owner or operator of the vehicle under Subsection (b); or
- (4) the vehicle is:
 - (A) left in violation of Section **2308.251** or **2308.253**; or
 - (B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility.

(b) A parking facility owner is considered to have given notice under Subsection (a)(3) if:

- (1) all a conspicuous notice has been attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:
 - (A) that the vehicle is in a parking space in which the vehicle is not authorized to be parked;
 - (B) a description of all other unauthorized areas in the parking facility;
 - (C) that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and
 - (D) 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) a notice is mailed after the notice is attached to the vehicle as provided by Subdivision (1) to the owner of the vehicle by certified mail, return receipt requested, to the last address shown for the owner according to the vehicle registration records of the Texas Department of Transportation, or if the vehicle is registered in another state, the appropriate agency of that state.

(c) The notice under Subsection (b)(2) must:

- (1) state that the vehicle is in a space in which the vehicle is not authorized to park;
- (2) describe all other unauthorized areas in the parking facility;
- (3) contain a warning that the unauthorized vehicle will be towed at the expense of the owner or operator of the vehicle if it is not removed from the parking facility before the 15th day after the postmark date of the notice; and
- (4) state a telephone number that is answered 24 hours a day to enable the owner or operator to locate the vehicle.

(d) The mailing of a notice under Subsection (b)(2) is not required if after the notice is attached under Subsection (b)(1) the owner or operator of the vehicle leaves the vehicle in another location where parking is unauthorized for the vehicle according to the notice.

Sec. 2308.253. UNATTENDED VEHICLES ON PARKING FACILITY OF APARTMENT COMPLEX; REMOVAL AND STORAGE OF VEHICLES.

(a) This section applies only to a parking facility serving or adjacent to an apartment complex consisting of one or more residential apartment units and any adjacent real property serving the apartment complex.

(b) The owner or operator of a vehicle may not leave unattended on a parking facility a vehicle that:

- (1) obstructs a gate that is designed or intended for the use of pedestrians or vehicles;
- (2) obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;
- (3) is in or obstructs a restricted parking area or parking space designated under Subchapter G, including a space designated for the use of employees or maintenance personnel of the parking facility or apartment complex;

- (4) is in a tow away zone, other than a fire lane covered by **Section 2308.251(c)**, that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;
- (5) is a semitrailer, trailer, or truck-tractor, as defined by Chapter 502, **Transportation Code**, unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or
- (6) is leaking a fluid that presents a hazard or threat to persons or property.

(c) A parking facility owner may not have an emergency vehicle described by **Section 2308.251(b)** removed from the parking facility.

(d) Except as provided by a contract described by Subsection (e), a parking facility owner may not have a vehicle removed from the parking facility merely because the vehicle does not display:

- (1) an unexpired license plate or registration insignia issued for the vehicle under Chapter 502, **Transportation Code**, or the vehicle registration law of another state or country; or
- (2) a valid vehicle inspection certificate issued under Chapter 548, **Transportation Code**, or the vehicle inspection law of another state or country.

(e) A contract provision providing for the removal from a parking facility of a vehicle that does not display an unexpired license plate or registration insignia or a valid inspection certificate 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 facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must be:

- (1) delivered in person to the owner or operator of the vehicle; or
 - (2) sent by certified mail, return receipt requested, to that owner or operator
- (f) This section may not be construed:
- (1) to authorize the owner or operator of a vehicle to leave an unattended vehicle on property that is not designed or intended for the parking of vehicles; or
 - (2) to limit or restrict the enforcement of Chapter 683, **Transportation Code**, the abandoned motor vehicle law.

(g) A provision of an apartment lease or rental agreement entered into or renewed on or after January 1, 2004, that is in conflict or inconsistent with this section is void and may not be enforced.

Sec. 2308.254. LIMITATION ON PARKING FACILITY OWNER'S AUTHORITY TO REMOVE UNAUTHORIZED VEHICLE.

A parking facility owner may not have an unauthorized vehicle removed from the facility except:

- (1) as provided by this chapter or a municipal ordinance that complies with **Section 2308.208**; or
- (2) under the direction of a peace officer or the owner or operator of the vehicle.

Sec. 2308.255. TOWING COMPANY'S AUTHORITY TO REMOVE AND STORE UNAUTHORIZED VEHICLE.

(a) A towing company that is insured as provided by Subsection (c) may, without the consent of an owner or operator of an unauthorized vehicle, 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:
 - (A) the parking facility owner has installed the signs required by **Section 2308.252(a)(1)**; or
 - (B) the owner or operator received notice under Section

2308.252(a)(2) or the parking facility owner gave notice complying with Section **2308.252(a)(3)**; or

- (2) the vehicle is:
 - (A) left in violation of Section **2308.251**; or
 - (B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility and the removal is approved by a peace officer.

(b) A towing company may not remove an unauthorized vehicle except under:

- (1) this chapter;
- (2) a municipal ordinance that complies with Section **2308.208**; or
- (3) the direction of a peace officer or the owner or operator of the vehicle.

(c) Only a towing company that is insured against liability for property damage incurred in towing a vehicle may remove and store an unauthorized vehicle under this section.

(d) A towing company may remove and store a vehicle under Subsection (a) only if the parking facility owner:

- (1) requests that the towing company remove and store the specific vehicle; or
- (2) has a standing written agreement with the towing company to enforce parking restrictions in the parking facility from which the vehicle will be removed.

Sec. 2308.256. VEHICLE STORAGE FACILITY'S DUTY TO REPORT AFTER ACCEPTING UNAUTHORIZED VEHICLE.

(a) A vehicle storage facility accepting a vehicle that is towed under this chapter shall within two hours after receiving the vehicle report to the police department of the municipality in which the parking facility is located, or, if the parking facility is not located in a municipality having a

police department, to the sheriff of the county in which the parking facility is located:

- (1) a general description of the vehicle;
- (2) the state and number of the vehicle's license plate, if any;
- (3) the vehicle identification number of the vehicle, if it can be ascertained;
- (4) the location from which the vehicle was towed; and
- (5) the name and location of the vehicle storage facility where the vehicle is being stored.

(b) The report required by this section must be made by telephone or delivered personally or by facsimile.

SUBCHAPTER G. SIGNS PROHIBITING UNAUTHORIZED VEHICLES AND DESIGNATING RESTRICTED AREAS

Sec. 2308.301. GENERAL REQUIREMENTS FOR SIGN PROHIBITING UNAUTHORIZED VEHICLES.

(a) Except as provided by Subsection (a)(2)(B) and Section **2308.304** or **2308.305** an unauthorized vehicle may not be towed under Section **2308.252(a)(1)** unless a sign prohibiting unauthorized vehicles on a parking facility is:

- (1) facing and conspicuously visible to the driver of a vehicle that enters the facility;
- (2) located:

- (A) on the right or left side of each driveway or curb-cut through which a vehicle can enter the facility, including an entry from an alley abutting the facility; or

- (B) at intervals along the entrance so that no entrance is farther than 25 feet from a sign if:

(i) curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto a parking facility from a public roadway other than an alley; and

(ii) the width of an entrance exceeds 35 feet;

- (3) permanently mounted on a pole, post, permanent wall, or permanent barrier;
- (4) installed on the parking facility; and
- (5) installed so that the bottom edge of the sign is no lower than five feet and no higher than eight feet above ground level.

(b) Except as provided by Section **2308.305**, an unauthorized vehicle may be towed under Section **2308.252(a)(1)** only if each sign prohibiting unauthorized vehicles:

- (1) is made of weather-resistant material;
- (2) is at least 18 inches wide and 24 inches tall;
- (3) contains the international symbol for towing vehicles;
- (4) contains a statement describing who may park in the parking facility and prohibiting all others;
- (5) bears the words "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense";
- (6) contains a statement of the days and hours of towing enforcement; and
- (7) contains a number, including the area code, of a telephone that is answered 24 hours a day to enable an owner or operator of a vehicle to locate the vehicle.

Sec. 2308.302. COLOR, LAYOUT, AND LETTERING HEIGHT REQUIREMENTS.

(a) Except as provided by Section **2308.305**, each sign required by this chapter must comply

with the color, layout, and lettering height requirements of this section.

(b) A bright red international towing symbol, which is a solid silhouette of a tow truck towing a vehicle on a generally rectangular white background, at least four inches in height, must be on the uppermost portion of a sign or on a separate sign placed immediately above the sign.

(c) The portion of the sign immediately below the international towing symbol must contain the words "Towing Enforced" or the information provided by Section **2308.301(b)(4)** in lettering at least two inches in height. The lettering on this portion of the sign must consist of white letters on a bright red background.

(d) Except as provided by Subsection (e), the next lower portion of the sign must contain the remaining information required by Section **2308.301(b)** displayed in bright red letters at least one inch in height on a white background.

(e) The bottommost portion of the sign must contain the telephone number required by Section **2308.301(b)**, in lettering at least one inch in height and may, if the facility owner chooses or if an applicable municipal ordinance requires, include the name and address of the storage facility to which an unauthorized vehicle will be removed. The lettering on this portion of the sign must consist of white letters on a bright red background.

Sec. 2308.303. TELEPHONE NUMBER FOR LOCATING TOWED VEHICLE REQUIRED.

If a parking facility owner posts a sign described by Sections **2308.301** and **2308.302**, the owner of a vehicle that is towed from the facility under this chapter must be able to locate the vehicle by calling the telephone number on the sign.

Sec. 2308.304. DESIGNATION OF RESTRICTED PARKING SPACES ON OTHERWISE UNRESTRICTED PARKING FACILITY.

A parking facility owner may designate one or more spaces as restricted parking spaces on a portion of an otherwise unrestricted parking facility. Instead of installing a sign at each entrance to the parking facility as provided by Section **2308.301(a)(2)**, an owner may place a

sign that prohibits unauthorized vehicles from parking in designated spaces and that otherwise complies with Sections **2308.301** and **2308.302**:

- (1) at the right or left side of each entrance to a designated area or group of parking spaces located on the restricted portion of the parking facility; or
- (2) at the end of a restricted parking space so that the sign, the top of which must not be higher than seven feet above the ground, is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

Sec. 2308.305. INDIVIDUAL PARKING RESTRICTIONS IN RESTRICTED AREA.

(a) A parking facility owner who complies with Sections **2308.301** and **2308.302** may impose further specific parking restrictions in an area to which the signs apply for individual spaces by installing or painting a weather-resistant sign or notice on a curb, pole, post, permanent wall, or permanent barrier so that the sign is in front of a vehicle that is parked in the space and the rear of which is at the entrance of the space.

(b) The top of the sign or notice may not be higher than seven feet above the ground.

(c) The sign or notice must include an indication that the space is reserved for a particular unit number, person, or type of person.

(d) The letters on the sign or notice must be at least two inches in height and must contrast to the color of the curb, wall, or barrier so they can be read during the day and at night. The letters are not required to be illuminated or made of reflective material.

SUBCHAPTER H. REGULATION OF PARKING ON CERTAIN PUBLIC ROADWAY AREAS

Sec. 2308.351. REMOVAL OF UNAUTHORIZED VEHICLE FROM LEASED RIGHT-OF-WAY.

Unless prohibited by the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in a leased area described by Section **2308.002(7)(B)(i)** if the owner or towing company gives notice under

Section **2308.252(a)(1), (2), or (3)** and otherwise complies with this chapter.

Sec. 2308.352. REMOVAL OF UNAUTHORIZED VEHICLE FROM AREA BETWEEN PARKING FACILITY AND PUBLIC ROADWAY.

Unless prohibited by a municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle any part of which is in an area described by Section **2308.002(7)(B)(ii)** if notice provided by Section **2308.252(a)(2) or (3)** is given and the owner or towing company has otherwise complied with this chapter.

Sec. 2308.353. REMOVAL UNDER GOVERNMENTAL ENTITY'S AUTHORITY OF UNAUTHORIZED VEHICLE PARKED IN RIGHT-OF-WAY.

(a) A governmental entity that has jurisdiction over a public roadway and that has posted one or more signs in the right-of-way stating that parking is prohibited in the right-of-way may:

- (1) remove or contract with a towing company to remove an unauthorized vehicle parked in the right-of-way of the public roadway; or
- (2) grant written permission to an abutting parking facility owner to:
 - (A) post one or more "No parking in R.O.W." signs along a common property line of the facility and the roadway; and
 - (B) remove vehicles from the right-of-way of the public roadway under this chapter.

(b) A sign under Subsection (a)(2) must:

- (1) state that a vehicle parked in the right-of-way may be towed at the expense of the owner or operator of the vehicle;
- (2) be placed facing the public roadway:
 - (A) on the parking facility owner's property not more than two feet from the common boundary line; and

- (B) at intervals so that no point in the boundary line is less than 25 feet from a sign posted under this subsection; and

- (3) in all other respects comply with Subchapter G.

(c) After signs have been posted under Subsection (b), the parking facility owner or a towing company may remove an unauthorized vehicle from the right-of-way subject to the governmental entity's written permission given under Subsection (a)(2).

Sec. 2308.354. AUTHORITY FOR REMOVAL OF VEHICLE FROM PUBLIC ROADWAY.

(a) Under an ordinance of a municipality regulating the parking of vehicles in the municipality, to aid in the enforcement of the ordinance, an employee designated by the municipality may be authorized to:

- (1) immobilize a vehicle parked in the municipality; and
- (2) remove an immobilized vehicle from a public roadway in the municipality.

(b) A parking facility owner or towing company may not remove a vehicle from a public roadway except under:

- (1) this chapter or a municipal ordinance that complies with Section 2308.208; or
- (2) the direction of a peace officer or the owner or operator of the vehicle.

SUBCHAPTER I. REGULATION OF TOWING COMPANIES AND PARKING FACILITY OWNERS

Sec. 2308.401. PARKING FACILITY OWNER PROHIBITED FROM RECEIVING FINANCIAL GAIN FROM TOWING COMPANY.

(a) A parking facility owner may not directly or indirectly accept anything of value from a towing company in connection with the removal of a vehicle from a parking facility.

(b) A parking facility owner may not have a direct or indirect monetary interest in a towing company that for compensation removes unauthorized vehicles from a parking facility in which the parking facility owner has an interest.

Sec. 2308.402. TOWING COMPANY PROHIBITED FROM FINANCIAL INVOLVEMENT WITH PARKING FACILITY OWNER.

(a) A towing company may not directly or indirectly give anything of value to a parking facility owner in connection with the removal of a vehicle from a parking facility.

(b) A towing company may not have a direct or indirect monetary interest in a parking facility from which the towing company for compensation removes unauthorized vehicles.

Sec. 2308.403. LIMITATION ON LIABILITY OF PARKING FACILITY OWNER FOR REMOVAL OR STORAGE OF UNAUTHORIZED VEHICLE.

A parking facility owner who causes the removal of an unauthorized vehicle is not liable for damages arising from the removal or storage of the vehicle if the vehicle:

- (1) was removed in compliance with this chapter; and

(2) is:

(A) removed by a towing company insured against liability for property damage incurred in towing a vehicle; and

(B) stored by a vehicle storage facility insured against liability for property damage incurred in storing a vehicle.

Sec. 2308.404. CIVIL LIABILITY OF TOWING COMPANY OR PARKING FACILITY OWNER FOR VIOLATION OF CHAPTER.

(a) A towing company or parking facility owner who violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for:

- (1) damages arising from the removal or storage of the vehicle; and

- (2) towing or storage fees assessed in connection with the vehicle's removal or storage.

(b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner or towing company to recover under Subsection (a).

(c) A towing company or parking facility owner who intentionally, knowingly, or recklessly violates this chapter is liable to the owner or operator of the vehicle that is the subject of the violation for \$300 plus three times the amount of fees assessed in the vehicle's removal, towing, or storage.

(d) In a suit brought under this chapter, the prevailing party is entitled to recover reasonable attorney's fees.

Sec. 2308.405. VIOLATION OF CHAPTER; FINE.

A violation of this chapter is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500.

Sec. 2308.406. VIOLATION OF CHAPTER; INJUNCTION.

A violation of this chapter may be enjoined under Subchapter E, Chapter 17, Business & Commerce Code.

Sec. 2308.407. MINOR SIGN OR LETTERING HEIGHT VARIATIONS.

A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

SUBCHAPTER J. RIGHTS OF OWNERS AND OPERATORS OF STORED VEHICLES

Sec. 2308.451. PAYMENT OF COST OF REMOVAL AND STORAGE OF VEHICLE.

(a) If in a hearing held under this chapter the court finds that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person who requested the hearing shall pay the costs of the removal and storage.

(b) If in a hearing held under this chapter the court does not find that a person or law enforcement agency authorized, with probable cause, the removal and storage in a vehicle storage facility of a vehicle, the person or law enforcement agency that authorized the removal shall:

- (1) pay the costs of the removal and storage; or
- (2) reimburse the owner or operator for the cost of the removal and storage paid by the owner or operator.

Sec. 2308.452. RIGHT OF OWNER OR OPERATOR OF VEHICLE TO HEARING.

The owner or operator of a vehicle that has been removed and placed in a vehicle storage facility without the consent of the owner or operator of the vehicle is entitled to a hearing on whether probable cause existed for the removal and placement.

Sec. 2308.453. JURISDICTION.

A hearing under this chapter shall be in the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.

Sec. 2308.454. NOTICE TO VEHICLE OWNER OR OPERATOR.

(a) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs of the vehicle's removal or storage, the towing company or vehicle storage facility that received the payment shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, shall include with that notice a notice of the person's rights under this chapter.

Sec. 2308.455. CONTENTS OF NOTICE.

The notice under Section 2308.454 must include:

- (1) a statement of:
 - (A) the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove the vehicle;

- (B) the information that a request for a hearing must contain; and
- (C) any filing fee for the hearing;
- (2) the name, address, and telephone number of the towing company that removed the vehicle;
- (3) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;
- (4) the name, address, and telephone number of the person, property owner, or law enforcement agency that authorized the removal of the vehicle; and
- (5) the name, address, and telephone number of the justice court having jurisdiction in the precinct in which the vehicle storage facility is located.
- (6) the name, address, and telephone number of the towing company that removed the vehicle;
- (7) a copy of any receipt or notification that the owner or operator received from the towing company or the vehicle storage facility; and
- (8) if the vehicle was removed from a parking facility:
 - (A) one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or
 - (B) a statement that no sign restricting parking was posted at the parking facility.

Sec. 2308.456. REQUEST FOR HEARING.

(a) Except as provided by Subsection (c), a person entitled to a hearing under this chapter must deliver a written request for the hearing to the court before the 14th day after the date the vehicle was removed and placed in the vehicle storage facility, excluding Saturdays, Sundays, and legal holidays.

(b) A request for a hearing must contain:

- (1) the name, address, and telephone number of the owner or operator of the vehicle;
- (2) the location from which the vehicle was removed;
- (3) the date when the vehicle was removed;
- (4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal;
- (5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(c) If notice was not given under Section **2308.454**, the 14-day deadline for requesting a hearing under Subsection (a) does not apply, and the owner or operator of the vehicle may deliver a written request for a hearing at any time.

(d) A person who fails to deliver a request in accordance with Subsection (a) waives the right to a hearing.

Sec. 2308.457. FILING FEE AUTHORIZED.

The court may charge a filing fee of \$20 for a hearing under this chapter.

Sec. 2308.458. HEARING.

(a) A hearing under this chapter shall be held before the **14th** working day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing, the person or law enforcement agency that authorized the removal of the vehicle, **and the vehicle storage facility in which the vehicle was placed** of the date, time, and place of the hearing **in a manner provided by Rule 21a, Texas Rules of Civil Procedure**. The notice of the hearing to the person or law enforcement agency that authorized the removal of the vehicle shall include a copy of the request for hearing.

- (b-1) At a hearing under this section:
- (1) the burden of proof is on the person who requested the hearing; and
 - (2) hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.
- (c) The issues in a hearing under this chapter are:
- (1) whether probable cause existed for the removal and placement of the vehicle;
 - (2) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized by the political subdivision under Section **2308.201** or **2308.202**;
 - (3) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount authorized under Section **2308.203** or **2308.204**; or
 - (4) whether a towing charge imposed or collected in connection with the removal or placement of the vehicle was greater than the amount filed with the department under Section **2308.206**.
- (d) The court shall make written findings of fact and a conclusion of law.
- (e) The court may award:
- (1) court costs to the prevailing party;
 - (2) the reasonable cost of photographs submitted under Section **2308.456(b)(8)** to a vehicle owner or operator who is the prevailing party;
 - (3) an amount equal to the amount that the towing charge exceeded fees regulated by a political subdivision or authorized by this code or by Chapter 2303; **and**
 - (4) **reimbursement of fees paid for vehicle towing and storage.**

Sec. 2308.459. APPEAL.

An appeal from a hearing under this chapter is governed by the rules of procedure applicable to civil cases in justice court, except that no appeal bond may be required by the court.

Sec. 2308.460. ENFORCEMENT OF AWARD.

An award under this chapter may be enforced by any means available for the enforcement of a judgment for a debt.

SUBCHAPTER K. ENFORCEMENT

Sec. 2308.501. ADMINISTRATIVE PENALTY.

(a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, regardless of whether the person holds a registration, permit, or license under this chapter, if the person violates:

- (1) this chapter or a rule adopted under this chapter; or**
- (2) a rule or order of the executive director or commission.**

(b) An administrative penalty may not be imposed unless the person charged with a violation is provided the opportunity for a hearing.

Sec. 2308.502. CEASE AND DESIST ORDER; INJUNCTION; CIVIL PENALTY.

(a) The executive director may issue a cease and desist order as necessary to enforce this chapter if the executive director determines that the action is necessary to prevent a violation of this chapter and to protect public health and safety.

(b) The attorney general or executive director may institute an action for an injunction or a civil penalty under this chapter as provided by Section 51.352.

Sec. 2308.503. SANCTIONS.

The department may impose sanctions as provided by Section 51.353.

**Sec. 2308.504. CRIMINAL PENALTY;
LICENSING.**

(a) A person commits an offense if the person:

- (1) violates the permitting or licensing requirements of this chapter;**
- (2) performs towing without a license to perform towing in this state;**
- (3) employs an individual who does not hold the appropriate license required by this chapter; or**
- (4) falsifies a certification or training.**

(b) An offense under this section is a Class C misdemeanor.

**Sec. 2308.505. CRIMINAL PENALTY;
TOWING.**

(a) A person commits an offense if the person:

- (1) violates an ordinance, resolution, order, rule, or regulation of a political subdivision adopted under Section 2308.201 or 2308.202, for which the political subdivision does not prescribe the penalty;**
- (2) charges or collects a fee in a political subdivision that regulates the operation of tow trucks under Section 2308.201 or 2308.202 that is not authorized or is greater than the authorized amount of the fee;**
- (3) charges or collects a fee greater than the amount authorized under Section 2308.204;**
- (4) charges or collects a fee in excess of the amount filed with the department under Section 2308.206;**
- (5) violates Section 2308.205; or**
- (6) violates a rule of the department applicable to a tow truck and towing company.**

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 per violation.