

## CHAPTER 675

## S.B. No. 1388

An Act relating to the licensing and regulation of and the placement of motor vehicles in motor vehicle storage facilities; providing for enforcement and for fees and their use; giving certain rights to owners of vehicles, as defined in the Act; imposing certain responsibility on the Texas Department of Labor and Standards; adding Articles 6687-9a and 6701g-3 to Title 116, Revised Statutes.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Title 116, Revised Statutes, is amended by adding Article 6687-9a to read as follows:

*“Article 6687-9a. VEHICLE STORAGE FACILITY ACT*

*“Section 1. SHORT TITLE. This article may be cited as the Vehicle Storage Facility Act.*

*“Section 2. DEFINITIONS. In this article:*

*“(1) ‘Department’ means the Texas Department of Labor and Standards.*

*“(2) ‘Vehicle storage facility’ means a garage, parking lot, or any type of facility owned by a person other than a governmental entity for storing or parking 10 or more vehicles.*

*“(3) ‘Vehicle’ means a motor vehicle subject to registration under the Certificate of Title Act (Article 6687-1, Vernon’s Texas Civil Statutes) or any other device designed to be self-propelled or transported on a public highway.*

*“(4) ‘Owner of a vehicle’ means:*

*“(A) a person in whose name the vehicle is registered under the Certificate of Title Act (Article 6687-1, Vernon’s Texas Civil Statutes);*

*“(B) a person in whose name the vehicle is registered under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon’s Texas Civil Statutes), or a member of the person’s immediate family;*

*“(C) a person who holds the vehicle through a valid lease agreement; or*

*“(D) an unrecorded lienholder whose right to possess the vehicle exists through a chattel mortgage.*

*“Section 3. EXCEPTION. This article does not apply to a vehicle parked or stored at a vehicle storage facility with the consent of the vehicle’s owner. This article does not apply to a vehicle storage facility operated by a person licensed pursuant to the Texas Motor Vehicle Commission Code.*

*“Section 4. AUTHORITY. (a) The department is authorized to issue licenses to operate vehicle storage facilities.*

*“(b) The department shall adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.*

*“Section 5. PROHIBITION. A person may not operate a vehicle storage facility unless the person holds a current license to operate a vehicle storage facility issued to the person by the department.*

*“Section 6. APPLICATION. (a) The department by rule shall determine the types of information to be supplied on an application for a license under this article, but the rules must require that an application be made under oath and list:*

“(1) each conviction of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$200, that was obtained against the applicant or a partner or officer of the applicant in the three years immediately preceding the date of the application;

“(2) the name and address of each partner, if the applicant is a partnership; and

“(3) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

“(b) The application of a corporation must be signed and sworn to by the president and secretary of the corporation.

“(c) An application under this section must be accompanied by a nonrefundable fee of \$100.

“Section 7. APPROVAL. The department shall approve an application that is submitted as provided by Section 6 of this article for a license to operate a vehicle storage facility unless the department determines that:

“(1) the applicant knowingly supplied false or incomplete information on the application;

“(2) the applicant, one of the applicant's partners, or one of the applicant's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$500, in the three years preceding the date of the application; or

“(3) the vehicle storage facility for which the license is sought does not meet the standards for storage facilities established by the rules of the department.

“Section 8. NOTICE OF DENIAL. If the department denies an application for a license under this article, the department shall send written notice of its decision to the applicant, at the address shown on the application, by certified mail, return receipt requested. The notice shall state the reason for the department's decision and that the applicant is entitled to a hearing before the department under Section 11 of this article. The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with the requirements of this article and rules of the department before the 15th day after the date the applicant receives the notice, the department shall then approve the application.

“Section 9. TERM OF LICENSE. (a) A license issued under this article expires on December 31 of the year in which it is issued.

“(b) A person may apply to the department to renew the license on an application form approved by the department. An application for renewal of a license must be accompanied by a fee of \$100.

“(c) If an application for renewal of a license is not submitted before the 31st day after the expiration date of the license, the license may not be renewed.

“(d) A person whose license expires and is not renewed under this section may apply for a new license under Section 6 of this article.

“Section 10. REVOCATION. (a) The department may revoke a license or deny an application to renew a license issued under this article if the department determines that:

“(1) the licensee, one of the licensee's partners, or one of the licensee's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$500, which directly relates to a duty or responsibility of an operator of a vehicle storage facility;

“(2) the vehicle storage facility for which the license was issued does not meet a standard for a vehicle storage facility set by rule of the department; or

“(3) the licensee knowingly violated a rule of the department, or an employee of the licensee, with the licensee's knowledge, violated a rule of the department.

“(b) The department shall send notice of the revocation or denial to the licensee by certified mail, return receipt requested, before the eighth day after the date of the decision.

“Section 11. HEARING. (a) A person whose application for a license to operate a storage facility has been denied, whose license has been revoked, or whose application to renew a license has been denied may, before the 15th day after the date the person receives notice of the revocation or denial, request in writing a hearing before the department on the revocation or denial.

“(b) The provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), relating to notice and hearings on contested cases, apply to notice and hearings on denial, revocation, and renewal of licenses under this article.

“(c) A hearing under this section is an exhaustion of administrative remedies, and an appeal from a hearing is to the district court having jurisdiction over the applicant or licensee.

“Section 12. VALIDITY OF LICENSE. (a) A license issued under this article is not valid for any person other than the person who applied for the license.

“(b) A license issued under this article applies only to a single vehicle storage facility named on the license.

"Section 13. **LOCAL OPTION.** (a) The governing body of a city by ordinance may provide that this article and rules adopted under this article do not apply inside the limits of the city.

"(b) On adopting an ordinance under this section, the governing body shall deliver a copy of the ordinance to the department.

"(c) An ordinance adopted under this section takes effect on the first day of the month following the month in which the ordinance is adopted.

"(d) If the governing body of a city repeals an ordinance adopted under this section, the governing body shall notify the department of its act as soon as practicable after the repeal.

"Section 14. **ENFORCEMENT.** A peace officer or license and weight inspector of the Department of Public Safety may make an arrest for a violation of a rule adopted under this article.

"Section 15. **USE OF FEES.** The department shall remit all fees collected under this article to the State Treasurer for deposit in the State Treasury to the credit of a fund to be used, subject to legislative appropriation, for administering this article.

"Section 16. **EFFECT OF HEARING ON FEES.** A hearing under Article 6701g-3, Revised Statutes, to determine whether there was probable cause for moving a vehicle to a vehicle storage facility does not affect the amount of fees due for removing and storing the vehicle."

**SECTION 2.** Title 116, Revised Statutes, is amended by adding Article 6701g-3 to read as follows:

"Article 6701g-3. **RIGHTS OF OWNER OF A STORED VEHICLE**

"Section 1. **DEFINITIONS.** In this article:

"(1) 'Vehicle storage facility' has the meaning assigned to that term by Article 6687-9a, Revised Statutes.

"(2) 'Vehicle' has the meaning assigned to that term by Article 6687-9a, Revised Statutes.

"Section 2. **RIGHT TO HEARING.** If a vehicle has been moved and placed in a vehicle storage facility without the consent of the owner, the owner is entitled to a hearing to determine whether or not probable cause existed for the removal and placement of the vehicle. A hearing under this article shall be before a justice of the peace or magistrate in whose jurisdiction the vehicle storage facility is located.

"Section 3. **REQUEST.** (a) A person entitled to a hearing under this article must deliver a written request for the hearing to the court before the sixth day after the date the vehicle was placed in the vehicle storage facility. In computing time under this subsection, Saturdays, Sundays, and legal holidays are excluded. A person who fails to deliver the request within the specified time period waives the right to the hearing.

"(b) A written notice under this section must contain the following information:

"(1) the name, address, and telephone number of the owner of the vehicle;

"(2) the date and the location from which the vehicle was removed;

"(3) the name, address, and telephone number of the person or law enforcement agency who authorized the removal; and

"(4) the name, address, and telephone number of the vehicle storage facility where the vehicle was placed.

"Section 4. **HEARING.** (a) A hearing under this article shall be held before the fourth working day after the date the request for the hearing was received by the court.

"(b) The court shall notify the vehicle's owner and the person or law enforcement agency who authorized the removal of the vehicle of the date, time, and place of the hearing.

"(c) The court may charge a filing fee of \$10 for a hearing under this article and may award court costs to the prevailing party.

"(d) The sole issue in a hearing under this article is whether or not probable cause existed for the removal and placement of the vehicle.

"(e) The court shall make written findings of fact and a conclusion of law regarding the issue in the hearing.

"Section 5. **PAYMENT OF STORAGE COSTS.** (a) If the court determines that probable cause existed for the removal and placement of the vehicle, the owner of the vehicle shall pay the costs of removing and storing the vehicle.

"(b) If the court does not determine that probable cause existed for the removal and placement of the vehicle, the person or law enforcement agency who authorized the removal shall pay the costs of removing and storing the vehicle. If the vehicle's owner paid removal or storage costs before the hearing, the person or law enforcement agency shall fully reimburse the owner."

**SECTION 3.** Not later than September 1, 1985, the Texas Department of Labor and Standards shall adopt rules required by Article 6687-9a, Revised Statutes, as added by this Act.

**SECTION 4.** (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 1986, and applies to the placement of motor vehicles in storage facilities on or after that date.

(b) Section 5, Article 6687-9a, Revised Statutes, as added by this Act, takes effect April 1, 1986, and applies to the placement of motor vehicles in storage facilities on or after that date.

**SECTION 5.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on May 9, 1985, by the following vote: Yeas 31, Nays 0; Senate concurred in House amendment on May 23, 1985, by a viva-voce vote; passed the House, with amendment, on May 21, 1985, by the following vote: Yeas 143, Nays 0, two present not voting.

Approved: June 14, 1985

Effective: January 1, 1986, except Section 4 (b), which is effective April 1, 1986.