

## CHAPTER 925

H.B. No. 1135

AN ACT

relating to the towing of vehicles.

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

SECTION 1. Chapter 835, Acts of the 65th Legislature, Regular Session, 1977 (Article 6701g-2, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. In this Act:

(1) ~~[(a)]~~ "Parking facility" means any public or private property used, in whole or in part, for restricted and/or paid parking of vehicles. "Parking facility" includes but is not limited to commercial parking lots, parking garages, and parking areas serving or adjacent to businesses, churches, schools, homes, ~~[and]~~ apartment complexes, *property governed by a property owners' association, and government-owned property leased to a private person.* "Parking facility" also includes a restricted space or spaces on a portion or portions of an otherwise unrestricted parking facility.

(2) ~~[(b)]~~ "Parking facility owner" means:

(A) *an ~~any~~ operator or owner (including a ~~any~~ lessee, employee, or agent thereof) of a parking facility;*

(B) *a property owners' association having control over assigned or unassigned parking areas according to a dedicatory instrument; and*

(C) *a property owner having exclusive use rights to a parking space under a dedicatory instrument.*

(3) [(e)] "Public roadway [highway]" means any public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way, unless otherwise stated.

(4) [(d)] "Towing company" means a person operating a tow truck registered under Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes) [any individual, corporation, partnership, or association engaged in the business of towing vehicles on a public highway for compensation or with the expectation of compensation for the towing, storage, or repair of vehicles]. The term "towing company" includes the owner, operator, employee, or agent of a towing company, but does not include cities, counties, or other political subdivisions of the state.

(5) [(e)] "Vehicle" means every kind of device in, upon, or by which any person or property is or may be transported or drawn on a public roadway [highway], except devices moved by human power or used exclusively on stationary rails or tracks. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer.

(6) [(f)] "Unauthorized vehicle" means any vehicle parked, stored, or situated in or on a parking facility without the consent of the parking facility owner.

(7) "Property owners' association" and "dedicatory instrument" have the meanings assigned by Section 202.001, Property Code.

(8) "Vehicle storage facility" means a facility operated by a person licensed under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes).

Sec. 2. (a) The owner or operator of a vehicle may not leave a vehicle unattended on a parking facility if the vehicle:

- (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 (b) of this section; or
- (4) is in a disabled parking space that is designated for the exclusive use of vehicles transporting disabled persons and does not display the specially designed license plate for vehicles transporting disabled persons or the removeable windshield identification card issued under Chapter 338, Acts of the 64th Legislature, Regular Session, 1975 (Article 6675a-5e.1, Vernon's Texas Civil Statutes).

(b) If a government regulation governing the marking of fire lanes applies to a parking facility, fire lanes in the facility must be marked as provided by the regulation. If a government regulation on the marking of fire lanes 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.

(c) This section does not apply to an emergency vehicle that is owned by or the operation of which is authorized by a governmental entity.

Sec. 3. [2.] (a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause such vehicle and any property resting on or contained within it to be removed and stored at a vehicle storage facility at the expense of the owner or operator of the vehicle, if any of the following occurs:

(1) [(i)] a sign or signs prohibiting unauthorized vehicles have been installed on the parking facility for at least 24 consecutive hours and remain installed at the time of towing [specifying those persons who may park in the parking facility and prohibiting all others, are placed so that they are readable day or night from all entrances to the parking facility (but signs need not be illuminated)];

(2) [(ii)] the owner or operator of the unauthorized vehicle has actually received notice from the parking facility owner that the vehicle will be towed at the vehicle owner's or operator's expense [away] if it is parked in an unauthorized space or not removed from an unauthorized space; [or]

(3) the parking facility owner gives notice to the owner or operator of the unauthorized vehicle as provided by Subsection (b) of this section that the vehicle will be towed at the

(6) contain a statement of the days and hours of towing enforcement, such as "Towing Enforced at All Times" or "Towing Enforced 7 a.m. to 7 p.m., Monday through Friday"; and

(7) contain a current telephone number, including the area code, that is answered 24 hours a day to enable the owner or operator of a towed vehicle to locate it.

(c) Except as provided by Subsection (e) of this section, each sign required by this Act shall comply with the following color, layout, and lettering height requirements:

(1) the topmost portion of the sign must contain the international towing symbol. The symbol must be bright red on a white background, at least four inches tall, and placed at the top of the unauthorized parking sign or on a separate sign immediately above the unauthorized parking sign;

(2) the portion of the sign immediately below the towing symbol must contain the words "Towing Enforced" or the information in Subsection (b)(4) of this section in lettering at least two inches tall. Before January 1, 1996, the lettering on this portion of the sign must be white letters on a bright red background or bright red letters on a white background, and after that date, the lettering on this portion must be white letters on a bright red background;

(3) except as provided by Subdivision (4) of this subsection, the next portion of the sign must contain the remaining information required by Subsection (b) of this section, with bright red letters at least one inch tall on a white background; and

(4) the bottommost portion of the sign must contain the 24-hour telephone number, in lettering at least one inch tall 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. Before January 1, 1996, the lettering on this portion of the sign must be white letters on a bright red background or bright red letters on a white background. After that date, the lettering on this portion must be white letters on a bright red background.

(d) A parking facility owner may designate one or more spaces as restricted parking spaces on a portion or portions of an otherwise unrestricted parking facility. Instead of installing unauthorized parking signs at each entrance to the parking facility as provided by Subsection (a)(2) of this section, a sign that prohibits unauthorized vehicles from parking in designated spaces and that otherwise complies with Subsections (a), (b), and (c) of this section, may be placed:

(1) at the right-hand or left-hand 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 an individual parking space so that the sign, with the top no higher than seven feet above ground level, is in front of a vehicle parked in the space with the rear of the vehicle being at the entrance of the space.

(e) A parking facility owner who complies with the entry sign requirements of Subsection (a), (b), or (c) of this section may impose individual parking restrictions in an area covered by the signs 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 parked in the space with the rear of the vehicle being at the entrance of the space. The top of the sign or notice must be no higher than seven feet above ground level. A sign must include an indication that the space is reserved for a particular unit number, person, or type of person, such as "Reserved for Unit 101," "Reserved for Suite 202," "Reserved for John Doe," "Reserved for Tenant," "Reserved for Permit Holders," or "Reserved for Permit #123". The letters must be at least two inches tall and must contrast to the color of the curb, wall, or barrier so they can be read day and night. The letters do not need to be illuminated or made of reflective material.

(f) If curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto the parking facility from a public roadway other than an alley and if an entrance exceeds 35 feet in width, each of the unauthorized parking signs otherwise complying with Subsection (a), (b), and (c) must be located at intervals along the entrance so that no entrance is further than 25 feet from a sign.

(g) *Minor variations of required or minimum heights of signs and letters do not constitute a violation of this Act.*

Sec. 7. [4.] (a) *In this Act, a parking facility includes:*

(1) *a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and*

(2) *the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainageway or the curb of the roadway, whichever is farthest from the facility's property line.*

(b) *Unless prohibited in the lease, a parking facility owner or towing company may remove an unauthorized vehicle parked in whole or in part in a leased area described by Subsection (a)(1) of this section if the owner or towing company:*

(1) *gives notice by sign as provided by Section 3(a)(1) of this Act and otherwise complies with this Act; or*

(2) *gives notice to the vehicle owner or operator as provided by Section 3(a)(2) or 3(a)(3) of this Act and otherwise complies with this Act.*

(c) *Unless prohibited by an applicable municipal ordinance, a parking facility owner or towing company may remove an unauthorized vehicle parked in whole or in part in an area described by Subsection (a)(2) of this section by giving notice as provided by Section 3(a)(2) or 3(a)(3) of this Act and otherwise complying with this Act.*

(d) *A governmental authority 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, on direction of a representative of the governmental authority; or*

(2) *grant written permission to an abutting parking facility owner to post "No parking in R.O.W." signs along the common property line between the facility and the public roadway and to remove vehicles from the right-of-way of the public roadway in compliance with this Act.*

(e) *The signs under Subsection (d)(2) of this section must state that vehicles parked in the right-of-way may be towed at the vehicle owner's or operator's expense and must be placed facing the public roadway, on the parking facility owner's property within two feet from the common boundary line, and at intervals so that no point in the boundary line is less than 25 feet from a sign posted under this subsection. In all other respects the signs must comply with Section 6 of this Act.*

(f) *If "No parking in R.O.W." signs have been posted in accordance with Subsection (e) of this section a parking facility owner or a towing company may remove an unauthorized vehicle from the right-of-way to the extent allowed in the governmental authority's written permission to the facility owner under Subsection (d)(2) of this section.*

(g) *A parking facility owner or towing company may not remove a vehicle from a public roadway [highway] except under this Act, a municipal ordinance complying with Section 10 of this Act, or the direction of a peace officer or the owner or operator of such vehicle.*

Sec. 8. [5.] *A parking facility owner may not accept anything of value, directly or indirectly, from a towing company in connection with the removal of a vehicle from a parking facility. A parking facility owner may not have a monetary [pecuniary] interest, directly or indirectly, in a towing company which removes unauthorized vehicles for compensation from a parking facility in which the parking facility owner has an interest.*

Sec. 9. [6.] *A towing company may not give anything of value, directly or indirectly, to a parking facility owner in connection with the removal of a vehicle from a parking facility. A towing company may not have a monetary [pecuniary] interest, directly or indirectly, in a parking facility from which the towing company removes unauthorized vehicles for compensation.*

*Sec. 10. A municipality may adopt an ordinance that is identical to this Act or that imposes additional requirements that exceed the minimum standards contained in this Act but may not adopt an ordinance that conflicts with this Act.*

**Sec. 11. [7.] (a)** Any towing company or parking facility owner who violates this Act shall be liable to the owner or operator of the vehicle for damages arising out of the removal or storage of such vehicle and/or any towing or storage fees assessed in connection with the removal or storage of such vehicle. Negligence on the part of the parking facility owner or towing company need not be proven in order to recover under this subsection.

(b) A towing company or parking facility owner who knowingly, intentionally, or recklessly violates this Act shall be liable to the owner or operator of the vehicle for \$300 [\$100] plus treble the amount of fees assessed in the removal, towing, or storage of the vehicle.

(c) In any suit brought under this Act, the prevailing party shall recover reasonable attorney's fees from the nonprevailing party.

**Sec. 12. [8.]** Any violation of this Act is *punishable by a fine of not less than \$200 and not more than \$500* [~~a Class B misdemeanor~~]. Any violation of the provisions of this Act may be enjoined pursuant to the provisions of the Deceptive Trade Practices-Consumer Protection Act.

**SECTION 2.** Chapter 480, Acts of the 65th Legislature, Regular Session, 1977 (Article 6701g-1, Vernon's Texas Civil Statutes), is repealed.

**SECTION 3.** The changes in law made by this Act apply only to a removal of an unauthorized vehicle from a parking facility that occurs on or after the effective date of this Act. A removal of an unauthorized vehicle from a parking facility that occurs before the effective date of this Act is governed by the law in effect when the removal occurred, and the former law is continued in effect for that purpose.

**SECTION 4.** This Act takes effect January 1, 1994.

**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.

Passed by the House on May 7, 1993, by a non-record vote; passed by the Senate on May 21, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Jan. 1, 1994.