

**CHAPTER 710**

**S.B. No. 452**

**AN ACT**

relating to the regulation and operation of tow trucks and storage facilities; creating offenses and providing penalties.

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

SECTION 1. Subsection (b), Section 5.05, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for a maximum of *five* [7] days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned vehicle to the police department within *48 hours* [7 days] after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

SECTION 2. Subdivision (1), Subsection (a), Section 5i, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move [disabled] motor vehicles.

SECTION 3. Subsection (b), Section 5i, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall design and provide for the issuance of [special] license plates for commercial motor vehicles used as tow trucks. The license plates shall bear the words "Tow Truck."

SECTION 4. Section 2, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by amending Subdivisions (1) and (3) and adding Subdivision (7) to read as follows:

(1) "~~Commission~~" [~~Commissioner~~] means the *Railroad Commission of Texas* [~~commissioner of licensing and regulation~~].

(3) "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 a year.

(7) "Preservation" means an action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility.

SECTION 5. Sections 4, 5, 6, 7, 8, and 10, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), are amended to read as follows:

Sec. 4. AUTHORITY. (a) The *commission* [~~commissioner~~] may issue licenses to operate vehicle storage facilities.

(b) The *commission* [~~commissioner~~] 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.

Sec. 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 *commission* [~~commissioner~~].

Sec. 6. APPLICATION. (a) The *commission* [~~commissioner~~] 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.

Sec. 7. APPROVAL. The *commission* [commissioner] 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 *commission* [commissioner] determines that:

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

(2) the applicant, one of the applicant's partners, a principal or the general manager of the applicant, 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 *commission* [commissioner].

Sec. 8. NOTICE OF DENIAL. If the *commission* [commissioner] denies an application for a license under this article, the *commission* [department] shall send written notice of the 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 *commission's* [commissioner's] decision and that the applicant is entitled to a hearing before the *commission* [commissioner] 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 *commission* [commissioner] before the 15th day after the date the applicant receives the notice, the *commission* [commissioner] shall then approve the application.

Sec. 10. SANCTIONS. (a) The *commission* [commissioner] shall adopt rules relating to the administrative sanctions that may be enforced against a licensee. If a licensee, a partner of a licensee, a principal in the licensee's business, or an employee of the licensee violates, with the knowledge of the licensee, this article or a rule or order adopted under this article, the *commission* [commissioner] may:

(1) issue a written warning to the licensee specifying the violations;

(2) deny, revoke, or suspend an application under this article;

(3) place on probation a person whose license has been suspended; or

(4) assess an administrative penalty in an amount not to exceed \$1,000 for each violation, with each violation considered a separate offense.

(b) The *commission* [commissioner] may revoke or suspend a license issued under this article or place on probation a person whose license has been suspended if the *commission* [commissioner] determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted of:

(1) a felony; or

(2) a misdemeanor that:

(A) is punishable by confinement or by a fine that exceeds \$500; and

(B) directly relates to a duty or responsibility of an operator of a vehicle storage facility.

(c) If it appears that a person is in violation of or is threatening to violate this article or a rule or order adopted under this article, the *commission* [commissioner] or the attorney general at the *commission's* [commissioner's] request may institute an action for injunctive relief, to recover a civil penalty not to exceed \$1,000 for each violation, or for both injunctive relief and the civil penalty. If the *commission* [commissioner] or the attorney general prevails in an action under this subsection, the *commission* [commissioner] or the attorney general is entitled to recover reasonable attorney's fees and court costs.

(d) A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a rule adopted under this article.

SECTION 6. Subsection (a), Section 11, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(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 *commission* [~~commissioner~~] on the revocation or denial.

SECTION 7. Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 13. NOTIFICATION OF OWNER. (a) The operator of a vehicle storage facility who receives a vehicle that has been towed to the facility for storage shall, not later than the *fifth* [~~seventh~~] day *but not before 24 hours* after the date the operator receives the vehicle, send a written notice to the registered owner and the primary lienholder of the vehicle. *The operator of the storage facility may charge the owner of the vehicle a reasonable fee for sending the notice required by this subsection.* [~~This subsection does not apply to notice for a vehicle that is removed by the owner before the seventh day after the date the operator receives the vehicle.~~]

(b) The notice must be sent by certified mail, return receipt requested, and must contain:

- (1) the date the vehicle was accepted for storage;
- (2) the first day for which a storage fee is assessed;
- (3) the daily storage rate;
- (4) the type and amount of all other charges to be paid when the vehicle is claimed;
- (5) the full name, street address, and telephone number of the facility;
- (6) the hours during which the owner may claim the vehicle; and
- (7) the facility license number preceded by "*Railroad Commission of Texas* [~~Department of Licensing and Regulation~~] Vehicle Storage Facility License Number."

(c) A notice is considered to be timely filed if the postmark shows that it was mailed within the *five-day* [~~seven-day~~] period provided by Subsection (a) of this section.

SECTION 8. Subsection (b), Section 14, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(b) The operator of a vehicle storage facility *is entitled to* [~~may not~~] charge an owner [~~more than~~] \$10 for preservation of a stored motor vehicle.

SECTION 9. Section 15, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 15. USE OF FEES. The *commission* [~~commissioner~~] 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 10. Section 17, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 17. OFFENSES; PENALTIES [~~PENALTY~~]. (a) A person commits an offense if the person:

- (1) operates a vehicle storage facility that does not have a valid license issued under this article; *or*
- (2) *violates any rule adopted by the commission under this article.*

(b) *A person convicted of an offense under this section shall be punished by a fine of not less than \$200 and not more than \$500* [~~An offense under this section is a Class C misdemeanor~~].

(c) *A person commits a separate offense for each day the person acts in violation of this section.*

SECTION 11. Sections 1, 2, 3, 4, 6, 7, 8, and 11, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), are amended to read as follows:

## Sec. 1. DEFINITIONS. In this Act:

(1) "Commission" means the *Railroad Commission of Texas* [~~Commission of Licensing and Regulation~~].

(2) [~~"Commissioner" means the commissioner of licensing and regulation.~~]

[~~(3) "Department" means the Texas Department of Licensing and Regulation.~~]

[~~(4) "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move [disabled] motor vehicles.~~]

(3) [(5)] "Tow truck owner" means a person engaged in the business of using a tow truck to tow, winch, or otherwise move a motor vehicle.

Sec. 2. REGISTRATION REQUIREMENT. (a) Except as provided by *Sections* [Section] 5 and 11A of this Act, a person may not operate a tow truck in this state unless the tow truck is registered with the *commission* [department] as provided by this Act.

(b) The *commission* [commissioner] shall issue a certificate of registration to a tow truck owner whose vehicle meets the registration requirements prescribed by rule of the *commission* [commissioner] and who pays the registration fee.

(c) A certificate of registration issued under this Act is not transferable.

(d) *Registration fees collected under this Act shall be deposited in a special account in the general revenue fund to be known as the tow truck registration account, which may be appropriated only to the commission for the registration and regulation of tow trucks.*

Sec. 3. POWERS AND DUTIES OF COMMISSION [COMMISSIONER]. The *commission* [commissioner] shall adopt rules, *in the interest of public safety, that provide requirements for registration and maintenance of registration under this Act. Rules adopted under this section must include [regarding only the] minimum insurance requirements for the operation of tow trucks and minimum safety standards regarding the operation of tow trucks.*

Sec. 4. IDENTIFICATION REQUIREMENT. (a) A [~~To be eligible for registration under this Act, a~~] tow truck covered by this Act must be labeled on both sides of the tow truck with the name, *city* [address], and telephone number of the *tow truck business of the tow truck owner.*

(b) The *commission* [commissioner] shall adopt rules relating to the identification requirement imposed under this section.

Sec. 6. RENEWAL. A certificate of registration is valid for the period set by the commission and may be renewed by paying to the *commission* [commissioner] the required renewal fee.

Sec. 7. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The *commission* [commissioner] may deny, suspend, revoke, or reinstate a certificate of registration.

(b) The *commission* [commissioner] shall adopt rules establishing the procedures for denial, suspension, revocation, or reinstatement of a certificate of registration for failure to follow the [~~insurance and minimum safety~~] requirements established by the *commission* [commissioner].

(c) Proceedings relating to the denial, suspension, or revocation of a certificate of registration issued under this Act are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 8. OFFENSES; PENALTIES [PENALTY]. (a) A person commits an offense if the person:

(1) *violates a rule adopted by the commission under this Act; or*

(2) operates [~~for compensation~~] a tow truck that does not have:

(A) a valid certificate of registration issued under this Act; and

(B) a valid tow truck license plate attached to the rear of the tow truck that is clearly visible from the rear of the truck.

(b) *A person convicted of a violation of this section shall be punished by a fine of not less than \$200 and not more than \$500* [~~An offense under this section is a Class C misdemeanor~~].

(c) A person commits a separate offense for each day the person acts in violation of this section.

Sec. 11. ~~[EFFECTIVE DATE FOR REGISTRATION]~~ REQUIREMENT OF DRIVER'S LICENSE. (a) A person who holds a valid driver's license or a valid commercial driver's license may not be required by a municipality or political subdivision in this state to obtain a license from the municipality or political subdivision for the operation of a tow truck. A municipality may require a municipal license for a tow truck operator performing private property tows within the boundaries of the municipality without regard to the location of the place of business of the tow truck owner. A license fee may not exceed \$15.

(b) In this section:

(1) "Driver's license" has the meaning assigned by Section 1, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), including subsequent amendments to that definition.

(2) "Commercial driver's license" has the meaning assigned by Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), including subsequent amendments to that definition ~~[is engaged in business as a tow truck owner on September 1, 1987, is not required to obtain a certificate of registration under this Act for that tow truck until February 1, 1988].~~

SECTION 12. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by adding Section 11A to read as follows:

Sec. 11A. EXCLUSIONS; EXEMPTIONS. (a) The following vehicles are excluded from regulation under this Act and exempted from registration under this Act:

(1) a tow truck that is:

(A) registered under the motor vehicle registration laws of another state;

(B) operated in connection with and based at a towing business located in another state;

(C) registered with a department or agency of another state;

(D) regulated under the laws of another state that, as to the operation of tow trucks, establish standards that equal or exceed the requirements of this Act; and

(E) operated only temporarily or occasionally on the highways of this state;

(2) a tow truck owned by and used exclusively in the service of the United States, the State of Texas, a county, a city, or a school district;

(3) a light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less to which a chain, strap, or rented tow bar or towing device is affixed and that is operated by an individual not in an automotive-related or motor-vehicle-related business;

(4) a vehicle that is towing a race car, a motor vehicle for exhibition, or an antique motor vehicle and is not being operated as a part of a business or profession;

(5) a recreational vehicle, as defined by the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), including subsequent amendments to that definition, towing another vehicle for a noncommercial purpose;

(6) a commercial transport vehicle that is capable of hauling four or more motor vehicles;

(7) a vehicle used only for towing motorcycles and incapable of towing any other type of vehicle;

(8) a non-tow-truck vehicle or tow device used by a rental car agency to move vehicles for customer use;

(9) a non-tow-truck vehicle or tow device used in agricultural operations for agricultural purposes; and

(10) non-tow-truck vehicles or tow devices owned by a licensee of the Motor Vehicle Board of the Texas Department of Transportation in transporting a vehicle owned by the licensee or a customer of the licensee.

(b) The commission shall adopt rules to administer this section.

SECTION 13. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by adding Section 11B to read as follows:

*Sec. 11B. FEES. Fees collected under this Act shall be remitted to the comptroller for deposit to the credit of an account in the general revenue fund, which shall be designated by the comptroller. Money in the account may be appropriated only to the commission for the enforcement of this Act.*

SECTION 14. Subsection (c), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Subdivision (8) to read as follows:

*(8) The length limitations of this subsection do not apply to the combination of a tow truck and another vehicle or vehicle combination if:*

*(A) the other vehicle or vehicle combination cannot be normally or safely driven or was abandoned on a highway; and*

*(B) the tow truck is towing the other vehicle or vehicle combination directly from its location on the highway to the nearest authorized place of repair, terminal, or destination of unloading.*

SECTION 15. (a) A rule adopted by the Texas Commission of Licensing and Regulation or the commissioner of licensing and regulation under Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), or the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) before the effective date of this Act remains in effect as a rule of the Railroad Commission of Texas.

(b) A certificate of registration or a license that is valid on the effective date of this Act remains valid until it expires or until the Railroad Commission of Texas suspends or revokes the registration or license.

(c) A proceeding to suspend or revoke a certificate of registration issued under Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687b, Vernon's Texas Civil Statutes), or a license issued under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) pending before the Texas Commission of Licensing and Regulation on the effective date of this Act is transferred without change in status to the Railroad Commission of Texas on the effective date of this Act.

(d) All records of the Texas Commission of Licensing and Regulation involving the registration of tow trucks under Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), or the licensing of vehicle storage facilities under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) shall be, on the effective date of this Act, transferred to the Railroad Commission of Texas.

SECTION 16. Subdivision (2), Section 2, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is repealed.

SECTION 17. (a) This Act takes effect September 1, 1993.

(b) The changes in law made by Sections 10 and 11 of this Act apply only to an offense committed on or after that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 18. 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 the Senate on March 24, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 25, 1993, by a viva-voce vote; passed the House, with amendments, on May 22, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.