

**Municipal Regulation and Contracting  
with Tow Trucking Companies  
in Texas**

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## **Curriculum Vitae**

Miles Risley is the City Attorney of Wichita Falls, Texas. He received his law degree from the University of Texas in 1992. He graduated summa cum laude from West Texas State University in 1989.

Mr. Risley has practiced municipal law since 1994. Prior to his appointment as City Attorney of Wichita Falls, he was the City Attorney of Victoria, Texas. Prior to joining the City of Victoria Legal Department, he practiced with the law firm of Byington, Easton, and Risley, PC in Austin, Texas. He has also been an adjunct instructor at Victoria College and has served as a U.S. Army Military Intelligence Officer.

Mr. Risley has been a municipal attorney and member of the Texas City Attorneys Association (TCAA) for more than 18 years. Mr. Risley is also a Local Government Fellow of the Texas International Municipal Lawyer's Association (IMLA). In addition, Mr. Risley is a member of the Texas State Bar College and has made presentations to IMLA, the TCAA, and the National Contract Management Association. His presentations and papers have discussed land use law, municipal court, government contracting, and wrecker regulation. In addition, he is currently on the Board of Directors of the Texas Coalition for Affordable Power, an aggregation group that purchases electricity for 158 cities and other political subdivisions and advocates for consumers of electrical power.

Mr. Risley has dealt with towing companies during every year of his career as a municipal lawyer. He successfully managed litigation in state and federal court alleging that the City of Victoria's towing ordinance was invalid and unconstitutional and he successfully defended Victoria's system to the Texas Attorney General (Tex. Att'y Gen'l Op. No. GA-0315 April 5, 2005) after a Texas legislator, acting on behalf of the Texas Towing and Storage Association, alleged it violated the rights of towing companies. So far, during his term as City Attorney of Wichita Falls, its Council has adopted a new wrecker ordinance, modified the rotation list system multiple times, and adopted a sole source contract with a group of wrecker companies.

# **Municipal Regulation and Contracting with Tow Truck Companies in Texas**

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# Municipal Regulation and Contracting with Tow Truck Companies in Texas

One of the necessary and often contentious tasks pursued by local government is the provision and regulation of towing services for its citizens. The operation of a modern roadway system and the limited parking available in many large cities requires the removal of vehicles outside the presence of and/or without the consent of their owners. The free market operates effectively only in the presence of competition. An arrested or absent vehicle owner is inherently vulnerable to overcharging in the absence of effective price regulation. Consequently, cities must generally establish controls over involuntary towing services if they want to ensure that safe, effective, honest, and price efficient towing services are provided to these vulnerable groups.

## A. Tow Truck Basics:

### 1. Classification of Tow Trucks:

**a. Weight Rating:** Tow trucks generally come in three weight ratings:

**Light-Duty:** Light-duty tow trucks generally have a Gross Vehicle Weight Rating (GVWR) of 10,000 pounds or less. They are designed to transport automobiles, pickup trucks and small vans.

**Medium-Duty:** Medium-duty tow trucks generally have a GVWR of 10,001 to 25,000 pounds. They can tow or transport medium-size trucks, buses and recreational vehicles, as well as smaller vehicles.

**Heavy-Duty:** Heavy-duty tow trucks generally have a GVWR of over 25,000 pounds. They are designed to tow or transport buses, large trucks, trailers and heavy equipment.

The weight rating or GVRW is not the capacity of a tow truck. The capacity of a tow truck transporting a vehicle on its back is determined by its “deck capacity”. The capacity of a tow truck transporting a vehicle with a wheel lift is determined by the application of formula that utilizes the weight of each axle and the degree to which the tow truck’s wheel lift overhangs the back of the truck.

**b. Method of Transport Classification:** Tow trucks are further divided into two other categories:

**Standard tow trucks** utilize a wheel lift or under-lift to pull vehicles. A wheel lift is a large metal yoke that can be fitted under the front or rear wheels to cradle them, drawing the front or rear end of the vehicle clear of the ground by a pneumatic or hydraulic hoist so it can be towed. This apparatus generally picks up the drive wheels of the vehicle (ie the front wheels if it is front wheel drive, the rear wheels if it is rear wheel drive) touching only the tires.

**Car carriers or “rollback trucks”** are designed to transport one to three motor vehicles on a flat platform that slides or tilts to the ground to facilitate the loading and unloading of the vehicle(s). In addition, they are generally equipped with a wheel-lift or under-lift that enables

them to tow an additional vehicle behind them. Car carriers are sometimes referred to as slidebacks, rollbacks, equipment transporters, or flatbeds. Car carriers are often used to transport vehicles that would be damaged by conventional towing techniques (all-wheel drive vehicles) or vehicles with severe wheel damage.

Rollback trucks often have wheel lift capabilities, allowing them to tow vehicles in addition to placing them on their bed. However, American rollback trucks usually lack booms. Consequently, they are limited in varying degrees in their ability to perform recovery operations from embankments and ditches.

**2. Types of Towing Jobs (who initiates):** Towing jobs can be initiated by the owner of the vehicle (consent tows) or be initiated by a government entity or private property owner (nonconsent tows).

**Consent Tows:** Consent tows are tows in which the owner has a disabled or wrecked vehicle and initiates the tow by calling the towing company. Due to federal preemption, cities are largely prohibited from regulating consent tows.

**Nonconsent Tows:** There are two types of non-consent tows:

**Private Property Impounds** – towing of vehicles that are illegally or inappropriately parked on private property.

**Police Directed Tows** - includes vehicles incapacitated as a result of an accident or involved in a crime -- and the owner cannot or will not secure the services of his/her own towing service.

- vehicles towed because they are incapacitated or abandoned on a public street, and the owners are unwilling to call a towing company or are absent. Sometimes called “incident management tows”.
- vehicles towed after drivers are arrested
- vehicles impounded because they are evidence of a crime.
- vehicles impounded because the driver is unlicensed or uninsured.

## **B. Regulation vs. Contracts:**

Cities often directly regulate the tow trucking industry. This regulation may or may not be in conjunction with the use of contracts between cities and individual towing companies. Before establishing a towing program, cities must carefully examine relevant federal and state laws to avoid preemption of their towing regulations.

Federal and state preemption limits cities' ability to directly regulate towing companies. The market participant exception enhances cities' flexibility when dealing with towing companies by eliminating the specter of preemption and many other claims that towing companies can use to shield themselves from governmental control. Local governments often will simply select a towing company to receive referrals emanating from their dispatch office. Most larger cities utilize a list of towing companies who receive referrals from the local dispatching office. This is known in the industry as a “rotation list”.

Cities that have limited parking availability must generally issue actual regulations to protect their citizens from excessive rates charged by persons towing from private property. Some states preempt local rate regulation by directly establishing allowable rates or by establishing a process for localities to follow to establish maximum allowable rates.

Cities that have little or no private property towing problems (ie. cities with ample parking) can avoid regulation and preemption issues altogether and simply contract with towing companies to remove the vehicles of arrestees and drivers of disabled vehicles. A city that limits its regulation entirely to police initiated tows (aka “incident management tows”) is simply establishing contractual limits on the provision of a valuable product (referrals) to towing companies. See “Regulating” towing companies entirely through contract can avoid much of the preemptive effect that states place on City authority.

The Texas Attorney General has recognized this distinction, opining that state requirements that normally required towing fee studies for establishing maximum towing rates did not apply to a municipality to the extent that a municipality was acting entirely as a “market participant” and not establishing the maximum fees by ordinance. See Tex. Atty. Gen. Op. GA-0315 (2005). In that opinion, the Texas Attorney General pointed out:

Federal law recognizes a distinction between towing regulation and actions a governmental body takes in a proprietary capacity. See *Cardinal Towing & Auto Repair, Inc., v. City of Bedford, Tex.*, 180 F.3d 686, 691 (5th Cir. 1999). A state or municipality acting as a market participant “in a narrow and focused manner consistent with the behavior of other market participants” is not regulating the towing market. *Id.* (citing *Bldg. and Constr. Trades Council v. Associated Builders & Contractors, Inc.*, 507 U.S. 218, 227 (1993)). Consequently, when called upon to determine if an ordinance such as Victoria's ordinance constitutes the regulation of towing, the federal courts have resolved it by answering two questions: First, does the challenged action essentially reflect the entity's own interest in its efficient procurement of needed goods and services, as measured by comparison with the typical behavior of private parties in similar circumstances? Second, does the narrow scope of the challenged action defeat an inference that its primary goal was to encourage a general policy rather than address a specific proprietary problem? *Id.* at 693.

In *Cardinal Towing*, in the context of analyzing a municipal towing ordinance, the Fifth Circuit answered these two questions in the affirmative. See *id.* In that case, the court was presented with a city ordinance that required the City of Bedford to contract only with one towing company to meet Bedford's police-initiated nonconsent towing needs. See *id.* at 688-89. The court observed that because of the “odd structure of the towing industry,” nonconsent tows do not provide an opportunity for the vehicle's owner to participate in negotiating the towing contract. See *id.* at 696. Rather, “the real decision is made by the party who ordered the tow, who chooses both to remove the vehicle and the party to perform the service.” *Id.* Accordingly, the court found that Bedford's ordinance was not a towing regulation because Bedford was merely creating efficiencies for itself by way of an ordinance that controlled the small arena of police-initiated nonconsent tows. *Id.* at 694-95.

In a similar case, the Fifth Circuit answered the same questions and found San Antonio's towing ordinances, which prohibited all towing companies from performing any type of tow unless under contract with the city, to be regulations. See *Stucky v. City of San Antonio*, 260 F.3d 424 (5th Cir. 2001), *rev'd and remanded on other grounds*, 536 U.S. 936 (2002). There the court reasoned that San Antonio's ordinances controlled so broadly the towing market that it had the direct effect of reducing the market's size. See *id.* at 436. “This effect [did] not speak to a private proprietary purchase, but rather to a public regulatory plan.” *Id.* Furthermore, this effect, coupled with the court's finding that San Antonio expressly considered its ordinances to be regulations, gave the court sufficient proof to conclude that San Antonio's interaction with the market was not so narrowly focused that it could

safely rule out the city's regulatory impulse. See *id.* at 438-39 (citing *Cardinal Towing*, 180 F.3d at 693). Here, under the ordinance, a towing company is limited to the fee maximum only when a driver is arrested, has been involved in an accident, or has an otherwise disabled vehicle and fails or refuses to designate a tow truck company to move the driver's vehicle from public property. In such a police-initiated nonconsent tow situation, the police officer investigating the incident is required to relay this information to the police communications officer on duty, who in turn is required to select from a list of towing companies that have contracted with the city to perform police-initiated nonconsent tows. See Victoria, Tx., Code of Ordinances sec. 23-65(a); City Brief, *supra* note 5, at 3. However, Victoria does not require the use of any particular towing company for private matters. See City Brief, *supra* note 5, at 2-3. A towing company that performs nonconsent tows from private property is not required to contract with Victoria and therefore is not subject to a fee limitation. See *id.*

Victoria's ordinance resembles the ordinance at issue in *Cardinal Towing*. Victoria clearly limits its ordinance to control police-initiated nonconsent tows to create efficiencies for itself. In addition, the narrow scope of its ordinance, which appears to control only a portion of the nonconsent tow market, defeats the inference that its primary goal is to encourage a general policy rather than address a specific proprietary problem. Moreover, Victoria expressly considers its police-initiated nonconsent tow rate limits to be elements of a contract between itself and a towing privilege holder. See Request Letter, *supra* note 1, at attachment A (“These rate limits shall not be considered rate regulations, but shall be considered contractual obligations pursuant to the city's provision of referrals to contractees.” Victoria, Tx., Code of Ordinances sec. 23-75(b) Rates).

Texas courts have repeatedly distinguished the right to contract from state and federal preemptive legislation. In *Fort Bend County Wrecker Association v. Fort Bend County Sheriff Milton Wright*, No. 01-99-00431-CV (Tex.App.—Houston [1st Dist.] 1994), the Court noted:

The Fifth Circuit has also held that non-consensual towing policies are not regulations or law. In *Cardinal Towing & Auto Repair v. City of Bedford*, the City decided to abandon a rotation system for non-consensual tows and chose instead to contract with one company by ordinance. The ordinance was limited to non-consensual tow situations in which the police requested a tow. See 180 F.3d 686, 689 (5th Cir.1999). The Court held “the City's actions did not constitute regulation or have the force and effect of law.” See *id.* at 697. Therefore, the Fort Bend Sheriff's wrecker policy does not rise to the level of a regulation or law, and thus, is permissible. We hold that the Sheriff is allowed to create a wrecker rotation list and maintain policies in accordance with the list.

## **C. State Preemption of Local Regulation of Towing Companies in Texas:**

**1. State Regulation of Towing Companies in Texas:** In recent years, Texas has dramatically expanded state regulation of towing companies as well as state preemption of municipal regulation of towing companies. Texas regulates towing companies pursuant to the Texas Towing and Booting Act at Chapter 2308 of the Texas Occupations Code. Texas regulates vehicle storage facilities pursuant to the Vehicle Storage Facilities Act at Chapter 2303 of the Texas Occupations Code. Both acts authorize the Texas Department of Licensing and Regulation (TDLR) to issue rules relating to the towing and storage of towed vehicles. The Texas Towing and Booting Act contains language that expressly preempts some municipal regulation of towing. See Subchapter E. Local Regulation of Towing and Booting, at Texas Occupations Code §§ 2308.201 - § 2308.209.

The Texas Towing and Booting Act and related TDLR rules provide regulations that:

- establish minimum insurance for towing companies and vehicle storage facilities (VSF's)

- require criminal background checks and drug and alcohol testing for drivers
- specify the signs that must be placed in private parking facilities as a prerequisite to towing
- prohibit towing companies from financial involvement with owners of private parking facilities
- provide for towing hearings in JP court relating to tows
- limit towing fees in incident management tows to the amount in a rate sheet filed with TDLR
- limit towing fees for towing from private lots to:
  - (1) light duty tows -- \$250;
  - (2) medium duty tows -- \$350; and
  - (3) heavy duty tows -- \$450 per unit or a maximum of \$900.
 See 16 TAC § 86.455.
- require the filing of municipal towing rate limits with the TDLR. 16 TAC § 86.500
- limit maximum storage fees charged by VSF's (\$20 per day). 16 TAC §85.722
- require tickets be given to persons towed that itemize the amounts charged for towing & storage
- prohibit VSF owners from disassembling, using, or removing items from stored vehicles
- provide fencing and surfacing requirements for VSF's
- provide notice requirements to record owners of vehicles

Extensive state regulation of towing in Texas allows municipal regulation of towing to be much less complex. In fact, due to state rate regulation, some cities can now avoid regulation entirely and deal with towing companies entirely through the contracting process. If a City chooses to limit its control over towing companies to its referrals, then its citizens whose vehicles are towed from private parking lots will be subject to the maximum fees established by state law over towing companies. The state maximum fee schedule in 16 TAC §86.455 provides private lot maximum towing fees that are considerably higher than maximum allowable towing fees in most localities.

**2. Direct Preemption of Municipal Authority over Towing Companies in Texas:** Texas preempts municipal regulation in of towing companies via various sections of Texas Occupation Code §§ 2308.201 through - § 2308.2085 as follows:

**Texas Occupations Code § 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.



**Texas Occupations Code § 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 if the private property tow fees:

- (1) are authorized by commission rule; and
- (2) do not exceed the maximum amount authorized by commission rule.

**Texas Occupations Code § 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.

**Texas Occupations Code § 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.

**Texas Occupations Code § 2308.2065. Fees for Nonconsent Tows; Refunds**

(a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than:

- (1) the fee for a nonconsent tow established under Section 2308.0575; or
- (2) a fee for a nonconsent tow authorized by a political subdivision.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established:

- (1) under Section 2308.0575; or
- (2) by a political subdivision.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the:

- (1) amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision; or
- (2) total amount of the charges for a service not listed in the amounts established by commission rule or by a political subdivision.

**Texas Occupations Code § 2308.208. Municipal or County Ordinance Regulating Unauthorized Vehicles and Towing of Motor Vehicles**

The governing body of a municipality or the commissioners court of a county 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.

**Texas Occupations Code § 2308.2085. Municipal Ordinance Regulating Booting Companies and Operators**

(a) A municipality may adopt an ordinance that is identical to the booting provisions in this chapter or that imposes additional requirements that exceed the minimum standards of the booting provisions in this chapter but may not adopt an ordinance that conflicts with the booting provisions in this chapter.

(b) A municipality may regulate the fees that may be charged in connection with the booting of a vehicle, including associated parking fees.

(c) A municipality may require booting companies to obtain a permit to operate in the municipality.

**3. What's left for Cities in Texas to Regulate:** Despite extensive state regulation and preemption, most large cities and cities with private parking issues will desire to continue regulating towing companies that perform nonconsent tows. Cities will want to make the following decisions when regulating towing companies performing nonconsent tows:

- Whether to refer police directed tows to a single company or to any companies that register (rotation list)
- Whether to regulate the maximum price of police directed tows via contract or via ordinance
- If towing fees are regulated via ordinance, whether to provide an administrative process allowing an official to increase maximum towing fees without further City Council action
- Whether to require registration for towing companies that perform nonconsent tows (Texas limits maximum fee to \$15)
- Whether to require levels of insurance that exceed the minimum insurance required by State law for towing companies who perform nonconsent tows
- Whether to require towing companies that perform nonconsent tows to store their towed vehicles in a storage facility within the City
- Whether to require a towing company to file a police report within a specified time after towing from private property. If so, what should be the time limit on filing the report.
- Whether to establish administrative procedures for sanctions on towing companies that are less than the sanction of termination of towing permit for violations relating to nonconsent towing. If so, what should the sanctions be?

**4. Most Common State Law Violations by Towing Companies:** State regulation of towing companies in Texas is extensive, thereby reducing the burden on many cities to regulate towing companies. Many types of towing regulations that are addressed by Texas' state regulation are dealt with administratively. The state lists the following common violations of state law:

## **a. Most Common State Law Towing Violations**

1. Equipment Violations – 16 TAC § 86.1000(a). Failure to operate a tow truck that is equipped with each of the following: (1) At least one 10 pound or two 5 pound multiple purpose fire extinguisher(s), in good working condition; (2) Magnetic tow lights, unless wireless, with appropriate cable and cushions to protect a vehicle's finish; (3) Tow dollies as appropriate; (4) Straps and tie downs as specified by the tow truck manufacturer; (5) Gloves; (6) Wheel chocks; (7) Five gallon trash receptacle; (8) Broom and shovel; (9) Thirty-six inch crow bar; and (10) Triangle reflectors, flares, cones, safety lights or other appropriate safety signals.
2. Tow Ticket – 16 TAC § 86.709(e). Failure of a towing company to prepare and issue a tow ticket for each non consent tow that it performs.
3. Vehicle Signage – 16 TAC § 86.701(a). Failure to display on the tow truck the permit holder's name, telephone number, city and state, and the permit number for the truck in letters at least 2 inches high, contrasting with background, and permanently affixed in conspicuous places on both sides of the tow truck.
4. Winch – 16 TAC § 86.1000(e). The winch exceeds the boom capacity or an oil leak was found.
5. Data Plate – 16 TAC § 86.1000(c). Failure to display a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism or a document
6. Failure to have proper uniform or proper reflective vest – 16 TAC § 86.1001(b)&(c).
7. Unlicensed activity – Tex. Occ. Code § 2308.151. Unless a person holds an appropriate license under this subchapter a person may not: perform towing operations; or operate a towing company.
8. Drug Testing of Towing Operators – Tex. Occ. Code § 2308.158 & 16 Tex. Admin. Code Ch. 86.710. Failure of a towing company to establish a drug testing policy for towing operators. Failure of the towing company to adopt the model drug testing policy adopted by the Commission or use another drug testing policy that the Department determines is at least as stringent as the policy adopted by the Commission.
9. Required Filing – Tex. Occ. Code § 2308.206 & Reporting Requirements – 16 TAC § 86.500. Before January 31 of each year, failure of the towing company to submit to the Department a schedule showing each towing fee the towing company charges or collects for non consent towing.
10. Charging Greater Non Consent Tow Fees – Tex. Occ. Code § 2308.206(e) & 16 TAC § 86.705(i). Charging a fee for a non consent tow that is greater than the fee listed in the schedule most recently filed with the Department.

## **b. Most Common State Law Vehicle Storage Facilities Violations**

1. Storage Lot Signs – 16 TAC § 86.1003. Failure to have a sign with all required information.
2. Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees – 16 TAC § 86.719(c). Collection of impoundment fees without performing required services.
3. Notice of Complaint Procedure – 16 TAC § 85.707. Failure to provide consumers or document consumers received the Notice of Complaint Procedure.
4. Facilities Fencing Requirements – Security of Vehicles – 16 TAC § 85.1000 (2)(a)&(b). Failure to secure vehicles.

5. Notice to Vehicle Owner or Lien Holder – Tex. Occ. Code § 2303.151 & 16 TAC § 85.703. Failure to properly notify the vehicle owner or lien holder as required.
6. Facility License Required – Tex. Occ. Code § 2303.101. Operating a vehicle storage facility without the required license.
7. Employee License Required – Tex. Occ. Code § 2303.1015. Working at a vehicle storage facility without the required license.
8. Drug Testing of Employees – Tex. Occ. Code § 2303.160 & 16 TAC § 85.725. Failure of the license holder to establish a drug testing policy for employees of the vehicle storage facility operated by the license holder. Failure of the license holder to adopt the model drug testing policy adopted by the Commission or use another drug testing policy that the Department determines is at least as stringent as the policy adopted by the Commission.
9. Forms of Payment Accepted – Tex. Occ. Code § 2303.159 & 16 TAC § 85.711. Failure of the operator of a vehicle storage facility to accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle.
10. Vehicle Owner Access – Tex. Occ. Code § 2303.158 & 16 TAC § 85.708. Failure to allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.

## **D. Federal Preemption of Local Regulation of Towing Companies:**

The federal government preempted local tow truck regulation with the Federal Aviation Administration Authorization Act (FAAAA) of 1994. Federal preemption of the trucking industry is now codified as 49 U.S.C.A. § 14501(c)(1) which states, in relevant part:

Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to price, route, or service of any motor carrier. . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

**1. Exceptions to Federal Preemption.** There are two exceptions to this federal preemption, the regulation of the **price** of nonconsent tows and the regulation of **safety**.

**a. Regulation of Price of Nonconsent Tows:** The price regulation exception to the FAAAA's preemption clause is 49 U.S.C.A. § 14501(c)(2)(C), which reads:

Paragraph (1). . . does not apply to the authority of a State or political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

The phrase “performed without the prior consent or authorization of the owner or operator of the motor vehicle” removes price regulation of nonconsent tows from federal preemption. Federal courts have protected the nonconsent nature of this exception. Ordinances that attempt to redefine all tows on public property as nonconsent tows and thereby regulate the price of consent tows have been struck down. *Stucky v. City of San Antonio*, 260 F.3d 424, 427 (5th Cir. 2001). Ordinances that attempted to regulate consent tows that immediately followed a nonconsent tow have also been struck down. *Houston Professional Towing Ass'n v. City of Houston, Texas*, Not Reported in F.Supp.2d, 2005 WL 2121552 (S.D.Tex.,2005). For a more recent case, see *California Tow Truck Ass'n v. City & County of San Francisco*, Not Reported in F.Supp.2d, 2010 WL 5071602 (N.D.Cal.,2010). In *California Tow Truck Ass'n*, the Court upheld the regulation of non-consent tows while rejecting the City's regulation of consent tows.

**b. Regulation of Safety:** The safety exception, now codified as Section 14501(c)(2)(A), allows states to regulate safety by stating that federal preemption:

shall not restrict the “safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

Until the decision in *City of Columbus v. Ours Garage and Wrecker Service, Inc.* 536 U.S. 424, 122 S.Ct. 2226 (2002), there was a split between courts concerning whether cities had the power to approve safety-related regulation of nonconsent towing. Some courts, such as the *Harris County Wrecker Owners for Equal Opportunity v. City of Houston*, 943 F. Supp. 711 (S.D. Tex. 1996) court, interpreted the 14501(c)(2)(A) exemption from preemption for “safety regulatory authority of a State” to allow cities to regulate a broad variety of safety issues. Other courts, such as the *R. Mayer of Atlanta, Inc. v. City of Atlanta*, 158 F.3d 538 (11<sup>th</sup> Cir. 1998) court, interpreted the phrase strictly, limiting safety-based preemption to state-issued regulations.

This difference in approach was reconciled by the *City of Columbus* decision. 536 U.S. 424 (2002). In *City of Columbus*, the U.S. Supreme Court held that by creating the safety exception, Congress intended to preserve all preexisting and traditional state police power regarding towing, and regulations which are genuinely related to safety fit within the exception.

Other courts have broadly authorized towing regulations on the basis of safety:

*Cole v. City of Dallas* 314 F. 3d 730(5th Cir. 2002) held that regulation requiring criminal history was included within the safety exception.

*VRC LLC v. City of Dallas*, 460 F.3d 607 (5th Cir. 2006) held that a city ordinance requiring the posting of signs on private property warning that unauthorized vehicles would be towed was permissible on the basis of “safety concerns”. In *VRC*, the Court rejected a close connection between the safety concerns and the municipal regulations. The court noted that consumer protection and public safety were not mutually exclusive categories. It held that where safety concerns were real enough to convince the court that the measures were both

reasonably related and genuinely responsive to safety concerns, the court need not inquire further. VRC also recognized the abrogation of several cases that had held municipal towing regulations to be preempted, including *Northway Towing, Inc. v. City of Pasadena*, 94 Supp.2d 801, 803 (S.D.Tex.2000), and *Whitten v. Vehicle Removal Corp.*, 56 S.W.3d 293, 306 (Tex.App.-Dallas 2001, pet. denied).

*Capitol City Towing & Recovery Inc. v. State ex rel. Dept of Public Safety and Corrections*, 873 So.2d 706 (La. Ct. App. 1<sup>st</sup> Cir. 2004) declared that provisions of the state's towing and storage act banning solicitation of towing business, limiting use of police scanners and CB radio, and requiring tow operators to wear clothing that identified towing company were safety regulations. Therefore, they were exempt from federal preemption.

*Ace Auto Body & Towing, Ltd. v. City of New York*, 171 F.3d 765 (2d Cir. 1999) held that the City of New York's rotational system was a permissible safety-related attempt to curtail the competitive incentives that motivate the practice of "chasing," i.e., racing to accident scene. This case also held that the City's requirements for licensing, displaying information, reporting, recordkeeping, checking criminal history, maintaining insurance, and posting bonds were legitimate safety-related requirements.

*Hott v. City of San Jose*, 92 F. Supp. 2d 996 (N.D. Cal. 2000) held that city regulations requiring liability insurance, criminal background check, displaying of information, reporting, and record keeping were all within the scope of the safety exception.

*Fife Enterprises v. Washington State Patrol*, 113 Wash. App. 1011 (Wash. App. Div. 3Rd 2002) held that record keeping and equipment safety requirements were exempt under safety exception.

*People Ex. Rel. Louise H. Renne v. Servantes*, 86 Cal.App.4th 1081 (2001) held that city licensing, record keeping, and background check requirements were permissible regulations under the safety exception.

The importance of legislative findings affirming the relationship of towing regulation to safety was highlighted in *California Tow Truck Ass'n v. City & County of San Francisco*, which stated:

Those findings identify a safety concern with nonconsensual tows. For example, the findings provide, among other things, that (1) "there is a significant risk to the safety of residents and visitors when illegal towing from private property occurs at night"; (2) "there is a risk to public health and safety when the vehicles of senior citizens and persons with disabilities are illegally towed from private property"; (3) "there are no accessible resources for people to research their rights and responsibilities with respect to private property tows"; and (4) "requiring tow car firms to provide information on the legal rights of vehicle owners at the time they reclaim their vehicle would be an effective way of informing vehicle owners of their rights under California law when their vehicle is towed from private property.

*California Tow Truck Ass'n v. City & County of San Francisco*, Not Reported in F.Supp.2d, 2010 WL 5071602, 3 (N.D.Cal., 2010)

A few courts have not deferred to statements of safety concerns. In *Loyal Tire & Auto Center, Inc. v. Town of Woodbury*, 445 F.3d 136 (2d Cir. 2006), the 2<sup>nd</sup> Circuit Court of Appeals held that a Town law requiring all tow companies to maintain a tow yard within one mile of the Town's police department to be placed on its rotation list was not genuinely responsive to safety. In *Loyal Tire*, the Court held that a general, prefatory statement of legislative intent was contradicted by the legislative history of the law, which was strongly suggestive of discriminatory motivation.

Also, in *Harris County Wrecker Owners for Equal Opportunity v. City of Houston*, 943 F. Supp. 711 (S.D. Tex. 1996), a federal district Court held that a City's argument of a safety basis for a limitation on the number towing service could be contradicted by evidence that the basis for receiving referral rights was based primarily on economic factors.

## **2. Procedural limitations on Ability to Assert Claim for Federal Preemption of Towing Regulations:**

Federal preemption of local towing regulation is only useful for plaintiffs if the right can be asserted as a private cause of action by towing companies, especially in 42 USC § 1983, with its concomitant right to receive attorney's fees. Since 1980, federal case law has evolved on the question of whether such preemption can be asserted by towing companies against cities. There is now a strong argument that the preemption of towing regulations is not actionable via a 1983 action.

In *Maine v. Thiboutot*, 448 U.S. 1, 4–8, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980), the U.S. Supreme Court permitted 42 USC § 1983 actions to be brought against state actors who had violated rights created by federal statute. The Court held that the plaintiffs had a right, under the Social Security Act, to seek a remedy under § 1983 for Maine's failure to administer their monetary entitlements. A year after *Thiboutot*, the Supreme Court rejected a claim that the Developmentally Disabled Assistance and Bill of Rights Act of 1975 conferred enforceable rights in *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). Over time, the Court emphasized that not all federal statutes create rights which are remediable by § 1983 by stating “To seek redress through § 1983 ... a plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law*.” *Blessing v. Freestone*, 520 U.S. 329, 340, 117 S.Ct. 1353, 137 L.Ed.2d 569 (1997). Then, in *Gonzaga University v. Doe*, 536 U.S. 273, 122 S.Ct. 2268 (2002) the U.S. Supreme Court tightened the test used to determine whether a statute creates federal rights. Under the rule established by the *Gonzaga* Court in 2002, courts must now look to “rights-creating language” and an “individual focus” in the statute's text and structure to determine whether Congress unambiguously intended to create individual rights. *Id.* at 2278–2279.

A pre-*Gonzaga* case that dealt with the question of a private right of action for an argument based of Section 14501(c)(1) preemption was *Petrey v. City of Toledo*, 246 F.3d 548, 565 (6th Cir.2001), which found that a cause of action existed under Section 1983 for such an action. In *Petrey*, the court relied on *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 106, 110 S.Ct. 444, 107 L.Ed.2d 420 (1989), to determine that a plaintiff could seek relief under 42 USC § 1983 for the violation of Section 14501(c)(1) by a local towing regulation.

In *Gonzaga*, the Court determined that the Family Educational Rights and Privacy Act of 1974 (“FERPA”), which provides for the withdrawal of federal funding from educational institutions that impermissibly release student records, did not confer rights to individual students. The Court found that FERPA conferred no rights enforceable under Section 1983 because its nondisclosure provisions contained no rights-creating language, giving them an aggregate, not individual focus, and served primarily to direct the Secretary of Education's distribution of public funds.

After *Gonzaga*, courts held that Section 14501 was not be enforceable through 42 USC § 1983. In *Henry's Wrecker Service Co. of Fairfax County, Inc. v. Prince George's County*, the Maryland District Court held that:

Plaintiffs' contention that § 14501(c)(1) grants individual rights remediable by § 1983 fails because the statute's text does not “unambiguously,” with “rights-creating language,” convey Congress' intent to confer individual rights to motor carriers. “The question of whether Congress ... intended to create a private right of action [is] definitively answered in the negative' where ‘a statute by its terms grants no private rights to any identifiable class.” *Gonzaga*, 536 U.S. at —, 122 S.Ct. at 2275 quoting *Touche Ross & Co. v. Redington*, 442 U.S. 560, 576, 99 S.Ct. 2479, 61 L.Ed.2d 82 (1979).Section 14501(c)(1) merely forbids State and local legislation in the areas of “price, route, or service,” as it relates to “any motor carrier ... or any motor private carrier, broker, or freight forwarder.” Without “rights-creating language,” characterized by a concrete expression of the set of rights to be granted to individual motor carriers, there is no textual basis for Plaintiffs' contention that § 14501(c)(1) confers individual rights remediable by § 1983.

*Henry's Wrecker Service Co. of Fairfax County, Inc. v. Prince George's County* 214 F.Supp.2d 541, 544 -545 (D.Md.,2002)

More recently, *Loyal Tire & Auto Center, Inc. v. Town of Woodbury*, 445 F.3d 136 (C.A.2 (N.Y.) 2006) held that Section 14501 may not be enforced through Section 1983, stating that the statute had “an aggregate, rather than an individual, focus”. *Id.* at 150.

For further discussion of the federal preemption issue, see James Lockhart, *Preemptive Effect of Federal Aviation Administration Authorization Act*, 49 U.S.C.A. §§ 14501(c), 41713(b)(4), 29 ALR, Fed. 2nd Series 563 (Originally published in 2008).

### **3. Contract System of Distributing Towing Jobs is excepted from Federal Preemption:**

Federal courts recognize a distinction between towing regulation and actions a governmental body takes in a proprietary capacity. See *Cardinal Towing & Auto Repair, Inc., v. City of Bedford, Tex.*, 180 F.3d 686, 691 (5th Cir. 1999). A state or municipality acting as a market participant “in a narrow and focused manner consistent with the behavior of other market participants” is not regulating the towing market. *Id.* (citing *Bldg. and Constr. Trades Council v. Associated Builders & Contractors, Inc.*, 507 U.S. 218, 227 (1993)).



Many towing companies have argued that towing contract systems are subject to federal preemption. Courts that have stricken down towing regulation as preempted under federal law have distinguished towing contract systems as not preempted. *Tocher v. City of Santa Ana* simultaneously invalidated the City of Santa Ana's regulatory system and upheld its contract system with the following language:

Although the plain language of the statute would appear to encompass a rotational tow list, it is saved from preemption by the municipal-proprietor exception (also called the market participant exception) to the preemption doctrine. *See Dillingham Construction N.A., Inc. v. County of Sonoma*, 190 F.3d 1034, 1037 (9th Cir.1999); *Shell Oil Co. v. City of Santa Monica*, 830 F.2d 1052, 1062 (9th Cir.1987). The key inquiry under the municipal-proprietor exception is whether the City is acting in a regulatory or proprietary capacity. . . .

*Tocher v. City of Santa Ana* 219 F.3d 1040, 1049 (C.A.9 (Cal.) 2000)[abrogated on other grounds]

Contract systems can provide for towing referrals to an single company or provide for referrals to a rotation list. *Crabtree v. City of Birmingham*, 292 Ala. 684, 299 So. 2d 282 (1974) held that a city did not violate equal protection by granting an exclusive contract to one wrecker service and prohibiting non-franchised wrecker service from responding to accidents via police radios. More recently, in *Cardinal Towing & Auto Repair, Inc., v. City of Bedford, Tex.* 180 F.3d 686, 691 (5th Cir. 1999), the 5<sup>th</sup> Circuit Court of Appeals upheld an exclusive contract system.

## **E. Other Federal Law Based Attacks on Local Regulation of Towing Companies:**

### **1. Equal Protection:**

Typically, attacks on towing regulation will feature an allegation that the city is violating equal protection in its distinctions. The equal protection clause of the 14<sup>th</sup> Amendment to the U.S. Constitution requires that the government treat similarly situated entities equally. A party alleging a violation of equal protection “must prove he was treated differently by the government than similarly situated persons and the different treatment was not rationally related to a legitimate government objective”. *Koscielski v. City of Minneapolis*, 435 F.3d 898 (8th Cir. 2006).

Under the rational basis review, governmental policy that allegedly violates equal protection is afforded a strong presumption of validity and must be upheld as long as there is a rational relationship between the disparity of treatment and some legitimate government purpose. Under the "rational basis" equal protection standard, all that is needed to uphold a state's classification scheme is to find that there are "plausible," "arguable," or "conceivable" reasons which may have been the basis for the distinction. *U.S.R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 101 S. Ct. 453, 66 L. Ed. 2D 368 (1980). To prove a government action lacks rational basis, a plaintiff must negate all the possible rational justifications for the distinctions in the action. *Midkiff v. Adams County Regional Water District*, 409 F.3d 758, 2005 Fed App. 0226P (6th Cir. 2005).

**a. No discrimination against Non-residents of City without Rational Basis.**

Towing regulations typically discriminate against entities that do not maintain facilities in or near the municipality. This type of regulation is rationally based on a need to ensure limited response times to accident scenes and reduce the probability that residents of the City will need to travel to distant locales to retrieve their vehicles.

In *Defalco Instant Towing, Inc. v. Borough of New Providence*, 380 N.J. Super. 152, 881 A.2d 745 (App.Div. 2005), the Superior Court of New Jersey invalidated an ordinance giving preference to in-town towing companies for police-initiated towing calls.

In this case, there is nothing in the record to demonstrate that the amended towing ordinance will actually reduce the response time for towing calls by giving preference to local towers or that it will otherwise promote or benefit the public health, safety, and welfare. . . the record fully supports plaintiffs' claim that "the Borough acted against the advice of their own police department to enact a system that ultimately sought only to protect its local business and economy," and the amended ordinance "amounts to nothing more than a thinly disguised attempt to bolster local businesses in the guise of an alleged faster response time."

*Defalco Instant Towing, Inc. v. Borough of New Providence*, 380 N.J. Super. 152, 158-159, 881 A.2d 745, 749 (N.J. Super. A.D., 2005)

*Defalco's* factual findings were atypical. In that case, the plaintiff was located extremely close to the Town's border and was within a 20-minute driving distance of the entire town. The Town's police department had testified that the discrimination present in the ordinance against the out-of-town plaintiff did not reduce response times.

For an opposite ruling see *Village Auto Body Works, Inc. v Town of Hempstead*, 85 App Div 2d 692, 445 NYS2d 492 (N.Y.A.D., 1981), in which the plaintiff owned a terminal 3,500 feet from the border of the town and was denied a towing license because it did not operate and maintain a terminal within the town. In *Village Auto Body Works*, the Court held that the out-of-town towing company was not denied equal protection of laws because the town's ordinance furthered a legitimate governmental interest in providing quick, safe and reasonably-priced towing service, and in keeping flow of traffic as free as possible.

An additional defense to an equal protection allegation against non-citizen discrimination is the argument that the City has the authority to direct its business to local contractors when acting in a proprietary, rather than regulatory, capacity. This authority was described in *Hughes v. Alexandria Scrap Corp*, 426 U.S. 794 (1976), in which the Supreme Court permitted the State of Maryland to limit its bounties to wreckers taking derelict cars off Maryland highways to Maryland wrecker companies.

## **b. Class of One Discrimination Not Applicable to Discretionary Government Contracting:**

In *Village of Willowbrook v. Olech*, the Supreme Court explained:

cases have recognized successful equal protection claims brought by a ‘class of one,’ where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

*Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000).

One problem with equal protection claims in a tow truck context is that the claimant is frequently the only entity to which claimed discrimination is aimed. This makes the claimant a “class of one”. Class of one equal protection discrimination claims are not cognizable where government action is not intended to apply to all parties. See *Engquist v. Oregon Dept. of Agr.*, 128 S. Ct. 2146, 170 L. Ed. 2d 975 (2008). In that case, the U.S. Supreme Court disapproved class of one employment discrimination claims, explaining that class-of-one equal protection cases can only be successful where the government action at issue is the type that should apply equally to all parties, such as the property assessment scheme in *Olech*. Where the government action is inherently discretionary (such as in employment (or government contracting), a class-of-one claim is not appropriate. The Court explained:

. . . some forms of state action. . . by their nature involve discretionary decisionmaking. . . In such cases the rule that people should be “treated alike, under like circumstances and conditions” is not violated when one person is treated differently from others, because treating like individuals differently is an accepted consequence of the discretion granted.

*Engquist v. Oregon Dept. of Agr.*, 128 S. Ct. 2146, 170 L. Ed. 2d 975, (2008).

## **2. Substantive Due Process:**

Municipal governments are prohibited by the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the U.S. Constitution from depriving persons of life, liberty or property without due process of law. Plaintiffs will often claim that municipalities are violating the substantive due process rights of tow truck companies when administering tow truck regulations. Substantive due process claims almost uniformly fail in a tow truck regulation context.

When pleading a cause of action for a violation of substantive due process under the 14th Amendment to the U.S. Constitution against a public body or official, a plaintiff must plead and prove both an (1) arbitrary conduct which shocks the conscience and (2) a constitutionally protected interest adversely affected or adversely impacted thereby. See Jeffrey A. Parness, *Pleading Civil Rights Claims*, 97 Ill. B.J. 156, 157 (2009).

When asserting a substantive due process violation in a § 1983 case, a plaintiff must “first identify a life, liberty, or property interest protected by the 14th Amendment and then identify a state action that resulted in a deprivation of that interest.” See *Blackburn v. City of Marshall*, 42 F.3d 925, 935 (5th Cir.1995) (citing *San Jacinto Sav. & Loan v. Kacal*, 928 F.2d 697, 700 (5th Cir.1991) and *Board*

of *Regents v. Roth*, 408 U.S. 564, 569, 92 S.Ct. 2701, 2705, 33 L.Ed.2d 548 (1972)). To establish a violation of substantive due process, a plaintiff must prove that the government deprived the plaintiff of his liberty or property. Stated differently, a violation occurs only when the government “works a deprivation” of a “constitutionally protected interest.” *Regents of University of Michigan v. Ewing*, 474 U.S. 214, 223, 106 S.Ct. 507, 512, 88 L.Ed.2d 523 (1985); See also *Simi Inv. Co. v. Harris County, Texas*, 236 F.3d 240, 249 (5th Cir.2000). A constitutionally protected property interest must be more than just a ‘unilateral expectation’; it must be a ‘legitimate claim of entitlement. See *Furlong v. Shalala*, 156 F.3d 384, 393 (2d Cir.1998) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972)).

Discretionary policies do not bestow upon individuals protected property interests.” *Beggs v. Gilkey*, 178 Fed.Appx. 593, 595 (8th Cir.2006) (unpublished). To assert a viable property interest, a plaintiff “must show that his interest in remaining on a rotation list is more than a unilateral expectation . . .” *Blackburn*, 42 F.3d at 940.

An interest stemming from a state statute or municipal ordinance generally creates a property interest only if the statute or ordinance employs mandatory language. Ordinance language concerning a tow rotation list may be mandatory if, for example, the police department is explicitly required to place or keep on the list any and all companies that meet the criteria of the ordinance. Notwithstanding, some courts have stated that property interests may arise from “mutually explicit understandings” or mandatory state law referral requirements and determined that wrecker operators had a property interest in a wrecker rotational list. See *Abercrombie v. City of Catoosa, Okla.*, 896 F.2d 1228, 1231 (10th Cir. 1990); *Gregg v. Lawson*, 732 F.Supp. 849, 853 (E.D.Tenn.1989); *Henson v. City of Syracuse*, 559 N.Y.S.2d 86 (N.Y.App.Div.1990); *Martin v. Stites*, 203 F.Supp.2d 1237 (D Kan. 2002); *Pritchett v. Alford*, 973 F.2d 307, 317 (4th Cir.1992); *Crownhart v. Thorp*, 1992 WL 332298, 2 (N.D.Ill.,1992).

Courts held that governments did **not** violate the substantive due process rights of tow truck companies in the following cases:

*Furra, et al. v. City of Nacogdoches, Texas*, Not Reported in F.Supp.2d, 2011 WL 2039656 (E.D.Tex.)

*Pete's Towing Co. v. City of Tampa, Fla.* 648 F.Supp.2d 1276 (M.D.Fla.,2009).

*Martin v. Stites*, 203 F.Supp.2d 1237, 2002-1 Trade Cases P 73,710 (2002).  
*Crabtree v Birmingham*, 292 Ala 684, 299 So 2d 282 (1974).

*Chavers v. Morrow*, 354 Fed.Appx. 938, 940-941, 2009 WL 4609841, (C.A.5 (Tex.), 2009)

*C & H Enterprises, Inc. v Commissioner of Motor Vehicles*, 167 Conn 304, 355 A2d 247 (1974)

*Giddens v City of Shreveport*, 901 F Supp 1170 (WD La, 1995).

*Habhab v. Hon.*, 536 F.3d 963, 968 (C.A.8 (Iowa), 2008)

*VRC, L.L.C. v. City of Dallas*, 391 F.Supp.2d 437, 441 (N.D.Tex.,2005)

*Magnum Towing & Recovery, LLC v. City of Toledo*, 430 F. Supp. 2d 689 (N.D. Ohio 2006)

*White Plains Towing Corp. v. Patterson*, 991 F.2d 1049 (CA.2, 1993).

*B & M Serv. Station v. City of Norwich*, Nos. 91-CV-1027, 93-CV-1782, 2000 WL 305981 (D.Conn. Feb. 25, 2000).

Many of these cases also held that the local governments did not violate the procedural due process rights of towing companies. (discussed in following section)

### **3. Procedural Due Process:**

Procedural due process generally requires notice and a hearing prior to a constitutional deprivation. The standard analysis under Due Process Clause proceeds in two steps: (1) court first asks whether there exists a liberty or property interest of which a person has been deprived, and (2) if so, it asks whether procedures followed by the State were constitutionally sufficient. *Swarthout v. Cooke*, 131 S. Ct. 859 (2011).

The essential elements of procedural due process of law are notice and the opportunity to be heard prior to depriving a person of his or her protected property interest. *Wolf v. Fauquier County Bd. of Supervisors*, 555 F.3d 311 (4th Cir. 2009); *Bluitt v. Houston Independent School Dist.*, 236 F. Supp. 2d 703 (S.D. Tex. 2002).

Even if government action depriving a person of life, liberty, or property survives a substantive due process scrutiny, "procedural" due process requires that such government action be implemented in a fair manner. *U.S. v. Salerno*, 481 U.S. 739, 107 S. Ct. 2095, 95 L. Ed. 2D 697 (1987).

Claims of lack of procedural due process in the regulation or contracting of towing companies almost always fail. Due process is only required when depriving persons of protected property interests. As shown in the substantive due process analysis above, courts are generally loathe to determine that towing companies have constitutionally protected rights to tow and impound vehicles for a particular government entity. *Giddens v City of Shreveport*, 901 F Supp 1170 (WD La, 1995), reported at 912 F Supp 953, represented this analysis:

The due process issue to be resolved in this case, then, is whether the plaintiffs have "a legitimate claim of entitlement" to the storage of "no preference" and impound vehicles. Guided by the recent decision of the United States Court of Appeals, Fifth Circuit in *Blackburn v. City of Marshall*, 42 F.3d 925 (5th Cir.1995), the Court concludes that they do not. . . . Because no state or local statute, ordinance or regulatory scheme governed the operation of the rotational list, the Court of Appeals concluded that "Blackburn has failed to allege a property interest in remaining on the list." *Id.* at 941.

To avoid creating the possibility of a claim based on towing regulation, attorneys drafting ordinances for cities should be careful to avoid creating entitlements therein, leaving *some* discretion in their local officials.

#### **4. First Amendment Claims:**

In *Board of County Comm'rs, Wabaunsee County, Kansas v. Umbehr*, 116 S. Ct. 2342, 2361 (1996), the U.S. Supreme Court held that the First Amendment protects independent contractors from termination of at-will government contracts in retaliation for the contractors' exercise of freedom of speech. In *O'Hare Truck Service, Inc. v. City of Northlake*, 518 U.S. 712, 116 S.Ct. 2353 (1996) the U.S. Supreme Court extended this First Amendment protection for independent contractors to a towing contractor. In doing so, the Supreme Court rejected the notion that a “difference of constitutional magnitude” exists in the relative degree to which employees and independent contractors depend on government sources for their income. *Id.*, 116 S.Ct. at 2359.

In *O'Hare*, the City of Northlake, Illinois removed an existing towing contractor from its rotation list after the contractor refused a requested campaign contribution from the mayor's campaign and placed the mayor's opponent's campaign posters at its place of business. The Supreme Court held that the towing contractor stated a claim for violation of his First Amendment rights. *Id.*

In *Umbehr*, the Supreme Court indicated that it was not extending its statement of First Amendment protection to persons without existing contractual relationships with government entities. *Umbehr*, 518 U.S. at 685, 116 S.Ct. 2342. Based on this refusal, most federal courts have refused to extend First Amendment protection to bidders or applicants of government contracts. See *McClintock v. Eichelberger*, 169 F.3d 812 (3rd Cir.1999). However, commentators have speculated on the expectation that these protections will be extended. See Terrence Welch & Bonnie Goldstein, *The First Amendment and Independent Contractors: The U.S. Supreme Court Expands Governmental Liability*, 44-MAY Fed. Law. 46 (May, 1997). Also see Brent Eckersley, *Constitutional Law: Board of County Commissioners v. Umbehr and O'Hare Truck Service v. City of Northlake--The Extension of First Amendment Protection to Independent Contractors--The Garbage Man can now Talk Trash!*, 50 Okla. L. Rev. 557, (Winter, 1997).

Since *Umbehr*, some lower courts have applied the first amendment protections of these cases to prospective contractors. In *Royal Towing, Inc. v. City of Harvey*, Not Reported in F.Supp.2d, 2004 WL 626137 (N.D.Ill.,2004), a U.S. District Court stated, with respect to a towing company removed from a rotation list:

even without a binding oral or written contract that defined the duration of the relationship, plaintiffs may succeed as to count I if they can prove that the removal of Royal was retaliation for the political speech. While the new administration was free to amend or terminate its relationship with the plaintiffs' company, it did not have the right to condition the towing contracts on political affiliation.

*A.F.C. Enterprises v. NY City School Construction Authority* analogized prospective contractors and prospective employees with the following statement:

The (*Umbehr*) Court discovered no “difference of constitutional magnitude” between contractors and employees, the distinction between which turns on “state law labels . . .” (*Umbehr*) at 679. “To the extent that salient differences between these classes of workers exist in individual cases, the *Umbehr* Court found ‘no reason to believe that proper application of the *Pickering* balancing test cannot accommodate’ them.” . . . In the light of the *Umbehr* and *O’Hare* Courts’ reasoning, it is apparent that no cause exists to create bright-line distinctions between government employees and contractors. Employees are entitled to the protections of the First Amendment whether they are terminated or not hired in the first place.

Not Reported in F.Supp.2d, 2001 WL 1335010, 16 (E.D.N.Y., 2001).

In *Oscar Renda Contracting, Inc. v. City of Lubbock*, 463 F.3d 378 (5th Cir. 2006), the Fifth Circuit ruled that private contractors do not need a “pre-existing commercial relationship” with a government entity in order to state a claim for first amendment retaliation under the First Amendment. In *Renda*, a disappointed, rejected low bidder sued the City of Lubbock after City officials rejected his bid on the basis of a lawsuit that bidder had filed against another government entity. The *Renda* majority held that independent contractors should be treated the same as individual government employees in the context of retaliation claims, stating “in a governmental employment context . . . no prior relationship is required before an employee is permitted to assert a claim for First Amendment retaliation.” *Id.* at 383. Also see Vincent P. Circelli, *First Amendment--Elements of Retaliation: The Fifth Circuit Rules that Independent Contractors do not need a Pre-Existing Commercial Relationship with a Government Entity in order To Bring a Claim of Retaliation*, 60 SMU L. Rev. 299 (Winter, 2007).

If a tow trucker is refused referrals by the government on First Amendment grounds, then, under the *Umbehr* analysis, the Court would apply the “Pickering Balancing Test” to his First Amendment Claims. See *Pickering v. Board of Education of Township High School District*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). Under the Pickering Balancing Test, the Court must balance plaintiff’s interests as a citizen, in commenting upon matters of public concern, against the State’s interests as an employer or contracting entity, in promoting the efficient referral of tow services.

Nonetheless, at least one court has applied a lower standard of review to alleged First Amendment violations of a wrecker’s First Amendment rights. In *Abercrombie v. City of Catoosa*, 896 F.2d 1228, 1233 (10th Cir.1990), the 10th Circuit held that removing a tow operator’s name from wrecker referral list because of protected speech violated the tow operator’s First Amendment rights. In doing so, the *Abercrombie* court treated Abercrombie as an ordinary citizen rather than a contractor or employee. This meant that that the Pickering Balancing Test did not need to be applied to the contractor’s right to be free of retaliation for its speech. See, e.g., *Pickering*, 391 U.S. at 568, 88 S.Ct. At 1734–35; *Blackburn*, 42 F.3d at 931. Also see *Barrett v. Fields*, 924 F.Supp. 1063, 1070 (D.Kan., 1996).

Procedurally, First Amendment claims will be fact intensive. Consequently, they can be difficult claims upon which to win summary judgment. In addition, knowledgeable plaintiffs will emphasize First Amendment claims because they will be seeking attorneys fees. Not only are attorneys fees clearly recoverable in a successful 42 USC §1983 claim based on First Amendment violations, but the lack of a property right will not doom a First Amendment retaliation claim, as it would a due

process claim. See *Perry v. Sindermann*, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972). Also see *Abercrombie v. City of Catoosa, Okl.* 896 F.2d 1228, 1233 (C.A.10(Okl.), 1990). The fact intensiveness and difficulty in winning summary judgment in a First Amendment claim were demonstrated in *Lucas v. Monroe County*, 203 F.3d 964, 973 (C.A.6(Mich.), 2000), where the Court considered speech complaining about the lack of “fair play” in the Sheriff’s office, which eventually led to his removal from the rotation list:

Even if we were to assume that Chappel's predominant motivation was securing a job for himself, we would not conclude that this motivation so dominated the substance of Chappel's speech that the “point” or “communicative purpose” of his speech was rendered merely a matter of personal concern. Chappel directly addressed matters that are rightly “near [the] zenith” of public concern-matters of public safety, and the gross mismanagement and misappropriation of public monies.

*Lucas v. Monroe County*, 203 F.3d 964, 973 (C.A.6 (Mich.),2000)

In the *Lucas* case, the Court described the elements for prevailing on a First Amendment claim with its requirement that plaintiffs provide evidence on each of the following elements:

- (i) that the plaintiffs were engaged in constitutionally protected conduct;
- (ii) that defendants' adverse action caused them to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that conduct; and
- (iii) that the adverse action was motivated at least in part as a response to the exercise of their constitutional rights.

Also see *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).

## **5. Federal Antitrust Claims:**

Section 1 of the Sherman Antitrust Act provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is illegal. Restraint of trade in this usage means restraint of competition. 15 USCA §1. Conduct falls within the scope of this prohibition only if some form of agreement or concerted action can be proven.

The scope of the prohibition is limited to those agreements where the restraint of trade is unreasonable:

Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition.



*Board of Trade of the City of Chicago v. United States*, 246 U.S. 231, 244 (1918) ("Chicago Board of Trade").

Antitrust plaintiffs are required to demonstrate, by "the facts peculiar to the business to which the restraint is applied", the nature of the challenged conduct and why it is harmful to competition. *Id.* at 244.

Cities are often alleged to have violated the Sherman Antitrust Act when regulating or contracting with members of the wrecker industry. These allegations can include violations of antitrust law through the following actions:

**Price fixing:** An agreement between business competitors selling the same product or service regarding its pricing

**Geographic market allocation:** An agreement between competitors not to compete within each other's geographic territories.

Cities have several possible responses to antitrust allegations in the context of tow truck regulation:

**a. State Action Doctrine:** The initial response is to rely on state action immunity (also known as "Parker Immunity").

**b. Local Government Antitrust Act:** If state action immunity does not result in dismissal of the antitrust allegations, cities should point out that the Local Government Antitrust Act prohibits damages in antitrust suits against municipal defendants.

**c. City Regulatory Activity Limited to Noncompetitive Market:** Another available response is to argue that City regulatory activity is limited to nonconsent tows, thereby ensuring that other cities are not interfering with an otherwise competitive market.

**d Noerr-Pennington Doctrine:** Cities should remember that the Noerr-Pennington doctrine protects the rights of private parties to lobby for anti-competitive measures.

**e. Intrastate Activity:** There is some case law that provides that tow truck regulation does not implicate sufficient interstate activity to implicate the Sherman Antitrust Act.

**a. State action doctrine:**

Government entities may legally restrain trade if authorized by their parent state. This is known in antitrust law as the state action doctrine or as "Parker immunity", from the name of the case in which it was established. *Parker v. Brown*, 317 US 341, 87 L Ed 315, 63 S Ct 307 (1943). Technically, the doctrine is not so much an immunity as a judicial determination that Congress did not intend for the Sherman and Clayton Acts to be mechanisms to challenge matters of chosen state policy. *Neo Gen Screening, Inc. v. New England Newborn Screening Program*, 187 F.3d 24, 28 (1st Cir. 1999).

Parker immunity aka state action immunity applies to states defending their regulatory programs, municipalities defending their regulatory programs to the extent such program are authorized by their state, and private entities operating pursuant to government regulatory programs. The elements of state action immunity differ, based on whether the entity alleged to have violated antitrust laws is:

- (1) a state,
- (2) a private entity, or
- (3) a unit of local government, such as a municipality.

Where the challenged action is by the **state**, then the exemption is said to be complete, without further inquiry. For example, in *Hoover v. Ronwin*, 466 U.S. 558, 104 S. Ct. 1989, 80 L. Ed. 2D 590 (1984), antitrust immunity was found for a state bar testing program administered through direct involvement of the state supreme court, making the conduct "in fact" that of the state as sovereign.

Where the challenged action is by a **private entity**, the exemption is only available if it was both: (1) authorized by the state as a matter of "clearly articulated and affirmatively expressed state policy," and (2) subjected to "active state supervision" to protect against possible abuse and ensure that it reflects the desired state policy. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105, 100 S. Ct. 937, 63 L. Ed. 2d 233 (1980).

Where the challenged action is by a **municipality** or other local government entity, an intermediate standard is employed. The municipality or government entity need only prove that the action was authorized by a state policy. Active supervision by a higher level state body is not required, since "[o]nce it is clear that state authorization exists, there is no need to require the State to supervise actively the [defendant's] execution of what is a properly delegated function." *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 47, 105 S. Ct. 1713, 85 L. Ed. 2D 24 (1985). Home rule authority to pass laws where not prohibited by the state is insufficient state authorization to gain state action immunity. See *Community Communications Co., Inc. v. City of Boulder, Colo.*, 455 U.S. 40, 51, 102 S. Ct. 835 (1982).

State action immunity may be predicated on a state policy or case law. However, unlike a statute, if state authorization is from court or executive branch department, the burden is on the defendant to demonstrate that the challenged conduct was a foreseeable consequence of "a clearly articulated policy of the State itself," such as a policy "approved by a state legislature" or by the "State Supreme Court." *Hallie v. Eau Claire*, 471 U.S. 34 at 42 (1985), *Southern Motor Carriers Rate Conference, Inc. v. U.S.*, 471 U.S. 48, 63, 105 S. Ct. 1721, 85 L. Ed. 2D 36 (1985).

Courts have applied the state action exemption to cities in the following cases, many of which could be applied to a city's wrecker industry activities:

*Jacobs, Visconsi & Jacobs, Co. v. City of Lawrence, Kan.*, 927 F.2d 1111 (10th Cir.1991) held that the state action doctrine immunized the City from antitrust immunity for a rezoning denial due to a state urban renewal statute and a planning and zoning statute. In that case, the Court held that the financial interest of commissioners in competing businesses did not abrogate the state action immunity. In that case, the court stated "It is not necessary ... for the state legislature to have stated explicitly that it expected the City to engage in conduct that would have anticompetitive effects." *Id.* at 1120.

*R. Ernest Cohn, D.C., D.A.B.C.O. v. Bond*, 953 F.2d 154 (4th Cir. 1991) held that state action immunity and the Local Government Antitrust Act shielded a municipally owned hospital's decision to deny staff privileges to a chiropractor. In that case, the Court held that state action immunity further extended to staff physicians who participated in the decision, since they were acting in their capacity as "employees" of a municipal entity.

*City of Columbia v. Omni Outdoor Advertising*, 499 U.S. 365, (1991) held that the state action immunity applies where the municipality acts in an area in which the state has authorized it to act. In that case, the plaintiff alleged that the city council had conspired with a local billboard company to grant the local company a monopoly within the city, disadvantaging the plaintiff. The Supreme Court held that the city had state-granted zoning authority to pass ordinances controlling billboards, establishing the state action exemption. The Supreme Court in that case also held that there was no "conspiracy" exception to state action immunity

*Brumfield Towing Service, Inc. v. City of Baton Rouge*, 911 F.Supp. 212 (M.D.La.,1996) held that state authorization to municipalities to "regulate, control, supervise and govern the business of operation and use of wreckers and towing devices" established a city's entitlement to the state action exemption for regulation and contracting with tow truck companies.

*Hallco Environmental Inc. v. Comanche County Bd. of County Com'rs*, 149 F.3d 1190 (10th Cir. 1998) held that state action immunity shielded a county board and its members from antitrust challenges to their adoption of regulations restricting the construction of new dump sites within the county, where the board acted pursuant to a state statute delegating responsibility over dump sites to counties.

*Omega Homes, Inc. v. City of Buffalo, N.Y.*, 171 F.3d 755 (2d Cir. 1999) held that state action immunity applied to a municipality's decision to award two exclusive dealing contracts for a large urban renewal project, where the city acted pursuant to state legislation granting municipalities decision-making authority over urban renewal programs.

*Duck Tours Seafari, Inc. v. City of Key West*, 875 So.2d 650 (Fla.App. 3d Dist.2004) held that the state action exemption only applies if it is clear that the state law has delegated to the municipality " 'the express authority to take action that foreseeably will result in anticompetitive effects'... [t]he fact that the state has made a general delegation of home rule power to the local government is not enough to authorize anticompetitive action." *Id.* at 653-55

*First American Title Co. v. Devaugh*, [in her capacity as the Lapeer County Register of Deeds], 480 F.3d 438 (6th Cir. 2007) held that state action immunity did not apply to contract restrictions imposed on title insurance companies by county agencies, under which the title companies were prohibited from distributing or using copies of official title documents for title search services that would have competed with the County Registers' indexing services. In that case, the Court held that statutes authorizing the Deed Registers to enter into "contracts" as part of a centralized system for recording and providing official title documents showed, at most, a legislative intent to displace competition in the provision of

official title documents, and not an intent to further displace competition in the sale and use of unofficial copies or information contained in the documents. Consequently, the statutes did not satisfy the requirement for state action immunity that the challenged conduct reflect “clearly articulated and affirmatively expressed...state policy. Importantly, this case contains dictum stating that the state-action immunity doctrine must be “narrowly construed” *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 442 F.3d 410, 440-41 (6th Cir.2006)

*Active Disposal, Inc. v. City of Darien*, 635 F.3d 883 (7th Cir. 2011) held that the state action exemption shielded municipalities from federal antitrust liability for awarding exclusive contracts to private recycling services, where a state statute expressly empowered them to "contract" for garbage and refuse services. In *Active Disposal*, the Court held that the fact that the statute did not specifically authorize the use of exclusive contracts was "irrelevant," since "after all an exclusive contract is merely a subset of the power to contract." *Id.* at 885-886

State statutes differ on the degree of specificity with which they authorize cities to regulate tow trucking services. There are tow trucking associations active in every state that are attempting to restrain cities in their contracting and regulatory authority over the wrecker industry. These state statutes can have the paradoxical effect of enhancing the viability of a Parker Act exemption claim by providing specific authority for municipalities to rely on when regulating wreckers.

Texas law enhances the ability of Texas local governments to utilize the Parker exemption with the following section of the Texas Towing and Booting Act, which provides:

**Texas Occ. Code § 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.

The Texas Towing and Booting Act more specifically authorizes local governments to establish price limits on towing companies by authorizing local fee regulation of towing companies and creating a state law violation for towing companies that charge fees in excess of towing fees established by a political subdivision.

**Texas Occ. Code § 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 if the private property tow fees:

- (1) are authorized by commission rule; and
- (2) do not exceed the maximum amount authorized by commission rule.

**Texas Occ. Code § 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.

**Texas Occ. Code § 2308.2065. Fees for Nonconsent Tows; Refunds**

(a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than:

- (1) the fee for a nonconsent tow established under Section 2308.0575; or
- (2) a fee for a nonconsent tow authorized by a political subdivision.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established:

- (1) under Section 2308.0575; or
- (2) by a political subdivision.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the:

- (1) amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision; or
- (2) total amount of the charges for a service not listed in the amounts established by commission rule or by a political subdivision.

Regulations of the Texas Department of Licensing and Regulation at 16 TAC §§ 86.458 & 86.500 bolster state authorization of municipal authority to regulate rates by creating a violation of towing regulations .

**Texas Occ. Code § 86.458. Fees for Nonconsent Tows, Refunds**

(a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than a nonconsent tow established under Texas Occupations Code, § 2308.2065.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established under Texas Occupations Code, § 2308.2065.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the amount charged to the owner or operator in excess of the amounts established by Texas Occupations Code.

**Texas Occ. Code § 86.500. Reporting Requirements--Towing Company**

(a) If a political subdivision begins regulating nonconsent tow fees, the towing company must update

the fee schedules provided to the VSF and used by the towing company before the 30th day after the ordinance goes into effect.

(b) Any changes in nonconsent tow fees regulated by a political subdivision must be provided to the VSF by the towing company before the 30th day after the effective date of the change.

(c) Complete lists required. Each time a towing company provides a nonconsent towing fee schedule to the VSF, the towing company must include a complete list of all nonconsent towing fees charged by the towing company. Partial towing fee schedules are not acceptable. Each fee schedule required by this chapter is a complete schedule of all nonconsent towing fees of the company.

(d) If a municipality establishes private property tow fees that are less than the private property tow fees authorized by § 86.455, the fee schedule must separately identify those municipalities and list each authorized fee.

(e) If a municipality establishes private property tow fees that are greater than the private property tow fees authorized by this section, the private property tow fee schedule may not exceed each fee authorized by § 86.455.

## **b. Local Government Antitrust Act**

Responding to a rising tide of antitrust suits against local government bodies in '70's and early '80's, Congress enacted the Local Government Antitrust Immunity Act of 1984 (LGAA). The LGAA's primary operative section reads as follows at 15 USC § 35:

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from any local government, or official or employee thereof acting in an official capacity

The LGAA eliminated the remedy of damages (single or treble) against cities, towns, villages, and special-purpose political subdivisions. Under the LGAA, plaintiffs were also prohibited from recovering money damages from any local government official, agent or employee when acting in an official capacity. The LGAA left intact the availability of injunctive relief in suits against municipalities, and did not affect a plaintiff's ability to sue private party defendants for damages as well as equitable relief. Municipalities are, thus, still subject to possible suit, unless they can bring themselves within the state action defense as described above. However, the stakes for local government bodies and their employees in such a suit have been substantially lowered.

The LGAA was intended as a response to "an increasing number of antitrust suits, and threatened suits, that could undermine a local government's ability to govern in the public interest." *GF Gaming Corp. v. City of Black Hawk, Colo.*, 405 F.3d 876, 885 (10th Cir.2005). To this end, the LGAA "precluded the courts from awarding monetary relief on antitrust claims brought against local government entities". *Thatcher Enterprises v. Cache County Corp.*, 902 F.2d 1472, 1477 (10th Cir.1990). Also see *Pittsburg County Rural Water Dist. No. 7 v. City of McAlester*, 211 F.3d 1279 (10th Cir.2000). By eliminating the threat of monetary damages, the ability of cities to simply moot antitrust claims by modifying their wrecker provisions is greatly increased. See *Chris' Wrecker Service, Inc. v. Town of Fairfield*, 619 F.Supp. 480 (D.C.Conn.1985).

### c. Mere Consumer Exemption:

Local governments that modify their contracts for distributing towing referrals to provide for sole source contracts are generally accused of violating antitrust laws. These claims almost universally fail. Courts held that when a city establishes a price for towing services while acting as a mere consumer, they will generally not be violating the Sherman Anti-Trust Act. In *Brumfield Towing Service, Inc. v. City of Baton Rouge*, 911 F.Supp. 212 (M.D.La.1996), the court held that the City of Baton Rouge, in contracting with one tow company to provide all nonpreference tows for the City, was merely a consumer of services. As a mere consumer, the *Brumfield* Court stated that the City could not violate the Sherman Act. *Id.* at 218.

A claim that others “combined or contracted to fix prices” of a product or service does not amount to a violation of the Sherman Act. The anti-trust laws are aimed only at “price fixing” among those who compete with each other in the provision of goods or services, that is to say among those who sell or provide the same goods or services. Thus, if all the tow truck operators in Baton Rouge got together and agreed with each other upon a schedule of prices to be charged consumers of towing services, that would be a combination or contract to fix prices among competitors and might well be a restraint of trade covered by the Sherman Act.

. . .

Here the City of Baton Rouge has simply acted in its capacity as a consumer of towing services. These towing service contracts, in the view of this court, are no different than other “sole source” contracts which the city might let for police or fire vehicles, for uniforms, for accounting services, or for any other product or service which the city might need. None are prohibited by the anti-trust law

*Brumfield Towing Service, Inc. v. City of Baton Rouge*, 911 F.Supp. 212, 217 (M.D.La., 1996).

The exemption from antitrust for governments acting on their own behalf has been expressed in other cases as well.

The amended complaint, on its face, rebuts the allegations of attempted monopoly by Defendant. West Deer, acting merely as a consumer-as opposed to a provider-of towing services, solicited public bids and at least three bidders participated. This is the essence of a competitive marketplace. See *Brumfield*, 911 F.Supp. at 216-18 (holding that antitrust laws are not implicated when a local government enters into a contract with a provider of towing services).

*Catanese Bros. Inc. v. West Deer Tp.* 2008 WL 2020121, 3 (W.D.Pa.) (W.D.Pa.,2008)

Local governments in the 5<sup>th</sup> Circuit have successfully defended antitrust allegations on the basis of this exception in the following cases:

- *Cardinal Towing & Auto Repair, Inc., v. City of Bedford, Tex.*, 180 F.3d 686, 691 (5th Cir. 1999)
- *Walker County Wrecker & Storage Ass'n v. Walker County*, 604 F.Supp. 28, 30 (S.D.Tex.1984)
- *Fort Bend County Wrecker Association v. Fort Bend County Sheriff Milton Wright*, No. 01-99-00431-CV (Tex.App.—Houston [1st Dist.] 1994)
- *Dumas Towing, LLC v. DeArmond*, 2012 WL 620332, 1 (N.D.Tex.) (N.D.Tex.,2012)
- *Brumfield Towing Service, Inc. v. City of Baton Rouge*, 911 F.Supp. 212, 217 -218 (M.D.La.,1996)

The *Brumfield* case was distinguished in *Martin v. Stites*, 31 F.Supp.2d 926 (D.Kan.1998), in which a towing company alleged that it had been denied a spot on the County rotation list because a competing towing company was involved in an unlawful conspiracy with the local sheriff, who established the policy for giving towing referrals. In *Martin v. Stites*, the District Court stated:

*Brumfield* does not control the instant case because it did not involve any allegations of conspiracy

between the City and the tow company. The court specifically noted that “the City of Baton Rouge [does not] receive any economic benefit from the provision of towing services. The only interest of the City of Baton Rouge is the public interest in removal of disabled vehicles which impede the flow of traffic; the city has no interest in the towing of such vehicles.” . . . Viewing the evidence in the light most favorable to Plaintiffs, a reasonable factfinder could find that the county commissioners and Sheriff Stites have an interest in referring a disproportionate number of tows to Mr. Schoenhals.

...

The court also rejects Defendants' argument that they are entitled to summary judgment because the nonpreference tow market is not a competitive market. Defendants submit that the market is not competitive because the tow companies “are simply waiting their turn to perform tows that have already been earmarked for them.” Defendants miss the point. The competition lies in the “earmarking” process; tow companies are competing for favorable positions on the county tow list. Moreover, they are competing for the repeat business of customers with whom they made contact through a nonpreference tow call. The court finds Defendants' argument that the market is not competitive as a matter of law unpersuasive.

*Martin v. Stites*, 31 F.Supp.2d 926 (D.Kan., 1998)

To bolster this defense against antitrust allegations, local governments should ensure that consumers of towing services in incident tows can still acquire towing services from persons not hired by the City to perform the services. *Brumfield Towing Service, Inc. v. City of Baton Rouge*, 911 F.Supp. 212, 217 -218 (M.D.La.,1996) pointed out this aspect in the following comment:

Without regard to who pays for towing services, there is no restraint of trade here. Those motorists who have a preference of tow truck operators are free to select the operator of their choice (and no price is “fixed” for those services by these contracts). Those motorists who have no preference in \*218 tow truck operators receive the benefit of the price negotiated (“fixed”) on their behalf by the city and the tow truck operators with whom it has contracted. Under Louisiana law, a contract such as this is called a stipulation pour autrui (for the benefit of a third party). Such contracts are lawful and fully enforceable under the provisions of LSA–C.C. Articles 1978 through 1982, including those entered by a municipality in favor of the public. See *Freeman v. Town of Many*, 394 So.2d 693 (La.App. 3rd Cir.), writ denied, 399 So.2d 598 (1981).

Here the city, as a consumer of towing services, has, for itself and the general public, selected the tow truck operators with whom it chooses deal. That election is simply the operation of the free market and in no way represents a “restraint of trade”, although clearly the unsuccessful bidders have lost business. But that is not different from any other unsuccessful bidder in a competitive market. When the city buys police vehicles from one dealer, to the exclusion of others, the unsuccessful bidders lose that business. Clearly, however, the anti-trust laws are in no way implicated in such transactions.

Towing companies as well as other unsuccessful municipal bidders regularly raise Sherman and Clayton antitrust act claims. These claims were being made long before the federal government became involved in preempting wrecker regulation, with generally unsuccessful results, as demonstrated by the following quote from *Kendrick v. City Council of Augusta, Ga.* 516 F.Supp. 1134, 1140 (D.C.Ga., 1981):

The protection of the Sherman Act does not enure to the benefit of all unsuccessful bidders on municipal contracts and places reliance on the pronouncement of the Fifth Circuit that: “(t)he Sherman Act is neither a lowest-responsible-bidder statute nor a panacea for all business affronts which seem to fit nowhere else.” *Scranton Construction Company, Inc. v. Litton Industries Leasing Corporation*, 494 F.2d 778, 783 (5th Cir. 1974), cert. denied, 419 U.S. 1105, 95 S.Ct. 774, 42 L.Ed.2d 800 (1975).



#### **d. Noerr Pennington Doctrine:**

The Noerr-Pennington doctrine arose from three decisions of the United States Supreme Court. In *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464, reh.denied, 365 U.S. 875, 81 S.Ct. 899, 5 L.Ed.2d 864 (1961), the Supreme Court set forth the doctrine in the context of petitioning a legislature for the passage of laws with anticompetitive intent. In *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965), the Court expanded the doctrine's coverage to petitioning the executive for the enforcement of laws. In *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972), the doctrine was expanded to petitioning for relief before a court or administrative agency.

The Noerr-Pennington doctrine has been held to shield entities legally lobbying local agencies and governments from liability. More importantly for municipal lawyers, it has been held to protect government entities and their officials from liability for lobbying third party state regulators. See *Hallco Environmental Inc. v. Comanche County Bd. of County Com'rs*, 149 F.3d 1190 (10th Cir. 1998).

As initially conceived, the Noerr-Pennington doctrine shielded from liability under the federal antitrust act all concerted efforts to influence public officials regardless of the intent or purpose of the petitioners. *United Mine Workers v. Pennington*, supra, 381 U.S. at 670. The doctrine was based on the belief that "it would be destructive of rights of association and of petition to hold that groups with common interests may not, without violating the antitrust laws, use the channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their business and economic interests vis-a-vis their competitors." *California Motor Transport Co. v. Trucking Unlimited*, supra, 404 U.S. At 510-11. However, a sham exception was later established, and lobbying activities fall within the "sham exception" of the antitrust laws when they were found to merely be a disguised attempt to directly injure a competitor and the political actor had no real interest in the outcome. *Friends of Rockland Shelter Animals, Inc. (FORSA) v. Mullen*, 313 F. Supp. 2d 339 (S.D. N.Y. 2004). The Noerr-Pennington Doctrine was held to shield a towing company from antitrust liability in *Western Connecticut Collision Corp. v. Greentree Motors of Danbury, Inc.*, WL 23025580 (Conn.Super., 2003)

#### **e. Lack of Impact on Interstate Commerce:**

Municipalities may defend against federal antitrust claims on the basis that the alleged activities do not impact interstate commerce. This defense was supported by the holding in *Walker County Wrecker and Storage Ass'n, Inc. v. Walker County*, 604 F.Supp. 28, 30 (D.C.Tex.,1984), which stated:

Plaintiffs have failed to state a claim under either the Sherman or Clayton Acts. The principle difficulty with these allegations is that Plaintiffs have failed to allege the requisite effect on interstate commerce. It is a well established principle that a claim brought pursuant to the Sherman or Clayton Act must relate to activities that substantially affect interstate commerce. *Woolen v. Surtran Taxicabs*, 461 F.Supp. 1025, 1033 (N.D.Tex.1978). Plaintiffs claim interstate commerce is affected since some of the towing originated on an interstate highway. This tenuous allegation is insufficient to sustain a claim under the Sherman or Clayton Acts. See *Boro Hall Corp. v. General Motors Corp.*, 130 F.2d 196 (2d Cir.1942) cert. denied, 317 U.S. 695, 63 S.Ct. 436, 87 L.Ed. 556; *Woolen v. Surtran Taxicabs*, 461 F.Supp. 1025 (N.D.Tex.1978).

Finally, it does not appear this is the type of activity the Federal Antitrust Laws are intended to reach due to the intra-state nature of the activities complained of. See *Foster v. Maryland State Savings and Loan Association*, 590 F.2d 928 (D.C.Cir.1978), cert. denied 439 U.S. 1071, 99 S.Ct. 842, 59 L.Ed.2d 37 (1979).

#### **f. Antitrust Recommendations:**

Antitrust law is inherently vague. However, many of the dangerous per se liability rules of the past have been eliminated by the courts over time. Nonetheless, one of the primary objectives of local government wrecker regulation is to limit excessive charges by wrecker companies. To reduce the probability of establishing a class of damaged “consumers”, municipalities should avoid establishing minimum prices for towing services. Instead, cities should only establish maximum prices for nonconsensual towing services, leaving towing companies free to negotiate lower prices with their customers. In addition, findings should be placed in ordinances that establish the desire of municipalities to regulate safety and carefully avoid statements that appear to be favoring particular tow truck companies. Further, state statutory authorizations for wrecker regulation should be researched and mentioned in findings to establish that wrecker regulation was approved for the purpose of furthering state-mandated objectives that lead to any limitation of competition.

#### **6. Dormant Commerce Clause:**

The federal Commerce Clause, Art. I, § 8, cl. 3 of the Constitution, reserves to Congress the power to legislate in matters relating to interstate commerce. The “dormant” Commerce Clause as the law terms it is the “other-side-of-the-coin” limitation on the power of the states to enact laws imposing substantial burdens on interstate commerce. See *South-Central Timber Development Inc. v. Wunnicke*, 467 U.S. 82, 87, 104 S.Ct. 2237, 81 L.Ed.2d 71 (1984). The dormant commerce clause is violated by local regulation if it “unjustifiably discriminates on its face against out-of-state entities or imposes burdens on interstate trade that are clearly excessive in relation to the putative local benefits.” See *Am. Trucking Ass'n v. Michigan Pub. Serv. Comm'n*, 545 U.S. 429, 433, 125 S.Ct. 2419, 162 L.Ed.2d 407 (2005). A City violates dormant commerce clause by requiring licensure for a tow truck merely to travel through a jurisdiction or perform consensual tows in the City for transport to other states. See *Automobile Club of New York, Inc. v. Dykstra*, 423 F. Supp. 2d 279 (S.D. N.Y. 2006); *California Tow Truck Ass'n v. City & County of San Francisco*, Not Reported in F.Supp.2d, 2010 WL 5071602, 7 (N.D.Cal.,2010).

#### **7. Americans with Disabilities Act Claims:**

The U.S. Department of Justice has entertained a unique species of claims against towing companies that are filed with cities. On August 26, 2002, the U.S. Department of Justice entered into an “agreement” with the City of Bryan, Texas, requiring it to modify its policies and procedures for ensuring that the City utilizes the services of towing companies on the City’s wrecker rotation list that are accessible to individuals with disabilities. In its settlement agreement, the City of Bryan agreed to require from wrecker companies, for placement on the City’s rotation list, certification by the wrecker company that it met specified minimum accessibility criteria and agreed to remove wrecker companies from the City’s rotation list that failed to meet the Minimum Accessibility Criteria. See *Settlement agreement between the United States Justice Department and the City of Bryan, Texas*, Department Of Justice Number 204-74-60 (August 26, 2002). <http://www.ada.gov/bryantx.htm>.

## **F. Useful Provisions in Contract System:**

### **1. Control of Maximum Towing Rates:**

An example of a towing rate provision in a contract is as follows:

(1) *Light duty towing* (towing a vehicle with a gross vehicle weight of 10,000 pounds or less):

a. A fee of \$120.00 per hour shall be paid to a towing company for towing a vehicle from one point to another location within the city as directed by the police department. This fee includes any work performed during the first hour. Time posted after the first hour will be billed in increments of 15 minutes.

b. *Second tow truck:* In the event the police officer at the scene determines that a second tow truck is required, a fee of \$120.00 per hour shall be paid to the towing company for any work performed at the scene during the first hour after the arrival of the second tow truck. Time posted for the second tow truck after the first hour will be billed in increments of 15 minutes. The use of the second tow truck shall be approved by a police supervisor. Travel time is excluded.

c. *Use of a dolly:* No additional fees shall be charged for the use of a dolly.

(2) *Medium duty towing* (towing a vehicle with a gross vehicle weight over 10,000 pounds but less than 25,000 pounds):

a. A fee of \$150.00 per hour shall be paid to the towing company for towing a vehicle requiring a medium duty tow from one point to another location within the city as directed by the police department. This fee includes any work performed during the first hour. Time posted after the first hour will be billed in increments of 15 minutes.

b. *Second tow truck:* In the event the police officer at the scene determines that a second medium duty tow truck is required, a fee of \$150.00 per hour shall be paid to the towing company for any work performed at the scene during the first hour after the arrival of the second medium duty tow truck. Time posted for the second tow truck after the first hour will be billed in increments of fifteen (15) minutes. The use of the second tow truck shall be approved by a police supervisor. Travel time is excluded.

c. *Use of a dolly:* No additional fees shall be charged for the use of a dolly.

(3) *Heavy duty towing* (towing a vehicle with a gross vehicle weight of over 25,000 pounds):

a. A fee of \$300.00 per hour shall be paid to the towing company for towing a vehicle requiring a heavy duty tow from one point to another location within the city as directed by the police department. This fee includes any work performed during the first hour. Time posted after the first hour will be billed in increments of 15 minutes.

b. *Second tow truck:* In the event the police officer at the scene determines that a second heavy duty tow truck is required, a fee of \$300.00 per hour shall be paid to the towing company for any work performed at the scene during the first hour after the arrival of the second heavy duty tow truck. Time posted for the second tow truck after the first hour will be billed in increments of 15 minutes. The use of the second tow truck shall be approved by a police supervisor. Travel time is excluded.

c. *Extra equipment:* If the towing company is required to rent or lease a piece of equipment which is not required in the normal operation of a towing company, the actual cost for lease or rental of such equipment may be passed on to the vehicle owner.

d. A minimum of two towing company employees must respond and share the responsibilities with each heavy duty tow truck to expedite the clearing of the roadway and increase safety. Failure to respond with two towing company employees will be counted as a failure to respond and the tow truck will not be allowed to work the scene.

## **2. Revenue Generation for Municipality:**

Contract systems have the advantage of allowing a municipality to generate revenue from members of the rotation list. Cities often spend a great deal of time administering the rotation list and managing disputes between wrecker companies and their consumers, as well as with other wrecker companies. Consequently, cities often have an impetus to recover some of these costs or even generate additional revenue from the towing referral system.

Utilizing a contract approach rather than a direct regulatory approach allows a municipality to generate revenue from tow trucking referrals that would ordinarily not be recoverable under a license-fee system because most states strictly limit the ability of City's to generate fees that exceed the cost of administering an ordinance. See AMJUR LICENSES § 12; *City of Houston v. Harris County Outdoor Advertising Ass'n*, 879 S.W.2d 322 (Tex. App. Houston 14th Dist. 1994), writ denied, (Feb. 16, 1995).

It should be self-evident that using the tow truck referral system as a revenue generation mechanism will require higher rates to be charged to recipients of towing services. Therefore, cities that have small resident populations and large commuter populations have a greater incentive to use towing referral as a revenue generator.

## **3. Business Location:**

It is common to require towing companies to locate their storage facility in the City limits or within a limited driving distance of the municipality. In the absence of such a limit, towing companies may store their vehicles at locations so far outside of town as to be inconvenient for a municipality's citizens.

## **4. Business Hours:**

Towing contracts often require towing companies to have 24-hour availability or minimum time availability for persons who wish to retrieve their towed vehicles.

## **5. Minimum Response Times:**

Many towing contracts require a towing company to respond to the scene of an accident or disablement within a specified period of time. Towing associations tend to recommend avoiding strict time response constraints to avoid unsafe driving by towing companies. However, average response time limitations are appropriate and common. If necessary, towing response can be created to assist towing companies in responding within reasonable time frames.

## **6. Contract Term:**

To avoid creating property rights that can lead to due process lawsuits, towing contracts should expire on a defined date.

## **7. Equipment Requirements:**

Towing contracts often require towing companies to have a minimum specified amount of equipment. Cities subject to heavy snows, thick fog, or other natural disasters and cities that are transected by large highways may desire to encourage towing companies to carry more equipment. The requirement for participants in rotation programs to own larger fleets can be beneficial in multi-vehicle accidents by reducing the number of responders that must be handled by each incident manager. Geographic attributes are important. Mountainous areas may require more sophisticated recovery equipment, while urban areas may require smaller trucks for tight spaces. Minimum equipment provisions should be drafted in conjunction with analysis of state equipment requirements to ensure local requirements do not conflict with state requirements.

Minimum equipment requirements are often subject to intense lobbying. Small towing companies seek to minimize equipment requirements while large towing companies often attempt to customize equipment requirements in a manner that excludes competition.

Limited equipment requirements incentivize the division of towing companies into smaller companies. Complex equipment requirements incentivize the combination of companies into larger entities. To avoid incentivizing size in either direction, some cities distribute towing referrals to companies on the basis of the number of trucks that each company operates. An example of this type of system would be to give towing companies one spot on a rotation list for each truck.

As an example, the City of Wichita Falls requires towing companies on its rotation list contract to have at least one heavy duty tow truck and two medium duty tow trucks. Wichita Falls also has the following minimum tow truck equipment requirements for each tow truck responding to a City incident:

1. 36-inch crowbar;
2. Magnetic tow lights, unless wireless, w/ appropriate cable & cushions;
3. Emergency overhead warning lights;
4. Safety chain;
5. Fire Extinguishers (A.B.C Type), two 5 lb. extinguishers or one 10 lb. extinguisher;
6. Broom;
7. Shovel;
8. Triangle reflectors, flares, cones, or safety lights;
9. Five gallon or larger trash receptacle;
10. Two-way voice or computer communication between tow truck and company dispatcher;
11. Backing warning signal;
12. Wheel chocks;
13. Two dollies;
14. Straps and tie-downs as specific by the tow truck manufacturer; and
15. Gloves.

## **8. Tow Truck Identification Requirements:**

Incident management tasks are simplified when responding vehicles are clearly marked. Consequently, towing contracts often specify that wrecker companies must clearly mark their vehicles. An example of such a clause is as follows:

Each tow truck shall have permanently inscribed and legible on each side of the vehicle, in letters of not less than two (2) inches in height, the Tow Truck Company's own name, street address and telephone number and be on a contrasting background. No other Tow Truck Company names may be inscribed on the sides of the vehicle.

## **9. Training, Experience, and Other Requirements for Drivers:**

Some tow truck contracts establish minimum training and/or experience for drivers responding to incident scenes. One of the useful services provided by the tow trucking associations is certification of drivers. See <http://www.towserver.net/certification.htm> for a listing of some available certifications. Some contracts will also mandate criminal background checks for drivers or allow their removal upon the request of local police.

## **10. Minimum Insurance Requirements:**

Over time, more and more states establish minimum insurance requirements for tow trucking companies. Prior to drafting a minimum insurance provision, municipal attorneys should review their state's minimum insurance requirements. (\$500,000 liability for incident management towing & \$300,000 for private property tows)

## **11. Financial Requirements:**

Cities may desire to deal only with towing companies that exist on a sound financial footing. Also, for the convenience of citizens, participants in towing programs may be required to honor specified credit cards.

## **12. Indemnity & Release:**

Participants in towing programs should be required to indemnify the municipality for claims caused by the companies and waive their claims against the municipality. Contracts differ on the enforceability of contractual indemnity and release obligations. Waivers of previously accrued causes of action against municipalities are broadly upheld and are akin to a settlement of a dispute. However, prospective waivers of liability uniquely can violate public policy. See dictum in *Midwest Towing & Recovery, Inc. v. City of Lancaster*, 2011 WL 249467, 4 (S.D. Ohio, 2011).

## **13. Limit on Owning Multiple Companies or Splitting Companies:**

A prohibition on splitting companies for the purpose of securing additional spots on a rotation list was considered defensible under a rational basis review in *Doug Reed Enterprises, Inc. v. City of Baton Rouge*, 591 So.2d 733 (1<sup>st</sup> Circ. Appeals - Louisiana 1991).

## **14. Reduced Cost Towing for City-initiated Tows:**

Some towing contracts provide for the towing company to provide services at free or reduced cost to the City. An example of such a provision is as follows.

Vehicles owned or leased by the Police Department will not be charged for local towing or tows within a fifty mile radius of the Police Station. There shall be no limit to the number of tows. Towing outside of the 50-mile radius shall be charged at the rate for towing fee plus \$1.00 per mile.

Vehicles owned or leased by the City that are towed by Contractor upon the City's request shall be charged a fee equal to one half of the amount allowed by the City Council.

When a vehicle that is owned or operated by the Allen Police Department is impounded by the Allen Police Department for evidentiary or examination purposes, a fee of \$60.00 shall be charged to the Police Department for reimbursement for towing and impound fees consistent with Texas Code of Criminal Procedure, Article 18.23. Any and all additional fees shall be waived.

If the vehicle is towed from the Police Department to the Impound Site, normal towing, impound and storage fees shall begin after it is towed from the Police Department. Allen Police Department officers accepting a City-owned/operated vehicle at the Police Department shall be responsible for advising the tow driver that the impoundment is being made pursuant to Texas Code of Criminal Procedure Article 18.23.

## **15. Other Potentially Desirable Towing Contract Provisions/Prohibitions:**

Standard boilerplate utilized on other city contracts will be desirable on a city contract with a towing company. In addition, cities may wish to prohibit some or all of the following acts in their contracts with towing companies for referrals:

- Dropping a vehicle or other property at a location other than designated by the police officer and without prior approval from the Police Department.
- Permitting a tow truck to be operated by anyone while under the influence of prescription drugs which could be reasonably anticipated to interfere with a driver's ability to operate the tow truck, alcohol, and/or illegal drugs;
- Permitting a tow truck to be operated by anyone whose operator's or driver's license is suspended, or permitting the operation of a tow truck by an operator who does not hold the proper commercial driver's license to operate said tow truck.
- Transferring or assigning any call for service to any other Towing Company.
- Any sustained complaint of theft by personnel of Towing Company while acting in their capacity as employees of Towing Company, whether occurring during a Police Tow or otherwise.
- Receiving more than \_\_\_ tow passes within the term of this contract.
- Driving any Tow Truck to or from the scene of an accident in a manner which endangers the life or safety of any person.
- Failing to maintain in effect any insurance required by this contract or by City Towing Ordinances.
- Failing to comply with all directions of police personnel at the scene of a police tow
- Failure to comply with any state or federal law or regulation or city ordinance related to the operation of a towing company or operation of a tow truck.
- Failure to properly clean up debris at an accident scene.
- Failure to comply with record keeping requirements of the contract, including complete and accurate records of the towing, receipt, storage, release, and disposal of all vehicles for a period of three years.
- Employing any driver who has been convicted of a felony within the preceding five years.
- Charging fees in excess of the amounts authorized by this contract or by the City Towing Ordinance.
- Sending a prohibited driver to perform a police tow.
- Poaching or circumventing the rotation schedule or policies in place.
- Failing to maintain a currently licensed vehicle storage facility located within the corporate limits of the city .
- Failing to maintain business operation 24 hours a day, 7 days per week.
- Failing to provide vehicle towing service within 30 minutes from the initial request for service for a Light or Medium Duty Tow Truck, and one hour from the initial request for service for a Heavy Duty Tow Truck, except in extraordinary situations where reasonable delay is caused by ice, snow, or other weather-related conditions. Reasonable delay means no more than 2 hours from the initial request for service.
- Failing to directly communicate with responding Tow Truck.
- Failing to notify the City of any change of ownership, president or chief executive officer, or change of address within 5 business days of any such change.
- Failing to deliver the vehicle being towed to the location within the corporate limits of City designated by the police officer at the scene of the tow. Delivery shall be made without delay or detour.
- Failing to fully cooperate with any investigation conducted by the City regarding complaints against Company.
- Failing to timely pay any taxes or fees due the City.
- Going to any accident scene unless the Company has been called to the scene by the owner or operator of a vehicle or an authorized representative of same, or by the City.

- Soliciting any towing business within the corporate limits of the city at the scene of a wrecked or disabled vehicle, regardless of whether the solicitation is for the purpose of soliciting the business of towing, repairing, wrecking, storing, trading, or purchasing the vehicle.
- Failing to only employ drivers of tow trucks authorized to operate same.
- Failing to provide Impound personnel with an invoice at the time the vehicle is delivered to the location directed by the police officer on the scene together with the signed wrecker selection form to be provided.
- Operating an impounded vehicle under any circumstances, unless otherwise instructed or after having received approval from a police officer.
- Permitting a Tow Truck driver to perform a Police Tow when that driver has been disapproved and prohibited by the Chief of Police.
- Unloading Vehicle outside the City Impound Facility, and driving Vehicle into impound.
- Storing any vehicles or Tow Trucks on the public roadways or rights-of-way.
- Failing to use reasonable care in the storage of property not belonging to the permit holder so as to minimize the risk of theft or damage.
- Failing to at all times comply with all rules pertaining to standards for the operation of tow trucks adopted by any agency of the State.
- Failing to provide the owner or operator of a vehicle that has been towed by Company with written city contact information at the time the vehicle owner or operator pays the costs of the vehicle's removal or storage. The city contact information shall include the statement: "If you have any questions regarding the towing of your vehicle, you may contact the . . . at . . ."
- Failing to notify the Chief of Police that a Company Tow Truck is no longer able to perform Police Tows as required by the contract.
- Operating in the City without a City Permit.
- Performing a medium duty or heavy duty tow using a light duty tow truck.
- Performing a heavy duty tow using a medium duty tow truck.
- Failing to respond to Police Dispatch within 15 minutes of the Police Department request



# Texas Towing and Booting Act.

Vernon's Texas Statutes and Codes

Annotated Currentness

Occupations Code (Refs & Annos)

Title 14. Regulation of Motor Vehicles and

Transportation (Refs & Annos)

Subtitle A. Regulations Related to Motor Vehicles

**Chapter 2308. Vehicle Towing and Booting (Refs & Annos)**

**Subchapter A. General Provisions**

**§ 2308.001. Short Title**

This chapter may be cited as the Texas Towing and Booting Act.

## **§ 2308.002. Definitions**

In this chapter:

(1) "Advisory board" means the Towing, Storage, and Booting Advisory Board.

(1-a) "Boot" means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

(1-b) "Booting company" means a person that controls, installs, or directs the installation and removal of one or more boots.

(1-c) "Boot operator" means an individual who installs or removes a boot on or from a vehicle.

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Consent tow" means any tow of a motor vehicle in which the tow truck is summoned 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 an incident management tow or a private property tow.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Driver's license" has the meaning assigned by Section 521.001, Transportation Code.

(5-a) "Incident management tow" means any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the

removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.

(6) "Nonconsent tow" means any tow of a motor vehicle that is not a consent tow, including:

(A) an incident management tow; and

(B) a private property 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 that charges a fee for parking, 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.

(7-a) "Parking facility authorized agent" means an employee or agent of a parking facility owner with the authority to:

(A) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and

(B) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.

(8) "Parking facility owner" means:

(A) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;

(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.

(8-a) "Private property tow" means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

(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. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(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.

#### **§ 2308.003. Expired**

#### **§ 2308.004. Exemption**

(a) This chapter does not apply to a person who, while exercising a statutory or contractual lien right with regard to a vehicle:

(1) installs or removes a boot; or

(2) controls, installs, or directs the installation and removal of one or more boots.

(b) This chapter does not apply to a commercial office building owner or manager who installs or removes a boot in the building's parking facility.

#### **Subchapter B. Advisory Board**

#### **§ 2308.051. Towing, Storage, and Booting 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;

(8) one representative of property and casualty insurers who write automobile insurance in this state; and

<Text of subsec. (a)(9), as added by Acts 2009, 81st Leg., ch. 457, § 8>

(9) one public member.

<Text of subsec. (a)(9), as added by Acts 2009, 81st Leg., ch. 845, § 6.>

(9) one representative of a booting company.

(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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 2308.056. General Powers and Duties**

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

#### **§ 2308.057. Rules**

(a) The commission shall adopt rules for permitting tow trucks and licensing towing operators, towing companies, booting companies, and boot operators. The commission may adopt different rules applicable to each type of permit or license.

(a-1) The commission shall adopt rules for denial of applications and permits if the applicant, a partner, principal, officer, or general manager of the applicant, or other license or permit holder has:

(1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;

(3) failed to submit a license or permit bond in an amount established by the commission;

(4) knowingly submitted false or incomplete information on the application; or

(5) filed an application to permit a tow truck previously permitted by a license or permit holder.

(b) The commission by rule shall adopt:

(1) standards of conduct for license and permit holders under this chapter; and

(2) requirements for a consent tow, private property tow, and incident management tow.

**§ 2308.0575. Rules on Fees; Contract for Study; Confidential Information**

(a) To protect the public health and safety, the commission by rule shall establish:

(1) the fees that may be charged in connection with a private property tow;

(2) the maximum amount that may be charged for fees, other than tow fees, that may be assessed by a towing company in connection with a private property tow; and

(3) a maximum amount that may be charged for the following private property tows:

(A) standard light-duty tows of motor vehicles with a gross weight rating of 10,000 pounds or less;

(B) medium-duty tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and

(C) heavy-duty tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds.

(b) In adopting rules under Subsection (a), the commission shall contract for a study that:

(1) examines towing fee studies conducted by municipalities in this state; and

(2) analyzes the cost of towing services by company, the

consumer price index, the geographic area, and individual cost components.

(c) The commission may structure the maximum amounts that may be charged for private property tows based on hourly or flat fees or by geographic location.

(d) The commission shall maintain the confidentiality of information contained in a study conducted under this section that is claimed to be confidential for competitive purposes and may not release information that identifies a person or company. The confidential information is exempt from disclosure under Chapter 552, Government Code.

(e) To protect the confidentiality of the information, the commission shall aggregate the information to the maximum extent possible considering the purpose of the study.

(f) The department shall contract to conduct a study on private property towing fees under this section at least once every two years.

**§ 2308.058. Fees**

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

**§ 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.

#### **§ 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, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

#### **§ 2308.061. Personnel**

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

### **Subchapter C. Tow Truck Permit Requirements**

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

**§ 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.

#### **§ 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**

##### **§ 2308.151. License Required**

Unless the person holds an appropriate license under this subchapter, a person may not:

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

##### **§ 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.

##### **§ 2308.1521. Vehicle Storage Facility Employee and Towing Operator; Dual License**

(a) The commission shall adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator. The department shall issue the license to an applicant who:

(1) meets the requirements established under:

(A) Section 2308.153, 2308.154, or 2308.155;

(B) Section 2303.1015; and

(C) any applicable rules adopted under this subchapter or Subchapter C, Chapter 2303; and

(2) submits to the department:

(A) an application on a department-approved form; and

(B) the required license fee.

(b) A person holding a license issued under this section may:

(1) work at a vehicle storage facility; and

(2) perform towing operations.

(c) The fee for a license issued under this section may not be:

(1) less than the fee for a license issued under this subchapter or Section 2303.1015; or

(2) more than the sum of the fees for a license issued under this subchapter and a license issued under Section 2303.1015.

##### **§ 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) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

#### **Subchapter D. License Requirements**

##### **§ 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) hold a valid driver's license issued by a state in the United States; and

(2) be certified by a program approved by the department.

##### **§ 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 hold a valid driver's license issued by a state in the United States.

##### **§ 2308.1551. Training License**

(a) The department may issue a training license to an applicant for a license under this subchapter if the applicant:

(1) holds a valid driver's license issued by a state in the United States;

(2) meets the qualifications established by rule by the commission; and

(3) is engaged in the process of learning and assisting in the operation of a tow truck under the supervision of a licensed tow truck operator.

(b) Notwithstanding Subsection (a), an applicant for a license under Section 2308.153 may be supervised by an operator who holds a license issued under Section 2308.153, 2308.154, or 2308.155.

(c) A training license issued under this section expires on the 91st day after the date of issuance and may not be renewed.

(d) The commission by rule shall set the fee, establish the qualifications, and provide for the issuance of a training license under this section.

##### **§ 2308.1555. Boot Operator's License**

(a) A boot operator's license is required to install or remove a boot from a vehicle.

(b) An applicant for a boot operator's license must be at least 18 years of age.

##### **§ 2308.1556. Booting Company License**

(a) A booting company license is required for a person to operate a booting company.

(b) To be eligible for a booting company license, an applicant must submit evidence that the applicant is covered by:

(1) a general liability insurance policy on a broad form with:

(A) a combined single limit for bodily injury and property damage for each occurrence of at least \$500,000; and

(B) an aggregate limit for all occurrences for each policy year of at least \$500,000; and

(2) an automobile liability insurance policy covering the applicant and the applicant's employees for vehicles owned, hired, or otherwise used in the applicant's business, with a combined single limit for each occurrence of at least \$500,000.

##### **§ 2308.156. Nontransferability of License**

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

##### **§ 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 incident management towing that is approved and administered by the department under this section.

**§ 2308.158. Alcohol And Drug Testing of Towing Operators**

(a) A towing company shall establish an alcohol and drug testing policy for towing operators. A towing company that establishes an alcohol and drug testing policy under this subsection may adopt the model alcohol and drug testing policy adopted by the commission or may use another alcohol and 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 alcohol and drug testing policy for use by a towing company. The model alcohol and drug testing policy must be designed to ensure the safety of the public through appropriate alcohol and drug testing and to protect the rights of employees. The model alcohol and drug testing policy must:

(1) require at least one scheduled drug test each year for each towing operator; and

(2) authorize random, unannounced alcohol and drug testing for towing operators.

**§ 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) submitting an application on a form prescribed by the executive director;

(2) submitting evidence demonstrating compliance with the requirements for the license type as required by this chapter or commission rule;

(3) paying a renewal fee; and

(4) completing continuing education as required by Section 2308.157.

**Subchapter E. Local Regulation of Towing and Booting § 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. [FN1]

(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.

[FN1] V.T.C.A., Transportation Code § 501.001 et seq.

**§ 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 if the private property tow fees:

- (1) are authorized by commission rule; and
- (2) do not exceed the maximum amount authorized by commission rule.

**§ 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.

§ 2308.204. Repealed by Acts 2011, 82nd Leg., ch. 353 (H.B. 3510), § 19(a)(1), eff. Sept. 1, 2011

§ 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.

§ 2308.206. Repealed by Acts 2011, 82nd Leg., ch. 353 (H.B. 2510), § 19(a)(2), eff. Sept. 1, 2011

§ 2308.2065. Fees for Nonconsent Tows; Refunds

(a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than:

- (1) the fee for a nonconsent tow established under Section 2308.0575; or
- (2) a fee for a nonconsent tow authorized by a political subdivision.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established:

- (1) under Section 2308.0575; or
- (2) by a political subdivision.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the:

- (1) amount charged to the owner or operator in excess of the amounts established by commission rule or by a political subdivision; or
- (2) total amount of the charges for a service not listed in the amounts established by commission rule or by a political subdivision.

§ 2308.207. Repealed by Acts 2009, 81st Leg., ch. 757, § 13, eff. Sept. 1, 2009

§ 2308.208. Municipal or County Ordinance Regulating Unauthorized Vehicles and Towing of Motor Vehicles

The governing body of a municipality or the commissioners court of a county 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.

§ 2308.2085. Municipal Ordinance Regulating Booting Companies and Operators

(a) A municipality may adopt an ordinance that is identical to the booting provisions in this chapter or that imposes additional requirements that exceed the minimum standards of the booting provisions in this chapter but may not adopt an ordinance that conflicts with the booting provisions in this chapter.

(b) A municipality may regulate the fees that may be charged in connection with the booting of a vehicle, including associated parking fees.

(c) A municipality may require booting companies to obtain a permit to operate in the municipality.

§ 2308.209. Tow Rotation List in Certain Counties

(a) Repealed by Acts 2009, 81st Leg., ch. 87, § 27.002(37).

(b) This section applies only to the unincorporated area of a county:

- (1) with a population of 550,000 or more that is adjacent to a county with a population of 3.3 million or more;
- (2) with a population of less than 10,000 that is located in a national forest; or
- (3) adjacent to a county described by Subdivision (2) that has a population of less than 75,000.

(c) The sheriff's office may maintain a list of towing companies to perform nonconsent tows of motor vehicles initiated by a peace officer investigating a traffic accident or a traffic incident. The towing companies must operate in a county to which this section applies.

(d) A peace officer initiating a nonconsent tow of a motor vehicle involved in a traffic accident or traffic incident that the officer is investigating shall notify the sheriff's office that the tow is being initiated. The sheriff's office shall contact successive towing companies on the tow rotation list until a company agrees to carry out the tow.

(e) The sheriff's office may assess a towing company an administrative fee to be included on the tow rotation list in an amount not to exceed the amount necessary to implement this section.

(f) The commissioners court of a county in which a list is maintained under Subsection (c) shall adopt policies to implement this section in a manner that ensures:

(1) equal distribution of nonconsent tows among the towing companies that perform nonconsent tows in the county; and

(2) consumer protection, including fair pricing, for owners or operators of motor vehicles towed by towing companies on the tow rotation list.

(g) The sheriff's office shall make a list maintained under this section available for public inspection.

(h) In a county in which a list is maintained under Subsection (c), a person commits an offense if:

(1) the person arrives at the scene of a traffic accident or traffic incident to perform a nonconsent tow of a motor vehicle without first being contacted by the sheriff's office;

(2) the person directly or indirectly solicits, on streets located in the county, towing services, including towing, removing, repairing, wrecking, storing, trading, selling, or purchasing related to a vehicle that has been damaged in an accident to the extent that it cannot be normally and safely driven; or

(3) the person enters the scene of a traffic accident, traffic incident, or other area under the control of a peace officer without the permission of the peace officer.

(i) An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than \$1 or more than \$200.

## **Subchapter F. Unauthorized Vehicles**

### **§ 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);

(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; or

(5) is leaking a fluid that presents a hazard or threat to persons or property.

(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.

### **§ 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 [FN1] 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) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and 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) 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.

[FN1] V.T.C.A., Occupations Code § 2308.301 et seq. § 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, [FN1] 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.

[FN1] V.T.C.A., Occupations Code § 2308.301 et seq. § 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.

**§ 2308.255. Towing Company's or Boot Operator's Authority to Remove and Store or Boot 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) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that

will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section 2308.251;

(B) in or obstructing a portion of a paved driveway; or

(C) on a 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) and a boot operator may boot a vehicle under Section 2308.257 only if the parking facility owner:

(1) requests that the towing company remove and store or that the boot operator boot the specific vehicle; or

(2) has a standing written agreement with the towing company or boot operator to enforce parking restrictions in the parking facility.

**§ 2308.2555. Removal of Certain Unauthorized Vehicles in Rural Areas**

(a) This section applies only to an abandoned vehicle that has damaged a fence on private property in a rural area.

(b) A law enforcement agency directing a towing company or tow operator to remove an abandoned vehicle that is located on private property shall provide the towing company or tow operator with the name and telephone number of the property owner or the owner's agent if the owner or agent has provided the information to the law enforcement agency.

(c) A towing company or tow operator provided with information under Subsection (b) shall contact the property owner or the owner's agent before entering private property to tow a vehicle described by Subsection (a).

**§ 2308.256. Repealed by Acts 2011, 82nd Leg., ch. 91 (S.B. 1303), § 18.005, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., ch. 353 (H.B. 3510), § 19(b), eff. Sept. 1, 2011**

**§ 2308.2565. Vehicle Storage Facility Duty to Report After Accepting Unauthorized Vehicle**

(a) Except for an incident management tow requested by a law enforcement agency, 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 from which the vehicle was towed or, if the vehicle was towed from a location that is not in a municipality with a police department, to the sheriff of the county from which the vehicle was towed:

- (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 in which the vehicle is being stored.

(b) A law enforcement agency may request a vehicle storage facility to provide a report, in a manner prescribed by the law enforcement agency, of incident management tows within the jurisdiction of the agency. A vehicle storage facility must provide the report not later than 48 hours after the time the facility receives the request.

**§ 2308.257. Booting of Unauthorized Vehicle**

(a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle in the parking facility if signs that comply with Subchapter G [FN1] prohibiting unauthorized vehicles are located on the parking facility at the time of the booting and for the preceding 24 hours and remain installed at the time of the booting.

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

- (1) that the vehicle has been booted and damage may occur if the vehicle is moved;

(2) the date and time the boot was installed;

(3) the name, address, and telephone number of the booting company;

(4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;

(5) the amount of the fee for removal of the boot and any associated parking fees; and

(6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J. [FN2]

(c) On removal of a boot, the boot operator shall provide a receipt to the vehicle owner or operator stating:

(1) the name of the person who removed the boot;

(2) the date and time the boot was removed;

(3) the name of the person to whom the vehicle was released;

(4) the amount of fees paid for removal of the boot and any associated parking fees; and

(5) the right of the vehicle owner or operator to a hearing under Subchapter J.

(d) The booting company shall maintain a copy of the receipt at its place of business for a period of three years. A peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.

(e) A booting company shall accept payment by an electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot. A booting company may not collect a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept.

[FN1] V.T.C.A., Occupations Code § 2308.301 et seq.

[FN2] V.T.C.A., Occupations Code § 2308.451 et seq.

**Subchapter G. Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas (Refs & Annos)**

**§ 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) or booted under Section 2308.257 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) or booted under Section 2308.257 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, as applicable:

(A) "Unauthorized Vehicles Will Be Towed or Booted at Owner's or Operator's Expense";

(B) "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense"; or

(C) "Unauthorized Vehicles Will Be Booted at Owner's or Operator's Expense";

(6) contains a statement of the days and hours of towing and booting 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 a towed vehicle or to arrange for removal of a boot from a vehicle.

## **Title 14. Regulation of Motor Vehicles and Transportation (Refs & Annos)**

### **Subtitle A. Regulations Related to Motor Vehicles**

#### **Chapter 2308. Vehicle Towing and Booting (Refs & Annos)**

##### **Subchapter G. Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas (Refs & Annos)**

###### **§ 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:

(1) in lettering at least two inches in height, contain the words, as applicable:

(A) "Towing and Booting Enforced";

(B) "Towing Enforced"; or

(C) "Booting Enforced"; and

(2) 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 numbers 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.

**§ 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.

**§ 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.

**§ 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 (Refs & Annos)**

**§ 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.

**§ 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.

**§ 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. [FN1]

(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).

[FN1] V.T.C.A., Occupations Code § 2308.301 et seq. § 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.

(c) In addition to the authority granted under Subsection (a) and to aid in the enforcement of an ordinance regulating the parking of vehicles, a municipality with a population of 1.9 million or more may authorize a designated employee to request the removal of a vehicle parked illegally in an area designated as a tow-away zone in a residential area where on-street parking is regulated by the ordinance.

(d) Subsections (a) and (c) do not apply to a vehicle owned by an electric, gas, water, or telecommunications utility while the vehicle is parked for the purpose of conducting work on a facility of the utility that is located below, above, or adjacent to the street.

## **Subchapter I. Regulation of Towing Companies, Booting Companies, and Parking Facility Owners (Refs & Annos)**

### **§ 2308.401. Parking Facility Owner Prohibited From Receiving Financial Gain From Towing Company or Booting Company**

(a) A parking facility owner may not directly or indirectly accept anything of value from:

(1) a towing company in connection with the removal of a vehicle from a parking facility; or

(2) a booting company in connection with booting a vehicle in a parking facility.

(b) A parking facility owner may not have a direct or indirect monetary interest in:

(1) a towing company that for compensation removes unauthorized vehicles from a parking facility in which the parking facility owner has an interest; or

(2) a booting company that for compensation boots vehicles in a parking facility in which the parking facility owner has an interest.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

### **§ 2308.402. Towing Company and Booting Company Prohibited From Financial Involvement With Parking Facility Owner**

(a) A towing company or booting company may not directly or indirectly give anything of value to a parking facility owner in connection with:

(1) the removal of a vehicle from a parking facility; or

(2) the booting of a vehicle in a parking facility.

(b) A towing company or booting company may not have a direct or indirect monetary interest in a parking facility:

(1) from which the towing company for compensation removes unauthorized vehicles; or

(2) in which the booting company for compensation installs boots on unauthorized vehicles.

(c) This section does not apply to a sign required under Section 2308.301 provided by a towing or booting company to a parking facility owner.

**§ 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.

**§ 2308.404. Civil Liability of Towing Company, Booting Company, or Parking Facility Owner for Violation of Chapter**

- (a) A towing company, booting 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, storage, or booting of the vehicle; and
  - (2) towing, storage, or booting fees assessed in connection with the vehicle's removal, storage, or booting.
- (b) A vehicle's owner or operator is not required to prove negligence of a parking facility owner, towing company, or booting company to recover under Subsection (a).
- (c) A towing company, booting 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 \$1000 plus three times the amount of fees assessed in the vehicle's removal, towing, storage, or booting.
- (d) Repealed by Acts 2011, 82nd Leg., ch. 353 (H.B. 3510), § 19(a)(3).

**§ 2308.405. Criminal Penalty**

A person commits an offense if the person violates this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$500 or more than \$1,500 unless it is shown on trial of the offense that the person knowingly or intentionally violated this chapter, in which event the offense is a Class B misdemeanor.

**§ 2308.406. Violation of Chapter; Injunction**

A violation of this chapter may be enjoined under Subchapter E, Chapter 17, Business & Commerce Code. [FN1]

[FN1] V.T.C.A., Bus. & C. § 17.41 et seq.

**§ 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 or Booted Vehicles (Refs & Annos)**

**§ 2308.451. Payment of Cost of Removal, Storage, and Booting 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 towing company, vehicle storage facility, or parking facility owner 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.
- (c) If in a hearing held under this chapter the court finds that a person authorized, with probable cause, the booting of a vehicle in a parking facility, the person who requested the hearing shall pay the costs of the booting.
  - (c-1) If, in a hearing held under this chapter, regardless of whether the court finds that there was probable cause for the removal and storage of a vehicle, the court finds that the towing charge collected exceeded fees regulated by a political subdivision or authorized by this chapter or Chapter 2303, the towing company shall reimburse the owner or operator of the vehicle an amount equal to the overcharge.
- (d) If in a hearing held under this chapter the court does not find that a person authorized, with probable cause, the booting of a vehicle, the person that authorized the booting shall:

(1) pay the costs of the booting and any related parking fees; or

(2) reimburse the owner or operator for the cost of the booting and any related parking fees paid by the owner or operator.

**§ 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 or booted 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 or booting.

**§ 2308.453. Jurisdiction**

A hearing under this chapter shall be in the justice court having jurisdiction in:

(1) the precinct from which the motor vehicle was towed; or

(2) for booted vehicles, the precinct in which the parking facility is located.

**§ 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, [FN1] shall include with that notice a notice of the person's rights under this chapter.

(c) If before a hearing held under this chapter the owner or operator of a vehicle pays the costs for removal of a boot, the booting company shall at the time of payment give the owner or operator written notice of the person's rights under this chapter.

(d) The booting operator that places a notice on a booted vehicle under Section 2308.257 shall include with that notice a notice of the person's rights under this chapter.

(e) If the towing company or vehicle storage facility that received the payment fails to furnish to the owner or operator of the vehicle the name, address, and telephone number of the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company or vehicle storage facility that received

the payment is liable if the court, after a hearing, does not find probable cause for the removal and storage of the vehicle.

[FN1] V.T.C.A., Occupations Code § 2303.151 et seq. § 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, or install a boot on, 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 or the booting company that booted the vehicle;

(3) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(4) the name, street address including city, state, and zip code, and telephone number of the person, parking facility 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 parking facility is located.

**§ 2308.456. Request for Hearing**

(a) Except as provided by Subsections (c) and (c-1), 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 or booted, 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 or in which the vehicle was booted;

(3) the date when the vehicle was removed or booted;

(4) the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting;

(5) the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

(6) the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle;

(7) a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and

(8) if the vehicle was removed from or booted in 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.

(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.

(c-1) The 14-day period for requesting a hearing under Subsection (a) does not begin until the date on which the towing company or vehicle storage facility provides to the vehicle owner or operator the information necessary for the vehicle owner or operator to complete the material for the request for hearing required under Subsections (b)(2) through (6).

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

#### **§ 2308.457. Filing Fee Authorized**

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

#### **§ 2308.458. Hearing**

(a) A hearing under this chapter shall be held before the 21st calendar day after the date the court receives the request for the hearing.

(b) The court shall notify the person who requested the hearing for a towed vehicle, the parking facility owner or law enforcement agency that authorized the removal of the vehicle, the towing company, 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 towing company and the parking facility owner or law enforcement agency that authorized the removal of the vehicle must include a copy of the request for hearing. Notice to the law enforcement agency that authorized the removal of the vehicle is sufficient as notice to the political subdivision in which the law enforcement agency is located.

(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.

(b-2) The court shall notify the person who requested the hearing for a booted vehicle, the parking facility in which the vehicle was booted, and the booting company of the date, time, and place of the hearing in a manner provided by Rule 21a, Texas Rules of Civil Procedure. The notice of hearing to the person that authorized the booting of the vehicle must include a copy of the request for hearing.

(c) The issues in a hearing regarding a towed vehicle 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

(4) 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 2308.0575.

(c-1) The issues in a hearing regarding a booted vehicle under this chapter are:

(1) whether probable cause existed for the booting of the vehicle; and

(2) whether a boot removal charge imposed or collected in connection with the removal of the boot from the

vehicle was greater than the amount authorized by the political subdivision under Section 2308.2085.

(d) The court shall make written findings of fact and a conclusion of law.

(e) The court may award:

(1) court costs and attorney's fees 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 or booting removal charge and associated parking fees 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, storage, or removal of a boot.

#### **§ 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.

#### **§ 2308.460. Enforcement of Award**

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

(b) The department shall suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment. The department must provide notice of the suspension to the license holder at least 30 days before the date the license is to be suspended.

(c) The owner or operator of the vehicle shall submit a certified copy of the final judgment to the department.

(d) On receipt of the certified copy of the unpaid final judgment, the department shall disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.

(e) The department shall reinstate the license on submission of evidence satisfactory to the department of

payment of the final judgment by the person, towing company, or vehicle storage facility.

### **Subchapter K. Enforcement**

#### **§ 2308.501. Administrative Penalty**

(a) The commission may impose an administrative penalty on a person under Subchapter F, Chapter 51, [FN1] 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.

[FN1] V.T.C.A., Occupations Code § 51.301 et seq.

#### **§ 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.

#### **§ 2308.503. Sanctions**

The department may impose sanctions as provided by Section 51.353.

#### **§ 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. An offense under this section is enforceable by law enforcement.

**§ 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, 2308.202, or 2308.2085 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 or booting under Section 2308.2085 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, towing company, or booting 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. An offense under this section is enforceable by law enforcement.

Current through the end of the 2011 Regular Session and  
First Called Session of the 82nd Legislature  
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**Art. 18.23. Expenses for Motor Vehicle Towed and Stored for Certain Purposes**

(a) A law enforcement agency that directs the towing and storage of a motor vehicle for an evidentiary or examination purpose shall pay the cost of the towing and storage.

(b) Subsection (a) applies whether the motor vehicle is taken to or stored on property that is:

- (1) owned or operated by the law enforcement agency; or
- (2) owned or operated by another person who provides storage services to the law enforcement agency, including:
  - (A) a governmental entity; and
  - (B) a vehicle storage facility, as defined by Section 2303.002, Occupations Code.

(c) Subsection (a) does not require a law enforcement agency to pay the cost of:

- (1) towing or storing a motor vehicle for a purpose that is not an evidentiary or examination purpose, including towing or storing a vehicle that has been abandoned, illegally parked, in an accident, or recovered after being stolen; or
- (2) storing a motor vehicle after the date the law enforcement agency authorizes the owner or operator of the property to which the vehicle was taken or on which the vehicle is stored to release the vehicle to the vehicle's owner.

(d) This subsection applies only to a motor vehicle taken to or stored on property described by Subsection (b)(2). After a law enforcement agency authorizes the release of a motor vehicle held for an evidentiary or examination purpose, the owner or operator of the storage property may not refuse to release the vehicle to the vehicle's owner because the law enforcement agency has not paid the cost of the towing and storage.

(e) Subchapter J, Chapter 2308, Occupations Code, does not apply to a motor vehicle directed by a law enforcement agency to be towed and stored for an evidentiary or examination purpose.

# Texas Vehicle Storage Facility Act

Vernon's Texas Statutes and Codes  
Annotated Currentness  
Occupations Code (Refs & Annos)  
Title 14. Regulation of Motor Vehicles and  
Transportation (Refs & Annos)  
Subtitle A. Regulations Related to Motor Vehicles

## Chapter 2303. Vehicle Storage Facilities Subchapter A. General Provisions

### § 2303.001. Short Title

This chapter may be cited as the **Vehicle Storage Facility Act**.

### § 2303.002. Definitions

In this chapter:

- (1) "Abandoned nuisance vehicle" means a motor vehicle that is:
  - (A) at least 10 years old; and
  - (B) of a condition only to be demolished, wrecked, or dismantled.
- (2) "Commission" means the Texas Commission of Licensing and Regulation.
- (3) "Department" means the Texas Department of Licensing and Regulation.
- (4) "Executive director" means the executive director of the department.
- (5) "Owner of a vehicle" 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, holds an affidavit of repossession, and is entitled to repossess the vehicle.
- (6) "Principal" means an individual who:
  - (A) personally or constructively holds, including as the beneficiary of a trust:
    - (i) at least 10 percent of a corporation's outstanding stock; or

- (ii) more than \$25,000 of the fair market value of a business entity;
- (B) has the controlling interest in a business entity;
- (C) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits, proceeds, or capital gains of a business entity;
- (D) is a member of the board of directors or other governing body of a business entity; or
- (E) serves as an elected officer of a business entity.

(7) "Vehicle" means:

- (A) a motor vehicle for which the issuance of a certificate of title is required under Chapter 501, Transportation Code; or
- (B) any other device designed to be self-propelled or transported on a public highway.

(8) "Vehicle storage facility" means a garage, parking lot, or other facility that is:

- (A) owned by a person other than a governmental entity; and
- (B) used to store or park at least 10 vehicles each year.

### § 2303.003. Exemptions

- (a) This chapter does not apply to a vehicle stored or parked at a vehicle storage facility with the consent of the owner of the vehicle.
- (b) This chapter does not apply to a vehicle storage facility operated by a person licensed under Chapter 2301.

## Subchapter B. Powers and Duties of Commission and Department

### § 2303.051. Rulemaking: License Requirements

The commission shall adopt rules that:

- (1) establish the requirements for a person to be licensed to operate a vehicle storage facility to ensure that the facility maintains adequate standards for the care of stored vehicles;
- (2) relate to the administrative sanctions that may be imposed on a person licensed under this chapter;
- (3) govern the administration of this chapter.

### § 2303.052. Issuance of License; Fees

(a) The department may issue licenses to operate vehicle storage facilities.

(b) The department may impose and collect a fee for a license in an amount sufficient to cover the costs incurred by the department in administering this chapter.

### § 2303.053. Rules Regarding Payment of Fee



(a) The commission may adopt rules regarding the method of payment of a fee under this chapter.

(b) The rules may authorize the use of:

- (1) electronic funds transfer; or
- (2) a credit card issued by a financial institution chartered by:
  - (A) a state or the federal government; or
  - (B) a nationally recognized credit organization approved by the department.

(c) The rules may require the payment of a discount or a service charge for a credit card payment in addition to the fee.

#### § 2303.054. Rules Restricting Advertising or Competitive Bidding

(a) The commission may not adopt a rule restricting advertising or competitive bidding by a person licensed under this chapter except to prohibit a false, misleading, or deceptive practice.

(b) In its rules to prohibit a false, misleading, or deceptive practice, the commission may not include a rule that:

- (1) restricts the person's use of any advertising medium;
- (2) restricts the person's personal appearance or the use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person; or
- (4) restricts the person's advertisement under a trade name.

#### § 2303.055. Examination of Criminal Conviction

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

#### § 2303.056. 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 holder is in violation of this chapter or in violation of a rule or order of the commission or executive director.

(b) At least once every two years, the department shall inspect a vehicle storage facility that holds a license under this chapter.

(c) 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 vehicle storage facility;
- (2) the inspection history of the vehicle storage facility;
- (3) any history of violations involving the vehicle storage facility; and
- (4) any other factor determined by the commission by rule.

(d) The vehicle storage facility shall pay a fee for each risk-based inspection performed under Subsection (c). The commission by rule shall set the amount of the fee.

#### § 2303.057. Personnel

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

#### § 2303.058. Advisory Board

The Towing, Storage, and Booting Advisory Board under Chapter 2308 shall advise the commission in adopting vehicle storage rules under this chapter.

#### Subchapter C. License Requirements, Issuance, and Renewal

##### § 2303.101. Facility License Required

(a) A person may not operate a vehicle storage facility unless the person holds a license issued under this chapter.

(b) A license issued under this chapter:

- (1) is valid only for the person who applied for the license; and
- (2) applies only to a single vehicle storage facility named on the license.

##### § 2303.1015. Employee License Required

(a) A person may not work at a vehicle storage facility unless the person holds a license issued under this chapter.

(b) The commission shall adopt rules governing the application for and issuance of a license under this section.

##### § 2303.1016. Vehicle Storage Facility Employee and Towing Operator; Dual License

(a) The commission shall adopt rules for the issuance of a dual license for a person who is a vehicle storage facility employee and towing operator. The department shall issue the license to an applicant who:

- (1) meets the requirements established under:
  - (A) Section 2303.1015;
  - (B) Section 2308.153, 2308.154, or 2308.155; and
  - (C) any applicable rules adopted under this subchapter or Subchapter D, Chapter 2308; and
- (2) submits to the department:
  - (A) an application on a department-approved form; and
  - (B) the required license fee.

(b) A person holding a license issued under this section may:

- (1) work at a vehicle storage facility; and
- (2) perform towing operations.

#### § 2303.102. License Application

(a) The commission by rule shall determine the types of information to be included in an application for a license under this chapter on a form prescribed by the executive director.

(b) The rules adopted under this section must require an application for a facility license to list:

- (1) the name and address of each partner, if the applicant is a partnership; and
- (2) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

(c) A corporation's application must be signed and sworn to by the president and secretary of the corporation.

#### § 2303.103. Eligibility

The department shall approve an application submitted as provided by Section 2303.102 unless the department determines that:

- (1) the applicant knowingly supplied false or incomplete information on the application;
- (2) in the three years preceding the date of application, the applicant, a partner, principal, or officer of the applicant, or the general manager of the applicant, was convicted of:
  - (A) a felony; or
  - (B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; or

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

#### § 2303.104. Notice of Denial; Opportunity to Comply

(a) If the department denies an application for a license under this chapter, the department shall send written notice of the decision to the applicant at the address

shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision and that the applicant is entitled to a hearing before the department under Subchapter E. [FN1]

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter and commission rules not later than the 14th day after the date the applicant receives the notice, the department shall approve the application.

[FN1] V.T.C.A., Occupations Code § 2303.201 et seq. § 2303.105. Term of License; Notice of Expiration

(a) A license issued under this chapter is valid for the period set by the department.

(b) Not later than the 30th day before the expiration date of a person's license, the department shall send written notice of the impending license expiration to the person at the person's last known address according to the department's records.

#### § 2303.106. Procedure for Renewal

(a) A person may apply to the department to renew the person's license. The application for renewal must be:

- (1) made on a form approved by the department;
- (2) submitted to the department before the expiration date of the license; and
- (3) accompanied by a nonrefundable fee.

(b) A person whose license expires and is not renewed under this section may apply for a new license under Section 2303.102.

### **Subchapter D. Practice by License Holder**

#### **§ 2303.151. Notice to Vehicle Owner or Lienholder**

(a) The operator of a vehicle storage facility who receives a vehicle that is registered in this state and that is towed to the facility for storage shall send a written notice to the registered owner and the primary lienholder of the vehicle not later than the fifth day after the date but not earlier than 24 hours after the date the operator receives the vehicle.

(b) Except as provided by Section 2303.152, the operator of a vehicle storage facility who receives a vehicle that is registered outside this state shall send a written notice to the registered owner and each recorded lienholder of the vehicle not later than the 14th day after the date but not

earlier than 24 hours after the date the operator receives the vehicle.

(c) It is a defense to an action initiated by the department for a violation of this section that the operator of the facility unsuccessfully attempted in writing or electronically to obtain information from the governmental entity with which the vehicle is registered.

(d) A notice under this section must:

- (1) be correctly addressed;
- (2) carry sufficient postage; and
- (3) be sent by certified mail, return receipt requested or electronic certified mail.

(e) A notice under this section is considered to have been given on the date indicated on the postmark and to be timely filed if:

- (1) the postmark indicates that the notice was mailed within the period described by Subsection (a) or (b), as applicable; or
- (2) the notice was published as provided by Section 2303.152.

#### § 2303.1511. 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 local law enforcement agency with jurisdiction over the area from which the vehicle was towed:

- (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 electronically or delivered personally or by facsimile.

(c) This section does not apply to a vehicle received as a result of an incident management tow requested by a law enforcement agency unless the law enforcement agency requests a report of incident management tows within the jurisdiction of the agency. In this subsection, "incident management tow" has the meaning assigned by Section 2308.002.

#### § 2303.152. Notice by Publication

(a) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility

may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

- (1) the vehicle is registered in another state;
- (2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;
- (3) the identity of the registered owner cannot be determined;
- (4) the registration does not contain an address for the registered owner; or
- (5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(b) The written request must:

- (1) be correctly addressed;
- (2) carry sufficient postage; and
- (3) be sent by certified mail, return receipt requested.

(c) Notice by publication is not required if each notice sent as provided by Section 2303.151 is returned because:

- (1) the notice was unclaimed or refused; or
- (2) the person to whom the notice was sent moved without leaving a forwarding address.

(d) Only one notice is required to be published for an abandoned nuisance vehicle.

(e) Notice to the registered owner and the primary lienholder of a vehicle towed to a vehicle storage facility may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

- (1) the vehicle does not display a license plate or a vehicle inspection certificate indicating the state of registration;
- (2) the identity of the registered owner cannot reasonably be determined by the operator of the storage facility; or
- (3) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

#### § 2303.153. Contents of Notice

(a) A notice by mail provided under Section 2303.151 must include:

- (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 any other charge to be paid when the vehicle is claimed;
- (5) the full name, street address, and telephone number of the vehicle storage facility;
- (6) the hours during which the owner may claim the vehicle; and
- (7) the facility license number preceded by "Texas Department of Transportation Vehicle Storage Facility License Number."

(b) A notice by publication provided under Section 2303.152 must include:

- (1) the vehicle description;
- (2) the total charges;
- (3) the full name, street address, and telephone number of the facility; and
- (4) the department registration number.

(c) Notice by publication is not required to include any information other than that listed in Subsection (b).

(d) Notice by publication may include a list of more than one vehicle, watercraft, or outboard motor.

#### § 2303.154. Second Notice; Consent to Sale

(a) If a vehicle is not claimed by a person permitted to claim the vehicle or a law enforcement agency has not taken an action in response to a notice under Section 683.031(c), Transportation Code, before the 15th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall send a second notice to the registered owner and the primary lienholder of the vehicle.

(a-1) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under Section 2303.151 or 2303.152, the operator of the vehicle storage facility shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

(b) Notice under this section must include:

- (1) the information listed in Section 2303.153(a);
- (2) a statement of the right of the facility to dispose of the vehicle under Section 2303.157; and
- (3) a statement that the failure of the owner or lienholder to claim the vehicle before the 30th day after the date the notice is provided is:
  - (A) a waiver by that person of all right, title, or interest in the vehicle; and
  - (B) a consent to the sale of the vehicle at a public sale.

(c) Notwithstanding Subsection (b), if publication is required for notice under this section, the notice must include:

- (1) the information listed in Section 2303.153(b); and
- (2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:
  - (A) a waiver of all right, title, and interest in the vehicle; and
  - (B) a consent to the sale of the vehicle at a public sale.

#### § 2303.1545. Disposition of Abandoned Nuisance Vehicle

(a) A vehicle storage facility that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under Section 2303.151 or 2303.152.

(b) The facility may:

- (1) notify the department that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee of \$10 to the department; or
- (2) in the alternative, notify the appropriate law enforcement agency and pay a fee of \$10 to that agency.

(c) A law enforcement agency described by Subsection (b)(2) may sign a document issued by the department.

#### § 2303.155. Charges Related to Storage

(a) For the purposes of this section, “governmental vehicle storage facility” means a garage, parking lot, or other facility that is:

- (A) owned by a governmental entity; and
- (B) used to store or park at least 10 vehicles each year.

(b) The operator of a vehicle storage facility or governmental vehicle storage facility may charge the owner of a vehicle stored or parked at the facility:

- (1) a notification fee set in a reasonable amount for providing notice under this subchapter, including notice under Section 2303.154(c);
- (2) an impoundment fee of \$20 for any action that:
  - (A) is taken by or at the direction of the owner or operator of the facility; and
  - (B) is necessary to preserve, protect, or service a vehicle stored or parked at the facility;
- (3) a daily storage fee of:
  - (A) not less than \$5 and not more than \$20 for each day or part of a day the vehicle is stored at the facility if the vehicle is not longer than 25 feet; or
  - (B) \$35 for each day or part of a day the vehicle is stored at the facility if the vehicle is longer than 25 feet;
- (4) any fee that is required to be submitted to a law enforcement agency, the agency’s authorized agent, or a governmental entity; and
- (5) a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(c) A notification fee under Subsection (b) may not exceed \$50, except that if notice by publication is required by this chapter and the cost of publication exceeds 50 percent of the notification fee, the vehicle storage facility may recover the additional amount of the cost of publication from the vehicle owner or agent.

(d) For purposes of imposing a daily storage fee, a day is considered to begin at midnight and to end at the next following midnight. A daily storage fee may be charged regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the facility for less than 12 hours.

(e) The operator of a vehicle storage facility or governmental vehicle storage facility may charge a daily storage fee under Subsection (b):

(1) for not more than five days before the date notice is mailed or published under this subchapter, if the vehicle is registered in this state;

(2) for not more than five days before the date the request for owner information is sent to the appropriate governmental entity as required by this subchapter, if the vehicle is registered in another state; and

(3) for each day the vehicle is in storage after the date the notice is mailed or published until the vehicle is removed and all accrued charges are paid.

(f) The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee related to the storage of a vehicle other than a fee authorized by this section or a towing fee authorized by Chapter 2308.

(g) This section controls over any conflicting municipal ordinance or charter provision.

#### § 2303.1551. 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.

#### § 2303.156. Payment by Lienholder or Insurance Company

(a) A lienholder who repossesses a vehicle delivered to a vehicle storage facility is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.

(b) An insurance company that pays a claim of total loss on a vehicle in a vehicle storage facility is liable to the operator of the facility for any money owed to the

operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company paid the claim.

#### § 2303.157. Disposal of Certain Abandoned Vehicles

(a) The operator of a vehicle storage facility may dispose of a vehicle for which notice is given under Section 2303.154 if, before the 30th day after the date notice is mailed, the vehicle is not:

(1) claimed by a person entitled to claim the vehicle; or  
(2) taken into custody by a law enforcement agency under Chapter 683, Transportation Code.

(b) An operator entitled to dispose of a vehicle under this section may sell the vehicle at a public sale without obtaining a release or discharge of any lien on the vehicle, regardless of whether notice was provided by mail or by publication under this chapter. The proceeds from the sale of the vehicle shall be applied to the charges incurred for the vehicle under Section 2303.155. The operator shall pay any excess proceeds to the person entitled to those proceeds.

(c) Notwithstanding Subsection (a), the operator of a vehicle storage facility may dispose of a vehicle for which notice was given under this subchapter as provided by this section if:

(1) the vehicle is an abandoned nuisance vehicle; and  
(2) before the 30th day after the date the notice was sent, the facility submits an application to the department for disposal of the vehicle.

#### § 2303.158. Access to Glove Compartment, Console, or Other Interior Storage Area to Establish Identity or Ownership

The operator of a vehicle storage facility or a governmental vehicle storage facility must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.

#### § 2303.159. Forms of Payment of Charges

(a) The operator of a vehicle storage facility shall accept payment by an electronic check, debit card, or credit card for any charge associated with delivery or storage of a vehicle. The facility shall conspicuously post a sign that states: "This vehicle storage facility must accept payment by an electronic check, credit card, or debit card for any fee or charge associated with delivery or storage of a vehicle." The operator of a vehicle storage facility may

not refuse to release a vehicle based on the inability of the facility to accept payment by electronic check, debit card, or credit card of a fee or charge associated with delivery or storage of the vehicle unless the operator, through no fault of the operator, is unable to accept the electronic check, debit card, or credit card because of a power outage or a machine malfunction.

(b) In this section, “vehicle storage facility” includes a governmental vehicle storage facility as defined by Section 2303.155.

#### § 2303.160. Release of Vehicles

(a) A vehicle storage facility may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

(b) A vehicle storage facility must accept evidence of financial responsibility, as required by Section 601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(c) Subsection (b) does not require a vehicle storage facility to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

- (1) pay the charges for services regulated under this chapter or Chapter 2308, including charges for an incident management tow, as defined by Section 2308.002; and
- (2) present valid photo identification issued by this state, another state, a federal agency, or a foreign government.

#### § 2303.161. Drug Testing of Employees

(a) A license holder shall establish a drug testing policy for employees of the vehicle storage facility operated by the license holder. A license holder 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 license holders. 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 employee of a vehicle storage facility who has direct contact with the public; and

(2) authorize random, unannounced drug testing for employees described by Subdivision (1).

# 16 TAC 85 TDLR Regs on Vehicle Storage Facilities

**Texas Administrative Code Currentness**  
**Title 16. Economic Regulation**  
**Part 4. Texas Department of Licensing and Regulation**  
**➔ Chapter 85. Vehicle Storage Facilities**

## **§ 85.1. Authority**

These rules are adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2303.

## **§ 85.10. Definitions**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abandoned nuisance vehicle--A motor vehicle that is at least 10 years old and is of a condition only to be demolished, wrecked, or dismantled.

(2) Act--The Vehicle Storage Facility Act, Texas Occupations Code, Chapter 2303.

(3) Affidavit of Right of Possession--A form prescribed by the department and provided by the licensee for use by an immediate family member certifying right of possession to a vehicle stored at a vehicle storage facility.

(4) Commission--The Texas Commission of Licensing and Regulation.

(5) Day--Twenty-four continuous hours.

(6) Department--The Texas Department of Licensing and Regulation.

(7) Executive director--The executive director of the department.

(8) Fence--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.

(9) Immediate family--A vehicle owner's parents, spouse, children, brothers, and sisters.

(10) Impoundment--The following actions when performed on a stored vehicle:

(A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors,

windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; or

(D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.

(11) License holder or Licensee--The person to which the department issued a license.

(12) Main entrance--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.

(13) Notice of Right of Possession for Salvage--A form prescribed by the department and executed by persons licensed under 16 Texas Administrative Code Chapter 86 as agents for an insurance company that has documented authority from the vehicle owner obtained prior to execution of the form, certifying right of possession of a total loss vehicle stored at a vehicle storage facility.

(14) Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(15) Primary lien holder--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.

(16) Principal--An individual who:

(A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) an ownership interest in a business that is equivalent to a fair market value of more than \$25,000;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;

(D) holds a position as a member of the board of directors or other governing body of a business; or

(E) holds a position as an elected officer of a business.

(17) Proof of loss claim form--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.

(18) Registered owner--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.

(19) Vehicle--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.

(20) Vehicle owner--A person:

(A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;

(B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;

(C) who holds a vehicle through a valid lease agreement;

(D) who is an unrecorded lienholder with a right to possession; or

(E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.

(21) Vehicle storage facility (VSF)--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.

(22) Vehicle transfer--Any movement of a vehicle out of a VSF, prior to its release as prescribed in this chapter.

#### **§ 85.20. Exemptions**

(a) These rules do not apply to a vehicle parked or stored at a VSF with the consent of the vehicle's owner.

(b) These rules do not apply to VSFs operated by persons licensed under Texas Occupations Code, Chapter 2301.

#### **§ 85.200. License Required--Vehicle Storage Facility**

A person may not operate a VSF unless the person holds a VSF license issued by the department. For purposes of this section, each VSF physical location or lot is a separate facility and must obtain a VSF license.

#### **§ 85.201. License Requirements--Vehicle Storage Facility License**

To be eligible for a VSF license, an applicant must:

(1) submit a completed application on a department approved form;

(2) pay the fee required under § 85.800;

(3) provide proof of insurance required under § 85.400;

(4) successfully pass a criminal background check;

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

(6) provide the name, and address of each corporate officer, including the president, secretary, and treasurer, if the applicant is a corporation;

(7) provide the name, and address of each owner of the VSF and the percentage of ownership interest each holds in the facility;

(8) provide the name, and address of the operator or manager of the VSF if it is not operated or managed by one of the owners;

(9) provide the facility's physical address, mailing address, and telephone number;

(10) state the VSF's storage capacity;

(11) state the height of any fence enclosing the VSF and the date it was installed;

(12) include a statement indicating whether the facility has an all weather surface, signs posted in the proper locations, and lighting, as required by these rules; and

(13) adopt the model drug testing policy provided in these rules or file an alternate drug testing policy for approval under these rules.

#### **§ 85.202. License Approval--Vehicle Storage Facility**

The department may deny a VSF license application if the applicant:

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



(2) in the three years preceding the date of application, the applicant, a partner, principal, or officer of the applicant, or the general manager of the applicant, was convicted of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine exceeding \$500; or

(3) the VSF for which the license is sought does not meet the standards for storage facilities established by these rules.

**§ 85.203. License Requirements--Vehicle Storage Facility License Renewal**

(a) To renew VSF license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the applicable fee required under § 85.800; and

(3) successfully pass a criminal background check.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any functions of a VSF that requires a license under this chapter.

(c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

**§ 85.204. License Requirements--Vehicle Storage Facility Employee License**

(a) To be eligible for a VSF employee license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under § 85.800;

(3) successfully pass a criminal background check; and

(4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under § 85.725, the applicant must submit a negative drug test to the department.

(b) A person may not work at a VSF unless the individual holds a license issued under this chapter. A VSF may not employ a person unless the person holds a license issued by the department.

(c) For purposes of this chapter, persons operating or managing a VSF as sole proprietor or other unincorporated business organization are employees of the VSF and required to obtain a VSF employee license.

**§ 85.205. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License**

(a) An applicant for a dual vehicle storage facility and towing operator employee license must:

(1) meet the requirements under:

(A) § 85.204; and

(B) 16 TAC § 86.208 and §§ 86.209, 86.210, or 86.211.

(2) submit to the department:

(A) an application on a department-approved form; and

(B) pay the required license fee under § 85.800.

(b) A person holding a license issued under this section may:

(1) work at a vehicle storage facility; and

(2) perform towing operations.

(c) An applicant holding a valid vehicle storage facility license who seeks to obtain a dual vehicle storage facility and towing operator employee license may request an expedited license by:

(1) meeting the requirements under subsection (a);

(2) submit an application on a department-approved form; and

(3) pay the required license fee under § 85.800.

**§ 85.206. License Requirements--Vehicle Storage Facility Employee License Renewal; Dual Vehicle Storage Facility Employee and Towing Operator License**

(a) To renew a VSF employee license or dual VSF employee and towing operator license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the applicable fee required under § 85.800;

(3) successfully pass a criminal background check; and

(4) if the applicant for renewal has within the preceding 12-month period tested positive for drugs under § 85.725, the applicant must submit a negative drug test to the department.

(b) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any duties of a VSF employee that requires a license under this chapter.

(c) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

**§ 85.207. License--Notice of Proposed Denial, Opportunity to Comply**

(a) If the department recommends denial of an application for a license under this chapter, the department shall send written notice of the decision to the applicant at the address shown on the application by certified mail, return receipt requested.

(b) The notice must state the reason for the department's decision.

(c) The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with this chapter not later than the 14th day after the date the applicant receives the notice, the department may approve the application.

**§ 85.208. Department Notifications to Licensee**

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed actions and decisions through email sent to the last email address designated by the licensee.

**§ 85.209. Licenses--License Terms**

A license issued by the department is valid only for the person who applied for the license; applies only to the single VSF or person named on the license; and is valid for 12 months from the date of issuance.

**§ 85.400. Insurance Requirements**

(a) An applicant or VSF licensee is responsible for ensuring the electronic submission of a certificate of insurance when applying for an initial license, submitting a license renewal, changing a business name or affiliation, and upon request of the department.

(b) The certificate of insurance must be obtained from and submitted by an insurance company licensed to do business in Texas pursuant to the Texas Insurance Code.

(c) The facility name and address shown on the proof of insurance form must be the same as the name and address on the license. The VSF licensee is responsible for ensuring that the insurance information on file with the department reflects the correct name and address of the insured facility.

(d) The VSF licensee must obtain insurance for the insured facility that meets the following requirements:

(1) Insurance coverage shall be in an amount of not less than:

(A) \$9,000 per claim if the VSF has space to store not more than 50 motor vehicles;

(B) \$18,000 per claim if the facility has space to store 51 to 99 motor vehicles; and

(C) \$25,000 per claim if the facility has space to store 100 or more motor vehicles.

(2) The VSF licensee's insurance policy must be kept in full force and effect so long as the facility is operating.

(3) The certificate of insurance must contain a provision obligating the insurer to give the department thirty-day notice before the effective date of a policy cancellation date. Notice must be in a form acceptable to the department.

(e) The department may revoke a VSF license if the insurance has been canceled and a replacement policy has not been filed prior to the cancellation date.

**§ 85.450. Inspections--General**

(a) All VSFs shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections will be performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to VSF owners and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the VSF. The department may conduct inspections under the Act and these rules with or without advance notice.

(c) The department inspector will contact the VSF owner, manager, or representative upon arrival at the VSF, and before proceeding with the inspection.

(d) The VSF owner, manager, or representative shall cooperate with the inspector in the performance of the inspection.

#### **§ 85.451. Periodic Inspections**

(a) Each VSF shall be inspected at least once every two years.

(b) The VSF owner, manager, or representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.

(c) On completion of the inspection, the VSF shall be advised in writing of the inspection results.

(d) The inspection report will identify violations that must be corrected by the licensee. The report will also indicate the corrective actions required to address the violations, in accordance with § 85.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(e) Based on the results of the periodic inspection, a VSF may be moved to a risk-based schedule of inspections. The department will notify the owner of the VSF, in writing, if the facility becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

#### **§ 85.452. Risk-based Inspections**

(a) Risk-based inspections are those required in addition to periodic inspections required under § 85.451 for VSFs determined by the department to be a greater risk to the public.

(b) To determine which licensee will be subject to risk-based inspections, the department has established criteria and frequencies for inspections.

(c) The owner of the VSF shall pay the fee required under § 85.800 for each risk-based inspection.

(d) VSFs subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Tabular or graphic material set at this point is not displayable.

(e) At the time of inspection of a VSF, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.

(f) Upon completion of the inspection, the owner of the VSF shall be advised in writing of the results.

(g) The inspection report will identify violations that must be corrected by the VSF. The report will also indicate the corrective actions required to address the violations, in accordance with § 85.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(h) VSFs on a risk-based inspection schedule that have no significant violations in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the VSF, in writing, if there is a change in the VSF's risk-based schedule or if the VSF is returned to a periodic inspection schedule.

#### **§ 85.453. Corrective Actions Following Inspection**

(a) When corrective actions to achieve compliance are required:

(1) the department shall provide the VSF a list of required corrective actions;

(2) within 10 days after receiving the list of required corrective actions, the VSF shall complete all corrective actions and provide written verification of the corrective actions to the department; and

(3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with § 85.900.

#### **§ 85.650. Towing, Storage, and Booting Advisory Board**

(a) The advisory board consists of the ten members appointed by the chairman of the commission with the approval of the commission. The ten members include:

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

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

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

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

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The chairman of the commission appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

#### **§ 85.700. Responsibilities of the Licensee--Proof of Exempt Status**

Vehicle storage facilities shall be responsible for providing proof regarding whether or not a vehicle was stored with the vehicle owner's consent.

#### **§ 85.701. Responsibilities of Licensee--Advertising**

A licensee may not engage in false, misleading, or deceptive advertising.

#### **§ 85.702. Responsibilities of Licensee--Changes to VSF Operator and VSF Employee License**

(a) A licensed VSF operator shall notify the department of changes to any of following information:

(1) change in the business name no later than the effective date of the change;

(2) change of mailing or physical address no later than the effective date of the change;

(3) change in the facility's storage capacity no later than the effective date of the change; or

(4) change in the company's drug testing policy.

(b) VSF employees licensed under these rules must submit a change of mailing address to the department within thirty days of the change.

#### **§ 85.703. Responsibilities of Licensee--Notice to Vehicle Owner or Lienholder**

(a) Applicability. If a vehicle is removed by the vehicle owner within 24 hours after the VSF receives the vehicle, notification as described in subsections (b)-(h) does not apply.

(b) Notification to owners of registered vehicles. Registered owners of towed vehicles shall be notified in the following manner.

(1) Vehicles registered in Texas. After accepting for storage a vehicle registered in Texas, the VSF shall notify the vehicle's current registered owner and primary lien holder by certified, electronic certified, or registered mail within five days, but in no event sooner than within 24 hours of receipt of the vehicle.

(2) Vehicles not registered in Texas. After accepting for storage a vehicle not registered in Texas, the VSF shall notify the vehicle's current registered owner and all recorded lien holders within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle.

(c) It is a defense to an action initiated by the department for violation of this section that the facility has attempted unsuccessfully and in writing or electronically to obtain information from the governmental entity with which the vehicle is registered by requesting the names and addresses of registered owners and lien holders based on the license plate number and vehicle identification number.

(d) Date of notification. Notification will be considered to have occurred when the United States Postal Service places its postmark and to be timely filed if:

- (1) the postmark indicates that the notice was mailed within the period described by subsection (a) or (b); or
- (2) the notice was published as provided for by subsection (e).

(e) Notice by publication. Notice to the registered owner and the primary lienholder of a vehicle towed to a VSF may be provided by publication in a newspaper of general circulation in the county in which the vehicle is stored if:

- (1) the vehicle is registered in another state;
- (2) the operator of the storage facility submits to the governmental entity with which the vehicle is registered a written request for information relating to the identity of the registered owner and any lienholder of record;
- (3) the identity of the registered owner cannot be determined;
- (4) the registration does not contain an address for the registered owner; or
- (5) the operator of the storage facility cannot reasonably determine the identity and address of each lienholder.

(f) Notice by publication is not required if each notice sent in accordance with subsection (b) is returned because:

(1) the notice was unclaimed or refused; or

(2) the person to whom the notice was sent moved without leaving a forwarding address.

(g) Only one notice is required to be published for an abandoned nuisance vehicle.

(h) Form of notifications. All mailed notifications must be correctly addressed; mailed with sufficient postage; and sent by certified mail, return receipt requested, or electronic certified mail.

(1) All mailed notifications shall state:

(A) the full licensed name of the VSF where the motor vehicle is located, its street address and telephone number, and the hours the vehicle can be released to the vehicle owner;

(B) the daily storage rate, the type and amount of all other charges assessed, and the statement, "Total storage charges cannot be computed until vehicle is claimed. The storage charge will accrue daily until vehicle is released";

(C) the first date for which a storage fee is assessed;

(D) the date the vehicle will be transferred from the VSF and the address to which the vehicle will be transferred if the operator will be transferring a vehicle to a second lot because the vehicle has not been claimed within a certain time;

(E) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

(F) the VSF license number preceded by the words "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number" or "TDLR VSF Lic. No.";

(G) a notice of the towed vehicle owner's right under Texas Occupations Code, Chapter 2308, to challenge the legality of the tow involved; and

(H) the name, mailing address, and toll-free telephone number of the department for purposes of directing questions or complaints.

(2) All published notifications shall state:

(A) the full name, street address, telephone number, and VSF license number of the VSF;

(B) a description of the vehicle; and

(C) the total amount of charges assessed against the vehicle.

(3) Notices published in a newspaper may contain information for more than one towed vehicle.

(i) If authorized, a notification fee may not be charged unless the notification is actually sent or performed before the vehicle is released.

**§ 85.704. Responsibilities of Licensee--Second Notice; Consent to Sale**

(a) If a vehicle is not claimed by a person permitted to claim the vehicle or is not taken into custody by a law enforcement agency under Chapter 683, Transportation Code, before the 15th day after the date notice is mailed or published under § 85.703, the operator of the VSF shall send a second notice to the registered owner and the primary lienholder of the vehicle.

(b) If a vehicle is not claimed by a person permitted to claim the vehicle before the 10th day after the date notice is mailed or published under § 85.703, the operator of the VSF shall consider the vehicle to be abandoned and send notice of abandonment to a law enforcement agency under Chapter 683, Transportation Code.

(c) Notice under this section must include:

- (1) the information listed in § 85.703(h);
- (2) a statement of the right of the facility to dispose of the vehicle under subsections (a) and (b);
- (3) a statement that the failure of the owner or lienholder to claim the vehicle and personal property before the 30th day after the date the notice is provided is:

(A) a waiver by that person of all right, title, or interest in the vehicle and personal property; and

(B) a consent to the sale of the vehicle at a public sale.

(d) Notwithstanding subsection (b), if publication is required for notice under this section, the notice must include:

- (1) the information listed in § 85.703(h)(2); and
- (2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:

(A) a waiver of all right, title, and interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(e) The operator shall pay any excess proceeds to the person entitled to those proceeds.

**§ 85.705. Responsibilities of Licensee--Report to Law Enforcement**

(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 local law enforcement agency with jurisdiction over the area from which the vehicle was towed:

- (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:

- (1) telephone;
- (2) electronically;
- (3) delivered personally;
- (4) by facsimile; or
- (5) in any manner prescribed by a law enforcement agency.

(c) VSF records shall indicate specifically to whom the report required by subsection (b) was reported and in what manner, as well as the time and date of the report, or the unique control or tracking number assigned to the report by local law enforcement documenting the report.

(d) This section does not apply to a vehicle received as a result of an incident management tow requested by law enforcement unless the law enforcement agency requests a report of incident management tows within its jurisdiction.

**§ 85.706. Responsibilities of Licensee--Documentation and Records**

(a) Retention of written documentation. Vehicle storage facility licensees must maintain a copy of the original written documentation regarding their operations for a

period of two years from the date of the release or disposal of the vehicle. Written documentation shall be in the form of:

- (1) motor vehicle registration checks;
  - (2) notification letters;
  - (3) certified return receipts;
  - (4) tow tickets (if applicable);
  - (5) bills for service;
  - (6) auction sales receipts;
  - (7) inventory (if applicable);
  - (8) certificates of authority to demolish; and
  - (9) any authorized document used to release a vehicle, including but not limited to a title, affidavit of right of possession and control, or court order.
- (b) Minimum information. Each licensee shall keep written records on each vehicle kept or stored at the VSF. These records shall contain:
- (1) the year, make, model, color, correct license plate number, state issuing the license, and correct vehicle identification number of the vehicle;
  - (2) the date, time and location from which the vehicle was towed, and name of person or company who authorized the tow;
  - (3) the tow operator's TDLR license number, the name of the company that towed the vehicle, and the license plate numbers of plates issued to the tow truck under Transportation Code, § 502.180, and § 504.508;
  - (4) the date the vehicle was released, the name of the individual to whom the vehicle was released, and the type of identification (Texas drivers license or other state or federally issued photo identification) and identification number provided by the individual to whom the vehicle was released;
  - (5) the date of any vehicle transfer, and the address of the location to which the vehicle was transferred along with the name of the towing company and towing operator's with TDLR license number, who made the transfer;
  - (6) a copy of any certificate of title issued after the vehicle came into the possession of the VSF, any certificate of authority to demolish, any law enforcement auction sales receipt, or any transfer document issued by

the State of Texas for the vehicle if vehicle ownership has been transferred due to any action of the VSF or if the vehicle has been disposed of or demolished; and

- (7) all amounts received at the time the vehicle was released, including the specific nature of each charge.
- (c) Nonconsent tow tickets. The VSF shall ensure that nonconsent tow tickets (if applicable) contain the licensed name of the towing company, publicly listed telephone number, the towing company certificate of registration number and the TDLR license number of the towing operator.
- (d) Regulatory documents. A VSF may not accept a vehicle for storage unless the VSF makes and maintains a copy of the towing operator's valid TDLR operator's license and tow truck cab card for the operator and truck delivering the vehicle for storage. The copies required by this subsection must be current and valid on the date a vehicle is delivered to the VSF for storage.
- (e) Availability of documentation. All documents required by this chapter shall be made available by the licensee, the licensee's agent, or the licensee's employee for inspection and copying upon request by department personnel, or a law enforcement officer, during the same hours the VSF must ensure that vehicles are available for release to the vehicle owner.
- (f) Care and custody of records. Required records shall be kept under the care and custody of the licensee for at least two years from the date the vehicle was released or disposed of.

#### **§ 85.707. Responsibilities of Licensee--Notice of Complaint Procedure**

- (a) Each VSF shall notify the vehicle owner of the department's website and email address, mailing address, and telephone number, for purposes of directing complaints regarding the vehicle storage to the department.
- (b) The licensee may use a legible sticker or rubber stamp to convey the required information required by subsection (a). The notice shall be included on:
  - (1) a sign prominently displayed to the public at the place of payment, with letters at least one inch in height, and a contrasting background; and
  - (2) the front page of any bill for service.

#### **§ 85.708. Responsibilities of Licensee--Rights of Owner or Authorized Representative**

(a) A VSF must allow a person claiming to be the owner of a vehicle stored or parked at the facility to have access to the vehicle's glove compartment, console, or other interior storage area if documents necessary to establish the person's identity or ownership of the vehicle are located in the glove compartment, console, or other interior storage area.

(b) When a person demonstrates ownership or right to possession of a motor vehicle stored at a VSF, the person or his/her authorized representative shall:

(1) be entitled to inspect a copy of the tow ticket for the motor vehicle and shall not be required to pay any fees or charges before doing so (reasonable opportunity to view the tow ticket displayed behind a glass enclosure satisfies this requirement);

(2) be given access to, and be allowed to remove, any personal belongings in the vehicle, unless otherwise indicated by a law enforcement officer (the VSF must require a receipt from the person to whom the personal belongings are released for any such property removed from the stored vehicle by the vehicle owner or authorized representative);

(3) have access, during normal business hours, to the vehicle for the purposes of insurance and/or repair estimates; and

(4) on request have access to the current nonconsent towing fees schedule relating to required posting at a VSF for the towing company that towed the vehicle to the VSF.

(c) When right of possession is demonstrated by submission of a proof of loss claim form from an insurance company, subsection (b)(2) does not apply.

(1) For purposes of this subsection, when an insurance company presents a proof of loss claim form, the term "access" includes, but is not limited to:

(A) verifying the present existence of such vehicle,

(B) confirming the loss,

(C) taking measurements and photographs of the interior and exterior of said vehicle,

(D) recording or attempting to ascertain mileage,

(E) verifying the VIN plate or label,

(F) opening or attempting to open doors, hood or trunk panels,

(G) writing a repair estimate, documenting features, options and conditions, and

(H) when authorized by the owner, operator or lessee of the vehicle, removing the vehicle from the VSF.

(2) Upon the request of an insurer presenting a proof of loss claim form, or upon the request of a tow truck operator possessing a notice of right of possession for salvage form, a VSF shall provide a legible copy of the tow ticket created by the towing operator responsible for towing the vehicle to the VSF to either:

(A) the insurer, within three business days of the insurer presenting the proof of loss claim form; or

(B) the tow truck operator, at the time the tow truck operator presents a copy of the notice of right to possession for salvage form to the VSF.

(3) The VSF may provide the copy of the tow ticket to the insurer, via regular mail, facsimile, or by other electronic means, provided the insurer provides the VSF with a specific mailing address, facsimile phone number, web address or email address to which to send the tow ticket.

(d) A VSF may not request a vehicle owner or operator to sign an authorization form for a tow, repair or any other service if the storage of the vehicle is the result of a tow initiated by law enforcement.

#### **§ 85.709. Responsibilities of Licensee--Unpermitted Tow Trucks Prohibited**

Unless authorized by another law or regulation, a VSF shall not allow a tow truck that is not permitted under Texas Occupations Code, Chapter 2308, to enter the storage area of the facility.

#### **§ 85.710. Responsibilities of Licensee--Release of Vehicles**

(a) Release of vehicles. The VSF must comply with the following requirements when releasing vehicles.

(1) The VSF shall comply with all provisions of Texas Occupations Code, Chapter 2308, Subchapter J, relating to the rights of the owner of a stored vehicle, including providing the name, address, and telephone number of:

(A) the justice court that has jurisdiction in the precinct in which the vehicle is towed; and

(B) the name, address and telephone number of the person or law enforcement agency that authorized the tow.



(2) The VSF shall provide the owner or the owner's representative with a tow ticket. The tow ticket may be combined with a VSF Invoice; provided, the combined tow ticket and VSF Invoice comply with the following requirements:

(A) tow charges must be separated from VSF storage charges and each category of charges must be preceded by a heading or label identifying the charges as "Tow Charges" or "Storage Charges";

(B) tow charges must appear on the combined statement of charges exactly as stated on the tow ticket prepared by the tow operator and provided to the VSF at the time the vehicle is presented for storage; and

(C) the combined statement of charges meet and contain all required elements of a separate VSF invoice and tow ticket; provided the license number and name of the tow operator may be excluded.

(3) The VSF shall allow the vehicle owner or authorized representative to obtain possession of the vehicle at any time between the hours listed on the facility information sign posted as described in § 85.1003, upon payment of all fees due, presentation of valid identification (Texas drivers license or other state or federally issued photo identification), and upon presentation of:

(A) a notarized power-of-attorney;

(B) a court order;

(C) a certificate of title;

(D) a tax collector's receipt and a vehicle registration renewal card accompanied by a conforming identification;

(E) name and address information corresponding to that contained in the files of the Texas Department of Motor Vehicles;

(F) a current automobile lease or rental agreement executed by the operator of the vehicle or a person holding a power of attorney executed by the person named in the lease agreement;

(G) appropriate identification of any state or federal law enforcement agency representative; or

(H) the most recent version of a department-approved form or electronic version of a department-approved form published on the department's website, [www.license.state.tx.us](http://www.license.state.tx.us); which the VSF must make available to the vehicle owner or person seeking possession of or access to the vehicle.

(4) A VSF may not refuse to release a vehicle to the owner or operator of the vehicle or require a sworn affidavit of the owner or operator of the vehicle solely because the owner or operator presents valid photo identification issued by this state, another state, or a federal agency that includes a different address than the address contained in the title and registration records of the vehicle.

(5) A VSF must accept evidence of financial responsibility (insurance card), as required by § 601.051, Transportation Code, as an additional form of identification that establishes ownership or right of possession or control of the vehicle.

(6) Paragraph (3) does not require a VSF to release a vehicle to the owner or operator of the vehicle if the owner or operator of the vehicle does not:

(A) pay the charges for services regulated under this chapter or Chapter 86 of this title, including charges for and associated with delivery or storage of the vehicle; and

(B) present valid photo identification issued by this state, another state, a federal agency or a foreign government.

(7) If it accepts vehicles 24 hours a day, all VSFs shall have vehicles available for release 24 hours a day within one hour's notice.

(8) If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and midnight Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays. It is not the intent of this section to require release of vehicles after midnight, and refusal to release after that time, even with notice after 11:00 p.m., is not a violation of this section.

(9) For purposes of determining when the one hour for release of a vehicle starts, the VSF must clearly note on the receipt the time of the call requesting vehicle release and have the person requesting release separately initial the notation.

(b) A VSF may not require an owner, operator or agent of an owner or operator of a vehicle to sign an authorization or release form to release the vehicle from the VSF if that form:

(1) changes the status of the law enforcement initiated tow from a nonconsent status to a consent tow status;

(2) changes the status of the storage resulting from a nonconsent tow from a nonconsent storage status to a consent storage status; or

(3) imposes any additional charges not regulated by the department.

#### **Part 4. Texas Department of Licensing and Regulation**

### **Chapter 85. Vehicle Storage Facilities**

#### **§ 85.711. Responsibilities of Licensee--Forms of Payment for Release of Vehicle**

In addition to other forms of payment accepted by the VSF, including a governmental VSF, a VSF must accept credit cards, debit cards or electronic checks.

#### **§ 85.712. Responsibilities of Licensee--Release of Vehicles; Payment by Lienholder or Insurance Company**

(a) A lienholder who repossesses a vehicle delivered to a VSF is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the lienholder repossessed the vehicle.

(b) An insurance company that pays a claim of total loss on a vehicle in a VSF is liable to the operator of the facility for any money owed to the operator in relation to delivery of the vehicle to or storage of the vehicle in the facility regardless of whether an amount accrued before the insurance company paid the claim.

#### **§ 85.713. Responsibilities of Licensee--Release of Vehicles From Law Enforcement Hold**

(a) The licensee may not refuse to release the vehicle to the vehicle's owner or insurance company due to nonpayment by the law enforcement agency that directed the towing and storage of the vehicle for evidentiary or examination purposes.

(b) Pursuant to 37 Texas Administrative Code § 4.16, relating to commercial vehicle rules and enforcement procedures, a commercial motor vehicle stored at the direction of the Texas Department of Public Safety shall not be released until the amount of delinquent administrative penalty assessed against the vehicle owner has been paid.

#### **§ 85.714. Responsibilities of Licensee--Provide Insurance Information to Vehicle Owner**

Upon request by the vehicle owner or the vehicle owner's authorized representative, the licensee shall provide the name, address, and telephone number of the insurance company that is providing required liability insurance coverage to the facility, in addition to the facility's insurance policy or certificate number for purposes of filing a claim for loss or damage of property. The insurance information shall be the same as that on file with the department.

#### **§ 85.715. Responsibilities of Licensee--Publicly Listed Telephone Number**

All VSFs shall have a publicly listed telephone where the VSF can be contacted. If the telephone number is changed from the number in the most recent VSF application, the VSF shall give the department written notice of the change prior to the date the new number is used. The notice shall include the storage lot's name, its location, its license number, the old telephone number, and the new telephone number.

#### **§ 85.716. Responsibilities of Licensee--Inspection of Stored Vehicles**

When the VSF accepts a vehicle towed without the vehicle owner's consent, the VSF shall inspect the vehicle and note as an addition on the tow ticket any differences from the information previously set out thereon, but shall not write over or deface any prior writing on the tow ticket. If the license plate number or vehicle identification number on the tow ticket is incorrect, the VSF shall note on its records the correct number and notify every previously advised person within 48 hours of noting the correct information.

#### **§ 85.717. Responsibilities of Licensee--Removal of Parts; Dismantling or Demolishing Stored Vehicles**

Except as provided for by these rules, no parts shall be removed from any vehicle, and no vehicle shall be dismantled or demolished within the storage area of a licensed VSF. Vehicles may be dismantled or demolished only if the VSF has a certificate of title, certificate of authority to demolish, police auction sales receipt, or transfer document issued by the State of Texas for the vehicle being dismantled or demolished.

#### **§ 85.718. Responsibilities of Licensee--Use of Stored Vehicles Prohibited**

No stored vehicle may be used for personal or business use without the written consent of the vehicle's owner.

**§ 85.719. Responsibilities of Licensee--Reasonable Storage Efforts; Impoundment of Stored Vehicles; Impoundment Fees**

(a) Reasonable storage efforts. A VSF operator shall make reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, sunroofs, trunks, hoods, or convertible tops. Such actions are included in the storage fee as set forth in this chapter.

(b) Impoundment of stored vehicles. If doors, windows, convertible tops, hatchbacks, sun roofs, trunks, or hoods are broken or inoperative, materials such as plastic or canvas tarpaulins must be used to ensure the impoundment of the stored vehicle.

(c) Impoundment Fees. A VSF operator is entitled to charge a fee for impoundment if, in addition to the requirements set out in subsection (b), the VSF operator, at a minimum:

- (1) conducts a written inventory of any unsecured personal property contained in the vehicle;
- (2) removes and stores all such property for which safekeeping is necessary, and specifies such removal and storage on the written inventory; or
- (3) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation or analogous state agency.

**§ 85.720. Responsibilities of Licensee--Repair; Alteration of Stored Vehicles Prohibited**

A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without consent of the vehicle owner or owner's authorized representative.

**§ 85.721. Responsibilities of Licensee--Vehicle Transfers**

When a motor vehicle has been delivered to a VSF, the vehicle may not be moved from that facility within the first 31 days of storage without the vehicle owner's authorization. If it becomes necessary to move the vehicle during the first 31 days of storage because of VSF

capacity problems, neither the registered vehicle owner nor recorded lienholder(s) may be assessed an additional charge. The VSF must send notice in accordance with these rules, except that the notice must be sent no less than 72 hours prior to moving the vehicle. If a vehicle is moved from a VSF, the licensee shall:

- (1) charge only those fees otherwise permitted by § 85.722 after the vehicle is towed to another location without the vehicle owner's permission;
- (2) retain records and inform the vehicle owner upon request of the location where the vehicle is at all times from the date on which the vehicle is transferred from the VSF until such time as the vehicle is recovered by the vehicle owner, or a new certificate of title, a certificate of authority to demolish, a police auction sales receipt, or a transfer document is issued by the State of Texas; and
- (3) maintain a record of the ultimate disposition of the vehicle, including the date and name of the person to whom the vehicle is released or a description of the document under which the vehicle was sold or demolished.

**§ 85.722. Responsibilities of Licensee--Storage Fees and Other Charges**

(a) For the purposes of this section, "VSF operator" includes a garage, parking lot, or other facility that is:

- (1) owned by a governmental entity; and
- (2) used to store or park at least 10 vehicles each year.

(b) The fees outlined in this section have precedence over any conflicting municipal ordinance or charter provision.

(c) Notification fee.

(1) A VSF may not charge a vehicle owner more than \$50 for notification under these rules. If a notification must be published, and the actual cost of publication exceeds 50% of the notification fee, the VSF operator may recover the additional amount of the cost of publication. The publication fee is in addition to the notification fee.

(2) If a vehicle is removed by the vehicle owner within 24 hours after the date the VSF receives the vehicle, notification is not required by these rules.

(3) If a vehicle is removed by the vehicle owner before notification is sent or within 24 hours from the time VSF receives the vehicle, the VSF operator may not charge a notification fee to the vehicle owner.

(d) Daily storage fee. A VSF operator may not charge less than \$5.00 or more than \$20 for each day or part of a day for storage of a vehicle that is 25 feet or less in length. A VSF operator shall charge a fee of \$35 for each day or part of a day for storage of a vehicle that exceeds 25 feet in length.

(1) A daily storage fee may be charged for any part of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the VSF less than 12 hours. In this paragraph a day is considered to begin and end at midnight.

(2) A VSF that has accepted into storage a vehicle registered in this state shall not charge for more than five days of storage fees until a notice, as prescribed in § 85.703 of these rules, is mailed or published.

(3) A VSF operator that has accepted into storage a vehicle not registered in Texas shall not charge for more than five days before the date the request for owner information is sent to the appropriate governmental entity. Such requests shall be correctly addressed, with sufficient postage, and sent by certified mail, or electronic certified mail, return receipt requested, to the governmental entity with which the vehicle is registered requesting information relating to the identity of the last known registered owner and any lienholder of record.

(4) A VSF operator shall charge a daily storage fee after notice, as prescribed in § 85.703, is mailed or published for each day or portion of a day the vehicle is in storage until the vehicle is removed and all accrued charges are paid.

(e) Impoundment fee. A VSF operator may charge a vehicle owner an Impoundment fee if Impoundment is performed in accordance with these rules. The Impoundment fee may not exceed \$20. If the VSF operator charges a fee for Impoundment, the written bill for services must specify the exact services performed for that fee and the dates those services were performed.

(f) Governmental or law enforcement fees. A VSF operator may collect from a vehicle owner any fee that must be paid to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(g) Environmental hazard fee. A VSF operator may collect from a vehicle owner a fee in an amount set by the commission for the remediation, recovery, or capture of an environmental or biological hazard.

(h) Additional fees. A VSF operator may not charge additional fees related to the storage of a vehicle other than fees authorized by these rules or a nonconsent-towing fee authorized by Texas Occupations Code, § 2308.2065.

#### **§ 85.723. Responsibilities of Licensee--Disposal of Certain Vehicles**

(a) Applicability. A VSF operator may not dispose of a vehicle unless the operator has complied with all provisions of the Act, including §§ 2303.151-2303.154 and § 2303.157, concerning notification and disposal of abandoned vehicles.

(b) Documentation and records. A VSF operator shall keep complete and accurate records of any vehicle disposed of under these rules. These records shall include:

(1) a copy of all forms completed by the VSF and provided to the vehicle buyer;

(2) copies of all notifications issued to the registered owner and all recorded lienholders, regardless of whether the notifications were mailed or published; and

(3) a copy of all forms submitted to governmental authorities to dispose of and demolish an abandoned nuisance vehicle.

#### **§ 85.724. Responsibilities of Licensee--Disposition of Abandoned Nuisance Vehicle**

(a) A VSF that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under § 2303.151 or § 2303.152 of the Act.

(b) The VSF must:

(1) notify the Texas Department of Transportation that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee to the Texas Department of Transportation; or

(2) notify the appropriate law enforcement agency and pay a fee to that agency.

(c) A law enforcement agency described by subsection (b)(2) may sign a document issued by the Texas Department of Transportation.

(d) Public sale. A VSF may dispose of a vehicle through a public sale in compliance with § 2303.157 of the Act. Disputes over the sale or dispersal of proceeds from the sale of the vehicle may be pursued through a court of appropriate jurisdiction.

**§ 85.725. Responsibilities of Licensee--Drug Testing Policy**

(a) A VSF adopting paragraphs (1)-(12) will comply with Texas Occupations Code, § 2303.160.

(1) Purpose and Scope. This drug testing policy provides guidance to supervisors and VSF employees about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all VSF employees and all VSF job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2303 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drugtest is administered, VSF employees and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's and applicant's system.

(4) Compliance with Drug Testing Policy. The failure or refusal by a VSF employee or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug testing policy is governed by these general rules:

(A) VSF employees shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) VSF employees are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) All VSF property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. VSF property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) Any VSF employee convicted of violating a criminal drug statute shall inform his/her supervisor of such conviction (including pleas of guilty and nolo contendere) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The VSF will notify the Texas Department of Licensing and Regulation of the conviction (including pleas of guilty and nolo contendere).

(6) Types of Tests.

(A) Pre-employment. All applicants for positions requiring a VSF employee license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All VSF employees employed by a VSF must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, VSF employees are subject to random urine drug testing. Under this policy, annual random test for drugs of at least 25 percent of the total number of VSF employees is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a VSF employee for random urine drug testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(iii) Each licensed VSF participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed VSF employees participating in and tested by the consortium employed by or under contract with the VSF.

(D) Return-to-Duty and Follow-Up.

(i) Any VSF employee who has violated this drug testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a VSF employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The VSF employee will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the federal Department of Health and Human Services (DHHS).

(B) Drug testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs, the VSF employee has 72 hours to request sending the split specimen to another federal

DHHS certified laboratory for analysis. The VSF employee will be required to pay for his or her split specimen test(s).

(D) For the VSF employee's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the VSF employee will be notified, and the MRO will notify the company.

(E) The VSF will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

(i) VSF employee's name;

(ii) VSF employee license number;

(iii) date of the positive test;

(iv) substance detected by the drug test; and

(v) disciplinary action imposed for violation of the drug testing policy.

(9) Reporting and Reviewing of Drug Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the VSF employee by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug test results to any other person except under written authorization from the VSF employee, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to VSF Employee. The minimal distribution of information for all VSF employees will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs;

(B) an existing community services hotline number, available drug counseling, rehabilitation, and assistance program;

(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug policy.

(11) Consequences of a Confirmed Positive Drug Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a VSF employee's positive drug test result has been confirmed, the VSF employee will stand down from VSF duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary response: the VSF employee's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug policy against VSF employees who voluntarily identify themselves as drug users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug testing.

(12) Exceptions.

(A) VSF employees subject to random drug testing under Title 49 Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the VSF employee tested negative and the negative test results are submitted to and verified by the MRO.

(B) VSF employees holding a valid towing operator license issued by the department who are tested for drugs in accordance with 16 Texas Administrative Code Chapter 86 are exempt from this section.

(b) Independent drug testing policy.

(1) A VSF may file an independent drug testing policy.

(2) The filing must describe how the independent drug testing policy is as stringent as each provision of the model policy set forth in subsection (a).

(c) Compliance. A VSF must adopt and implement a drug testing policy compliant with subsection (a) or (b).

**§ 85.800. Fees**

(a) Application fees.

(1) Vehicle Storage Facility License

(A) Original Application--\$250

(B) Renewal--\$250

(2) Vehicle Storage Facility Employee License

(A) Original Application--\$75

(B) Renewal--\$75

(3) Dual Vehicle Storage Facility and Tow Operator License

(A) Original Application--\$150

(B) Expedited Dual License--\$75

(C) Renewal--\$150

(b) Revised/Duplicate License/Certificate/Permit/Registration--\$25

(c) Risk-based Inspections--\$150

(d) Late renewals fees for licenses under this chapter are provided under § 60.83 of this title (relating to Late Renewal Fees).

(e) All fees are nonrefundable except as provided for by commission rules or statute.

**§ 85.900. Administrative Sanctions and Penalties**

A person that violates Texas Occupations Code, Chapter 2303, a rule, or an order of the Executive Director or Commission relating to Texas Occupations Code, Chapter 2303, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2303 and applicable agency rules.

**§ 85.1000. Technical Requirements--Facility Fencing Requirements**

Enclosure and security of stored vehicles.

(1) Fencing. If not enclosed by a five-foot high fence on or before September 1, 1985, all VSFs shall be completely enclosed by a fence at least six feet high with a gate, which is locked at all times when the licensee or an agent or employee is not at the storage lot. No two VSFs may operate within the same fenced area.

(2) Security of vehicles.

(A) No vehicle may be stored or kept at any licensed VSF unless it is kept inside the fenced or enclosed area at all times. For purposes of this subparagraph, the term "enclosed" shall mean inside a building.

(B) A vehicle accepted for storage in a VSF must be secured to prevent theft of the vehicle or its contents, including but not limited to locking doors, closing windows and hatchbacks, and raising or covering convertible tops.

#### **§ 85.1001. Technical Requirements--Storage Lot Surface**

All VSFs shall have an all-weather surface such as concrete, asphalt, black-top, stone, macadam, limestone, iron ore, gravel, shell, or caliche, that enables the safe and effective movement of stored vehicles upon all portions of the lot, both under their own power and under tow, at all times, regardless of prevailing weather conditions. The surface shall also be free of overgrown vegetation.

#### **§ 85.1002. Technical Requirements--Storage Lot Lighting**

All VSFs shall maintain illumination levels adequate for nighttime release of vehicles. The term "adequate" shall mean sufficient to allow inspection of a vehicle for damage at the time of release. At a minimum, there must be one lighting fixture containing at least a 250-watt element for each 1/4 acre of storage area.

#### **§ 85.1003. Technical Requirements--Storage Lot Signs**

(a) Facility information. All VSFs shall have a clearly visible and readable sign at its main entrance. Such sign shall have letters at least 2 inches in height, with contrasting background, shall be visible at 10 feet, and shall contain the following information:

(1) the registered name of the storage lot, as it appears on the VSF license;

(2) street address;

(3) the telephone number for the owner to contact in order to obtain release of the vehicle;

(4) the facility's hours, within one hour of which vehicles will be released to vehicle owners; and

(5) the storage lot's state license number preceded by the phrase "VSF License Number."

(b) All VSFs shall have a sign in view of the person who claims the vehicle setting out the charge for storage and all other fees, which may be charged by the storage lot, including notification and impoundment fees. The sign shall include all forms of payments the VSF accepts for any charge associated with delivery or storage of a vehicle. The sign must be located so it is clearly visible to a vehicle owner at the place of payment and shall have letters at least 1 inch in height with a contrasting background.

(c) Nonconsent towing fees schedule. All VSFs shall conspicuously place a sign, at the place of payment, which states in 1-inch letters that:

(1) "Nonconsent tow fees schedules available on request." The VSF shall provide a copy of a nonconsent towing fees schedule on request; and

(2) The nonconsent towing fees provided for viewing must match the nonconsent towing fees authorized by this chapter or Texas Occupations Code § 2308.2065.

(d) Instruments accepted for release of vehicle. VSFs shall have a sign describing the documents that may be presented by the vehicle owner or his/her authorized representative to obtain possession of the vehicle. This sign shall list all instruments as described in § 85.710(a)(3)(A)-(G), and shall also state: "Affidavit of Right of Possession Furnished Upon Request." This sign shall be located so it is clearly visible to a vehicle owner at the place of payment, and have letters at least 1 inch in height with a contrasting background.

(e) A VSF must conspicuously post a sign that states: "This vehicle storage facility must accept payment by an electronic check, credit card, or debit card for any fee or charge associated with delivery or storage of a vehicle."

(f) Combination signs. A VSF may combine the signs described in subsections (b), (c), (d), and (e), if the combination sign meets the requirements of each of the separate signs.

#### **§ 85.1004. Technical Requirements--Company**



## **Records**

(a) General records to be maintained. Except as provided in paragraphs (1) and (2), every vehicle storage facility shall maintain at a principal office in Texas all records and information required by the department.

(1) Texas firms. If a vehicle storage facility wishes to maintain records at a location other than its principal office in Texas, the vehicle storage facility shall make a written request to the department. A vehicle storage facility may not begin maintaining records at an alternate location until the request is approved by the department.

(2) Out-of-state firms. A vehicle storage facility whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal office in Texas. Alternatively, a vehicle storage facility may maintain such records at an out-of-state facility if the vehicle storage facility reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted under this chapter.

(b) Preservation and destruction of records. All books and records generated by a vehicle storage facility must be maintained for not less than two years at the vehicle storage facility's principal business address.

# Texas Department of Licensing and Regulation – Regulations concerning Vehicle Towing and Booting

## Texas Administrative Code Currentness

### Title 16. Economic Regulation

#### Part 4. Texas Department of Licensing and Regulation

#### ➔ Chapter 86. Vehicle Towing and Booting

##### § 86.1. Authority and Purpose

This chapter is adopted under the authority of the Texas Occupations Code, Chapter 51 and Chapter 2308. This chapter increases the safety of vehicle towing operators by ensuring that only qualified professionals tow vehicles.

##### § 86.10. Definitions

The following words and terms, when used in this chapter will have the following meanings, unless the context clearly shows otherwise:

- (1) Advisory board--The Towing, Storage, and Booting Advisory Board.
- (2) Applicant--The person or entity submitting an application for a permit or license issued by the department.
- (3) Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company, approved in this state, warrants that a towing company for whom the certificate is filed has the minimum coverage as required by § 86.400.
- (4) Commission--The Texas Commission of Licensing and Regulation.
- (5) Consent tow--Any tow of a motor vehicle in which the tow truck is summoned 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 an incident management tow or a private property tow.
- (6) Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.
- (7) Contested case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.
- (8) Department--The Texas Department of Licensing and Regulation.
- (9) Driver's License--Has the meaning assigned by § 521.001, Transportation Code.
- (10) Incident--An unplanned randomly occurring traffic event that adversely affects normal traffic operations.
- (11) Incident management tow--Any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.
- (12) License holder or Licensee--The person to which the department issued a license.
- (13) Nonconsent tow--Any tow of a motor vehicle that is not a consent tow, including:
  - (A) an incident management tow; and
  - (B) a private property tow.
- (14) Parking facility--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.
- (15) Parking facility authorized agent--An employee or agent of a parking facility owner with the authority to:
  - (A) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and
  - (B) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.
- (16) Parking facility owner--

(A) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;

(B) a property owners' association having control under a dedicatory instrument, as that term is defined in § 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 § 202.001, Property Code, to use a parking space.

(17) Permit holder--The person to which the department issued a permit.

(18) Private property tow--Any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

(19) Property owners' association--Has the meaning assigned by § 202.001, Property Code.

(20) Public roadway--A public street, alley, road, right-of-way, or other public way, including paved and unpaved portions of the right-of-way.

(21) Tow truck--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; or

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(22) Towing company--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.

(23) Towing operator--The person to which the department issued a towing operator license.

(24) Unauthorized vehicle--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(25) Vehicle--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.

(26) Vehicle owner--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.

(27) Vehicle storage facility--A vehicle storage facility, as defined by Texas Occupations Code, § 2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

#### **§ 86.200. Tow Truck Permit--Required**

(a) A tow truck may not be used for towing on the public streets or roads of this state unless an appropriate tow truck permit has been issued by the department.

(b) A separate permit is required for each tow truck.

(c) A tow truck permit is valid for not more than one year from the date of issuance. A tow truck permit shall expire

on the same date as the license issued by the department to the tow truck company.

**§ 86.201. Tow Truck Permit--Incident Management Towing**

(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 allowed under § 545.3051, Transportation Code.

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

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under § 86.800;
- (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.
- (4) provide proof of insurance required under § 86.400; and
- (5) successfully pass a criminal background check.

(c) An incident management towing permit may also be used for private property towing and consent towing.

**§ 86.202. Tow Truck Permit--Private Property Towing**

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

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

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under § 86.800;
- (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.
- (4) provide proof of insurance required under § 86.400; and
- (5) successfully pass a criminal background check.

(c) A private property towing permit may also be used for consent towing but not for incident management towing.

**§ 86.203. Tow Truck Permit--Consent Towing**

(a) A consent towing permit is required for a tow truck used to perform a consent tow authorized by the vehicle owner, as defined in § 86.10(22).

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

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under § 86.800;
- (3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.
- (4) provide proof of insurance required under § 86.400; and
- (5) successfully pass a criminal background check.

(c) A consent towing permit may not be used for nonconsent towing, including incident management towing and private property towing.

**§ 86.204. Tow Truck Permit--Approval and Issuance**

(a) The department will issue a permit under this chapter to an applicant who meets the requirements for a permit. The department may deny an application or revoke a license if the applicant, a partner, principal, officer, or general manager of the applicant has:

- (1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:
  - (A) a felony; or
  - (B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;
- (2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;
- (3) failed to submit a license or permit bond in an amount established by the commission;
- (4) knowingly submitted false or incomplete information on the application;
- (5) filed an application to permit a tow truck previously permitted by a license or permit holder; or

(6) the applicant has had a permit revoked under this chapter.

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

**§ 86.205. Tow Truck Permit--Renewal**

(a) The department will send written notice to permit holders at least 30 days before the permit expires. The notice will be sent to the permit holder's last known address according to the records of the department.

(b) To renew a permit, a permit holder must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under § 86.800;

(3) verify that the tow truck is equipped to tow light-duty or heavy-duty vehicles according to the manufacturer's guidelines.

(4) provide proof of insurance required under § 86.400; and

(5) successfully pass a criminal background check.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the permit. A late renewal means the permit holder will have an un-permitted period from the expiration date of the expired permit to the issuance date of the renewed permit. During the un-permitted period, a tow truck may not be used for towing on the public roadways of this state.

(d) Non-receipt of a permit renewal notice from the department does not exempt a person from any requirements of these rules.

**§ 86.206. Tow Truck Cab Cards**

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

(1) show the permit number of the certificate issued under these rules;

(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 a permit issued under these rules.

(b) The department will issue a cab card when the department issues or renews a permit.

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

(d) If an original cab card is lost, stolen, destroyed, or mutilated, if it becomes illegible, or if it otherwise requires replacement, the permit holder, can request that the department issue a new cab card.

(e) The department may require a permit holder to surrender the original cab card if the permit is suspended or revoked.

**§ 86.207. Licensing Requirements--Towing Operator License**

(a) A person shall not perform towing operations without a towing operator license issued by the department.

(b) Each type of towing operator license is:

(1) valid for one year from the date of issuance;

(2) valid throughout this state; and

(3) nontransferable.

**§ 86.208. Towing Operator Licensing--Approval and Issuance**

The department will issue a license under this chapter to an applicant who meets the requirements for a towing operator license. The department may deny an application or revoke a license if the applicant has:

(1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;

(2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;

(3) failed to submit a license or permit bond in an amount established by the commission;

(4) knowingly submitted false or incomplete information on the application;

(5) filed an application to permit a tow truck previously permitted by a license or permit holder; or

(6) the applicant has had a permit or license revoked under this chapter.

**§ 86.209. Licensing Requirements--Incident Management Towing Operator License**

(a) An incident management towing operator's license is required to operate a tow truck permitted or required to be permitted under this chapter.

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

(1) submit a completed application on a department-approved form;

(2) hold a valid driver's license issued by a state in the United States;

(3) be certified by a program approved by the department;

(4) successfully pass a criminal background check; and

(5) pay the fee required under § 86.800.

**§ 86.210. Licensing Requirements--Private Property Towing Operator License**

(a) A private property towing operator's license is required to operate a tow truck permitted or required to be permitted under this chapter.

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

(1) submit a completed application on a department-approved form;

(2) hold a valid driver's license issued by a state in the United States;

(3) be certified by a program approved by the department;

(4) successfully pass a criminal background check; and

(5) pay the fee required under § 86.800.

**§ 86.211. Licensing Requirements--Consent Towing Operator License**

(a) A consent towing operator's license is needed to operate a tow truck permitted or required to be permitted under this chapter.

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

(1) submit a completed application on a department-approved form;

(2) hold a valid driver's license issued by a state in the United States;

(3) successfully pass a criminal background check; and

(4) pay the fee required under § 86.800.

**§ 86.212. Licensing Requirements--Dual Vehicle Storage Facility Employee and Towing Operator License**

(a) An applicant for a dual vehicle storage facility employee and towing operator license must:

(1) meet the requirements under:

(A) § 85.204 of this title (relating to License Requirements--Vehicle Storage Facility Employee License); and

(B) 16 TAC § 86.208 and §§ 86.209, 86.210, or 86.211;

(2) submit to the department:

(A) an application on a department-approved form; and

(B) the required license fee under § 86.800.

(b) A person holding a license issued under this section may:

(1) work at a vehicle storage facility; and

(2) perform towing operations for the class of towing endorsed on the license.

(c) An applicant holding a valid towing operator license who seeks to obtain a dual vehicle storage facility and towing operator employee license may request an expedited license by:

(1) meeting the requirements under subsection (a);

(2) submit an application on a department-approved form; and

(3) pay the required license fee under § 86.800.

**§ 86.213. Licensing Requirements--Towing Operator Training License**

(a) An applicant for a towing operator training license must:

- (1) submit a completed application on a department-approved form;
- (2) hold a valid driver's license issued by a state in the United States;
- (3) successfully pass a criminal background check; and
- (4) pay the fee required under § 86.800.

(b) A towing operator training license is valid for 90 days from the date of issuance.

**§ 86.214. Licensing Renewal--Towing Operators**

(a) The department will send written notice to licensees at least 30 days before the license expires. The notice will be sent to the licensee's last known address according to the records of the department.

(b) A licensee may renew a license under this chapter by:

- (1) submitting a completed application on a department-approved form;
- (2) pay the fee required under § 86.800;
- (3) meet the applicable continuing education requirements;
- (4) successfully pass a criminal background check; and
- (5) if the applicant for renewal has within the preceding 12-month period tested positive for drugs or alcohol under § 86.710, the applicant must submit a negative drug or alcohol test to the department.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a tow truck operator may not operate a tow truck on the public roadways of this state.

(d) Non-receipt of a license renewal notice from the department does not exempt a person from any requirements of this chapter.

**§ 86.215. Licensing Requirements--Towing Company License Required**

(a) A person shall not operate a towing company without a towing company license issued by the department.

(b) To be eligible for a towing company license, an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under § 86.800;
- (3) successfully pass a criminal background check;
- (4) provide the name, and address of each partner if the applicant is a partnership;
- (5) provide the name, and address of each corporate officer, including the president, secretary, and treasurer, if the applicant is a corporation;
- (6) provide the name, and address of each owner of the towing company and the percentage of ownership interest each holds in the company;
- (7) provide the name, and address of the operator or manager of the towing company if it is not operated or managed by one of the owners;
- (8) provide the towing company's physical address, mailing address, and telephone number; and
- (9) adopt the drug and alcohol testing policy provided in this chapter or file a drug and alcohol testing policy for approval under this chapter.

**§ 86.216. Towing Company License--Approval and Issuance**

(a) Upon receipt of an application for a towing company license, the department will review the application to verify the qualifications of the applicant.

(b) If an applicant is qualified under this chapter, the department will issue a towing company license to the applicant.

(c) If an applicant is determined to be not qualified under this chapter, the department will advise the applicant in writing of the reasons the applicant is not qualified or the deficiencies in the application.

(d) The department may deny a towing company license application or revoke a license if the applicant, a partner,

principal, officer, or general manager of the applicant, or other license or permit holder has:

- (1) a criminal conviction, or has pleaded guilty or nolo contendere to an offense, before the date of the application, for:
    - (A) a felony; or
    - (B) a misdemeanor punishable by confinement in jail or by a fine in an amount that exceeds \$500;
  - (2) violated an order of the commission or executive director, including an order for sanctions or administrative penalties;
  - (3) failed to submit a license or permit bond in an amount established by the commission;
  - (4) knowingly submitted false or incomplete information on the application;
  - (5) filed an application to permit a tow truck previously permitted by a license or permit holder;
  - (6) had a license revoked under this chapter;
  - (7) failed to file a completed application; or
  - (8) provides false, misleading, or deceptive information in the application.
- (e) The department will issue a certificate containing a single unique license number for each towing company.

#### **§ 86.217. Towing Company License Renewal**

- (a) The department will notify the license holder at least 30 days before the date a license expires. The notice will be in writing and sent to the license holder's last known address according to the records of the department.
- (b) To renew a towing company license, an applicant must:
  - (1) submit a completed application on a department-approved form;
  - (2) pay the applicable fee required under § 86.800; and
  - (3) successfully pass a criminal background check.

#### **§ 86.218. Department Notifications to Licensee or Permit Holder**

Unless otherwise provided for by statute or this chapter, the department may send notice of department proposed

actions and decisions through email sent to the last email address designated by the licensee or permit holder.

#### **§ 86.250. License Requirements--Towing Operator Continuing Education**

- (a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.
- (b) To renew a towing operator license, a licensee must complete a total of 4 hours of continuing education through Department-approved courses. The continuing education hours must include the following:
  - (1) 1 hour in roadway safety;
  - (2) 1 hour in Texas law and rules that regulate the conduct of towing operators; and
  - (3) 2 hours in any topic listed in subsection (g), including subsection (g)(1) and (g)(2).
- (c) For a timely renewal, the continuing education hours must have been completed within the term of the current license. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.
- (d) A licensee will not receive continuing education hours for attending the same course more than once.
- (e) A licensee will receive continuing education hours for only those courses that are approved by the Department, under procedures prescribed by the Department.
- (f) A licensee must retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the Department may examine the licensee's records to determine compliance with this subsection.
- (g) To be approved by the Department under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:
  - (1) Texas law and rules that regulate the conduct of towing operators;
  - (2) roadway safety;
  - (3) driver safety;
  - (4) towing techniques;
  - (5) equipment operation and safety; and



(6) customer service and documentation.

(h) A Department-approved course may be offered until the expiration of the course approval or until the provider ceases to hold an active provider registration, whichever occurs first.

(i) A provider shall pay to the Department a continuing education record fee of \$5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under § 59.90 of this title.

(j) To renew an incident management towing operator's license the first time, a licensee must complete, in lieu of the requirements stated in subsections (b), (c), and (g), a professional development course relating to towing that:

(1) consists of at least 8 hours of training, of which:

(A) at least 2 hours are live demonstration and hands-on training;

(B) at least 2 hours are classroom training; and

(C) any remaining hours are classroom training or live demonstration and hands-on training;

(2) is dedicated to instruction in the following topics:

(A) how light-duty tow trucks work;

(B) towing with a wheel lift;

(C) towing with a tow sling;

(D) using tow dollies;

(E) car carrier operation;

(F) vehicle recovery;

(G) light-duty tow trucks;

(H) field procedures;

(I) vehicle maintenance; and

(J) safety; and

(3) is offered by or through a Department-approved provider, including a community college, college, or university.

(k) This section shall apply to licensees, providers, and courses upon the effective date of this section.

(l) Notwithstanding any other provision of this section or Chapter 59 of this title, a licensee may receive credit under subsection (j) for a course that the licensee completed before the effective date of this section if:

(1) the course satisfies the requirements of subsection (j)(1) and (j)(2); and

(2) the licensee furnishes to the Department a certificate of completion or other evidence satisfactory to the Department of completion of the course.

#### **§ 86.400. Insurance Requirements--Tow Truck Permits**

(a) An applicant for a tow truck permit is responsible for ensuring the electronic submission of a certificate of insurance when applying for an initial license or permit, submitting a license or permit renewal, changing a business name or affiliation, and upon request of the department.

(b) The certificate of insurance must be obtained from and submitted by an insurance company licensed and authorized to do business in Texas pursuant to the Texas Insurance Code.

(c) The name and address of the applicant, licensee, or permit holder shown on the certificate of insurance form must be the same as the name and address on the application or permit. The applicant or permit holder is responsible for ensuring that the insurance information on file with the department reflects the correct name and address of the insured.

(d) Coverage.

(1) Tow truck permit applicants and permit holders must obtain insurance for each permitted tow truck that meets the following requirements:

(A) Incident Management Towing

(i) a minimum of \$500,000 liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and

(ii) a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident.

(B) Private Property Towing

(i) a minimum of \$300,000 of liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo) per occurrence, or both; and

(ii) a minimum of \$50,000 of cargo or cargo on hook insurance per tow truck per incident.

(C) Consent Towing. A minimum of \$300,000 of liability insurance per tow truck per incident, which is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage (excluding cargo or cargo on hook) per occurrence, or both.

(2) Insurance covering permitted tow trucks must be kept in full force and effect at all times.

(3) The certificate of insurance must contain a provision obligating the insurer give the department thirty days notice before the effective date of a policy cancellation date.

(e) Replacement insurance filing.

(1) The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

(A) the new insurance filing is received by the department; and

(B) a cancellation notice has not been received for previous insurance filings.

(2) The department may revoke a license if the insurance has been canceled and a replacement policy has not been filed prior to the cancellation date.

(f) Insolvency of insurance carrier. If an insurer for a tow truck permit holder becomes insolvent, is placed in receivership, or has its certificate of authority suspended or revoked and if the tow truck permit holder no longer has insurance coverage as required by these rules, the tow truck permit holder shall file with the department, not later than the 10th day after the date the coverage lapses:

(1) evidence of insurance as required by these rules; and

(2) an affidavit that:

(A) indicates that an accident from which the tow truck permit holder may incur liability did not occur while the coverage was not in effect; or

(B) contains a plan acceptable to the department indicating how the tow truck permit holder will satisfy

claims of liability against the tow truck permit holder for an accident that occurred while the coverage was not in effect.

(g) Notices. The department will notify the Texas Department of Public Safety and other law enforcement agencies of each tow truck permit that has been revoked for failure to maintain the required insurance coverage.

#### **§ 86.450. Inspections--General**

(a) A towing company shall be inspected periodically, according to a risk-based schedule, or as a result of a complaint. These inspections are performed to determine compliance with the requirements of the Act and these rules. In addition, the department may make information available to licensees and managers on best practices for risk-reduction techniques.

(b) Inspections shall be performed during the normal operating hours of the towing company. The department may conduct inspections under the Act and these rules with or without advance notice.

(c) The department inspector will contact the towing company owner, manager, or their representative upon arrival at the towing company, and before proceeding with the inspection.

(d) The towing company owner, manager, or their representative shall cooperate with the inspector in the performance of the inspection.

#### **§ 86.451. Periodic Inspections**

(a) Each towing company shall be inspected at least once every two years.

(b) The towing company owner, manager, or their representative must, upon request, make available to the inspector all records, notices and other documents required by these rules.

(c) Upon completion of the inspection, the owner manager, or representative shall be advised in writing of the results of the inspection. The inspection report will indicate whether the inspection was approved or not approved, and will describe any violations identified during the inspection.

(d) For inspections that are not approved, the inspection report will identify violations that must be corrected by the owner. The report will also indicate the corrective actions required to address the violations, in accordance with § 86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(e) Based on the results of the periodic inspection, a towing company may be moved to a risk-based schedule of inspections. The department will notify the owner of the towing company, in writing, if the company becomes subject to the risk-based inspection schedule and the scheduled frequency of inspection.

#### **§ 86.452. Risk-based Inspections**

(a) Risk-based inspections are those required in addition to periodic inspections required under § 86.451, for towing companies determined by the department to be a greater risk to the public.

(b) To determine which towing company will be subject to risk-based inspections, the department has established criteria and frequencies for inspections.

(c) The owner of the towing company shall pay the fee required under § 86.800 for each risk-based inspection, in a manner established by the department.

(d) Each towing company subject to risk-based inspections will be scheduled for inspection based on the following risk criteria and inspection frequency:

Tabular or graphic material set at this point is not displayable.

(e) At the time of inspection of a towing company, the owner, manager, or their representative must, upon request, make available to the inspector, records, notices and other documents required by this chapter.

(f) Upon completion of the inspection, the owner of the towing company shall be advised in writing of the results of the inspection.

(g) The inspection report will identify violations that must be corrected by the towing company. The report will also indicate the corrective actions required to address the violations, in accordance with § 86.453. Additionally, the department may assess administrative penalties and/or administrative sanctions for violations.

(h) A towing company on a risk-based inspection schedule that has no significant violations in four consecutive inspections, may be moved to a less frequent risk-based inspection schedule or returned to a periodic schedule of inspections. The department will notify the owner of the towing company if there is a change in the towing company's risk-based schedule or if the towing company is returned to a periodic inspection schedule.

#### **§ 86.453. Corrective Actions Following Inspection**

(a) When corrective actions to achieve compliance are required:

(1) the department shall provide the towing company a list of required corrective modification(s);

(2) within 10 days after receiving the list of required corrective actions, the owner shall complete all corrective actions and provide written verification of the corrective actions to the department; and

(3) the department may grant an extension, consistent with established procedures, if satisfactory evidence is presented showing that the time period specified is inadequate to perform the necessary corrections.

(b) The department may assess administrative penalties and/or administrative sanctions for violations or for failure to complete corrective actions timely or provide written verification to the department timely, in accordance with § 86.900.

#### **§ 86.455. Private Property Tow Fees**

(a) For purposes of this section:

(1) light-duty means the tows of motor vehicles with a gross weight rating of 10,000 pounds or less;

(2) medium-duty means the tows of motor vehicles with a gross weight rating of more than 10,000 pounds, but less than 25,000 pounds; and

(3) heavy-duty means the tows of motor vehicles with a gross weight rating that exceeds 25,000 pounds; and

(4) drop charge means the maximum that may be charged for the release of the vehicle before its removal from the property or parked location.

(b) The maximum amount that may be charged for private property tows is as follows:

(1) light duty tows--\$250;

(2) medium duty tows--\$350; and

(3) heavy duty tows--\$450 per unit or a maximum of \$900.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner attempts to retrieve the motor vehicle before its removal from the property or parked location, the maximum amount that may be charged for a drop charge (if the motor vehicle is hooked up) is:

(1) light duty tows--\$125;

(2) medium duty tows--\$175; and

(3) heavy duty tows--\$225.

(d) If an owner, authorized operator, or authorized agent of the owner of a motor vehicle is present before the removal from the property or parked location the towing operator shall advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle that he or she may offer payment of the towing drop charge.

(e) For purposes of this section, a tow company must accept cash, credit cards and debit cards as payment for the drop charge.

#### **§ 86.458. Fees for Nonconsent Tows, Refunds**

(a) A license or permit holder may not charge a fee for a nonconsent tow that is greater than a nonconsent tow established under Texas Occupations Code, § 2308.2065.

(b) A license or permit holder may not charge a fee for a service related to a nonconsent tow that is not included in the list of fees established under Texas Occupations Code, § 2308.2065.

(c) The department may require a license or permit holder to refund to a vehicle owner or operator the amount charged to the owner or operator in excess of the amounts established by Texas Occupations Code.

#### **§ 86.500. Reporting Requirements--Towing Company**

(a) If a political subdivision begins regulating nonconsent tow fees, the towing company must update the fee schedules provided to the VSF and used by the towing company before the 30th day after the ordinance goes into effect.

(b) Any changes in nonconsent tow fees regulated by a political subdivision must be provided to the VSF by the towing company before the 30th day after the effective date of the change.

(c) Complete lists required. Each time a towing company provides a nonconsent towing fee schedule to the VSF, the towing company must include a complete list of all nonconsent towing fees charged by the towing company. Partial towing fee schedules are not acceptable. Each fee schedule required by this chapter is a complete schedule of all nonconsent towing fees of the company.

(d) If a municipality establishes private property tow fees that are less than the private property tow fees authorized

by § 86.455, the fee schedule must separately identify those municipalities and list each authorized fee.

(e) If a municipality establishes private property tow fees that are greater than the private property tow fees authorized by this section, the private property tow fee schedule may not exceed each fee authorized by § 86.455.

#### **§ 86.650. Towing, Storage, and Booting Advisory Board**

(a) The advisory board consists of the ten members appointed by the chairman of the commission with the approval of the commission. The ten members include:

(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 law enforcement officer from a county with a population of less than one-million;

(6) one law enforcement officer from a county with a population of one-million or more;

(7) one parking facility owner;

(8) one representative of property and casualty insurers who write automobile insurance in this state;

(9) one member of a booting company; and

(10) one public member.

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

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

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

(2) If a vacancy occurs during a term, the chairman of the commission will appoint a replacement who meets the qualifications of the open position to serve for the balance of the term.

(d) The chairman of the commission appoints one of the advisory board members to serve as the presiding officer of the advisory board for one year. The presiding officer of the advisory board may vote on any matter before the advisory board.

(e) Advisory board members do not receive compensation. They are, subject to the General Appropriations Act, reimbursed for actual and necessary expenses incurred in performing the duties of the advisory board.

(f) The advisory board meets twice yearly and may meet at other times at the call of the chairman of the commission or the executive director.

(g) The advisory board provides advice and recommendations to the department on technical matters relevant to the administration and enforcement of this chapter, including examination content, licensing standards, continuing education requirements, and maximum amounts that may be charged for fees related to private property tows.

**§ 86.700. Responsibilities of Tow Truck Permit Holder--Storage of Towed Vehicles**

(a) Unless the towing company agrees to take the vehicle to a location designated by the vehicle's owner, a towing company that makes a nonconsent tow shall tow the vehicle to a vehicle storage facility operated by a person who holds a vehicle storage facility license issued by the department.

(b) In the event the vehicle is taken to a location other than a licensed vehicle storage facility, the document signed by the vehicle owner or operator to authorize the tow may not include authorization of any other services other than those necessary to perform the nonconsent tow.

**§ 86.701. Responsibilities of Tow Truck Permit Holder--Tow Truck Signage**

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

- (1) the permit holder's name;
- (2) the permit holder's publicly listed 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.

**§ 86.702. Responsibilities of Licensee and Permit Holder--Change Name, Address, or Drug and Alcohol Testing Policy**

(a) A licensee or permit holder shall notify the department of changes to any of following information:

(1) change in the licensee's or permit holder's name no later than the effective date of the change;

(2) change of the licensee's or permit holder's mailing or physical address no later than the effective date of the change; or

(3) change in the licensee's drug and alcohol testing policy no later than 30 days before the effective date of the change.

(b) The requirements of subsection (a)(3) apply only to a towing company regulated by this chapter.

**§ 86.703. Responsibilities of Towing Company--Change of Ownership**

A towing company must file an original application for licensure when there is a change in the ownership of the company, including but not limited to, a corporate merger or a change in the sole proprietorship or partnership.

**§ 86.705. Responsibilities of Towing Company--Standards of Conduct**

(a) Except for signs required by Texas Occupations Code, § 2308.301, 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.

(c) A towing company may not tow a vehicle to a vehicle storage facility unless the vehicle storage facility is in compliance with the required postings in Texas Occupations Code, § 2308.207.

(d) A towing company may not remove and store an unauthorized vehicle unless authorized by Texas Occupations Code, § 2308.255.

(e) A towing company may not perform a nonconsent tow unless the property from which the vehicle is towed is in compliance with Texas Occupations Code, §§ 2308.301-2308.305.

(f) Except as authorized by Texas Occupations Code, §§ 2308.351-2308.354, a towing company may not perform a nonconsent tow from:

(1) a leased right-of-way;

(2) an area between a parking facility and a public right-of-way;

(3) a public right-of-way; or

(4) a public roadway.

(g) A towing company may not contract 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, unless the towing company notes on the tow ticket the:

(1) name of the person or company that authorized the tow;

(2) telephone number of the company or person that authorized the tow; and

(3) date of compliance with the notice provisions in Texas Occupations Code, § 2308.253(e).

(h) A towing company or towing operator 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.

(i) A towing company or towing operator may not charge a fee related to a nonconsent tow that is not listed in the schedule most recently submitted to the department.

(j) A towing company may not charge a fee for a nonconsent tow that is greater than the statewide fee or nonconsent tow fee authorized by Texas Occupations Code, § 2308.2065.

(k) A towing company may not charge a fee related to a nonconsent tow unless that fee is authorized by the

statewide fee or nonconsent tow fees authorized by Texas Occupations Code, § 2308.2065.

(l) A towing company must keep record of every nonconsent tow including, but not limited to, the following information:

(1) vehicle description, including license or vehicle identification number, if available;

(2) a statement describing the reason for towing the vehicle;

(3) location vehicle towed from; and

(4) vehicle storage location.

(m) A towing company may not employ or contract with unlicensed persons required to hold a license under this chapter.

**§ 86.706. Responsibilities of Towing Company--Required Postings at Vehicle Storage Facility (VSF)**

(a) A towing company must provide its nonconsent towing fees schedule to all VSF's to which the towing company delivers vehicles for storage.

(b) The nonconsent towing fees schedule provided to the VSF and made available to the public at the VSF must match the nonconsent towing fees schedule on file with the department.

(c) A towing company may not collect nonconsent towing fees unless the VSF accepting nonconsent towed vehicles post a sign in one inch letters stating "Nonconsent tow fees schedules available on request."

(d) The nonconsent towing fees schedule must be made available to any requestor during normal business hours of the VSF.

**§ 86.708. Responsibilities of Towing Company--Tow Truck License Plates**

Unless allowed by another law or regulation, a towing company or tow truck operator must not operate or cause a tow truck to be operated on the public roadways of this State unless the tow truck displays current license plates that include the words "Tow Truck."

**§ 86.709. Responsibilities of Towing Company--Tow Ticket**

(a) A towing company must prepare and issue a tow ticket for each nonconsent tow.

(b) A copy of the tow ticket must be given to the vehicle owner, if the owner or operator is present and available at the time of the tow, and a copy delivered to the vehicle storage facility, or place agreed upon by the towing operator and vehicle owner.

(c) The tow ticket shall only authorize charges directly related to towing the vehicle to a designated location authorized by subsection (b).

(d) The tow ticket shall itemize each charge and must characterize the fees using the identical fee structure stated in the towing company's nonconsent towing fee schedule on file with the VSF.

(e) The tow ticket must contain the licensed name of the towing company, publicly listed telephone number, towing company certificate of registration number, and the TDLR license number of the towing operator.

**§ 86.710. Responsibilities of Towing Company--Drug and Alcohol Testing Policy**

(a) A towing company adopting paragraphs (1)-(12) of this subsection will comply with Texas Occupations Code, § 2308.158.

(1) Purpose and Scope. This drug and alcohol testing policy provides guidance to supervisors and towing operators about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all towing operators and all towing operator job applicants.

(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2308 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug or alcohol test is administered, towing operators and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug and alcohol testing policy.

(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug or alcohol test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator's or applicant's system.

(4) Compliance with Drug and Alcohol Testing Policy. The failure or refusal by a towing operator or applicant to cooperate fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug and alcohol testing policy is governed by these general rules:

(A) towing operators shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) towing operators are prohibited from engaging in the manufacture, sale, distribution, use, or unauthorized possession of illegal drugs at any time.

(C) all towing company property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. Towing company property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) any towing operator convicted of violating a criminal drug or alcohol statute shall inform his/her supervisor of such conviction (including pleas of guilty and nolo contendere) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The towing company will notify the Texas

Department of Licensing and Regulation of the conviction (including pleas of guilty and nolo contendere).

(6) Types of Tests.

(A) Pre-employment. All applicants for positions requiring a towing operator's license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All towing operators employed by a towing company must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, towing operators are subject to random urine drug and alcohol testing. Under this policy, annual random test for drugs and alcohol of at least 25 percent of the total number of towing operators is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a towing operator for random urine drug and alcohol testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(iii) Each licensed towing company participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed towing operators participating in and tested by the consortium.

(D) Return-to-Duty and Follow-Up.

(i) Any towing operator who has violated this drug and alcohol testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a towing operator returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The towing operator will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the Federal Department of Health and Human Services.

(B) Drug and alcohol testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs or alcohol, the towing operator has 72 hours to request sending the split specimen to another Federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The towing operator will be required to pay for his or her split specimen test(s).

(D) For the towing operator's protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the towing operator will be notified, and the MRO will notify the company.

(E) The towing company will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

(i) towing operator's name;

(ii) towing operator's license number;

(iii) date of the positive test;

(iv) substance detected by the drug and alcohol test; and

(v) disciplinary action imposed violation of the drug testing policy.

(9) Reporting and Reviewing of Drug and Alcohol Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.



(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the Federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the towing operator by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug or alcohol test results to any other person except under written authorization from the towing operator, unless such results are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to Towing Operators. The minimal distribution of information for all towing operators will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs and alcohol;

(B) an existing community services hotline number, available drug and alcohol counseling, rehabilitation, and assistance program;

(C) the company's policy regarding the use of prohibited drugs and/or alcohol; and

(D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug and alcohol policy.

(11) Consequences of a Confirmed Positive Drug and Alcohol Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a towing operator's positive drug and alcohol test result has been confirmed, the towing operator will stand down from towing operation duties and may be subject to disciplinary action up to and including termination.

(C) The company may consider the following factors in determining the appropriate disciplinary action: the towing operator's work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug and alcohol policy against towing operators who voluntarily identify themselves as drug or alcohol users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug and alcohol testing.

(12) Exceptions.

(A) Towing operators subject to random drug and alcohol testing under Title 49, Code of Federal Regulation, Part 40 who have been randomly tested in the 12-month reporting period are exempt from the annual test requirement, provided that the towing operator's tested negative and the negative test results are submitted to and verified by the MRO.

(B) Towing operators holding a valid Towing Operator License issued by the department who are tested for drugs and alcohol in accordance with 16 Texas Administrative Code Chapter 85 are exempt from this section.

(b) Independent drug and alcohol testing policy.

(1) A towing company may file an independent drug and alcohol testing policy.

(2) The filing must describe how the independent drug and alcohol testing policy is as stringent as each provision of the model policy set forth in subsection (a).

(c) Compliance. A towing company is required to adopt and implement an alcohol and drug testing policy that complies with subsection (a) or (b).

**§ 86.711. Responsibilities of Towing Company-- Honesty, Trustworthiness, and Integrity**

A towing company must conduct towing operations with honesty, trustworthiness, and integrity.

**§ 86.715. Responsibilities of Towing Operators-- Standards of Conduct**

(a) A towing operator may not charge a fee for a nonconsent tow that is greater than the statewide fee or nonconsent tow fee approved by Texas Occupations Code, § 2308.2065.

(b) A towing operator may not charge a fee related to a nonconsent tow unless that fee is authorized by the statewide fee or nonconsent tow fees approved by Texas Occupations Code, § 2308.2065.

(c) A towing operator must allow department personnel and law enforcement to inspect a tow truck permitted under this chapter.

(d) A towing operator must perform each tow in a safe and competent manner based on the circumstances and type of vehicle under tow.

(e) During the term of the towing operator license, a towing operator must maintain a current valid driver's license. An occupational driver's license does not meet the requirements of this chapter.

(f) A towing operator may not tow a vehicle to a vehicle storage facility unless the vehicle storage facility displays a TDLR license number.

(g) A towing operator may not remove and store an unauthorized vehicle unless authorized by Texas Occupations Code, § 2308.255.

(h) A towing operator may not perform a nonconsent tow unless the property from which the vehicle is towed is in compliance with Texas Occupations Code, §§ 2308.301-2308.305.

(i) Except as authorized by Texas Occupations Code, §§ 2308.351-2308.354, a towing operator may not perform a nonconsent tow from:

(1) a leased right-of-way;

(2) an area between a parking facility and a public right-of-way;

(3) a public right-of-way; or

(4) a public roadway.

(j) A towing operator must prepare and issue a tow ticket for each nonconsent tow.

(k) towing operator must provide a copy of the tow ticket to the vehicle owner or representative, if the owner or representative, or operator is present and available at the time of the tow, and a copy delivered to the vehicle storage facility, or place agreed upon by the towing operator and vehicle owner.

(l) The tow ticket provided by the towing operator shall only authorize charges directly related to towing the vehicle to a designated location authorized by subsection (k).

(m) The tow ticket provided by the towing operator must itemize each charge and must characterize the fees using the identical fee structure stated in the towing company's nonconsent towing fee schedule on file with the VSF.

(n) The towing operator must include on the tow ticket the licensed name of the towing company, publicly listed

telephone number, towing company TDLR license number, and the TDLR license number of the towing operator.

(o) A towing operator must perform each towing operation with honesty, trustworthiness, and integrity.

(p) When performing towing operations, all towing operators must carry and openly display the appropriate TDLR issued original towing operator license.

### **§ 86.800. Fees**

(a) Application Fees

(1) Permit Tow Truck

(A) Original Application--\$75

(B) Renewal--\$75

(C) Duplicate Permit--No charge

(D) Permit Amendment--\$25

(2) Tow Company License

(A) Original Application--\$350

(B) Renewal--\$350

(C) Duplicate License--\$25

(D) Permit Amendment--\$25

(3) Operator License

(A) Original Application--\$100

(B) Renewal--\$100

(C) Duplicate License--\$25

(D) Operator License Amendment--\$25

(E) Training License--\$25

(4) Dual Vehicle Storage Facility License and Towing Operator

(A) Original Application--\$150

(B) Expedited Dual License--\$75

(C) Renewal--\$150

(b) Risk-based inspections--\$150

(c) Late renewal fees for licenses and permits issued under this chapter are provided under § 60.83 of this title (relating to Late Renewal Fees).

(d) All fees are nonrefundable except as provided for by commission rules or statute.

**§ 86.900. Sanctions and Administrative Penalties**

A person that violates Texas Occupations Code, Chapter 2308, a rule, or an order of the Executive Director or Commission relating to Texas Occupations Code, Chapter 2308, will be subject to administrative sanctions and/or administrative penalties under Texas Occupations Code, Chapters 51 and 2308 and applicable agency rules.

**§ 86.901. Cease and Desist Order**

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

**§ 86.902. Requirement to Reimburse**

A license or permit holder charging a fee greater than the fee listed on its most recent fee schedule submitted to the department or a fee not listed on its most recent fee schedule submitted to the department may be ordered to reimburse the vehicle owner or operator of the over charges and unauthorized charges.

**§ 86.903. Enforcement of Unpaid Judgments**

(a) The department shall suspend a license holder's license on the license holder's failure to pay a final judgment awarded to an owner or operator of a vehicle before the 60th day after the date of the final judgment. The department must provide notice of the suspension to the license holder at least 30 days before the date the license is to be suspended.

(b) The owner or operator of the vehicle shall submit a certified copy of the final judgment to the department.

(c) On receipt of the certified copy of the unpaid final judgment, the department shall disqualify a person from renewing a license or permit or deny the person the opportunity of taking a licensing examination on the grounds that the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.

(d) The department shall reinstate the license on submission of evidence satisfactory to the department of

payment of the final judgment by the person, towing company, or vehicle storage facility.

**§ 86.1000. Technical Requirements--Tow Truck Safety Equipment and Truck Operations**

(a) Each tow truck shall, if applicable:

(1) have a legible manufacturer's data plate indicating the capacity of the boom, the winch or the carry mechanism; or

(2) have a document in the truck from the manufacturer stating the capacity of the boom, the winch and the carry mechanism.

(b) Every hydraulic line on each tow truck must be free of leaks and be in good working condition free of defects.

(c) The winch must not exceed the capacity of the boom or leak oil.

(d) The cables must be as specified by the manufacturer and be in good condition, within manufacturer guidelines.

**§ 86.1001. Technical Requirements--Towing Operator Safety Clothing and Identification**

(a) Towing operators, as a condition of their license must comply with the protective clothing policy.

(b) Towing operators must wear a reflective vest, shirt, or reflective jacket at all times while working outside the tow truck; the reflective vest, shirt, or reflective jacket must meet the ANSI/ISEA requirements for high visibility safety apparel at all times when using or assisting in the use or operation of a licensed tow truck on a road or road related area.

(c) When performing towing operations, all tow truck operators must carry and openly display the appropriate TDLR issued original towing operator license.

(d) Towing operators permitted under § 86.211 are exempt from the requirements of subsection (b).

**§ 86.1002. Technical Requirements--Towing Company Records**

(a) General records to be maintained. Except as provided in paragraphs (1) and (2), every towing company shall maintain at a principal office in Texas all records and information required by the department.

(1) Texas firms. If a towing company wishes to maintain records at a location other than its principal office in Texas, the towing company shall make a written request

to the department. A tow company may not begin maintaining records at an alternate location until the request is approved by the department.

(2) Out-of-state firms. A towing company whose principal business address is located outside the state of Texas shall maintain records required under this section at its principal office in Texas. Alternatively, a towing company may maintain such records at an out-of-state facility if the towing company reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted under these rules.

(b) Preservation and destruction of records. All books and records generated by a tow company must be maintained for not less than two years at the towing company's principal business address.