

# **A NEW SPECIES OF INSURANCE FRAUD: FLIPPING HOW TO IDENTIFY IT, INVESTIGATE IT, AND PROSECUTE IT**

**MICHAEL SHIRK, PROSECUTOR**

Texas Department of Licensing and Regulation  
512.539.5616 | Michael.Shirk@TDLR.TEXAS.GOV

**Texas Department of Licensing and Regulation**

Texas Towing and Booting Act: TEXAS OCCUPATIONS CODE, Ch. 2308  
16 TEXAS ADMINISTRATIVE CODE, Ch. 86

Vehicle Storage Facility Act: TEXAS OCCUPATIONS CODE, Ch. 2303  
16 TEXAS ADMINISTRATIVE CODE, Ch. 85

Authorized to investigate and prosecute cases at the State Office of Administrative Hearings.

Cases may be commenced from information received by TDLR, typically a complaint received from a vehicle owner but also law enforcement, insurance adjuster, or SIU.

Violation of law by licensee: [https://www.tdlr.texas.gov/complaints/default\\_Licensed.aspx](https://www.tdlr.texas.gov/complaints/default_Licensed.aspx)

## **FLIPPING**

Activity by a towing company, towing operator, or vehicle storage facility resulting in a vehicle being taken directly to, or transferred to, an unregulated body shop.

Documents signed by the vehicle owner or operator must authorize the vehicle being taken to, or transferred to, an unregulated body shop. In cases of flipping these documents are obtained by deceit, fraud, misrepresentations, or unfair and deceptive acts or practices.

**Eternity is a mere moment, just long enough for a joke (Hermann Hesse) | The Important Minute**



A careful and nuanced interview with the vehicle operator (and those present) to determine the facts and circumstances surrounding his or her signing of the documents.

- Accident scene with police, tow trucks, ambulances, chaos, injury?
- What was presented, how was it presented, how was it represented?
- Copy of any document given to vehicle owner?
- Vehicle storage facility, fragile, upset, rushed and, again, what was presented, how was it presented, how was it represented, copies given?

Body shop:

- Physical Location / Secretary of State and assumed named data bases
- Total Loss: Administration, teardown, tow, storage, administration fees = \$2,000

Prevention:

- Clear instructions to insured and body shop that no work is to be done.
- Sticker vehicle.
- Obtain Documents.
- Notice to Preserve Documents.
- File complaint or legal proceeding.

### **Legal Duties**

#### **TOWING COMPANIES AND TOW TRUCK DRIVERS**

##### **TEXAS OCCUPATIONS CODE § 2308.205(a):**

(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:

- (1) the towing company agrees to take the vehicle to a location designated by the vehicle's owner; or
- (2) the vehicle is towed under:
  - (A) rules adopted under Subsection (a-1); or
  - (B) Section 2308.259(b).

##### **16 TEXAS ADMINISTRATIVE CODE § 86.700:**

- (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.

##### **16 TEXAS ADMINISTRATIVE CODE §86.705: Responsibilities of Towing Company--Standards of Conduct.**

- (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.

\* \* \* \*

(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.

**16 TEXAS ADMINISTRATIVE CODE § 86.706**

- (a) A towing company must provide its nonconsent towing fees schedule to all VSFs 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.

**16 TEXAS ADMINISTRATIVE CODE 86.709**

- (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.

**16 TEXAS ADMINISTRATIVE CODE 86.711:** A towing company must conduct towing operations with honesty, trustworthiness, and integrity.

**16 TEXAS ADMINISTRATIVE CODE 86.715**

- (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.

\* \* \* \*

- (j) A towing operator must prepare and issue a tow ticket for each nonconsent tow.
- (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.

- - - - VEHICLE STORAGE FACILITIES - - - -

**16 TEXAS ADMINISTRATIVE CODE § 85.10(21) & (22)**

(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.

**16 TEXAS ADMINISTRATIVE CODE § 85.20(a):** These rules do not apply to a vehicle parked or stored at a VSF with the consent of the vehicle's owner.

**16 TEXAS ADMINISTRATIVE CODE § 85.700**

Vehicle storage facilities shall be responsible for providing proof regarding whether or not a vehicle was stored with the vehicle owner's consent

**16 TEXAS ADMINISTRATIVE CODE § 85.703(a) and (b):**

(a) If a vehicle is removed by the vehicle owner or authorized representative within 24 hours after the VSF receives the vehicle, notification as described in subsections (b) - (j) does not apply.

(b) The registered owners and lien holders of a vehicle accepted at a VSF shall be notified in the following manner.

(1) If a vehicle is registered in Texas, the VSF shall notify the vehicle's registered owner and primary lien holder by certified mail, return receipt requested, registered, or electronic certified mail within five days, but no sooner than within 24 hours of receipt of the vehicle.

(2) If a vehicle is not registered in Texas, the VSF shall notify the vehicle's registered owner and all recorded lien holders within 14 days, but no sooner than within 24 hours of receipt of the vehicle.

**16 TEXAS ADMINISTRATIVE CODE § 85.703:**

(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 tow 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.

**16 TEXAS ADMINISTRATIVE CODE § 85.708(c) and (d):**

(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.

**16 TEXAS ADMINISTRATIVE CODE § 85.710(a)(2) & (b):**

(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.

\* \* \* \*

(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.

(c) A person may not execute, submit or use a department-approved form or other document which contains a false, fictitious, dishonest, or fraudulent statement of a material fact used for the purpose of obtaining possession of or access to a motor vehicle stored by a facility licensed under Texas Occupations Code, Chapter 2303.

(1) For purposes of this section, a false, fictitious, dishonest, or fraudulent statement related to authorization from the vehicle owner to the person or entity named in the form or document is a material fact.

(2) Conduct found by the commission or the executive director by final order to have violated this section shall be deemed fraudulent and dishonest conduct.

#### **16 TEXAS ADMINISTRATIVE CODE § 85.713(a)**

(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.

#### **16 TEXAS ADMINISTRATIVE CODE § 85.714**

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.

#### **16 TEXAS ADMINISTRATIVE CODE § 85.720**

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.

#### **16 TEXAS ADMINISTRATIVE CODE § 85.721**

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.

**16 TEXAS ADMINISTRATIVE CODE § 85.722 (fees)**

Notification Fee / Daily Storage Fee / Impound Fee / Government of Law Enforcement Fee  
Environmental Hazard Fee

**16 TEXAS ADMINISTRATIVE CODE § 85.726:** A person licensed under this chapter must conduct vehicle storage facility operations with honesty, trustworthiness and integrity.

**16 TEXAS ADMINISTRATIVE CODE § 85.1004**

(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.