

BILL ANALYSIS

C.S.S.B. 422
By: Bivins
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current state law, Texas motorists are required to carry automobile liability insurance or otherwise establish financial responsibility. In addition, all persons operating a motor vehicle are required to show valid proof of financial responsibility when requested by a peace officer, when involved in an accident, or when obtaining certain registrations, inspections, or licenses. In 1998, the Department of Public Safety estimated that roughly 20 percent of Texas motorists were uninsured. Some motorists are able to circumvent insurance requirements by canceling purchased insurance policies immediately after licensing and registration requirements are met. In addition, automobile insurance availability and affordability have been cited as factors contributing to the number of uninsured motorists. C.S.S.B. 422 provides for verification of compliance with and enforcement of financial responsibility requirements, requires standard proof of insurance cards, and permits an insured to waive coverage for noneconomic and exemplary damages.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Transportation in SECTION 1.01 (Sections 601.502, Transportation Code) and to the Commissioner of Insurance in SECTION 2.01 (Article 5.06-1, Insurance Code) and SECTION 3.01 (Article 5.06-7, Insurance Code) of this bill. .

ANALYSIS

SECTION BY SECTION ANALYSIS

ARTICLE 1. FINANCIAL RESPONSIBILITY REQUIREMENTS

SECTION 1.01. Amends Chapter 601, Transportation Code, by adding Subchapter N, as follows:

SUBCHAPTER N. VERIFICATION OF COMPLIANCE WITH AND ENFORCEMENT OF FINANCIAL RESPONSIBILITY REQUIREMENTS

Sec. 601.501. DEFINITION. Defines "verification date."

Sec. 601.502. VERIFICATION OF ESTABLISHMENT OF FINANCIAL RESPONSIBILITY THROUGH RANDOM SAMPLING. (a) Requires the Texas Department of Transportation (TxDOT) or an agent of that department to verify whether an owner who is selected or whose motor vehicle is selected has established financial responsibility through a process of random selection of samples of registrations of motor vehicles and owners of motor vehicles. Requires the Department of Public Safety (DPS) to provide the TxDOT access to certain information.

(b) Prohibits a sample from being selected by any discriminatory method.

(c) Authorizes TxDOT to select certain other registered motor vehicle owners, in addition to the general random sampling of motor vehicle registrations, to verify that the person has established financial

responsibility.

(d) Requires TxDOT to send a request for information about a motor vehicle and the owner's method of establishing financial responsibility to randomly selected motor vehicle owners. Provides that the request must require the owner to state whether financial responsibility has been established as of the verification date.

(e) Requires TxDOT to adopt rules as necessary to implement this subchapter and requires TxDot by rule to establish the frequency of sample selection and prescribe certain methods, a particular form, and information to be requested in the form.

(f) Authorizes TxDOT to require an owner to include a statement that the owner had established financial responsibility as of the verification date, through certain methods.

(g) Requires the owner, to whom the notice is sent to furnish requested information to TxDOT in the prescribed form, accompanied by a signed affirmation that the information is true and correct by a certain date.

(h) Authorizes TxDOT to conduct a verification investigation if the owner asserts that the owner had, as of the verification date, established financial responsibility.

Sec. 601.503. VERIFICATION INVESTIGATION. (a) Authorizes TxDOT or an agent of that department to furnish necessary information to the insurer, surety, or officer named in the response in order to verify a response received from an owner under Section 601.502. Requires the insurer, surety, or officer to inform TxDOT by a certain date, after the date of receipt of the information, whether financial responsibility had been established for the affected motor vehicle. Provides that an insurer is subject to an administrative penalty for not complying with this subsection.

(b) Requires TxDOT to examine DPS records to verify that a certificate of self- insurance has been issued if an owner has stated that financial responsibility has been established through self-insurance.

Sec. 601.504. CIVIL PENALTY; WARNING NOTICE. (a) Provides that if an owner responds under Section 601.502 that the owner has not established financial responsibility or the owner fails to respond in a timely manner or if TxDOT otherwise determines that an owner has registered or maintained the registration of a motor vehicle without establishing financial responsibility in accordance with Section 601.051(a):

(1) Provides that the owner is liable to the state for a civil penalty of \$250; and

(2) Requires TxDOT to mail the owner a warning stating certain information.

(b) Requires TxDOT to terminate the registration for the motor vehicle, if an owner of a motor vehicle has not provided evidence of financial responsibility to TxDOT within the 30 days after the date the warning is sent.

(c) Requires each notice or warning sent under this section to include, in English and Spanish, a clear and reasonably complete statement of an owner's rights and responsibilities under this chapter.

(d) Requires TxDOT to recover its costs in implementing and administering the verification program under this subchapter from the civil penalties collected under this chapter. Requires TxDOT to deposit any amounts collected that exceed the administrative costs of TxDOT under this subchapter to the credit of the general revenue fund.

Sec. 601.505. REGISTRATION OF MOTOR VEHICLE FOR WHICH REGISTRATION TERMINATED. (a) Prohibits the registration of a motor vehicle for which registration is terminated under

Section 601.504(b) unless the owner submits the required \$250 civil penalty and certain other fees, except as provided by Subsection (b), (c), and (d).

(b) Requires TxDOT to reinstate the terminated registration of a motor vehicle without payment of any fee under subsection (a)(2) if before the end of the registration period during which the registration was terminated the owner of the motor vehicle presents certain evidence of financial responsibility.

(c) Provides that notwithstanding the terms of this Subchapter:

(1) no lien attaches to a vehicle as a result of a violation of this Subchapter;

(2) a person is not liable for a fine or penalty levied under this section or Section 601.504 if the person did not own the vehicle at the time the fine or penalty was levied; and

(3) neither a tax assessor-collector nor the Texas Department of Transportation may refuse to register a vehicle on the ground that a prior owner of the vehicle violated this Subchapter.

(d) Provides that the provisions of Subsection (c) are not available to:

(1) a person who received a title to the vehicle as a gift from the prior owner; or

(2) a person who received the title to the vehicle from a family member, unless the Texas Department of Transportation is satisfied that the transfer is in good faith and not to defeat the purpose of this Subchapter.

Sec. 601.506. DISPLAY OF FALSE PROOF OF FINANCIAL RESPONSIBILITY; OFFENSE.

(a) Provides that a person commits an offense if the person knowingly provides false proof of financial responsibility or evidence of financial responsibility that is illegally altered, counterfeit, or otherwise invalid to certain officers of the court.

(b) Requires a peace officer to confiscate invalid evidence of financial responsibility for presentation in court if the officer issues a citation to a motor vehicle operator for displaying invalid evidence of financial responsibility.

(c) Provides that an offense under this section is punishable by a fine of not less than \$500 or more than \$750.

Sec. 601.507. USE OF AGENTS. Authorizes TxDOT to submit requests for proposals for contracts with private vendors to perform the random sampling and the verification investigations as an agent of that department. Authorizes TxDOT to enter into contracts as necessary to implement the use of agents.

SECTION 1.02. Amends Section 601.051, Transportation Code, as follows:

(a) Creates this subsection from existing text.

(b) Adds this subsection to prohibit an owner of a motor vehicle from allowing another person to operate the motor vehicle in this state unless financial responsibility is established and evidenced.

SECTION 1.03. Amends Section 601.191, Transportation Code, as follows:

Sec. 601.191. New Heading: OPERATION OF MOTOR VEHICLE IN VIOLATION OF FINANCIAL RESPONSIBILITY REQUIREMENTS; OFFENSE. (a) Provides that a person commits an offense if the person operates a motor vehicle or permits another person to operate a motor vehicle in violation of Section 601.051.

(b) Increases the fine for an offense under this section from not less than \$175 or more than \$350 to not

less than \$350 or more than \$500, except as provided by Subsection (d).

(c) Provides that it is a defense to prosecution under this section that the owner or operator charged with an offense produces satisfactory evidence in court that at the time of the alleged offense, the owner or operator had established financial responsibility. Deletes reference to previous convictions of an offense under this section and the related fines.

(d) Provides that a court may reduce a fine to not less than \$350, rather than \$175, if a person a person who has not been previously convicted is economically unable to pay the fine.

SECTION 1.04. Amends Section 601.195, Transportation Code, by adding Subsection (c) to provide that it is a defense to prosecution under this section that a person charged with an offense produces in court satisfactory evidence that, at the time of the alleged offense, the owner or operator had established financial responsibility in accordance with Subchapter F or K, as applicable.

SECTION 1.05. Requires TxDOT, in performing sample selection under Section 601.502, Transportation Code, as added by this Act, to ensure that at least 500,000 samples are selected on or before September 1, 2005.

SECTION 1.06. (a) Requires TxDOT, in cooperation with the Texas Department of Insurance and the Department of Public Safety of the State of Texas, to conduct an evaluation of the implementation and operation of the verification program adopted under Chapter 601N, Transportation Code, as added by this Act, and of the effectiveness of the verification program in increasing compliance with the financial responsibility requirements established under Chapter 601C, Transportation Code. Requires the evaluation to include certain information.

(b) Requires TxDOT to enter into contracts, memoranda of understanding, or interagency agreements as necessary to implement this section.

(c) Requires TxDOT to report the results of the evaluation conducted under this section to the legislature not later than February 1, 2011. Requires TxDOT to provide written copies of the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

ARTICLE 2. UNINSURED AND UNDERINSURED MOTORIST COVERAGE SECTION 2.01. Amends Article 5.06-1, Insurance Code, as follows:

(a) Redesignated from Subdivision (1). Deletes language referring to an Assigned Risk Plan established under Section 35 of the Texas Motor Vehicle Safety-Responsibility Act and inserts the Texas Automobile Insurance Plan Association. Replaces "Board" with "commissioner of insurance (commissioner)" and "him" with "the named insured." Makes conforming and nonsubstantive changes.

(b) Redesignated from Subdivision (2). Defines "exemplary damages" and "noneconomic damages." Makes nonsubstantive and conforming changes.

(c) Makes a conforming change.

(e) Provides that this subsection applies except as provided by Subsection (f) of this article. Replaces the Texas Motor Vehicle Safety-Responsibility Act with Chapter 601, Transportation Code. Makes a conforming change.

(f) Authorizes the named insured to elect to waive coverage under this article for recovery of noneconomic and exemplary damages resulting from bodily injury, sickness, or disease, including death. Provides that if an insured elects to waive coverage under this subsection, Subsection (e) of this article does not apply to the limits of liability that are applicable to the coverage provided under the policy issued to the insured for damages resulting from bodily injury, sickness, or disease, including death. Authorizes the commissioner

by rule to adopt minimum limits of liability applicable to those damages. Provides that waiver of coverage under this subsection does not affect the insured's right to bring an action for noneconomic and exemplary damages against a responsible party. Provides that written rejection of coverage for noneconomic and exemplary damages is not effective unless the insurer provides the insured with a written notice, acknowledged in writing by the insured at the time of the rejection, disclosing the amount of potential coverage that is available, the types of damages that would be covered, and the amount of premium saved because the coverage is rejected.

(g) Redesignated from Subdivision (4)(a). Makes a conforming change.

(h) Redesignated from Subdivision (4)(b).

(i) Redesignated from Subdivision (5). Provides that if the named insured has waived coverage under Subsection (f) of this article for recovery of noneconomic and exemplary damages, the amount paid to the insured may not include any amount attributable to noneconomic and exemplary damages.

(j) Redesignated from Subdivision (6) to make conforming and nonsubstantive changes.

(k) Redesignated from Subdivision (7).

(l) Redesignated from Subdivision (8) to make nonsubstantive changes.

ARTICLE 3. PROOF OF INSURANCE CARDS

SECTION 3.01. Amends Subchapter A, Chapter 5, Insurance code, by adding Article 5.06-7.

Article 5.06-7. FORM AND APPEARANCE OF PROOF OF MOTOR VEHICLE LIABILITY INSURANCE. (a) Requires the commissioner of insurance (commissioner) to prescribe by rule a standard appearance and form for a proof of motor vehicle liability insurance card.

(b) Requires the commissioner to require an appearance of the card that is difficult to alter, duplicate, or counterfeit and not cost-prohibitive for consumers.

ARTICLE 4. REPEALER

SECTION 4.01. Repealer: Section 601.193 (Defense: Financial Responsibility in Effect at Time of Alleged Offense), Transportation Code.

ARTICLE 5. TRANSITION; EFFECTIVE DATE

SECTION 5.01. Makes application of the change in law made by this Act to Chapter 601, Transportation Code, prospective.

SECTION 5.02. Makes application of amendments to Article 5.06-1, Insurance Code, prospective to January 1, 2004.

SECTION 5.03. (a) Effective date: September 1, 2003, except as provided by Subsection (b) of this section.

(b) Article 1 of this Act takes effect January 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 422 modifies the original by providing that it is a defense to prosecution under Section 601.195 (Operation of a motor vehicle in violation of requirement to establish financial responsibility) of the

Transportation Code that the person charged with an offense produces evidence that the owner or operator had established financial responsibility in accordance with Subchapter F or K, rather than Section 601.051(a).