

BILL ANALYSIS

Senate Research Center

S.B. 1792
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Transportation
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A number of customers on toll projects across Texas refuse to pay the toll to access the road. Some individuals make this choice on a regular basis, racking up large number of unpaid tolls and violations. There are currently over 100,000 drivers who have more than 100 unpaid tolls on facilities in north Texas, costing the toll entity more than \$48 million since 2010. Eighty percent of these individuals drive north Texas toll roads daily.

Toll entities have varying authority options to pursue these habitual violators to receive compensation and little or no ability to prohibit the continued use of the facility by these individuals.

S.B. 1792 authorizes toll project entities to make or seek a determination that a registered owner of a vehicle is a "habitual violator" for the non-payment of tolls and administrative fees for use of the toll facilities.

S.B. 1792 amends current law relating to remedies for nonpayment of tolls for the use of toll projects, authorizes a fee, and creates an offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 372, Transportation Code, by adding Subchapter C, as follows:

SUBCHAPTER C. NONPAYMENT OF TOLLS; REMEDIES.

Sec. 372.101. **APPLICABILITY.** Provides that this subchapter does not apply to a county acting under Chapter 284 (Drainage on Public Roads).

Sec. 372.102. **PUBLICATION OF NONPAYING VEHICLE INFORMATION.** (a) Authorizes a toll project entity, notwithstanding the confidentiality of electronic toll collection customer account information, including confidentiality under Sections 228.057(e) (relating to providing that certain toll collection customer account information is confidential), 366.179(d) (relating to providing that certain transponder customer account information, including contact and payment information and trip data, is confidential), and 370.178(d) (relating to providing that certain transponder customer account information, including contact and payment information and trip data, is confidential), to publish a list of the names of the registered owners of lessees of nonpaying vehicles who at the time of publication are liable for the payment of past due and unpaid tolls or administrative fees. Authorizes the list to include only the persons' names and, for each person listed, the city and state of the person's residence, the total number of events of nonpayment, and the total amount due for the tolls and administrative fees.

(b) Prohibits a toll project entity from including on a list published under Subsection (a) the name of a registered owner who remits a tax imposed under Section 152.026 (Tax On Gross Rental Receipts), Tax Code.

Sec. 372.103. TOLL VIOLATION PAYMENT PLAN. Authorizes a toll project entity to enter into an agreement with the registered owner of a vehicle, for whom a single payment is not feasible, that allows the person to pay the total amount of outstanding tolls and administrative fees over a specified period. Requires that the agreement be in writing and specify the amount due for tolls and administrative fees, the duration of the agreement, and the amount of each payment.

Sec. 372.104. DEFAULT; SUIT TO RECOVER OUTSTANDING BALANCE DUE. (a) Authorizes a toll project entity to send by first class mail to the person at the address shown on the agreement a written notice demanding payment of the outstanding balance due if the registered owner of the vehicle fails to comply with the terms of an agreement described by Section 372.103.

(b) Authorizes the toll project entity, in addition to other remedies available to the entity, to refer the matter to an attorney authorized to represent the toll project entity for suit or collection if the registered owner fails to pay the outstanding balance due on or before the 30th day after the date on which the notice is mailed.

(c) Authorizes the authorized attorney to file suit in a district court in the county in which the toll project entity's administrative offices are permanently located to recover the outstanding balance due and to recover reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the toll project entity in the proceeding.

Sec. 372.105. NONPAYMENT BY VEHICLES NOT REGISTERED IN THIS STATE.

(a) Authorizes a toll project entity, in lieu of mailing a written notice of nonpayment, to serve with a written notice of nonpayment in person an owner of a vehicle that is not registered in this state, including the owner of a vehicle registered in another state of the United States, the United Mexican States, a state of the United Mexican States, or another country or territory. Authorizes a notice of nonpayment to also be served by an employee of a governmental entity operating an international bridge at the time a vehicle with a record of nonpayment seeks to enter or leave this state.

(b) Requires that each written notice of nonpayment issued under Subsection (a) include a warning that the failure to pay the amounts in the notice may result in the toll project entity's exercise of the habitual violator remedies under this subchapter.

(c) Provides that an owner who is served a written notice of nonpayment under Subsection (a) and fails to pay the proper toll and administrative fee within the time specified in the notice commits an offense. Provides that each failure to pay a toll or administrative fee under this subsection is a separate offense.

(d) Provides that an offense under Subsection (c) is a misdemeanor punishable by a fine prohibited from exceeding \$250. Authorizes the court in which an owner is convicted of an offense under this section to also collect the proper toll and administrative fee and forward the toll and fee to the toll project entity.

(e) Provides that it is a defense to prosecution under Subsection (c) that the owner of the vehicle is a lessor of the vehicle and not later than the 30th day after the date the notice of nonpayment is served under Subsection (a) provides the toll project entity proof that that meets applicable toll project entity law establishing that the vehicle was leased to another person at the time of nonpayment.

(f) Provides that it is a defense to prosecution under Subsection (c) that the vehicle in question was stolen before the failure to pay the proper toll occurred

and was not recovered by the time of the failure to pay, but only if the theft was reported to the appropriate law enforcement authority before the earlier of the occurrence of the failure to pay, or eight hours after the discovery of the theft.

Sec. 372.106. HABITUAL VIOLATOR. (a) Provides that, for the purposes of this chapter, a habitual violator is a registered owner of a vehicle who a toll project entity determines:

(1) was issued at least two written notices of nonpayment that contained:

(A) in the aggregate, 100 or more events of nonpayment within a period of one year, not including events of nonpayment for which:

(i) the registered owner has provided the toll project entity information establishing that the vehicle was subject to a lease at the time of the nonpayment, as provided by applicable toll project entity law; or

(ii) a defense of theft at the time of the nonpayment has been established and provided by applicable toll project entity law; and

(B) a warning that the failure to pay the amounts specified in the notices may result in the toll project entity's exercise of habitual violator remedies; and

(2) has not paid in full the total amount due for tolls and administrative fees under those notices.

(b) Requires a toll project entity, if the toll project entity makes a determination under Subsection (a), to give written notice to the person at the person's address as shown in the vehicle registration records of the Texas Department of Motor Vehicles (TxDMV) or the analogous agency of another state or country, or an alternate address provided by the person or derived through other reliable means.

(c) Requires that the notice:

(1) be sent by first class mail and is presumed received on the fifth day after the date the notice is mailed; and

(2) state the total number of events of nonpayment and the total amount due for tolls and administrative fees, the date of the determination under Subsection (a), the right of the person to request a hearing on the determination, and the procedure for requesting a hearing, including the period during which the request is required to be made.

(d) Requires that a hearing be held as provided by Section 372.107, if not later than the 30th day after the notice on which the person is presumed to have received the notice the toll project entity receives a written request for a hearing.

(e) Provides that the toll project entity's determination becomes final and not subject to appeal on the expiration date of that period, if the person does not request a hearing within the period provided by Subsection (d).

Sec. 372.107. HEARING. (a) Provides that a justice court has jurisdiction to conduct a hearing in accordance with this section.

(b) Requires that a hearing requested under Section 372.106 be conducted in a justice court in a county in which the toll collection facilities where at least 25 percent of the events of nonpayment occurred are located.

(c) Requires a party requesting a hearing to pay a filing fee of \$100 to the clerk of the justice court. Requires, if that party prevails under the justice's finding under Subsection (f), the other party to reimburse the prevailing party for the amount of the filing fee within 10 days after issuance of the finding.

(d) Provides that the issues that are required to be proven at the hearing by a preponderance of the evidence are:

(1) whether the registered owner was issued at least two written notices of nonpayment for an aggregate of 100 or more events of nonpayment within a period of one year, not including events of nonpayment for which:

(A) the registered owner has provided to the toll project entity information establishing that the vehicle was subject to a lease at the time of the nonpayment, as provided by applicable toll project entity law; or

(B) a defense of theft at the time of the nonpayment has been established and provided by applicable toll project entity law; and

(2) whether the total amount due for tolls and administrative fees specified in those notices was not paid in full by the dates specified in the notices and remains not fully paid.

(e) Authorizes proof under Subsection (d) to be by oral testimony, documentary evidence, video surveillance, or any other reasonable evidence.

(f) Provides that the toll project entity's determination that the registered owner is a habitual violator is sustained and becomes final if the justice of the peace finds in the affirmative on each issue in Subsection (d). Requires the toll project entity to rescind its determination that the registered owner is a habitual violator if the justice of the peace does not find in the affirmative on each issue in Subsection (d). Provides that rescission of the determination does not limit the toll project entity's authority to pursue collection of the outstanding toll and administrative fees.

(g) Provides that a registered owner who requests a hearing and fails to appear without just cause waives the right to a hearing, and the toll project entity's determination is final and not subject to appeal.

(h) Prohibits a justice of the peace court from adopting administrative hearings processes to expedite hearings conducted under this section.

Sec. 372.108. APPEAL. (a) Authorizes a registered owner to appeal the justice of the peace's decision by filing a petition not later than the 30th day after the date on which the decision is rendered, in the county court at law of the county in which the justice of the peace precinct is located, or if there is no county court at law in that county, in the county court.

(b) Requires the registered owner to send a file-stamped copy of the petition, certified by the clerk of the court, to the toll project entity by certified mail not later than the 30th day after the date the appeal petition is filed.

(c) Requires the court to notify the toll project entity of the hearing not later than the 31st day before the date the court sets for the hearing.

(d) Provides that a trial on appeal is a trial de novo on the issues under Section 372.107(d).

(e) Provides that neither the filing of the appeal petition nor the service of notice of the appeal stays the toll project entity's exercise of the habitual violator remedies unless the person who files the appeal posts a bond with the toll project entity issued by a sufficient surety in the total amount of unpaid tolls and fees owed by the registered owner to the toll project entity.

Sec. 372.109. PERIOD DETERMINATION IS EFFECTIVE. (a) Provides that a final determination that a person is a habitual violator remains in effect until the total amount due for the person's tolls and administrative fees is paid, or the toll project entity, in its sole discretion, determines that the amount has been otherwise addressed.

(b) Requires the toll project entity, when a determination terminates, to, not later than the seventh day after the date of the termination, send notice of the termination to the person who is the subject of the determination at an address under Subsection 372.106(b), and if the toll project entity provided notice to a county assessor-collector or TxDMV under Section 502.011, to that county assessor-collector or that department, as appropriate.

Sec. 372.110. ORDER PROHIBITING OPERATION OF MOTOR VEHICLE ON TOLL PROJECT; OFFENSE. (a) Authorizes a toll project entity, by order of its governing body, to prohibit the operation of a motor vehicle on a toll project of the toll project entity if the registered owner of the vehicle has been finally determined to be a habitual violator, and the toll project entity has provided notice of the prohibition order to the registered owner.

(b) Requires that the notice required under Subsection (a)(2) (relating to a toll project entity providing notice of a prohibition order to the registered owner) be sent by first class mail to the registered owner at an address under Section 372.106(b) at least 10 days before the date the prohibition order takes effect and is presumed received on the fifth day after the date the notice is mailed.

(c) Authorizes the order described in Subsection (a), notwithstanding any provisions of law governing the confidentiality of electronic toll collection customer account information, to include the registered owner's name, the city and state of residence, and the license plate number of the nonpaying vehicle.

(d) Provides that a person commits an offense if the person operates a motor vehicle on a toll project in violation of an order issued under Subsection (a). Provides that an offense under this subsection is a Class C misdemeanor.

Sec. 372.111. DENIAL OF MOTOR VEHICLE REGISTRATION. Authorizes a toll project entity, after a final determination that the registered owner is a habitual violator, to report the determination to a county assessor-collector or TxDMV in order to cause the denial of a vehicle registration as provided by Section 502.011.

Sec. 372.112. IMPOUNDMENT OF MOTOR VEHICLE. (a) Authorizes a peace officer to detain a motor vehicle observed by the officer to be operated in violation of an order under Section 372.110(a) and is authorized to direct the impoundment of the vehicle if:

(1) the vehicle was previously operated on a toll project in violation of an order issued under Section 372.110(a); and

(2) personal notice to the registered owner of the vehicle of the toll project entity's intent to have the vehicle impounded on a second or subsequent violation of Section 372.110(a) was provided:

(A) at the time of the hearing under Section 372.107;

(B) at the time of the previous traffic stop involving a violation of Section 372.110(a); or

(C) by personal service.

(b) Authorizes a vehicle impounded under this section to be released after payment by or on behalf of the registered owner of all towing, storage, and impoundment charges, and a determination by the toll project entity that all unpaid tolls and fees owed to the entity by the registered owner are paid or are otherwise addressed to the satisfaction of the toll project entity in the toll project entity's sole discretion.

(c) Provides that, for the purposes of Section 2303.155(b)(4) (relating to authorizing the operator of a vehicle storage facility or governmental vehicle storage facility to charge the owner of a vehicle stored or parked at the facility certain fees), Occupations Code, fees required to be submitted to a governmental entity include an amount for unpaid tolls and fees owed by the registered owner of an impounded vehicle as set out in timely written notice given by the toll project entity to the operator of the vehicle storage facility where the vehicle is impounded. Authorizes the toll project entity to set out in that notice an amount less than all unpaid tolls and fees owed by the registered owner without releasing the registered owner from liability under any other law for the full amount of unpaid tolls and fees.

Sec. 372.113. HABITUAL VIOLATOR REMEDIES AGAINST LESSEE OF VEHICLE. (a) Authorizes a toll project entity to seek habitual violator remedies against a lessee of a vehicle and not the registered owner if the toll project entity sends to the lessee, in accordance with applicable toll project entity law, at least two notices of nonpayment containing:

(1) the warning under Section 372.106(a)(1)(B); and

(2) in the aggregate, 100 or more events of nonpayment in the period of one year, not including events of nonpayment for which a defense of theft at the time of the nonpayment has been established as provided by applicable toll project entity law, that:

(A) were not paid in full by the dates specified in the notices and that remain not fully paid; and

(B) were incurred during the period of the lease as shown in a lease contract document provided by the registered owner to the toll project entity as provided by applicable toll project entity law.

(b) Requires a toll project entity seeking habitual violator remedies against a lessee under Subsection (a) to use the procedures of this subchapter as if the lessee were the registered owner.

Sec. 372.114. HABITUAL VIOLATOR REMEDIES AGAINST OWNERS OF VEHICLES NOT REGISTERED IN THIS STATE. (a) Authorizes a toll project entity to seek habitual violator remedies against a person described by Section 372.105(a) if:

(1) the person is served with two or more written notices of nonpayment under Section 372.105(a) and the amount owing under the notices was not paid in full by the dates specified in the notices and remains not fully paid; and

(2) notice of the toll project entity's intent to seek habitual violator remedies was served on the person in the manner described by Section 372.105(a) for a notice of nonpayment.

(b) Authorizes a person described by Section 372.105(a) to request a hearing under Section 372.107 not later than the 30th day after the date of the notice under Subsection (a)(2).

(c) Requires a justice of the peace, in making a finding under Section 372.107 against a person described by Section 372.105(a), to find that the requirements of Subsection (a) have been met in lieu of the findings otherwise required under Section 372.107(d)

Sec. 372.115. USE OF REMEDIES OPTIONAL. Provides that a toll project entity's use of remedies under this subchapter is cumulative of other remedies and is optional, and nothing in this subchapter prohibits a toll project entity from exercising any other enforcement remedies available under this chapter or other law.

Sec. 372.116. TEMPORARY GRACE PERIOD FOR REGIONAL TOLLWAY AUTHORITIES. (a) Requires a regional tollway authority, not later than the 30th day after the effective date of this subchapter, to send to each person the regional tollway authority determines to be a habitual violator on the effective date of this subchapter the notice required by Section 372.106(b).

(b) Requires that the notice under Subsection (a) also include:

(1) the total amount the person would owe for the events of nonpayment in the notice, not including any otherwise applicable administrative fees or penalties; and

(2) information regarding the terms of the grace period under this section.

(c) Authorizes a person who receives notice under this section, not later than the 90th day after the effective date of this subchapter, to:

(1) request a hearing under Section 372.107; or

(2) become an electronic toll collection customer of the regional tollway authority and:

(A) pay the amount specified under Subsection (b) plus an administrative fee in an amount not to exceed 10 percent of the amount specified under Subsection (b); or

(B) enter into a contract under Section 372.103 to pay the amount specified under Subsection (b) plus an administrative fee in an amount not to exceed 10 percent of the amount specified under Subsection (b).

(d) Prohibits a regional tollway authority from pursuing habitual toll violator remedies under this subchapter against a person who becomes an electronic toll collection customer and:

(1) pays the amount specified under Subsection (b) plus an administrative fee in an amount not to exceed 10 percent of the amount specified under Subsection (b); or

(2) enters into a contract under Section 372.103 to pay the amount specified under Subsection (b) plus an administrative fee in an amount not to exceed 10 percent of the amount specified under Subsection (b) and makes the required payments.

(e) Provides that this section expires August 31, 2015.

SECTION 2. Amends Subchapter A, Chapter 502, Transportation Code, by adding Section 502.011, as follows:

Sec. 502.011. REFUSAL TO REGISTER VEHICLE FOR NONPAYMENT OF TOLL OR ADMINISTRATIVE FEE. (a) Authorizes a county assessor-collector or TxDMV to refuse to register or renew the registration of a motor vehicle if it has received written notice from a toll project entity that the owner of the vehicle has been finally determined to be a habitual violator under Subchapter C, Chapter 372.

(b) Requires a toll project entity to notify a county assessor-collector or TxDMV, as applicable, that:

(1) a person for whom the assessor-collector or TxDMV has refused to register a vehicle is no longer determined to be a habitual violator; or

(2) an appeal has been perfected and the appellant has posted any bond required to stay the toll project entity's exercise of habitual violator remedies pending the appeal.

(c) Provides that this section does not apply to the registration of a motor vehicle under Section 501.0234 (Duty of Vehicle Dealer On Sale of Certain Vehicles).

SECTION 3. Amends Subchapter B, Chapter 103, Government Code, by adding Section 103.0321, as follows:

Sec. 103.0321. MISCELLANEOUS FEES AND COSTS: TRANSPORTATION CODE. Requires that a filing fee of \$100 be collected under Section 372.107(c), Transportation Code, as court costs for determining whether a person is a habitual violator for purposes of Subchapter C, Chapter 372, Transportation Code.

SECTION 4. Effective date: upon passage or September 1, 2013.