

By: Phillips

H.B. No. 3048

Substitute the following for H.B. No. 3048:

By: Harper-Brown

C.S.H.B. No. 3048

A BILL TO BE ENTITLED

AN ACT

relating to remedies for nonpayment of tolls for the use of toll projects; authorizing a fee; creating an offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 372, Transportation Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. NONPAYMENT OF TOLLS; REMEDIES

Sec. 372.101. APPLICABILITY. This subchapter does not apply to a county acting under Chapter 284.

Sec. 372.102. PUBLICATION OF NONPAYING VEHICLE INFORMATION. (a) Notwithstanding the confidentiality of electronic toll collection customer account information, including confidentiality under Sections 228.057(e), 366.179(d), and 370.178(d), a toll project entity may publish a list of the names of the registered owners or lessees of nonpaying vehicles who at the time of publication are liable for the payment of past due and unpaid tolls or administrative fees. The list may include only the persons' names and, for each person listed:

(1) the city and state of the person's residence;

(2) the total number of events of nonpayment; and

(3) the total amount due for the tolls and administrative fees.

(b) A toll project entity may not include on a list published under Subsection (a) the name of a registered owner who

1 remits a tax imposed under Section 152.026, Tax Code.

2 Sec. 372.103. TOLL VIOLATION PAYMENT PLAN. A toll project
3 entity may enter into an agreement with the registered owner of a
4 vehicle, for whom a single payment is not feasible, that allows the
5 person to pay the total amount of outstanding tolls and
6 administrative fees over a specified period. The agreement must be
7 in writing and specify the amount due for tolls and administrative
8 fees, the duration of the agreement, and the amount of each payment.

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

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

21 (c) The authorized attorney may file suit in a district
22 court in the county in which the toll project entity's
23 administrative offices are primarily located to recover the
24 outstanding balance due. The authorized attorney may recover
25 reasonable attorney's fees, investigative costs, and court costs
26 incurred on behalf of the toll project entity in the proceeding in
27 the same manner as provided by general law for a private litigant.

1 Sec. 372.105. NONPAYMENT BY VEHICLES NOT REGISTERED IN THIS
2 STATE. (a) A toll project entity may, in lieu of mailing a written
3 notice of nonpayment, serve with a written notice of nonpayment in
4 person an owner of a vehicle that is not registered in this state,
5 including the owner of a vehicle registered in another state of the
6 United States, the United Mexican States, a state of the United
7 Mexican States, or another country or territory. A notice of
8 nonpayment may also be served by an employee of a governmental
9 entity operating an international bridge at the time a vehicle with
10 a record of nonpayment seeks to enter or leave this state.

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

15 (c) An owner who is served a written notice of nonpayment
16 under Subsection (a) and fails to pay the proper toll and
17 administrative fee within the time specified in the notice commits
18 an offense. Each failure to pay a toll or administrative fee under
19 this subsection is a separate offense.

20 (d) An offense under Subsection (c) is a misdemeanor
21 punishable by a fine not to exceed \$250. The court in which an owner
22 is convicted of an offense under this section shall also collect the
23 proper toll and administrative fee and forward the toll and fee to
24 the toll project entity.

25 (e) It is a defense to prosecution under Subsection (c) that
26 the owner of the vehicle is a lessor of the vehicle and not later
27 than the 30th day after the date the notice of nonpayment is served

1 under Subsection (a) provides to the toll project entity proof that
2 meets applicable toll project entity law establishing that the
3 vehicle was leased to another person at the time of the nonpayment.

4 (f) It is a defense to prosecution under Subsection (c) that
5 the vehicle in question was stolen before the failure to pay the
6 proper toll occurred and was not recovered by the time of the
7 failure to pay, but only if the theft was reported to the
8 appropriate law enforcement authority before the earlier of:

9 (1) the occurrence of the failure to pay; or

10 (2) eight hours after the discovery of the theft.

11 Sec. 372.106. HABITUAL VIOLATOR. (a) For purposes of this
12 subchapter, a habitual violator is a registered owner of a vehicle
13 who a toll project entity determines:

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

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

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

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

26 (B) a warning that the failure to pay the amounts
27 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) If the toll project entity makes a determination under Subsection (a), the toll project entity shall give written notice to the person at:

(1) the person's address as shown in the vehicle registration records of the Texas Department of Motor Vehicles or the analogous agency of another state or country; or

(2) an alternate address provided by the person or derived through other reliable means.

(c) The notice must:

(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:

(A) the total number of events of nonpayment and the total amount due for tolls and administrative fees;

(B) the date of the determination under Subsection (a);

(C) the right of the person to request a hearing on the determination; and

(D) the procedure for requesting a hearing, including the period during which the request must be made.

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

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

5 Sec. 372.107. HEARING. (a) A justice court has
6 jurisdiction to conduct a hearing in accordance with this section.

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

11 (c) The justice of the peace is entitled to receive a fee not
12 to exceed \$100 for conducting the hearing. The party that does not
13 prevail under the justice's finding under Subsection (f) is liable
14 for payment of the fee.

15 (d) The issues that must be proven at the hearing by a
16 preponderance of the evidence are:

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

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

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

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

4 (e) Proof under Subsection (d) may be by oral testimony,
5 documentary evidence, video surveillance, or any other reasonable
6 evidence.

7 (f) If the justice of the peace finds in the affirmative on
8 each issue in Subsection (d), the toll project entity's
9 determination that the registered owner is a habitual violator is
10 sustained and becomes final. If the justice does not find in the
11 affirmative on each issue in Subsection (d), the toll project
12 entity shall rescind its determination that the registered owner is
13 a habitual violator. Rescission of the determination does not limit
14 the toll project entity's authority to pursue collection of the
15 outstanding tolls and administrative fees.

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

20 (h) A justice of the peace court may adopt administrative
21 hearings processes to expedite hearings conducted under this
22 section.

23 Sec. 372.108. APPEAL. (a) A registered owner may appeal
24 the justice of the peace's decision by filing a petition not later
25 than the 30th day after the date on which the decision is rendered:

26 (1) in the county court at law of the county in which
27 the justice of the peace precinct is located; or

1 (2) if there is no county court at law in that county,
2 in the county court.

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

7 (c) The court shall notify the toll project entity of the
8 hearing not later than the 31st day before the date the court sets
9 for the hearing.

10 (d) A trial on appeal is a trial de novo on the issues under
11 Section 372.107(d).

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

18 Sec. 372.109. PERIOD DETERMINATION IS EFFECTIVE. (a) A
19 final determination that a person is a habitual violator remains in
20 effect until:

21 (1) the total amount due for the person's tolls and
22 administrative fees is paid; or

23 (2) the toll project entity, in its sole discretion,
24 determines that the amount has been otherwise addressed.

25 (b) When a determination terminates, the toll project
26 entity shall, not later than the seventh day after the date of the
27 termination, send notice of the termination:

1 (1) to the person who is the subject of the
2 determination at an address under Section 372.106(b); and

3 (2) if the toll project entity provided notice to a
4 county assessor-collector or the Texas Department of Motor Vehicles
5 under Section 502.011, to that county assessor-collector or that
6 department, as appropriate.

7 Sec. 372.110. ORDER PROHIBITING OPERATION OF MOTOR VEHICLE
8 ON TOLL PROJECT; OFFENSE. (a) A toll project entity, by order of
9 its governing body, may prohibit the operation of a motor vehicle on
10 a toll project of the toll project entity if:

11 (1) the registered owner of the vehicle has been
12 finally determined to be a habitual violator; and

13 (2) the toll project entity has provided notice of the
14 prohibition order to the registered owner.

15 (b) The notice required by Subsection (a)(2) must be sent by
16 first class mail to the registered owner at an address under Section
17 372.106(b) at least 10 days before the date the prohibition order
18 takes effect and is presumed received on the fifth day after the
19 date the notice is mailed.

20 (c) Notwithstanding any provisions of law governing the
21 confidentiality of electronic toll collection customer account
22 information, the order described in Subsection (a) may include the
23 registered owner's name, the city and state of residence, and the
24 license plate number of the nonpaying vehicle.

25 (d) A person commits an offense if the person operates a
26 motor vehicle on a toll project in violation of an order issued
27 under Subsection (a). An offense under this subsection is a Class C

1 misdemeanor.

2 Sec. 372.111. DENIAL OF MOTOR VEHICLE REGISTRATION. After
3 a final determination that the registered owner of a motor vehicle
4 is a habitual violator, the toll project entity may report the
5 determination to a county assessor-collector or the Texas
6 Department of Motor Vehicles in order to cause the denial of vehicle
7 registration as provided by Section 502.011.

8 Sec. 372.112. IMPOUNDMENT OF MOTOR VEHICLE. (a) A peace
9 officer may detain a motor vehicle observed by the officer to be
10 operated in violation of an order under Section 372.110(a) and may
11 direct the impoundment of the vehicle if:

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

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

19 (A) at the time of the hearing under Section
20 372.107;

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

23 (C) by personal service.

24 (b) A vehicle impounded under this section may be released
25 after:

26 (1) payment by or on behalf of the registered owner of
27 all towing, storage, and impoundment charges; and

1 (2) a determination by the toll project entity that
2 all unpaid tolls and fees owed to the entity by the registered owner
3 are paid or are otherwise addressed to the satisfaction of the toll
4 project entity in the toll project entity's sole discretion.

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

11 (1) the warning under Section 372.106(a)(1)(B); and
12 (2) in the aggregate, 100 or more events of nonpayment
13 in the period of one year, not including events of nonpayment for
14 which a defense of theft at the time of the nonpayment has been
15 established as provided by applicable toll project entity law,
16 that:

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

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

23 (b) A toll project entity seeking habitual violator
24 remedies against a lessee under Subsection (a) shall use the
25 procedures of this subchapter as if the lessee were the registered
26 owner.

27 Sec. 372.114. HABITUAL VIOLATOR REMEDIES AGAINST OWNERS OF

1 VEHICLES NOT REGISTERED IN THIS STATE. (a) A toll project entity
2 may seek habitual violator remedies against a person described by
3 Section 372.105(a) if:

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

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

11 (b) A person described by Section 372.105(a) may request a
12 hearing under Section 372.107 not later than the 30th day after the
13 date of the notice under Subsection (a)(2).

14 (c) In making a finding under Section 372.107 against a
15 person described by Section 372.105(a), a justice of the peace must
16 find that the requirements of Subsection (a) have been met in lieu
17 of the findings otherwise required under Section 372.107(d).

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

23 SECTION 2. Subchapter A, Chapter 502, Transportation Code,
24 is amended by adding Section 502.011 to read as follows:

25 Sec. 502.011. REFUSAL TO REGISTER VEHICLE FOR NONPAYMENT OF
26 TOLL OR ADMINISTRATIVE FEE. (a) A county assessor-collector or the
27 department may refuse to register or renew the registration of a

1 motor vehicle if it has received written notice from a toll project
2 entity that the owner of the vehicle has been finally determined to
3 be a habitual violator under Subchapter C, Chapter 372.

4 (b) A toll project entity shall notify a county
5 assessor-collector or the department, as applicable, that:

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

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

12 (c) This section does not apply to the registration of a
13 motor vehicle under Section 501.0234.

14 SECTION 3. Subchapter B, Chapter 103, Government Code, is
15 amended by adding Section 103.0321 to read as follows:

16 Sec. 103.0321. MISCELLANEOUS FEES AND COSTS:
17 TRANSPORTATION CODE. A reasonable fee not to exceed \$100 may be
18 collected under Section 372.107(c), Transportation Code, as court
19 costs for determining whether a person is a habitual violator for
20 purposes of Subchapter C, Chapter 372, Transportation Code.

21 SECTION 4. This Act takes effect January 1, 2014.