



## **SHAKEDOWN: Toll collection practices designed to extort money from Texas drivers**

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Testimony on House Transportation Committee Interim Charge on toll collection.

Submitted by Terri Hall, Founder and Director  
Texans Uniting for Reform & Freedom and Texans for Toll-free Highways  
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The shakedown of Texas drivers must stop.

That's what toll collection has become in the great state of Texas — a shakedown. Forcibly compelling drivers to pay-up or block their vehicle registration, which is tantamount to taking away their ability to drive. Since many Texans have substantial car payments, they could be making payments on a car they cannot drive and have no financial means to get a different vehicle until their toll debt is paid. How is this any different than the evils and unintended consequences of the Driver Responsibility Program? It isn't, and it may be even worse.

Some argue that blocking vehicle registration is a necessary evil to hold over drivers' heads in order to get them to pay their debts. Without it, they argue, there isn't sufficient means to compel drivers to pay their bill. They use a similar argument for keeping toll fines punitive and high.

Both are wrong and unconstitutional. Since failure to show up in court over toll fines and debts could land you in jail, we've created what's the equivalent of debtors prisons in Texas. It violates the constitution and decades of civil rights case law.

The Harris County Toll Road Authority (HCTRA) has its own court system, which is like the fox guarding the henhouse. This fundamentally violates the due process rights afforded to every citizen in the Constitution. Without an unbiased third party to oversee these cases, there can be no real justice. This system reaps dire consequences both financially and with regards to one's freedom of mobility. How can Texas, a state forged in the concepts of liberty and personal freedom, allow such blatantly unconstitutional actions under the color of law? If toll disputes need to go to court, basic constitutional and civil rights require it to be before a fair and impartial judge (like the Justice of the Peace courts), and not before parties connected to the agency a driver has a dispute with! If you took away the criminal penalties, there would be no need for any of this.

No Texan should go to jail or have their ability to drive (and thus make a living) taken away for failure to pay a debt. In fact, it's totally counterproductive. We strongly believe our toll collection system is designed to fine and fee Texans to death, it lacks transparency, confuses the public, and financially ruins far too many Texans. If a driver can't work out toll billing problems, it imperils a person's ability to drive and they're even threatened with jail to get them to pay-up. This system entraps people and holds a proverbial gun to their head in order to get them to pay-up. By taking away one's ability to get to work, you jeopardize their ability to pay the debt they owe, leaving them in a vicious cycle with no way out.

### **BILLING ERRORS RAMPANT**

Billing errors are commonplace.

Many drivers are being billed for another's tolls/penalties. Since when did it become law to allow the owner of a vehicle to be punished for something another person did? Often, a person is erroneously billed for a car they sold and the new owners are racking up the toll violations, yet the old owners are receiving threats and being told they're responsible for enormous fines that are a consequence of someone else's actions. The burden should be on the governmental entity to prove who

committed the violations. Simply because a person owns a vehicle shouldn't mean they're held accountable, and possibly financially ruined, for the actions of another.

Similarly, a person who owns the car can be penalized for tolls/fines incurred by someone who borrowed the owner's car, like their children, a relative, or friend. The toll agencies bill and penalize the owner, not the driver who committed the violation.

Here's a reminder of how prolific toll billing errors can be:

October 2007 - The [Newspaper.com](http://www.thenewspaper.com) reported, "Texas Department of Transportation (TxDOT) officials earlier this week admitted that accuracy problems with the devices that read the TxTag toll transponders resulted in at least 50,000 motorists being overbilled while traveling on three Austin toll roads. An investigation discovered that antennae installed by the firm United Toll Systems were apparently misaimed, causing one in 600 passing cars to be double-charged.

"TxDOT officials reassured the public by insisting that only one in 2000 motorists will be overcharged now, reducing the number of innocent motorists double-billed to just 15,000. United Toll Systems, however, continues to boast about its accuracy on its website, saying, 'In fact, we are currently deploying our latest and greatest system to the Central Texas Turnpike Project and just completed system integration with zero defects!'

"The problems are not limited to Austin. Almost 250 miles away in Tyler, Texas, motorists on the Loop 49 toll road are also being overbilled. At least sixteen motorists who checked their statements called in after noticing they had been double-charged."<sup>1</sup>

November 2013 - KVUE reported, "TxDOT employees logged 2,337 entries identifying problems with cameras misreading vehicle information and billing issues over the past six years. Issues range from double charges and incorrect rates to misreading the number of axles on vehicles."<sup>2</sup>

August 2014 - *Associated Press* reported, "41,000 Texas motorists mistakenly charged toll on a new toll road when the road was supposed to be free."<sup>3</sup>

February 2015 - The *Examiner* reported, "30,000 motorists had valid toll tag accounts that should have been charged through their accounts, but instead received paper bills adding an extra 33% for pay-by-mail as well as additional late fees. When they tried to

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<sup>1</sup> The [Newspaper.com](http://www.thenewspaper.com), "Texas: 50,000 Overbilled by Inaccurate Toll Transponders," 2007, <http://www.thenewspaper.com/news/20/2016.asp>.

<sup>2</sup> Andy Pierrotti, "Incorrectly charged by TxDOT tolls," 2013, <https://www.kvue.com/news/Incorrectly-charged-by-TXDOT-Tolls--233514401.html>.

<sup>3</sup> Associated Press, "41,000 motorists erroneously charged, Texas Department of Transportation says," 2014, <http://www.foxnews.com/us/2014/08/05/41000-motorists-erroneously-charged-texas-department-transportation-says.html>.

reach customer service at TxDOT's toll-free number, they faced extremely long wait times before anything could be resolved.<sup>4</sup>

February 2015 - CNN Money reported, "In an industry already known for bad behavior, debt collectors that work for government agencies usually don't have to work within the confines of consumer protection laws – opening the door for higher fees and even more aggressive tactics. Their government bosses can give them the power to threaten debtors with the suspension of their driver's license, garnishment of their wages, foreclosure and arrest to get them to pay up.

"One of the biggest players in this industry is law firm Linebarger Goggan Blair & Sampson...Despite decades of scandals over the way the firm gets business -- and even jail time for one of its top executives -- Linebarger still lands lucrative government contracts.

"...Many attribute this success to the millions of dollars the firm has spent wooing politicians, from local mayors to powerful players like former Texas Governor Rick Perry. Its political pull has even helped it get certain state and federal laws changed in its favor – including Texas legislation that allows it to charge debtors such high fees. For one out-of-town driver who mistakenly failed to pay \$7.50 in tolls on a Texas highway, these fees became a \$157.50 bill in a matter of months. The toll road was due the original toll amount, plus \$66 in administrative fees. Linebarger added \$84 for itself.

"...CNNMoney found that with the power of government agencies behind them, debt collectors like Linebarger are able to play by their own rules, in essence acting above the law. Thanks to legal exemptions, government collectors usually don't have to follow the main federal law that regulates the debt collection industry. State consumer protection laws often don't apply either. And when debtors have challenged Linebarger's government collections work in court based on other laws, the firm has gone so far as to argue it has immunity because it is an extension of the government.

"...And for those who just couldn't afford to pay what they initially owed, the firm's fees left them trapped in debt and fearful that they may lose their driver's license, their home or end up in jail.

"...Harry Memnon, who is a high school ROTC instructor, was so worried about having his driver's license suspended that he used a credit card to pay Linebarger's \$287 bill -- which he says the firm told him all stemmed from \$1.25 in toll charges."

"...But Memnon says he wasn't notified of the 2009 toll charges or given a chance to pay until he received a \$102 bill from Linebarger in July of 2012, which demanded he pay or attend a hearing. Confused, he immediately called the firm. After being told the

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<sup>4</sup> Terri Hall, "Xerox toll collection problems explode in Senate hearing," 2015, <http://www.texasturf.org/2012-06-01-03-09-30/latest-news/2095-scandal-txdot-xerox-toll-contract-blows-up-in-texas-senate>.

violation was incurred by a rental car driver, he asked for proof the debt was his. When he didn't hear back and another call to the firm went unanswered, he became convinced it was a scam and didn't attend the hearing. Then a new bill arrived in September, and the amount owed had nearly tripled, growing from \$102 to a \$287 bill, thanks to new collection fees and fines due to the missed hearing. At this point, he had already fought the firm for months over the phone, so he gave up and paid."

"...The scandals date back to its early days, when firm partners became infamous for using political connections to win contracts and change laws. Past controversies ranged from allegations of illegal loans to public officials to inappropriately influencing lawmakers, including a controversial Mexican getaway with a Texas Speaker of the House that reportedly involved a topless dancer.

"...And in Texas, a partner (at Linebarger) was indicted in 2012 for covering up donations to a local elected official and his case remains ongoing. More recently, two Linebarger consultants have been at the center of alleged bribery schemes -- one of which is heading to trial and another that is still under investigation."<sup>5</sup>

July 2017 - The *Statesman* reported, "Tens of thousands of toll tag holders throughout Texas have erroneously received pay-by-mail bills in recent weeks, rather than having the tolls subtracted from their tag accounts at lower rates, officials said Wednesday. The bad bills began around mid-May when some agencies switched to a new program, officials said.

"...This has meant that toll tag customers, used to simply having toll charges subtracted from their existing balance in a toll account, in some cases instead have received bills in the mail charging what is typically a 33 percent premium over a toll tag rate, plus administrative fees."<sup>6</sup>

February 2018 - KXAN investigative report found TxDOT's billing practices had racked up \$1 billion in fines alone.

Former Rep. Joe Pickett commented: "...it's going to be almost impossible to collect some of these exorbitant fees and *it's really made up money*. It's not money out of our pocket. *We didn't give you a loan and you didn't pay it back. This is funny money. It didn't really exist*" (emphasis mine).<sup>7</sup>

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<sup>5</sup> Blake Ellis and Melanie Hicken, "The secret world of government debt collection," 2015, <https://money.cnn.com/interactive/pf/debt-collector/government-agencies/>.

<sup>6</sup> Ben Wear, "Glitch leads to toll tag customers getting bills at higher rates," 2017, <https://www.statesman.com/news/glitch-leads-toll-tag-customers-getting-bills-higher-rates/Q2EADCfjtDSnZHKx6ErQkl/>.

<sup>7</sup> Sarah Rafique, "TxTag revamps billing system after KXAN investigation," 2018, [https://www.kxan.com/news/local/austin/lawmaker-implores-drivers-to-speak-up-before-toll-fee-cap\\_20180312075656885/1031498196](https://www.kxan.com/news/local/austin/lawmaker-implores-drivers-to-speak-up-before-toll-fee-cap_20180312075656885/1031498196).

## **HABITUAL TOLL VIOLATOR**

Let's look at how easy it is to be declared a 'habitual toll violator.' It used to take 100 unpaid transactions, but SB 312 lowered that threshold making it even easier to be labeled a habitual violator by failing to pay after receiving two bills (which the toll entity doesn't send by certified mail or have to prove the bills even received). Some toll bills are not even identifiable and can often appear to be a scam, with no entity name or logo, a PO Box or nondescript address, and no way to reach a real person to verify the transactions are in fact being billed correctly.

Given the enormous fines that get tacked onto the actual tolls owed, paying a bill right away is now out of reach, if not impossible to pay, for many Texas drivers. Here's the most common scenario for how people get fines and fees racked up inadvertently. Your payment card expires and your bank sends you out a new card. You don't immediately remember to call the toll authority to update your account to the new card. Meanwhile, every time you pass under a toll gantry without funds in your account, it counts as a toll violation. You may have to go through 5-10 toll gantries per day. It wouldn't even take 30 days before you're declared a habitual toll violator and NTTA could stop you on the tollway, impound your car on the spot, leave you on the side of the road, and block your vehicle registration — all for a short lapse on a new payment card.

Private vendors notify the customer when a payment card is denied and gives them an opportunity to update their payment card before penalties are imposed. Netflix and Amazon want that payment to go through. NTTA doesn't have the same incentive since they cash-in on this common scenario and can tack on massive fines and fees preferring to use government force to make you pay-up or else. Only the government can get away with such schemes and it's financially ruining thousands of Texans.

Another way a person racks up the violations without their knowledge is due to the agencies delaying the issuance of a toll bill. When someone receives their first toll bill that was for a toll over a year old, they have no meaningful way to prove their innocence or have the ability to defend whether or not the toll is even valid. Even six months seems far too long for most drivers to have a prayer of recalling if the tolls being billed are, in fact, valid. There must be a statute of limitation on how far back a toll agency can reach to try and collect an unpaid toll.

Tolls constitute a pain tax, especially with the advent of congestion pricing — when there's more congestion you pay a premium in tolls. The more congested the free routes, the more 'pain' that's inflicted on commuters who feel forced into paying tolls to get anywhere, like it's a punishment for going to work when they're told.

So the punitive fines and fees being willfully inflicted upon drivers are an even greater pain tax, even when there's an honest effort to pay, basic civil rights are ignored because the government is the one doing the collecting. All for what? Enriching unaccountable toll agencies that use toll fines to further grow their own bureaucracies and impose yet more toll taxes upon Texas drivers with impunity?

## **FINES MORE LIKE USURY**

Toll fines are a punishment that doesn't fit the 'crime.'

Toll fines and fees are more accurately called usury. What's the definition of usury? An exorbitant amount or rate of interest. It's clear this is the aim in the exorbitant amounts we're seeing tacked indiscriminately onto toll bills. It's not uncommon to see a \$20 toll bill mushroom into thousands owed.

Toll bureaucracies have been given virtually unchecked authority to threaten and abuse drivers to get them to pay what's become completely unreasonable fines and fees tacked onto toll bills. Toll bills should be sent to the correct address and agencies should have to prove the customer actually received the bill before fines escalate or result in impounding or blocking registration.

You have unleashed a massive bureaucracy, given them too much power, allowed them to financially ruin Texans, take away their ability to drive (and make a living), and even make them a criminal, all because of an allegedly late or unpaid bill.

These tactics amount to usury and have no place in a free society, much less in Texas — the cradle of liberty. This takes us back to a form of debtor's prison, which is supposed to be unconstitutional.

## **WHAT MUST BE DONE**

We made progress with passage of SB 312, but as you know, this only applies to a handful of Texas tollways operated by TxDOT: SH 130 (excludes privately operated portion), Loop 1 (excludes portion operated by CTRMA), SH 45N, SH 45SE, SH 99 (excludes portions operated by Ft. Bend County Toll Road Authority), SH 249 (excludes portions managed by Montgomery County), & SH 288 managed toll lanes.

- 1) Toll fines should be capped at \$48/year for **all** toll agencies.
- 2) All criminal penalties must be removed (the House voted to de-criminalize 136-3, in 2017).
- 3) Bills should be sent immediately with a uniform, timely billing standard required (ie - tolls incurred must be billed within 14 days and payment should be not be due before 30 working days from the time of receipt.) Like most financial delinquencies, there must be a statute of limitation on how far back an agency can go to collect a toll. Agencies should not be allowed to collect tolls more than six months old. Drivers should have at least 90 working days before an unpaid toll bill is sent to collections.
- 4) Toll agencies should be required to prove the customer actually received notice of tolls owed *before* any fines or fees are assessed.
- 5) Requirement that agencies *must* make payment arrangements with those unable to pay in full at the time of billing without fines and fees tacked on for inability to pay in full at the time of the billing cycle.
- 6) Agencies must immediately notify drivers of any problems with payment cards associated with their toll tag accounts. The practice of holding back bills to allow fines and fees to rack up before notifying drivers of a problem with payment cards must stop. We mustn't tolerate from government agencies what we wouldn't tolerate from consumer/commercial institutions.