

BILL ANALYSIS

Senate Research Center

S.B. 1792
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Transportation
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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. 1472 authorizes regional mobility authorities 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.

The bill prescribes policies and procedures for an entity to seek an administrative determination of habitual violation at a hearing which an individual may attend to state his or her case, and an individual to appeal the decision in a district court.

Following administrative determination of habitual violation, an entity may notify a county tax assessor-collector or the Texas Department of Motor Vehicles to refuse renewal of the vehicle registration until the account is paid or the violator has entered a payment plan with the entity.

As proposed, S.B. 1792 amends current law relating to remedies for nonpayment of tolls; for the use of certain toll projects; authorizing a fee and certain investigative and court costs; creating an offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to a regional mobility authority organized under Chapter 370 (Regional Mobility Authorities) or under Section 361.003 [Repealed], as that section existed before June 22, 2003, in SECTION 3 (Section 370.452, Transportation Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 370.177, Transportation Code, by adding Subsection (c-1), as follows:

(c-1) Requires the notice under Subsection (c) (relating to authorizing the imposition and collection of an administrative fee to recover the cost of collecting the unpaid toll, not to exceed \$100) to include a warning that the failure to pay the amounts specified in the notice may result in the exercise of habitual violator remedies under Subchapter L by the regional mobility authority organized under certain sections (authority).

SECTION 2. Amends Subchapter E, Chapter 370, Transportation Code, by adding Section 370.1771, as follows:

Sec. 370.1771. NONPAYMENT BY VEHICLES NOT REGISTERED IN THIS STATE. (a) Authorizes an authority to, in lieu of mailing a written notice of nonpayment under Section 370.177(c), 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 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 authority's exercise of the habitual violator remedies under Section 370.455.

(c) Provides that a person 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 not to exceed \$250. Requires the court in which a person 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 authority.

(e) Provides that Section 370.177(e) (relating to providing an exception to the application of certain subsections that the registered owner of a vehicle is a lessor of the vehicle and provides that the authority provide certain information to the person not later than the 30th day after notice of nonpayment) applies to an offense under Subsection (c), except that the person is required to provide the contract document or electronic data not later than the 30th day after the date notice is served under Subsection (a).

(f) Provides that Sections 370.177(i) (relating to providing that nonpayment of a registered owner is established with proof that the vehicle passed through a toll collection facility without payment and proof that the defendant was the registered owner or the driver of the vehicle during nonpayment) and (j) (relating to providing that it is a defense to prosecution that one's motor vehicle was stolen before the failure to pay occurred and was not recovered by the time of the failure to pay) apply to an offense under this section.

SECTION 3. Amends Chapter 370, Transportation Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. HABITUAL VIOLATOR REMEDIES

Sec. 370.451. NOTICE OF INTENTION TO SEEK ADMINISTRATIVE DECISION REGARDING HABITUAL VIOLATOR REMEDIES. (a) Authorizes an authority to seek an administrative decision to determine whether habitual violator remedies under this subchapter are authorized to be exercised against the registered owner of a vehicle if the authority sends to the owner:

(1) one or more notices of nonpayment containing the warning under Section 370.177(c-1) indicating that a vehicle or vehicles of the owner incurred 100 or more tolls that were not paid in full by the dates specified in the notices and that remain not fully paid; and

(2) notice of the authority's intent to seek an administrative decision by first class mail to the last address of the owner known to the authority; or the owner's address as recorded in the Texas Department of Motor Vehicles (TxDMV) vehicle registration records.

(b) Requires that a notice issued under Subsection (a)(2):

(1) include the total amount of unpaid tolls and fees not paid in full as specified in one or more notices of nonpayment; and

(2) advise the registered owner that the registered owner is entitled to a hearing under Section 370.452 to contest a proposed administrative decision; and the authority may exercise habitual violator remedies against the owner if the administrative decision authorizes the exercise of those remedies, and the administrative decision will remain in effect until all unpaid tolls and fees owed to the authority by the owner are paid or are otherwise addressed to the satisfaction of the authority in the authority's sole discretion.

Sec. 370.452. HEARING. (a) Authorizes a registered owner to, not later than the 30th day after the date of the notice under Section 370.451, request a hearing on the issue of whether the authority may exercise habitual violator remedies.

(b) Requires an authority to, by written policy, establish a hearing process under this section. Requires the policy to:

(1) specify issues that are germane to a hearing;

(2) include reasonable rules of procedure;

(3) include the process through which an administrative decision is issued;

(4) prohibit an administrative decision from going into effect before the opportunity for a hearing has expired;

(5) require that a hearing officer be an independent contractor retained by the authority solely to serve as a hearing officer;

(6) prohibit compensation of the hearing officer by the authority that is related to the outcome of the hearings before the hearing officer;

(7) provide that the registered owner has a right to be represented by an attorney; and offer witnesses and evidence, cross-examine witnesses, and make opening and closing statements; and

(8) vest the hearing officer with discretion to control the scope and duration of the proceedings and to exclude oral or written evidence that the hearing officer determines is irrelevant, immaterial, or unduly repetitious.

(c) Provides that a registered owner who fails to request a hearing within the time specified or appear at a scheduled hearing is considered to have waived the right to a hearing and consented to the administrative decision, and:

(1) the hearing officer shall issue an administrative decision authorizing the exercise of habitual violator remedies under this subchapter if the hearing officer makes the findings described by Section 370.453(a); and

(2) if the hearing officer issues an administrative decision authorizing the exercise of habitual violator remedies, the authority may exercise the habitual violator remedies without further proceedings or action.

Sec. 370.453. ADMINISTRATIVE DECISION. (a) Authorizes a hearing officer to issue an administrative decision authorizing the authority to exercise habitual violator remedies only if a preponderance of the evidence demonstrates that:

- (1) one or more notices of nonpayment containing the warning under Section 370.177(c-1) were sent to the registered owner indicating that a vehicle or vehicles of the owner incurred 100 or more unpaid authority tolls, not including any unpaid tolls for which the defense of theft of the vehicle has been proven under Section 370.177(j);
- (2) the vehicle or vehicles were owned by the registered owner at the time of passage through a toll collection facility; and
- (3) the amounts in the notice or notices of nonpayment were not paid in full by the dates specified in the notices and remain not fully paid.

(b) Authorizes proof under Subsection (a) to be by testimony of a peace officer or authority employee, video surveillance, other evidence establishing that a vehicle owned by a registered owner passed through a toll collection facility, or any other reasonable evidence, including, for the purposes of pursuing habitual violator remedies against a lessee under Section 370.457, a copy of a contract document or electronic data described by Section 370.177(e).

Sec. 370.454. APPEAL. (a) Authorizes a registered owner to appeal an administrative decision authorizing the exercise of habitual violator remedies by:

- (1) filing, not later than the 30th day after the date on which the decision is rendered, a petition with the clerk of a district court in the county in which the authority's administrative offices are located; and
- (2) paying the costs required by law for that court.

(b) Requires the court in which an appeal petition is filed to schedule a hearing and notify each party of the date, time, and place of the hearing.

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

Sec. 370.455. HABITUAL VIOLATOR REMEDY: CRIMINAL TRESPASS. (a) Authorizes the authority, when an administrative decision authorizing the exercise of habitual violator remedies is in effect, to provide the registered owner by any means the notice required under Section 30.05 (Criminal Trespass), Penal Code, for the offense of criminal trespass, including by service on the registered owner by a peace officer who stops or detains a vehicle for a traffic or other violation or who renders aid to the vehicle. Authorize the notice to forbid the registered owner's entry onto any portion of a turnpike project designated by the authority as a controlled-access toll road under Section 370.179 (Controlled Access to Turnpike Projects), and the owner commits an offense under Section 30.05, Penal Code, by the owner's entry onto the turnpike project without effective consent.

(b) Authorizes the authority, in addition to an authority's exercise of its rights under Subsection (a) against a registered owner, to exercise those rights against a person who drives a vehicle owned by the registered owner by providing the driver with the criminal trespass notice described in Subsection (a). Provides that the driver commits an offense under Section 30.05, Penal Code, by the driver's subsequent entry onto the portion of the turnpike project described in the notice while driving the vehicle owned by the registered owner.

(c) Provides that nothing in this section limits an authority's rights under Section 30.05, Penal Code.

Sec. 370.456. **HABITUAL VIOLATOR REMEDY: REFUSAL TO REGISTER VEHICLE.** (a) Authorizes an authority to notify a county assessor-collector or TxDMV under Section 502.011 that the owner of a vehicle is subject to an administrative decision authorizing the exercise of habitual violator remedies by the authority.

(b) Provides that for the purposes of this section, a vehicle is considered to be owned by a person if the person holds legal title to the vehicle, regardless of whether the person obtains legal title before or after an administrative decision is issued.

Sec. 370.457. **HABITUAL VIOLATOR REMEDIES AGAINST LESSEE OF VEHICLE.** (a) Authorizes an authority to seek an administrative decision authorizing the exercise of habitual violator remedies against a lessee of a vehicle and not the registered owner if the authority, as authorized under Section 370.177(e-1), sends to the lessee one or more notices of nonpayment containing the warning under Section 370.177(c-1) indicating that a vehicle or vehicles of the owner incurred 100 or more tolls that:

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

(2) were incurred during the period of the lease as shown in the contract document or electronic data submitted to the authority under Section 370.177(e).

(b) Requires an authority seeking an administrative decision against a lessee under Subsection (a) to use the procedures of this subchapter as if the lessee were the registered owner.

Sec. 370.458. **HABITUAL VIOLATOR REMEDIES AGAINST OWNERS OF VEHICLES NOT REGISTERED IN THIS STATE.** (a) Authorizes an authority to seek an administrative decision under Section 370.453 to determine whether habitual violator remedies under Section 370.455 are authorized to be exercised against a person described by Section 370.1771(a) if:

(1) the person is served with five or more written notices of nonpayment under Section 370.1771(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 authority's intent to seek an administrative decision containing the information under Section 370.451(b) was served on the person in the manner described by Section 370.1771(a) for a notice of nonpayment.

(b) Authorizes a person described by Section 370.1771(a) to request a hearing under Section 370.452 not later than the 30th day after the date of the notice under Subsection (a)(2).

(c) Requires a hearing officer, in making an administrative decision under Section 370.453 against a person described by Section 370.1771(a), to find that the requirements of Subsection (a)(1) have been met in lieu of the finding otherwise required under Section 370.453(a)(1).

Sec. 370.459. **USE OF HABITUAL VIOLATOR REMEDIES OPTIONAL.** Provides that an authority's use of habitual violator remedies under this subchapter is optional, and

nothing in this subchapter prohibits an authority from exercising any other enforcement remedies available under this chapter or other law, including Section 370.177(1) (relating to providing that with regard to its toll collection and enforcement powers for its turnpike projects or other certain toll projects under a certain agreement).

SECTION 4. 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) Requires 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 regional mobility authority that the owner of the vehicle is subject to an administrative decision under Section 370.453 that authorizes the use of habitual violator remedies against the owner.

(b) Requires a regional mobility authority 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 subject to an administrative decision under Section 370.453; or

(2) an appeal of an administrative decision under Section 370.454 has been perfected and the appellant has posted a bond sufficient to stay the authority's exercise of habitual violator remedies pending the appeal.

SECTION 5. Effective date: upon passage or September 1, 2013.