

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 remits a tax imposed under Section 152.026, Tax Code.

Sec. 372.103. TOLL VIOLATION PAYMENT PLAN. A toll project entity may 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. The agreement must 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) If the registered owner of the vehicle fails to comply with the terms of an agreement described by Section 372.103, a toll project entity may 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.

(b) 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, the toll project entity may, in addition to other remedies available to the entity, refer the matter to an attorney authorized to represent the toll project entity for suit or collection.

(c) The authorized attorney may file suit in a district court in the county in which the toll project entity's administrative offices are primarily located to recover the outstanding balance

due. The authorized attorney may 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) A toll project entity may, in lieu of mailing a written notice of nonpayment, 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. A notice of nonpayment may 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) Each written notice of nonpayment issued under Subsection (a) shall 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) 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. Each failure to pay a toll or administrative fee under this subsection is a separate offense.

(d) An offense under Subsection (c) is a misdemeanor punishable by a fine not to exceed \$250. The court in which an owner is convicted of an offense under this section may also

collect the proper toll and administrative fee and forward the toll and fee to the toll project entity.

(e) 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 to the toll project entity proof that meets applicable toll project entity law establishing that the vehicle was leased to another person at the time of the nonpayment.

(f) 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:

- (1) the occurrence of the failure to pay; or
- (2) eight hours after the discovery of the theft.

Sec. 372.106. HABITUAL VIOLATOR. (a) For purposes of this subchapter, 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 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

(ii) a defense of theft at the time of the nonpayment has been established as 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) 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.

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

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

(b) A hearing requested under Section 372.106 shall 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) A party requesting a hearing shall pay a filing fee of \$100 to the clerk of the justice court. If that party prevails under the justice's finding under Subsection (f), the other party shall reimburse the prevailing party for the amount of the filing fee within 10 days after issuance of the finding.

(d) The issues that must 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 as 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) Proof under Subsection (d) may be by oral testimony, documentary evidence, video surveillance, or any other reasonable evidence.

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

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

Sec. 372.108. APPEAL. (a) A registered owner may 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:

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

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

(b) The registered owner must 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) The court shall notify the toll project entity of the hearing not later than the 31st day before the date the court sets for the hearing.

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

(e) Neither the filing of the appeal petition nor 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) A final determination that a person is a habitual violator remains in effect until:

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

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

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

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

(2) if the toll project entity provided notice to a county assessor-collector or the Texas Department of Motor Vehicles 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) A toll project entity, by order of its governing body, may prohibit the operation of a motor vehicle on a toll project of the toll project entity if:

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

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

(b) The notice required by Subsection (a)(2) must 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) Notwithstanding any provisions of law governing the confidentiality of electronic toll collection customer account information, the order described in Subsection (a) may include the registered owner's name, the city and state of residence, and the license plate number of the nonpaying vehicle.

(d) 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). An offense under this subsection is a Class C misdemeanor.

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

Sec. 372.112. IMPOUNDMENT OF MOTOR VEHICLE. (a) A peace officer may detain a motor vehicle observed by the officer to be operated in violation of an order under Section 372.110(a) and may 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) A vehicle impounded under this section may be released after:

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

(2) 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) For the purposes of Section 2303.155(b)(4), 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. The toll project entity may 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) A toll project entity may 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) A toll project entity seeking habitual violator remedies against a lessee under Subsection (a) shall 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) A toll project entity may 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) A person described by Section 372.105(a) may request a hearing under Section 372.107 not later than the 30th day after the date of the notice under Subsection (a)(2).

(c) In making a finding under Section 372.107 against a person described by Section 372.105(a), a justice of the peace must 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. 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) Not later than the 30th day after the effective date of this subchapter, a regional tollway authority shall send to each person the authority determines to be a habitual violator on the effective date of this subchapter the notice required by Section 372.106(b).

(b) The notice under Subsection (a) must 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) Not later than the 90th day after the effective date of this subchapter, a person who receives notice under this section may:

(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) A regional tollway authority may not pursue 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) This section expires August 31, 2015.

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

Sec. 502.011. REFUSAL TO REGISTER VEHICLE FOR NONPAYMENT OF TOLL OR ADMINISTRATIVE FEE. (a) A county assessor-collector or the department may 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) A toll project entity shall notify a county assessor-collector or the department, as applicable, that:

(1) a person for whom the assessor-collector or the department 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) This section does not apply to the registration of a motor vehicle under Section 501.0234.

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

Sec. 103.0321. MISCELLANEOUS FEES AND COSTS: TRANSPORTATION CODE. A filing fee of \$100 shall be collected under Section

S.B. No. 1792
372.107(c), Transportation Code, for determining whether a person
is a habitual violator for purposes of Subchapter C, Chapter 372,
Transportation Code.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1792 passed the Senate on April 18, 2013, by the following vote: Yeas 28, Nays 1, one present not voting; and that the Senate concurred in House amendments on May 17, 2013, by the following vote: Yeas 30, Nays 0, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1792 passed the House, with amendments, on May 1, 2013, by the following vote: Yeas 140, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor