

- SUBJECT:** Setting penalties for improperly passing stationary emergency vehicles
- COMMITTEE:** Transportation — committee substitute recommended
- VOTE:** 6 ayes — Krusee, Phillips, Hamric, Garza, Harper-Brown, Hill
0 nays
3 absent— Edwards, Laney, Mercer
- SENATE VOTE:** On final passage, February 27 — voice vote
- WITNESSES:** For — R. Brandon Bess, Texas State Troopers Association; Larry Cernosek, Texas Towing and Storage Association
Against — None
- BACKGROUND:** Transportation Code, ch. 545, subch. D governs vehicular right of way. Sec. 541.201 defines “authorized emergency vehicle” as vehicles operated by fire and police departments, private volunteer firefighters, certified emergency medical services, accredited or approved blood or tissue banks; licensed by the Texas Department of Health as public or private ambulances; designated or authorized for use by municipal departments or public service corporations; or used in compliance with criteria established for industrial emergency response vehicles.
- DIGEST:** CSSB 193, to be cited as the Move Over Act, would make it a misdemeanor for a motorist to fail to change lanes or to slow down when passing a stationary authorized emergency vehicle on a roadway.

The bill would apply to a motorist who approached an emergency vehicle using visual signals as specified in state law, unless a police officer directed the motorist otherwise. If the roadway consisted of at least two lanes in the same direction, the motorist would have to vacate the lane closest to the emergency vehicle or slow down to 20 miles per hour below a posted speed limits of at least 25 mph. Where the speed limits was less than 25 mph, the motorist would have to slow down to 5 mph.

A violation would be a misdemeanor punishable by a fine of up to \$200. The fine would increase to \$500 if the violation resulted in property damage. A violation that resulted in bodily injury would be a Class B misdemeanor, punishable by up to 180 days in jail and/or a maximum fine of \$2,000. A violator also could be prosecuted under other sections of the Transportation and/or Penal codes, if applicable.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

Texas motorists must yield right-of-way and/or pull over when they approach moving emergency vehicles that are responding to emergencies on roadways. No state law, however, requires motorists to create space or slow down when passing stationary emergency vehicles with activated signals.

CSSB 193 would rectify this omission by putting common-sense requirements into state law, similar to those enacted by Florida and Illinois. Requiring drivers to change lanes where possible, or to slow down by 20 mph in other cases, would address the negligence often at the root of this ongoing problem. Graduated misdemeanor penalties that increase with the severity of the act would be appropriate for such traffic offenses. Higher fines or possible jail time for vehicle damages or personal injuries would deter mischievous or intentionally criminal drivers who endanger state and local law enforcement officers and emergency services personnel.

These public servants and their vehicles are at risk each time they must stop a traffic law violator or suspicious vehicle or must assist at an accident scene or other emergency. Motorists kill or injure several of these public servants each year or damage or destroy their vehicles, despite their efforts to perform their duties safely out of the flow of moving traffic. Some motorists play games of “chicken” with these personnel by aiming their vehicles at them, then swerving at the last possible moment. Others, especially some truckers, drive as close to highway patrol officers as possible while staying within their lanes and attempt to blow off the troopers’ hats. According to the Department of Public Safety (DPS), troopers are more likely to be struck by passing vehicles while stopped on roadsides than to be shot by criminals who are committing felonies. The danger is as great on rural roads as on urban expressways. These personnel should be focused on their duties, not on avoiding bad or malicious drivers.

Specific lane-change conditions and speed-reduction levels would be more enforceable deterrents than general requirements invoking ambiguous safety guidelines subject to driver discretion and open to legal interpretation.

Drivers who injure emergency and law enforcement personnel could go to jail under CSSB 193. They also could be prosecuted for other crimes arising from the same fact situation, such as vehicular homicide.

Typically, DPS would issue warnings to nonnegligious violators for 90 days after the law was enacted before writing citations. DPS also could heighten driver awareness by producing public service announcements about the new law or by placing messages on the state's electronic roadside signs.

**OPPONENTS
SAY:**

CSSB 193 would make innocent motorists criminals in cases where safe avoidance was not feasible or where failure to provide additional clearance was not solely their fault. Emergency vehicles sometimes occupy or protrude into lanes, making them difficult to avoid safely. This particularly occurs when peace officers stop vehicles too close to oncoming traffic instead of moving to safer locations. The bill would not address improperly or unsafely parked emergency vehicles, nor the larger problem of inadequate shoulders along roadways.

The bill could create a new state revenue source without accomplishing its purpose. Florida's Move Over law is less than a year old, and Illinois enacted its version in 2001. Their impact on driver behavior vis-a-vis emergency vehicles to date is unknown, although citations have been issued.

This nationwide problem should be studied comprehensively by the U.S. Transportation Department before states make unilateral policy decisions. As outlined in federal legislation proposed in 1999, emergency personnel should be trained in roadside safety, given technical assistance regarding equipment and highway design, and required to participate in demonstration projects aimed at improving their safety.

**OTHER
OPPONENTS
SAY:**

The penalties proposed by CSSB 193 would be too lenient for meaningful deterrence. Illinois, for example, suspends violators' driver's licenses, allows fines of up to \$10,000, and includes driving while intoxicated as an aggravating factor. At the very least, causing death should be a felony,

causing bodily injury should be a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000), and causing property damage should be a Class B misdemeanor. At a minimum, repeat offenders should be subject to license suspension or revocation.

Setting specific speed-reduction requirements would be unnecessarily confusing and could be difficult to enforce. Motorists would not know about these potential new violations unless the state undertook a public awareness campaign, which the bill would not require. DPS usually does not initiate such campaigns to educate motorists about new traffic laws.

The bill should stipulate that lane changing would be required only if it could be done safely under existing driving conditions. It is unclear what a motorist should do if an emergency vehicle occupied one lane of a multilane roadway. Also, the bill would set no guidelines or requirements for how emergency vehicles should be parked along roadways.

The exception for directions by a police officer may be worded too narrowly and should be broadened to include any law enforcement officer or official traffic-control device.

NOTES:

The committee substitute explicitly would require motorists to change lanes, eliminating the qualification that they must do so if possible safely under existing traffic conditions. The substitute also would require specific speed reductions, as opposed to a "safe speed," and would add the exception for police directions. It also would change the Senate engrossed version by reducing the penalty for a violation that caused property damage from a Class B misdemeanor to a \$500 fine and by reducing the penalty for a violation that caused bodily injury from a Class A to a Class B misdemeanor. The substitute also would specify that prosecution would be allowed under other statutes and would entitle the bill the Move Over Act.