

BILL ANALYSIS

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S.B. 1329
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DIGEST AND PURPOSE

Currently, approximately 17 to 26 percent of Texas drivers are uninsured. As proposed, S.B. 1329 provides methods to enhance enforcement of the state's laws requiring motorists to possess current liability insurance; provides access to short-term auto liability insurance for persons entering Texas from Mexico; requires standard appearance and form for proof of insurance cards; and permits the insured to waive coverage for noneconomic and exemplary damages.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Transportation in Article 1 (Section 601.502, Transportation Code) and to the commissioner of insurance in Article 2 (Section 2.01, Article 5.01C, Insurance Code), Article 3 (Section 3.01 Article 5.06-1, Insurance Code) and Article 4 (Section 4.01, Article 5.06-7, Insurance Code, and Section 4.02) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. FINANCIAL RESPONSIBILITY REQUIREMENTS

SECTION 1.01. Amends Chapter 601, Transportation Code, by adding Subchapter N as follows:

SUBCHAPTER N. VERIFICATION OF COMPLIANCE WITH AND ENFORCEMENT OF FINANCIAL RESPONSIBILITY REQUIREMENTS

Sec. 601.501. DEFINITIONS. Defines "department" and "verification date."

Sec. 601.502. VERIFICATION OF ESTABLISHMENT OF FINANCIAL RESPONSIBILITY THROUGH RANDOM SAMPLING. (a) Requires the Texas Department of Transportation (department) or an agent of the department to randomly select samples of registrations of motor vehicles subject to this chapter, or samples of owners of motor vehicles subject to this chapter, to verify whether the owner has established financial responsibility in accordance with Section 601.051(a). Prohibits a sample selected under this section from being classified on the basis of the owner's race, color, religion, sex, national origin, age, marital status, physical or mental disability, economic status, or geographic location.

(b) Authorizes the department, in addition to the general random sampling of motor vehicle registrations, to randomly select other persons who own a registered motor vehicle to verify that the person has established financial responsibility, including certain specified persons.

(c) Requires the department to send to the owner of a randomly selected motor vehicle, or to a randomly selected motor vehicle owner, a request for information about the motor vehicle and the owner's method of establishing financial responsibility. Requires the request to require the owner to state whether the owner has, as of the verification date, established financial responsibility in accordance with Section

601.051(a).

(d) Requires the department by rule to establish the frequency of sample selection and prescribe the methods employed for the random selection of samples and the procedures necessary for implementation of the verification process, including the method of sending the verification request, which may include certified mail, return receipt requested, the form for verification of financial responsibility, and information to be requested in the prescribed form.

(e) Authorizes the department to require the information provided by the owner to include a statement by the owner that the owner had, as of the verification date, established financial responsibility by certain means.

(f) Requires the owner to whom the notice is sent to furnish the requested information, that not later than the 30th day after the verification date, to the department in the form prescribed by the department, accompanied by the owner's signed affirmation that the information is true and correct.

(g) Provides that an owner whose response indicates that the owner had not established financial responsibility in accordance with Section 601.051(a), or who fails to respond to the request, is subject to suspension of the owner's motor vehicle registration in the manner provided by Section 601.505.

(h) Authorizes the department, if the owner responds to the request for information by asserting that the owner had, as of the verification date, established financial responsibility in accordance with a method authorized by Section 601.051(a), to conduct a verification investigation as provided by Section 601.503.

Sec. 601.503. VERIFICATION INVESTIGATION. (a) Authorizes the department, in order to verify a response received from an owner under Section 601.502, to furnish necessary information to the insurer, surety, or officer named in the response. Requires that not later than the 30th day after the date of receipt of the information, the insurer, surety, or officer inform the department whether, as of the verification date, financial responsibility had been established for the affected motor vehicle in accordance with Section 601.051(a).

(b) Requires the department, if the response received from an owner under Section 601.502 states that financial responsibility has been established through self-insurance, to examine the department's records to verify that a certificate of self-insurance has been issued in accordance with Section 601.124.

Sec. 601.504. WARNING NOTICE. Requires the department, if an owner responds under Section 601.502 that the owner has not established financial responsibility or the owner fails to respond in a timely manner, or if the department otherwise determines that an owner has registered or maintained the registration of a motor vehicle without establishing financial responsibility in accordance with Section 601.051(a), to issue a warning notice to the owner that informs the owner that the owner is not in compliance with Section 601.051(a) and that the owner's motor vehicle registration will be suspended on the 45th day after the date on which the warning notice is mailed unless the owner, not later than the 30th day after the date of the mailing of the warning notice, establishes financial responsibility in the manner prescribed by Section 601.505(b).

Sec. 601.505. SUSPENSION; REINSTATEMENT; EXCEPTION. (a) Requires the department to suspend the registration of an owner to whom a warning notice is issued under Section 601.504 on the 45th day after the date of the mailing of the notice. Requires the department, for a first violation, to terminate the suspension on payment by the owner of a \$100

reinstatement fee and submission of proof of financial responsibility as prescribed by the department. Requires the department, for a second or subsequent violation within the four years that follow the first violation or for a violation of Section 601.507, to terminate the suspension on the 120th day after the effective date of the suspension on payment by the owner of a \$100 reinstatement fee and submission of proof of financial responsibility in a manner prescribed by the department.

(b) Requires the department, for a first violation, to defer the suspension if the owner submits to the department, not later than the 30th day after the date of the mailing of the warning notice under Section 601.504, proof of financial responsibility evidenced by a motor vehicle insurance policy that complies with Subchapter D, the premiums for which have been prepaid for a term of at least six months. Requires the owner, on the earlier of the 180th day after the date of the mailing of the warning notice or the expiration date of the insurance policy described by this subsection, to submit to the department evidence of renewal of the motor vehicle insurance policy, the premiums for which have been prepaid for a term of at least six months. Requires the department, if the owner fails to submit the required evidence of renewal, to impose the suspension and reinstatement fee.

(c) Authorizes the department, notwithstanding any other provision of this subchapter, to register in accordance with Chapter 502 the motor vehicle of an applicant for registration who received a request for information under Section 601.502, and presents proof of financial responsibility that complies with Section 601.051(a) and was in effect on the verification date of the request for information.

Sec. 601.506. **SUBMISSION OF FALSE PROOF.** Requires the department, if the department determines that the proof of financial responsibility submitted by a motor vehicle owner under Section 601.502 is false, to suspend the owner's motor vehicle registration. Requires the department to terminate the suspension on or after the 180th day after the effective date of the suspension on payment by the owner of a \$200 reinstatement fee and submission of proof of financial responsibility as prescribed by the department.

Sec. 601.507. **OPERATION OF MOTOR VEHICLE WHILE REGISTRATION SUSPENDED FOR FAILURE TO ESTABLISH FINANCIAL RESPONSIBILITY.** (a) Provides that a person who operates a motor vehicle while the registration of the motor vehicle is suspended under this subchapter commits an offense.

(b) Provides that an offense under this section is punishable by a fine of not less than \$1,000 or more than \$2,000.

(c) Provides that it is a defense to prosecution under this section that the person charged with an offense produces in court satisfactory evidence that, at the time of the alleged offense, the owner or operator had established financial responsibility in accordance with Section 601.051(a).

Sec. 601.508. **MAINTENANCE OF EVIDENCE OF FINANCIAL RESPONSIBILITY.** (a) Requires each operator of a motor vehicle subject to Section 601.051 to carry within the vehicle a written document providing evidence of financial responsibility. Requires the document to be legible and provide information sufficient to demonstrate that the owner or operator of the motor vehicle has established financial responsibility as required under Section 601.051(a). Sets forth documents which might meet the requirements of this section.

(b) Requires the operator of a motor vehicle to surrender the evidence of financial responsibility into the possession of a peace officer, as defined by Article 2.12, Code of Criminal Procedure (Who are peace officers), court, or court officer who requests

inspection of the evidence of financial responsibility. Provides that a person who fails or refuses to comply with such a request is presumed to violate Section 601.051(a).

Sec. 601.509. **DISPLAY OF FALSE PROOF OF FINANCIAL RESPONSIBILITY; CRIMINAL PENALTY.** (a) Provides that a person commits an offense if the person provides evidence of financial responsibility to a peace officer, as defined by Article 2.12, Code of Criminal Procedure, court, or officer of the court knowing that financial responsibility has not been established as required under Section 601.051(a) or that the evidence of financial responsibility is illegally altered, counterfeit, or otherwise invalid.

(b) Requires the peace officer, if a peace officer issues a citation to a motor vehicle operator for displaying invalid evidence of financial responsibility, to confiscate the invalid evidence of financial responsibility for presentation in court.

(c) Provides that an offense under this section is a Class B misdemeanor.

Sec. 601.510. **DISPOSITION OF FEES.** Requires the department, from the reinstatement fees collected under this subchapter, to recover its costs in implementing and administering the verification program under this subchapter. Requires the department to deposit any amounts collected that exceed the administrative costs of the department under this subchapter in the general revenue fund.

Sec. 601.511. **USE OF AGENTS BY DEPARTMENT.** Authorizes the department to submit requests for proposals for contracts with private vendors to perform the random sampling and the verification investigations required under this subchapter as an agent of the department. Authorizes the department to enter into contracts as necessary to implement this section.

SECTION 1.02. Amends Section 601.051, Transportation Code, to prohibit a person from operating, registering, or maintaining registration of a motor vehicle in this state unless financial responsibility is established for that vehicle through certain means.

(b) Prohibits an owner of a motor vehicle from permitting another person to operate the motor vehicle in this state unless financial responsibility is established for that vehicle and evidenced through a method described by Subsection (a).

SECTION 1.03. Amends Section 601.191, Transportation Code, as follows:

Sec. 601.191. New heading: **OPERATION OF MOTOR VEHICLE IN VIOLATION OF FINANCIAL RESPONSIBILITY REQUIREMENTS.** (a) Provides that a person commits an offense if the person operates a motor vehicle or permits another person to operate a motor vehicle in violation of Section 601.051.

(b) Provides that except as provided by Subsection (d), an offense under this section is punishable by a fine of not less than \$500, rather than \$175 or more than \$1,000, rather than \$350. Deletes language regarding Subsection (c) and a misdemeanor.

(c) Provides that it is a defense to prosecution under this section that the person charged with an offense produces in court satisfactory evidence that, at the time of the alleged offense, the owner or operator had established financial responsibility in accordance with Section 601.051(a). Deletes language regarding a previous conviction.

(d) Makes a conforming change.

SECTION 1.04. Amends Section 601.195, Transportation Code, by adding Subsection (c), as follows:

(c) Provides that it is a defense to prosecution under this section that the person charged with an offense produces in court satisfactory evidence that, at the time of the alleged offense, the owner or operator had established financial responsibility in accordance with Section 601.051(a).

SECTION 1.05. Requires the department in performing sample selection under Section 601.502, Transportation Code, as added by this Act, to ensure that at least 500,000 samples are selected on or before September 1, 2003.

SECTION 1.06. (a) Requires the department, in cooperation with the Texas Department of Insurance and the Department of Public Safety of the State of Texas, to conduct an evaluation of the implementation and operation of the verification program adopted under Subchapter N, Chapter 601, Transportation Code, as added by this Act, and of the effectiveness of the verification program in increasing compliance with the financial responsibility requirements established under Subchapter C, Chapter 601, Transportation Code. Requires the evaluation to include certain information.

(b) Requires the department to enter into contracts, memoranda of understanding, or interagency agreements as necessary to implement this section.

(c) Requires the department to report the results of the evaluation conducted under this section to the 81st Legislature not later than February 1, 2009. Requires the department to provide written copies of the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

ARTICLE 2. SHORT-TERM MOTOR VEHICLE LIABILITY INSURANCE FOR CERTAIN MOTORISTS

SECTION 2.01. Amends Chapter 5A, Insurance Code, by adding Article 5.01C, as follows:

Art. 5.01C. SHORT-TERM LIABILITY INSURANCE FOR MOTORISTS ENTERING THIS STATE FROM MEXICO

Sec. 1. DEFINITIONS. Defines “insurer,” “motor vehicle,” and “short-term liability insurance policy.”

Sec. 2. RULES. (a) Authorizes the commissioner of insurance (commissioner) by rule to establish a program to provide for the sale of short-term liability insurance policies to motorists entering this state at Texas-Mexico border crossings and to increase the availability of those policies.

(b) Authorizes the commissioner to negotiate an agreement with any insurer under which the insurer will sell policies described by Subsection (a) of this section.

Sec. 3. LICENSE REQUIRED. Requires that a person representing an insurer in selling short-term liability insurance policies under this article to be licensed under Chapter 21A of this code.

Sec. 4. FORMS. Requires an insurer selling short-term liability insurance policies under this article to use the policy forms adopted by the commissioner under Article 5.06 of this code unless the insurer is exempt from using those forms.

ARTICLE 3. UNINSURED AND UNDERINSURED MOTORIST COVERAGE

SECTION 3.01. Amends Article 5.06-1, Insurance Code, to provide that no automobile liability insurance, including insurance issued through the Texas Automobile Insurance Plan Association, covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, under provisions prescribed by the commissioner, rather than board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death, or property damage resulting therefrom. Makes a nonsubstantive change.

(b) Defines, for the purpose of these coverages, “exemplary damages,” “noneconomic damages,” “uninsured motor vehicle,” and “underinsured motor vehicle.”

(c) Authorizes the commissioner, in the policy forms adopted under Article 5.06 of this code, to define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured.

(e) Requires that except as provided by Subsection (f) of this article, the limits of liability for bodily injury, sickness, or disease, including death, shall be offered to the insured in amounts not less than those prescribed in Chapter 601, Transportation Code, rather than the Texas Motor Vehicle Safety Responsibility Act, and such higher available limits as may be desired by the insured, but not greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(f) Provides that the named insured may elect to waive coverage under this article for recovery of noneconomic and exemplary damages resulting from bodily injury, sickness, or disease, including death. Provides that if an insured elects to waive coverage under this subsection, Subsection (e) of this article does not apply to the limits of liability that are applicable to the coverage provided under the policy issued to the named insured for damages resulting from bodily injury, sickness, or disease, including death. Authorizes the commissioner by rule to adopt minimum limits of liability applicable to those damages. Provides that waiver of coverage under this subsection does not affect the insured's right to bring an action for noneconomic and exemplary damages against a responsible party.

(g) Makes a conforming change.

(i) Provides that if the named insured has waived coverage under Subsection (f) of this article for recovery of noneconomic and exemplary damages, the amount paid to the insured may not include any amount attributable to noneconomic and exemplary damages. Makes a nonsubstantive change.

(j) Makes conforming and nonsubstantive changes.

ARTICLE 4. PROOF OF INSURANCE CARDS

SECTION 4.01. Amends Chapter 5A, Insurance Code, by adding Article 5.06-7, as follows:

Art. 5.06-7. FORM AND APPEARANCE OF PROOF OF MOTOR VEHICLE LIABILITY INSURANCE. (a) Requires the commissioner to prescribe by rule a standard appearance and form for a card issued by an insurer as proof of motor vehicle liability insurance prescribed by Section 601.081, Transportation Code.

(b) Requires the commissioner, in prescribing the appearance of a proof of motor

vehicle liability insurance card under Subsection (a) of this article, to require an appearance that is difficult to alter, duplicate, or counterfeit and not cost-prohibitive for consumers.

(c) Requires a card issued as proof of motor vehicle liability insurance issued in this state by an insurer to conform to the form and appearance prescribed under Subsection (a) of this article.

SECTION 4.02. (a) Requires the commissioner of insurance to prescribe the standard appearance and form of proof of motor vehicle liability insurance cards as required by Article 5.06-7, Insurance Code, as added by this Act, not later than December 1, 2001.

(b) Requires that a card issued by an insurer as proof of motor vehicle liability insurance that is issued on or after January 1, 2002, to conform with rules established by the commissioner of insurance under Article 5.06-7, Insurance Code, as added by this Act. Provides that proof of motor vehicle liability insurance that is issued before January 1, 2002, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 5. CONDUCT THAT CONSTITUTES THE BUSINESS OF INSURANCE

SECTION 5.01. Amends Section 101.051(b), Insurance Code, to delete language regarding a person domiciled in this state and a risk located in this state.

ARTICLE 6. REPEALER

SECTION 6.01. Repealer: Section 601.053 (Evidence of Financial Responsibility), Transportation Code; Section 601.193 (Defense: Financial Responsibility in Effect at Time of Alleged Offense), Transportation Code; Chapter 601H (Failure to maintain evidence of financial responsibility; suspension of driver's license and motor vehicle registration), Transportation Code; and Chapter 601I (Failure to maintain evidence of financial responsibility; impoundment of motor vehicle), Transportation Code.

ARTICLE 7. TRANSITION; EFFECTIVE DATE

SECTION 7.01. Provides that the change in law made by this Act to Chapter 601, Transportation Code, applies only to punishment for an offense committed on or after the effective date of this Act. Provides that for purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.

SECTION 7.02. Provides that Article 5.06-1, Insurance Code, as amended by this Act, applies only to a motor vehicle liability insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2002. Provides that a policy that is delivered, issued for delivery, or renewed before January 1, 2002, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7.03. Effective date: September 1, 2001, except as provided by Subsection (b) of this section. Provides that Article 1 of this Act takes effect January 1, 2003.