

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

SB 1250 (Limón) – As Amended April 19, 2022

SENATE VOTE: 37-0

SUBJECT: Rental passenger vehicle transactions: fees: toll roads and bridges

SUMMARY: This bill would require a rental car company to provide a written notice to its customers, separate from the rental contract, stating the amount a customer may be charged by the rental company if tolls are not paid by the customer, whether there are methods to avoid those charges, and, if so, instructions as to how the customer can use those methods.

Specifically, **this bill would:**

- 1) Require a rental company to provide a written notice to its customers stating the amount a customer may be charged by the rental company if tolls are not paid by the customer and whether there are any methods to avoid those charges.
- 2) If there are methods to avoid the charges, require the notice pursuant to 1), above, to include instructions as to how the customer can use those methods.
- 3) Specify that the written notice pursuant to 1), above, be separate from the rental contract, in 14-point type or larger, and shall be given to the customer along with the rental contract or handed to the customer upon exiting the rental lot.

EXISTING LAW:

- 1) Prohibits a rental company from charging in addition to the rental rate, additional mandatory charges, or a mileage charge, as those may be applicable, any other fee that is required to be paid by the renter as a condition of hiring or leasing the vehicle. (Civ. Code Sec. 1939.19(a).)
- 2) Provides that, if additional mandatory charges are imposed, the rental company shall, at the time and place the rental commences, clearly and conspicuously disclose in the rental contract the total of the rental rate and additional mandatory charges for the entire rental, *exclusive of charges that cannot be determined at the time the rental commences*. (Civ. Code Sec. 1939.19(b)(2); emphasis added.)
- 3) Permits a rental company to charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. (Civ. Code Sec. 1939.19(c).)
- 4) Defines “rental company,” for purposes of the above provisions, to mean a person or entity in the business of renting passenger vehicles to the public. (Civ. Code Sec. 1939.01(a).)
- 5) Provides that, except as specified, each vehicle that enters into or upon a vehicular crossing immediately becomes liable for those tolls and other charges as may from time to time be prescribed by the California Transportation Commission. (Veh. Code Sec. 23301.)

- 6) Provides that it is unlawful for a driver to fail to pay tolls or other charges on any vehicular crossing or toll highway. (Veh. Code Sec. 23302(a)(1).)
- 7) Provides that no person shall evade or attempt to evade the payment of tolls or other charges on any vehicular crossing or toll highway; and provides that a violation of this provision is subject to civil penalties and is neither an infraction nor a public offense. (Veh. Code Sec. 23302.5.)
- 8) Requires an issuing agency that permits pay-by-plate toll payment to communicate, as practicable, the pay-by-plate toll amount in the same manner as it communicates other toll payment methods; and requires the issuing agency to provide publicly available information on how pay-by-plate toll payment works, including the toll amount, process for payment, and period of time a vehicle has to resolve the payment before an issuing agency may process the trip as a violation. (Veh. Code Sec. 23301.8.)
- 9) Defines “pay-by-plate toll payment” to mean an issuing agency’s use of on-road vehicle license plate identification recognition technology to accept payment of tolls in accordance with policies adopted by the issuing agency. (Veh. Code Sec. 23302(e).)
- 10) Permits a person to contest a notice of toll evasion violation or a notice of delinquent toll evasion within 21 days from the issuance of the notice of toll evasion violation, or within 15 days from the mailing of the notice of delinquent toll evasion, whichever occurs later. (Veh. Code Sec. 40255(a).)
- 11) Specifies that the schedule of toll evasion penalties for toll evasion violations shall be limited to \$100 for the first violation, \$250 for a second violation within one year, and \$500 for each additional violation within one year. (Veh. Code Sec. 40258(a).)
- 12) Requires a notice of delinquent toll evasion violation to contain, or be accompanied with, an affidavit of nonliability and information of what constitutes nonliability, information as to the effect of executing the affidavit, and instructions for returning the affidavit to the issuing agency. (Veh. Code Sec. 40263.)
- 13) Provides that if the affidavit of nonliability pursuant to 12), above, is returned to the agency within 30 days of the mailing of the notice of toll evasion violation together with the proof of a written rental agreement or lease between a bona fide renting or leasing company and its customer which identifies the rentee or lessee and provides the driver’s license number, name, and address of the rentee or lessee, the processing agency shall serve or mail to the rentee or lessee identified in the affidavit of nonliability a notice of delinquent toll evasion violation; and further provides that if payment is not received within 15 days of the mailing of the notice of delinquent toll evasion violation, the processing agency may proceed against the rentee or lessee, as specified. (Veh. Code Sec. 40264.)

FISCAL EFFECT: None. This bill has been keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of this bill:** This bill seeks to protect consumers from unexpected charges by better informing rental car customers as to how they can avoid additional charges from the rental car company for toll costs accrued during their rental period. This bill is author-sponsored.

2) **Author's statement:** According to the author:

Now that many toll roads and bridges have moved away from offering cash payment options, consumers in rental cars have fewer options to pay for tolls without using the programs offered by rental car companies.

These companies vary widely on their charges. This can be confusing for consumers when they are charged for much more than the toll on their bill. Consumers can pay the charge online up to 30 days before crossing the bridge or up to 48 hours after crossing. But to pay this charge in advance you would need details about the car that a rental car driver would not know before obtaining the car. Additionally, many consumers may be unaware that they are able to pay online, or that there is a limited window.

SB 1250 would require car rental companies to provide a notice to consumers on what the convenience charges would be for passing through a toll in a rental car, and if there are any ways to avoid those charges. This bill will ensure that consumers are aware of these charges before passing through the tolls, and ensure that they are aware of ways they can avoid the charges.

3) **Cashless tolls and rental car fees:** This bill is responding to the rapid transition of toll roads away from in-person, on-site payment and toward automated license plate readers and preemptive or subsequent online payment. According to an April 2022 San Francisco Chronicle article, nearly 60% of American bridges, tunnels, and highways that collect tolls have eliminated the option for cash payment, moving to automated systems, and, since 2010, 97% of all new toll operations have been electronic.¹ Automated tolling can provide substantial benefits, including reducing congestion and emissions, and improving safety by removing tollbooths that present physical obstacles in the road. However, the transition to cashless tolling has also introduced a number of complications, including with respect to the payment of tolls in rented vehicles.

When an individual rents a car, the car is registered to the rental car company and not to the individual, so any invoice resulting from the use of the toll road is sent to the rental car company rather than the individual. When this occurs, most rental companies charge the customer the amount of the invoice in addition to a “convenience fee,” but how each rental car company handles the situation differs based on company and location, and is often difficult to discern. As 2020 article in the New York Times describes:

Despite years of regulatory actions, class-action suits and fee rollbacks by companies, there is still confusion over the way some rental car companies deal with electronic tolls.

As cashless tolls become more prevalent, drivers without transponders – those windshield-mounted devices that many call E-Z Passes – can find themselves on roads where they have no immediate option to pay. Instead they often receive a mailing based

¹ Michael Cabanatuan, “Bay Area toll collectors are gone, so what happens to the tollbooths? Here’s the \$77 million answer,” *San Francisco Chronicle*, Apr. 10, 2022, <https://www.sfchronicle.com/bayarea/article/Bay-Area-toll-collectors-vanished-when-COVID-hit-17068234.php> [as of Jun. 19, 2022].

on an image of their plate taken at the toll. In the case of rental cars, the notification goes to the company.

If you don't sign up for an electronic toll pass, some companies tack on an administrative fee – as much as \$15 – for each cashless toll encountered. And if you do, some companies charge a daily fee of \$12 or more for the pass, even on the days when you never hit a toll.²

A coalition of rental car companies that adopted an “oppose unless amended” position on a previous version of the bill explains that these fees are generally intended to cover labor and other costs incurred to provide the service of paying the toll on the renter's behalf:

If a renter decides not to pay the toll, the rental car company can bill the renter the cost of the toll plus a fee that reflects costs incurred to provide the service. That fee reflects the costs of the third-party service provider and employee time it takes to pay the toll on behalf of the renter.

While there are generally options available for rental car customers to minimize additional costs associated with tolls accrued during the rental period, the fees imposed and mechanisms for minimizing or avoiding fees can be difficult to parse, and sometimes even difficult to locate. According to a 2019 CNBC article:

Finding what a [rental car] company will charge for tolls and transponders is rarely easy. Some clearly state the toll and transponder fees on the company's website, but others bury the information, making it very confusing or not revealing the charges until bookings are made, if at all.

Many rental customers don't learn about the transponder fees until they're at the rental counter being asked (or pressured) to sign multiple “accept” or “decline” lines on a contract.

Even calling ahead to a customer service line may not be much help. After several minutes searching for toll and transponder fees, CNBC couldn't find the information on one company's website. Later, a customer service agent tallied up the costs, laughed and said, “My advice, if you think you'll be going through tolls, don't rent this car.”³

A 2017 article in the Pew Charitable Trust's *Stateline* adds:

In some states, renters can avoid the fees by paying tolls in advance online. And in most places, it is legal to use your own transponder in a rental car as long as you add the car to your account. But with more than a hundred different electronic tolling systems around the country, the system that works at home may not be effective somewhere else. [...]

² Kevin Flynn, “Rental Cars and Cashless Tolls: Convenience Might Cost You,” *New York Times*, Jan. 23, 2020, <https://www.nytimes.com/2020/01/23/travel/rental-cars-and-cashless-tolls.html> [as of Jun. 19, 2022].

³ Harriet Baskas, “How to avoid getting dinged with surprise rental car toll fees,” *CNBC*, Jul. 5, 2019, <https://www.cnb.com/2019/07/05/how-to-avoid-getting-dinged-with-surprise-rental-car-toll-fees.html> [as of Jun. 19, 2022].

And for some renters who don't read the fine print of their contracts, the fees associated with tolling can come as a surprise because rental car companies contract with third parties that bill drivers at a later date.

"The car rental agencies do have all those fees within their contracts and listed on their websites," [Mark] Mannell [who runs CarRentalSavers.com] said. "But it's usually toward the end and in small print. They could do a better job of disclosing their fees up front."⁴

Other states have attempted various approaches to addressing these unanticipated and arguably excessive fees rental car customers are increasingly facing, but such efforts have been unsuccessful in the face of rental car industry opposition. For instance, legislation introduced in New Jersey would have capped the fee a rental company can charge for their toll transponder to \$2/day and would have prohibited any charge if the toll had no on-site payment alternative. But rental car companies argued that capping these fees would prevent them from responding to fluctuations in the cost of maintain in-car tolling devices.⁵

This bill's approach seeks to instead ensure that rental car customers are informed of potential fees and are equipped with the information necessary to avoid them if possible.

- 4) Bill would require conspicuous notice of rental car toll fees and instructions on how fees can be avoided:** This bill would require a rental company to provide a written notice to its customers stating the amount a customer may be charged by the rental company if tolls are not paid by the customer and whether there are any methods to avoid those charges. If there are methods to avoid the charges, the bill requires the notice to include instructions as to how the customer can use those methods. The bill specifies that the notice shall be provided in 14-point type or larger, that it shall be separate from the rental contract, and that it shall be given to the customer along with the rental contract or handed to the customer upon exiting the rental lot.

By requiring this notice to be explicit concerning the fees and mechanisms for avoiding, and by providing that the notice must be in large font and separate from the rental contract, this bill seems likely to better inform rental car customers with respect to their options and obligations for cashless tolls. Rather than burying such disclosures in fine print deep in a complex and lengthy contract, the bill would draw particular attention to its contents, allowing the customer to take necessary actions to avoid unexpected and excessive fees. Notably, the bill does not constrain these fees or require the rental company to adopt any particular fee structure with respect to toll payment, and, accordingly, the bill seems to impose minimal burden on rental companies relative to the benefit the notice is likely to provide for consumers.

- 5) Related legislation:** AB 2594 (Ting) would make various changes to the administration of bridge and road tolls, including, among other things: requiring an issuing agency to allow a driver of a rental car to register the vehicle license plate with the agency online for the

⁴ Sarah Breitenbach, "As Cashless Toll Roads Proliferate, So Do Rental Car Fees," *Stateline*, Pew Charitable Trusts, Aug. 10, 2017, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/08/10/as-cashless-toll-roads-proliferate-so-do-rental-car-fees> [as of Jun. 19, 2022].

⁵ *Ibid.*

purpose of paying all tolls with a credit or debit card; and requiring rental car agencies to provide the customer, separate from the rental contract, a fact sheet explaining how an individual may register the license plate on their rental vehicle with an issuing agency to pay tolls for the length of the rental period, rather than being billed by the rental car agency for a toll invoice.

- 6) **Prior legislation:** SB 623 (Newman, 2021) would have made several changes to laws pertaining to the use of personally identifiable information for the purposes of electronic toll collection or electronic transit fare collection. This bill died in the Senate Judiciary Committee.

SB 664 (Allen, 2019) was substantively similar to SB 623. This bill died in the Assembly Privacy & Consumer Protection Committee.

AB 2535 (Oberholte, Ch. 435, Stats. 2018) required transportation agencies to include in the notice of a toll evasion violation sent to a violator a copy of photographic evidence on which the determination was reached by automated devices for any failure to meet occupancy requirements in a HOT lane.

AB 344 (Melendez, 2017) would have deferred payment requirements for a person contesting a notice of toll evasion violation through an administrative review hearing. This bill died in the Senate Transportation & Housing Committee.

SB 1268 (Simitian, Ch. 489, Stats. 2010) enumerates several privacy protections restricting the use and disclosure of personally identifiable information of either an electronic toll collection subscriber or user of a tolled facility that employs an electronic toll collection system.

AB 628 (Block, Ch. 459, Stats. 2009) defines “pay-by-plate toll payment,” requires an issuing agency that permits pay-by-plate toll payment to communicate, as practicable, the pay-by-plate toll amount in the same manner as it communicates other toll payment methods, and specifies evidentiary requirements for toll evasion violations in circumstances necessitating pay-by-plate toll payment.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

Avis (previous version)
Budget (previous version)
Enterprise Holdings (previous version)
Hertz (previous version)
Payless Car Rental (previous version)

Analysis Prepared by: Landon Klein / P. & C.P. / (916) 319-2200