

BILL ANALYSIS

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S.B. 1787
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Economic Development
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DIGEST

Currently, Texas motorists are required by law to carry automobile liability insurance or otherwise establish financial responsibility. In addition, all persons operating a motor vehicle are required to show valid proof of financial responsibility when requested by a peace officer, when involved in an accident, or when obtaining certain registrations, inspections, or licenses. The number of drivers in this state who still do not comply with the law is estimated to be between 20 to 23 percent. The ability of some motorists to circumvent the law by purchasing automobile insurance policies for the purpose of obtaining the required licence and registration, and subsequently canceling their policies until verification is required again is one of the enforcement problems cited by the Senate Interim Committee on Civil Justice (committee). Automobile insurance availability and affordability were also cited by the committee as factors contributing to the number of uninsured motorists. S.B. 1787 would regulate and set forth requirements regarding motor vehicle insurance, establish business offenses, and provide penalties.

PURPOSE

As proposed, S.B. 1787 regulates and sets forth requirements regarding motor vehicle insurance, establishes business offenses, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Transportation in SECTIONS 1.01, 2.01, 3.01, and 4.02 (Section 601.502(d), Chapter 601, Transportation Code; Articles 5.06-1(f) and 5.06-7(a), Insurance Code; and Section(c), Article 1.14-1, Insurance Code) 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. Requires the Texas Department of Transportation (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. 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. Authorizes the department, in addition to the general random sampling of motor vehicle registrations, to randomly select other persons to verify that the person has established certain financial responsibility. Sets forth the established financial responsibility criteria. Requires the department to send a request for information about a motor vehicle and an owner’s method of establishing financial responsibility to the motor vehicle owner. Sets forth the required information to be included in the request. Requires the department, by rule, to prescribe the methods employed for the random selection of samples and the procedures necessary for implementation of the verification process. 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 certain financial responsibility. Sets forth the established financial responsibility criteria. Requires the owner to whom notice is sent, not later than the 30th day after the verification date, to furnish the requested information to the department in the form prescribed by the department, accompanied by the owner's signed affirmation that the information is true and correct. Provides that an owner whose response indicates that the owner had not established financial responsibility in accordance with Section 601.051, or who fails to respond to a request, is subject to suspension of the owner's motor vehicle registration in the manner provided by Section 601.505. Authorizes the department to conduct a verification investigation as provided by Section 601.503, if the owner responds to a 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.

Sec. 601.503. VERIFICATION INVESTIGATION. Authorizes the department, 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 the insurer, surety, or officer, not later than the 30th day after the date of receipt of the information, to 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. Requires the department to examine the department's records to verify that a certificate of self-insurance has been issued in accordance with Section 601.124, if a response received from an owner under Section 601.502 states that financial responsibility has been established through self-insurance.

Sec. 601.504. WARNING NOTICE. Requires the department to issue a warning notice to an owner, if an owner response 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. Requires the warning notice to inform the owner that the owner is not in compliance with Section 601.051 and that the owner's motor vehicle registration is 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.

Sec. 601.505. SUSPENSION; REINSTATEMENT. Requires the department to suspend the registration of an owner to whom a notice is issued under Section 601.504, unless the owner submits to the department, within the period provided by Section 601.504(b), proof of financial responsibility evidenced by a motor vehicle insurance policy, the premiums of 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 warning notice under Section 601.504 or the expiration date of the insurance policy described by this subsection, to submit to the department evidence of renewal of the motor vehicle policy, the premiums of which have been prepaid for a term of at least six months. Requires the department to immediately suspend the registration of an owner, if the owner fails to submit the required evidence of renewal. Requires the department, except as provided by Subsection (c), to terminate a suspension of registration under this section on payment of a \$100 reinstatement fee and submission of proof of financial responsibility as prescribed by the department. Prohibits the department from terminating a suspension under Subsection (b) before the 120th day after the effective date of the suspension, if during the preceding four years, the department has suspended an owner's registration under this subchapter.

Sec. 601.506. SUBMISSION OF FALSE PROOF. Requires the department to suspend an owner's motor vehicle registration, if the department determines that proof of financial responsibility submitted by a motor vehicle owner under Section 601.502 is false. Requires the department to terminate the suspension on 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. Prohibits a person from operating a motor vehicle if the registration of the motor vehicle is suspended under this subchapter. Provides that a person commits a business offense if the person violates Subsection (a). Provides that a business offense under this subsection is punishable by a fine of not

less than \$1,000 or more than \$2,000.

Sec. 601.508. **MAINTENANCE OF EVIDENCE OF FINANCIAL RESPONSIBILITY.** 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 to provide information sufficient to demonstrate that the owner or operator of the motor vehicle has established financial responsibility as required under Section 601.051 and may include certain information. Requires the operator of a motor vehicle to surrender the evidence of financial responsibility into the possession of a peace officer, 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. Provides that a person who provides evidence of financial responsibility knowing that financial responsibility has not been established as required under Section 601.051, or that the evidence of financial responsibility is illegally altered, counterfeit, or otherwise invalid is presumed to violate Sections 601.196 and 601.509.

Sec. 601.509. **DISPLAY OF FALSE PROOF OF FINANCIAL RESPONSIBILITY; CRIMINAL PENALTY.** Provides that a person commits an offense if the person provides evidence of financial responsibility to a peace officer, court, or officer of the court knowing that financial responsibility has not been established as required under Section 601.051 or that evidence of financial responsibility is illegally altered, counterfeit, or otherwise invalid. Requires an officer to confiscate an invalid evidence of financial responsibility for presentation in court, if a peace officer issues a citation to a motor vehicle operator for displaying invalid evidence of financial responsibility. Provides that an offense under this section is a misdemeanor punishable by a fine not to exceed \$1,000; confinement in the county jail not to exceed one year; or both the fine and the confinement.

Sec. 601.510. **DISPOSITION OF FEES.** Requires the department to recover its costs in implementing and administering the verification program from the reinstatement fees collected 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.

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 by certain methods. Prohibits a motor vehicle owner from permitting another person to operate, register, or maintain registration of the motor vehicle in this state unless financial responsibility is established for that vehicle and evidenced through a method described by Subsection (a). Makes a conforming change.

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.** Provides that an offense under this section is a business offense, rather than misdemeanor, punishable by a fine of not less than \$500, rather than \$175, or more than \$1,000, rather than \$350. Provides that it is a defense to prosecution under this section and Section 601.195, that a person charged with a violation produces satisfactory evidence in court that, at the time of arrest, the owner or operator had established financial responsibility in accordance with Section 601.051. Deletes existing Subsections (c) and (d), regarding offenses.

SECTION 1.04. Amends Section 12.02, Penal Code, to provide that offenses are designated as felonies, misdemeanors, or business offenses.

SECTION 1.05. Amends Chapter 12A, Penal Code, by adding Section 12.05, as follows:

Sec. 12.05. **BUSINESS OFFENSE.** Provides that a business offense is a nonmisdemeanor offense for which the penalty is a fine of at least \$500 and that conviction of a business offense does not impose any legal disability or disadvantage.

SECTION 1.06. Amends Chapter 12B, Penal Code, as follows:

SUBCHAPTER B. New heading: ORDINARY MISDEMEANOR
AND BUSINESS OFFENSE PUNISHMENTS

SECTION 1.07. Amends Chapter 12B, Penal Code, by adding Section 12.24, as follows:

Sec. 12.24. BUSINESS OFFENSE. Requires an individual adjudged guilty of a business offense to be punished by a fine of at least \$500.

SECTION 1.08. Requires the department, in performing sample selection under Section 601.502, as added by this Act, to ensure at least 500,000 samples are selected on or before September 1, 2001.

ARTICLE 2. UNINSURED AND UNDERINSURED MOTORIST COVERAGE

SECTION 2.01. Amends Article 5.06-1, Insurance Code, to require no automobile liability insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle to be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, under provisions prescribed by the commissioner of insurance (commissioner), rather than State Board of Insurance (board). Defines “exemplary damages,” and “noneconomic damages.” Requires, except as provided by Subsection (f) of this article, the limits of liability for bodily injury, sickness, or disease, including death, to 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. Authorizes the named insured to 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. Requires the amount paid to an insured to be reduced by an amount equal to the amount of damages attributable to noneconomic and exemplary damages, if the named insured has waived coverage under Subsection (f) of this article for recovery of noneconomic and exemplary damages. Makes conforming and nonsubstantive changes.

ARTICLE 3. PROOF OF INSURANCE CARDS

SECTION 3.01. 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. 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. Requires the commissioner, in prescribing the appearance of a proof of motor vehicle liability insurance card under Subsection (a), to require a certain appearance. 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).

SECTION 3.02. (a) Requires the commissioner 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, 1999.

(b) Requires a card issued on or after January 1, 2000, to conform with rules established by the commissioner of insurance under Article 5.06-7, Insurance Code, as added by this Act. Makes application of this Act prospective.

ARTICLE 4. UNAUTHORIZED INSURANCE

SECTION 4.01. Amends Section 2, Article 1.14-1, Insurance Code, as follows:

Sec. 2. New heading: ENGAGING IN BUSINESS OF INSURANCE; DEFINITIONS.

SECTION 4.02. Amends Section 2, Article 1.14-1, Insurance Code, by amending Subsections (a) and (c), and adding Subsection (d), to redefine “engaging in the business of insurance.” Defines “insurer” and

“person.” Requires the commissioner, rather than the State Board of Insurance, to promulgate rules defining insurance exchanges and syndicates covered by Subsection (a)(1) of this section. Provides that the venue of an act described by Section (a)(1) of this section that is committed by mail is in the location where the matter transmitted by mail is delivered and takes effect.

SECTION 4.03. Amends Section 3(b), Article 1.14-1, Insurance Code, to prohibit a person from directly or indirectly engaging in the business of insurance except as provided by and in accordance with the specific authorization of statute. Deletes text prohibiting insurers from directly or indirectly doing any acts of insurance business set forth in this Article.

SECTION 4.04. Amends Section 13(a), Article 1.14-1, Insurance Code, to provide that a person commits an offense if the person engages in the business of insurance without holding a certificate of authority, license, or other authorization issued by the department; or having an exemption that is recognized by the department from the requirement to hold a certificate of authority, license, or other authorization issued by the department; or after a person’s certificate of authority, license, or other authorization has been revoked or suspended by the commissioner.

ARTICLE 5. REPEALER

SECTION 5.01. Provides that the following laws are repealed:

- (1) Repealer: Section 3(a), Article 1.14-1, Insurance Code (Definition of “person.”).
- (2) Repealer: Section 13(c), Article 1.14-1, Insurance Code (It is a defense to prosecution under this section that Section 2(a) of this article by its specific terms does not apply to the person charged.).
- (3) Repealer: Section 601.053, Transportation Code (Evidence of Financial Responsibility).
- (4) Repealer: Section 601.193, Transportation Code (Defense: Financial Responsibility in Effect at Time of Alleged Offense.).
- (5) Repealer: Chapter 601H, Transportation Code (Failure to maintain evidence of responsibility; suspension of driver’s license and motor vehicle registration.).
- (6) Repealer: Chapter 601I, Transportation Code (Failure to maintain evidence of responsibility; impoundment of motor vehicle.).

ARTICLE 6. TRANSITION; EFFECTIVE DATE; EMERGENCY

SECTION 6.01. Makes application of this Act prospective.

SECTION 6.02. 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, 2000. Provides that a policy that is delivered, issued for delivery, or renewed before January 1, 2000, 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 6.03. (a) Effective date: September 1, 1999, except as provided by Subsection (b) of this section.

- (b) Effective date for Article 1 of this Act: September 1, 2000.

SECTION 6.04. Emergency clause.