

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1250 (Limón)
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Fiscal: No
Urgency: No
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SUBJECT

Rental passenger vehicle transactions: fees: toll roads and bridges

DIGEST

This bill requires a rental company to provide a written notice to customers stating the amount they may be charged for tolls if not paid by the customer and whether there are any methods to avoid those charges and instructions for using those methods.

EXECUTIVE SUMMARY

Many toll roads and bridges are moving to an entirely electronic processing of tolls, phasing out the ability to pay in cash as drivers go through the toll. This is generally accomplished through the scanning of transponders placed in the vehicles or by simply scanning the license plates of vehicles as they cross through the toll. When a driver is using a rental car, they likely do not have their own transponder and the toll is generally sent directly to the rental car company.

Concerns have been raised that rental car companies are charging exorbitant fees and usurious daily toll passes without clear notice to customers about these potential charges or ways to avoid them. In response, this bill requires a rental company to provide a written notice to customers stating the amount they may be charged for tolls if not paid by the customer and whether there are any methods to avoid those charges. If there are such methods, the notice must instruct the customer how to use them.

This bill is author sponsored. A coalition of rental car companies is in opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Generally governs the transactions between a rental car company, referred to in the statutes as a rental company, and its customers. (Civ. Code, div. 3, pt. 4, tit. 5, ch. 1.5, §§ 1939.01 et seq.)
- 2) Provides that when providing a quote, or imposing charges for a rental, the rental company may separately state the rental rate, additional mandatory charges, if any, and a mileage charge, if any, that a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. Additional mandatory charges must be disclosed as provided. (Civ. Code § 1939.19.)
- 3) Provides that in addition to the rental rate, taxes, additional mandatory charges, if any, and mileage charges, if any, a rental company may 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. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company and for additional drivers, except as provided. (Civ. Code § 1939.19.)
- 4) Authorizes a renter to bring an action against a rental company for the recovery of damages and appropriate equitable relief for violations of the above provisions. The prevailing party shall be entitled to recover reasonable attorney's fees and costs. (Civ. Code § 1939.25.)
- 5) Provides that 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 § 23301.)
- 6) Deems it unlawful for a driver to fail to pay tolls or other charges on any vehicular crossing or toll highway. (Veh. Code § 23302.)

- 7) Provides that, for vehicular crossings and toll highways where the issuing agency permits pay-by-plate payment in accordance with policies adopted by the issuing agency, and where electronic toll collection is the only other method of paying tolls or other charges, it is prima facie evidence of a violation for a driver to drive a vehicle onto the vehicular crossing or toll highway without either a transponder or other electronic toll payment device associated with a valid account with a sufficient balance or valid vehicle license plates properly attached. (Veh. Code § 23302.)
- 8) Defines “pay-by-plate toll payment” as 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. The law makes clear that this does not require an issuing agency to offer pay-by-plate toll processing as a method for paying tolls. (Veh. Code § 23302.)
- 9) 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. The issuing agency must 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 § 23301.8.)
- 10) Provides that if the affidavit of nonliability 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. 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. (Veh. Code § 40264.)

This bill:

- 1) Requires 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 notice shall include instructions as to how the customer can use those methods.

- 2) Requires the notice to be separate from the rental contract, in 14-point type or larger, and given to the customer along with the rental contract or handed to the customer upon exiting the rental lot.

COMMENTS

1. Tolls and rental cars

Generally, it is unlawful for a driver to fail to pay tolls or other charges on any vehicular crossing or toll highway. While in the past drivers were provided an opportunity to pay cash at these crossings, many tolls have now gone entirely electronic. For instance, the Bay Area has recently gotten rid of their toll takers:

The new year meant the official start of an all-electronic toll collection for Bay Area bridges, including the Bay Bridge, according to the Bay Area Toll Authority.

Drivers will need to have a FasTrak or a license plate account when they go through toll booths on the Antioch, Benicia-Martinez, Carquinez, Dumbarton, Richmond-San Rafael, Bay Bridge and San Mateo-Hayward bridges.

The Golden Gate Bridge, which is not owned by the Bay Area Toll Authority, went all-electronic with its toll collection in 2013.

Vehicles that do not have a Fastrak or license plate account will receive a monthly invoice.¹

This movement to an all-electronic system poses a problem for drivers of rental cars whom oftentimes do not have their own account or cannot use their existing account while in the rental vehicle.

Some tolling agencies do allow for these drivers to pay tolls while driving a rental car. The Orange County tolling agency, the Transportation Corridor Agencies (TCA), allows consumers to register their rental vehicle license plate in advance:

If you are renting or borrowing a vehicle and have a FasTrak account you can temporarily add the vehicle's license plate number to your account. Log in to your account to add the vehicle on a temporary basis with a start and end date for your rental period. Driving a rental car or borrowed

¹ Bay Area bridges go all-electronic with toll collection (January 2, 2021) abc7News, <https://abc7news.com/fastrak-toll-collection-electronic-takers/9295048/>. All internet citations are current as of April 6, 2022.

vehicle on The Toll Roads without temporarily adding the license plate number to your account may result in tolls and additional service fees billed through the rental company or a Notice of Toll Evasion.²

Even if a driver does not have an account, TCA allows them to have tolls charged directly to their credit card while using a rental car. However, there are limitations. Drivers may need to pre-register their vehicle before driving on the toll roads and tolls incurred before registering the vehicle can be charged directly through the rental company, according to the rental agreement. Registering a rental vehicle also only covers certain tolls within California.

These processes require an exceptional degree of advanced planning. Even where a consumer is mindful and savvy enough to take advantage of these options, they are not always afforded an option to pay themselves before having to go through the rental company and their myriad fees.

The problems with these fees and other programs set up by rental car companies have been the subject of numerous articles and have motivated bills in other states. One summarizes the problem quite succinctly:

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 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.³

The article points to an example of a retired teacher who, during a family trip out of state, passed through tolls amounting to less than \$10 but was faced with a toll bill from Advantage Rent a Car of over \$100.

One of the lawsuits referenced above was brought by the San Francisco City Attorney:

² *Rental Vehicles*, The Toll Roads of Orange County, <https://thetollroads.com/help/rentals>.

³ Kevin Flynn, Rental Cars and Cashless Tolls: Convenience Might Cost You (January 23, 2022) The New York Times, <https://www.nytimes.com/2020/01/23/travel/rental-cars-and-cashless-tolls.html>.

The lawsuit Herrera filed on March 1, 2017 stems from Hertz's PlatePass service, which permits customers to bypass cash toll lanes and use the faster electronic FasTrak lanes without having to establish a FasTrak account. But the Golden Gate Bridge went to cashless, electronic tolling in 2013. Since then, Hertz's PlatePass service provides no real benefit to motorists who cross the Golden Gate Bridge. They no longer receive the advertised benefit of faster passage because every lane is the same and available to everyone, with or without PlatePass or FasTrak. And Hertz customers can no longer avoid the service and its steep fees by paying their tolls via an optional cash lane. To make matters worse, Hertz misled its customers about how to avoid PlatePass and its expensive fees by using the free and convenient payment options offered by the Golden Gate Bridge.

The result of these practices was that Hertz customers were unwittingly purchasing the supposedly-optional toll service PlatePass, and paying up to \$24.75 in extra fees, including fees charged for every day of the car rental, even if the toll service was only used on one of those days. For many customers, that meant paying more than \$30 to cross the bridge one time.

The lawsuit alleged that Hertz and American Traffic Solutions, also known as ATS, engaged in false advertising and unfair, unlawful and fraudulent business practices in violation of several state and federal consumer protection laws, including California's landmark 1988 legislation that specifically prohibits abusive practices in the rental car industry. American Traffic Solutions has since rebranded itself as Verra Mobility.⁴

Ultimately, Hertz and its business partner settled the lawsuit for \$3.65 million.

Legislation has been introduced in other states, such as New Jersey and Florida.⁵ The former would have limited the fee a rental company can charge for their tolling system to \$2 per day and prohibits the charge if the toll road or bridge had no alternative payment option. However, both bills failed amidst industry opposition.

2. Simply requiring better notice of potential fees and methods to avoid them

Existing law already largely regulates the fees that can be charged by rental companies and specifically provides for how some of these fees must be disclosed. The rental rate, taxes, mileage charges, and additional mandatory charges, if any, are to be stated

⁴ Hertz & ATS cut fees, to pay \$3.65M to settle Golden Gate Bridge toll case (February 19, 2019) City Attorney of San Francisco, <https://www.sfcityattorney.org/2019/02/19/hertz-cuts-fees-agrees-to-pay-3-65m-to-settle-golden-gate-bridge-toll-case/>.

⁵ Sarah Breitenbach, As Cashless Toll Roads Proliferate, So Do Rental Car Fees (August 10, 2017) Pew Stateline, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/08/10/as-cashless-toll-roads-proliferate-so-do-rental-car-fees>.

clearly and conspicuously, as provided. If a rental company states a rental rate in print advertisement or in a quotation, the rental company must disclose clearly in that advertisement or quotation the terms of mileage conditions relating to the advertised or quoted rental rate, including the amount of any mileage or gas charges.

If, in addition to these costs, a rental company would like to charge for additional items or services provided in connection with a particular rental transaction, the renter must be able to avoid incurring the charges by choosing not to obtain or utilize the optional item or service. Such optional items and services include optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental.

After amendments that significantly narrowed the scope of this bill, it now merely requires 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 notice shall include instructions as to how the customer can use those methods.

Given the sometimes hidden terms in these larger contracts, these fees should arguably be given prominence so customers have adequate notice of their options and the consequences of not utilizing those options. As can be seen, the process for paying these tolls on one's own while in a rental car are fairly involved. This bill requires companies to give guidance to customers so that they may be better prepared to take advantage of these options.

According to the author:

Recently many toll roads and bridges have stopped offering an option to pay at the time of incurring the toll. When driving in a rental car, consumers can pay either in advance or within 48 hours of incurring the toll. If the toll is not paid within 48 hours the consumer is charged through the rental company. Different rental companies have different rates and programs for convenience charges.

SB 1250 will require rental car companies to provide a disclosure to the consumer. The disclosure will make the consumers aware of the charges and how to avoid them.

Another bill addressing toll charges that is currently pending is AB 2594 (Ting, 2022). The bill establishes a number of consumer protections in connection with paying tolls.

Among other things, the bill requires a toll agency that permits pay-by-plate payment of tolls, but where an alternate method of toll payment utilizing a transponder or other electronic toll payment device is also offered, to include in the invoice for the pay-by-plate toll information about how to enroll in that alternative payment method. The information shall include an internet website link with information about how to enroll in the alternate payment method and a customer service phone number. There are also guidelines for notifying drivers of their toll charges and an appeals process for any disputes. Agencies are also required to make transponders or other devices available for purchase online and at other locations and to charge no more than \$5 for them.

A coalition of rental car companies has written in opposition. However, their concerns are focused on the previous version of this bill.

SUPPORT

None known

OPPOSITION

Avis
Budget
Enterprise Holdings
Hertz
Payless

RELATED LEGISLATION

Pending Legislation: AB 2594 (Ting, 2022) *See* Comment 2.

Prior Legislation: AB 901 (Calderon, Ch. 415, Stats. 2021) increased California's cap on what rental car companies can charge for an optional damage waiver for certain types of vehicles, and allowed the cap to be increased annually; eliminated California's prohibition on a rental car company charging for drivers in addition to the renter, subject to specific exceptions; and eliminated the requirement that, for vehicles rented by a member of the rental car company's membership program, the vehicle come with a tag on the rearview mirror stating that the renter may change their election to purchase or decline the optional damage waiver.
