

Assembly Bill No. 628

Passed the Assembly September 3, 2009

Chief Clerk of the Assembly

Passed the Senate September 1, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 23302, 40255, and 40273 of, and to add Section 23301.8 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 628, Block. Vehicles: toll evasion violations.

(1) Existing law makes it unlawful for any person to refuse to pay tolls or other charges on any vehicular crossing or toll highway and provides that it is prima facie evidence of a violation of this provision for any person to enter upon any vehicular crossing without either lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person or a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls. A violation of these provisions is an infraction.

This bill would require 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 provide certain publicly available information on how pay-by-plate toll payment works. The bill would additionally provide that, for vehicular crossings and toll highways where the issuing agency permits pay-by-plate toll payment of tolls and other charges in accordance with policies adopted by the issuing agency, it is prima facie evidence of a toll evasion violation for a person to enter the vehicular crossing or toll highway without at least one of the following: (A) lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person, or (B) a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls, or (C) valid California vehicle license plates properly affixed to both the front and rear of the vehicle in which that person enters onto the vehicular crossing or toll highway. Where electronic toll collection is the only other method of paying tolls or other charges, the bill would provide that it is prima facie evidence of a toll

evasion violation for a person to enter the vehicular crossing or toll highway without either (i) a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls, or (ii) valid California vehicle license plates properly affixed to both the front and rear of the vehicle in which that person enters onto the vehicular crossing or toll highway.

(2) Existing law provides that the officer or person authorized to issue a notice of toll evasion violation is not required to participate in an administrative review of the toll evasion violation and that the issuing agency is not required to produce any evidence other than the notice of toll evasion violation or a copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement under penalty of perjury from the person reporting the violations. Under existing law perjury is a crime.

This bill would require instead, for a toll evasion violation that occurs on a vehicular crossing or toll highway where the issuing agency allows pay-by-plate toll payment, that the required evidence consisting of a statement be from the officer or person authorized to issue a notice of toll evasion and include a statement that the tolls or other charges and any applicable fee were not paid in accordance with the issuing agency's policies for pay-by-plate toll processing and payment. The bill would not require that this statement be made under penalty of perjury. The bill would require that any officer or person who knowingly provides false information pursuant to this provision be subject to a civil penalty for each violation in the amount of \$250 up to a maximum amount of \$2,500. The bill would also authorize any public prosecutor to bring an action for a civil penalty in the name of the people of the State of California.

(3) Existing law requires that any information obtained through the use of automated devices shall not be used for any purpose other than to identify, and obtain the mailing address information of, toll evasion violators, to facilitate the serving of notices of toll evasion violations and notices of delinquent toll evasion violations.

This bill would additionally provide that this information shall not be used for any purpose other than to identify, and obtain the mailing address information of, persons entering a vehicular

crossing and toll highway where pay-by-plate toll payment is permitted by the toll operator to facilitate the collection of tolls.

(4) The bill would make other technical, nonsubstantive, and conforming changes to these provisions.

Because the bill would create new crimes, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 23301.8 is added to the Vehicle Code, to read:

23301.8. Where an issuing agency permits pay-by-plate toll payment as described in subdivision (e) of Section 23302, it shall communicate, as practicable, the pay-by-plate toll amount in the same manner as it communicates other toll payment methods. The issuing agency shall 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 under Section 40255. Communication of this information may include the Department of Transportation's approved signage, posting of information on the issuing agency's Internet Web site, media advertising, public meeting or disclosure as required by the issuing agency's policies, or other methods of communication. Except where the issuing agency has an agreement with a vehicle owner that specifies in advance any administrative fees that will be imposed on the owner for pay-by-plate toll payment, administrative costs shall be incorporated into the pay-by-plate toll amount, and no additional administrative costs shall be added above the posted pay-by-plate toll amount.

SEC. 2. Section 23302 of the Vehicle Code is amended to read:

23302. (a) It is unlawful for a person to fail to pay tolls or other charges on any vehicular crossing or toll highway. Except as otherwise provided in subdivision (b), (c), or (d), it is prima

facie evidence of a violation of this section for a person to enter upon any vehicular crossing without either lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person or a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls. If a transponder or other electronic toll payment device is used to pay tolls or other charges due, the device shall be located in, or on the vehicle in a location so as to be visible for the purpose of enforcement at all times when the vehicle is located on the vehicular crossing or toll highway. Where required by the operator of a vehicular crossing or toll highway, this requirement applies even if the operator offers free travel or nontoll accounts to certain classes of users.

(b) For vehicular crossings and toll highways that use electronic toll collection as the only method of paying tolls or other charges, it is prima facie evidence of a violation of this section for a person to enter the vehicular crossing or toll highway without a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls.

(c) For vehicular crossings and toll highways where the issuing agency, as defined in Section 40250, permits pay-by-plate payment of tolls and other charges in accordance with policies adopted by the issuing agency, it is prima facie evidence of a violation of this section for a person to enter the vehicular crossing or toll highway without at least one of the following:

(1) Lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person.

(2) A transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls.

(3) Valid vehicle license plates properly attached pursuant to Section 4850.5 or 5200 to the vehicle in which that person enters onto the vehicular crossing or toll highway.

(d) For vehicular crossings and toll highways where the issuing agency, as defined in Section 40250, permits pay-by-plate payment of tolls and other charges 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 of this section for a person to enter the vehicular crossing or toll highway without either a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls or valid vehicle license plates properly attached to the vehicle pursuant to Section 4850.5 or 5200 in which that person enters onto the vehicular crossing or toll highway.

(e) As used in this article, “pay-by-plate toll payment” means 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.

(f) This section does not require an issuing agency to offer pay-by-plate toll processing as a method for paying tolls.

SEC. 3. Section 40255 of the Vehicle Code is amended to read:

40255. (a) 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, a person may contest a notice of toll evasion violation or a notice of delinquent toll evasion. In that case, the processing agency shall do the following:

(1) The processing agency shall either investigate with its own records and staff or request that the issuing agency investigate the circumstances of the notice with respect to the contestant’s written explanation of reasons for contesting the toll evasion violation. If, based upon the results of that investigation, the processing agency is satisfied that the violation did not occur or that the registered owner was not responsible for the violation, the processing agency shall cancel the notice of toll evasion violation and make an adequate record of the reasons for canceling the notice. The processing agency shall mail the results of the investigation to the person who contested the notice of toll evasion violation or the notice of delinquent toll evasion violation.

(2) If the person contesting a notice of toll evasion violation or notice of delinquent toll evasion violation is not satisfied with the results of the investigation provided for in paragraph (1), the person may, within 15 days of the mailing of the results of the investigation, deposit the amount of the toll evasion penalty and request an administrative review. After January 1, 1996, an administrative hearing shall be held within 90 calendar days

following the receipt of a request for an administrative hearing, excluding any time tolled pursuant to this article. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(b) The administrative review procedure shall consist of the following:

(1) The person requesting an administrative review shall indicate to the processing agency his or her election for a review by mail or personal conference.

(2) If the person requesting an administrative review is a minor, that person shall be permitted to appear at an administrative review or admit responsibility for a toll evasion violation without the necessity of the appointment of a guardian. The processing agency may proceed against that person in the same manner as if that person were an adult.

(3) (A) The administrative review shall be conducted before a reviewer designated to conduct the review by the issuing agency's governing body or chief executive officer. In the case of violations on facilities developed pursuant to Section 143 of the Streets and Highways Code, the processing agency shall contract with a public agency or a private entity that has no financial interest in the facility for the provision of administrative review services pursuant to this subdivision. The costs of those administrative review services shall be included in the administrative fees authorized by this article.

(B) In addition to any other requirements of employment, a reviewer shall demonstrate those qualifications, training, and objectivity prescribed by the issuing agency's governing body or chief executive as are necessary and which are consistent with the duties and responsibilities set forth in this article.

(C) The examiner's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fines collected by the examiner.

(4) The officer or person authorized to issue a notice of toll evasion violation shall not be required to participate in an administrative review. The issuing agency shall not be required to produce any evidence other than the notice of toll evasion violation or copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement under penalty of perjury from the person reporting the violation.

The documentation in proper form shall be considered prima facie evidence of the violation.

(5) For a toll evasion violation that occurs on a vehicular crossing or toll highway where the issuing agency allows pay-by-plate toll payment, as defined in subdivision (e) of Section 23302, the officer or person authorized to issue a notice of toll evasion violation shall not be required to participate in an administrative review. The issuing agency shall not be required to produce any evidence other than the notice of toll evasion violation or copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement from the officer or person authorized to issue a notice of toll evasion that the tolls or other charges and any applicable fee was not paid in accordance with the issuing agency's policies for pay-by-plate toll payment. Any officer or person who knowingly provides false information pursuant to this paragraph shall be subject to a civil penalty for each violation in the minimum amount of two hundred fifty dollars (\$250) up to a maximum amount of two thousand five hundred dollars (\$2,500). An action for a civil penalty may be brought by any public prosecutor in the name of the people of the State of California. The documentation in proper form shall be considered prima facie evidence of the violation.

(6) The review shall be conducted in accordance with the written procedure established by the processing agency which shall ensure fair and impartial review of contested toll evasion violations. The agency's final decision may be delivered personally or by first-class mail.

SEC. 4. Section 40273 of the Vehicle Code is amended to read:

40273. Any information obtained pursuant to this article through the use of automated devices shall not be used for any purpose other than to identify, and obtain the mailing address information of, either of the following:

(a) Toll evasion violators, to facilitate the serving of notices of toll evasion violations and notices of delinquent toll evasion violations.

(b) Persons entering a vehicular crossing and toll highway where pay-by-plate toll payment, as defined in Section 23302, is permitted by the toll operator to facilitate the collection of tolls.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2009

Governor