

GREEN SHEET REDIGEST

HB 701

2021 Regular Session

Pierre

HIGHWAYS: Provides relative to the Department of Transportation and Development's authority over high-occupancy vehicle lanes on state highways.

DIGEST

Proposed law authorizes the secretary of the Dept. of Transportation and Development (DOTD), or his designee, to exercise police powers of the state necessary to maintain the peace and accomplish the orderly handling of the authority to establish high occupancy vehicle (HOV) lanes, subject to the provisions of proposed law.

Proposed law provides the regulations for a frequent violator failure to respond to high-occupancy vehicle violation when the office of motor vehicles receives notice from the DOTD to not renew or reissue driver's license or vehicle registration pursuant to R.S. 47:820.5.9(J)(2). Requires the office of motor vehicles to issue a notice at the address listed on the violator's driver's license unless a more current address is on file. Requires the vehicle be identified by the vehicle identification number and assigned license plate number; in addition, advise the registered owner of his registration privileges. Further requires the violator to pay a \$100 reinstatement fee.

Proposed law provides for definitions.

Proposed law requires any travel lane designated as an HOV lane be for the exclusive use of qualified HOVs.

Proposed law authorizes the DOTD to establish permitting requirements for motor vehicles on one or more designated HOV lanes, including registration of the HOV with the department, prior to using an HOV lane. Proposed law requires a motor vehicle that has not fulfilled applicable permitting requirement established by the DOTD not be considered a qualified HOV.

Proposed law requires the vehicle's registered owner be liable to make payment to the department of the proper penalty and, except as provided in proposed law, a \$25 administrative fee to recover the cost of collecting the penalty subject to provisions of this Section where a record generated by an HOV monitoring system shows the HOV violation.

Proposed law establishes an HOV violation fine of not more than \$100. Authorizes the department to establish increasing penalties for multiple HOV violations, not to exceed \$100 penalty for a single HOV violation imposed pursuant to proposed law.

Proposed law provides a presumption that the ownership status of the motor vehicle is prima facie evidence of liability. However, there is a rebuttable presumption by providing proof the vehicle was sold, or otherwise transferred prior to the HOV violation.

Proposed law requires the department, for the purpose of educating the public and promoting proper use of HOV lanes, promulgate rules and regulations governing the issuance of warning letters in lieu of HOV violation notices to drivers who are not frequent violators. Requires warning letters not result in the assessment of penalties or fees against the registered owner and provide the information required for HOV violation notices.

Proposed law provides that the following procedures be taken for the collection of penalties, administrative fees, and late charges assessed pursuant to this Section:

- (1) The department must send notice of an HOV violation by first-class mail to the registered owner of the motor vehicle at the address shown on the records of the Dept. of Public Safety and Corrections, office of motor vehicles (OMV), or such other address as may be provided by the owner or determined through other reliable

means. Authorizes the department to aggregate multiple HOV violations in one HOV violation notice. Specifies that a manual or automatic record of the mailing prepared in the ordinary course of business of the department is *prima facie* evidence of the mailing of the notice.

- (2) The HOV violation notice must include the name and address of the person alleged to be liable for the HOV violation, the amount to be paid, identifying information for the motor vehicle involved, the date and the approximate time of the HOV violation, the administrative fees due, an electronic mail address and physical or post office box mailing address to which an appeal may be sent, and any other information as the department may deem appropriate.
- (3) The violation notice must include a warning that the registered owner has to pay the penalty and administrative fees specified in the notice or appeal the HOV violation by making a request for a hearing to the department within 30 days after issuance and describe the means and content of the response for payment or appeal. Requires the HOV violation notice also include a statement notifying the registered owner that he may waive his right to a hearing by notifying the department that he is waiving this right and appealing the HOV violation by request for a written disposition. Specifies that the failure of the registered owner to appeal the violation in one of the manners provided and within the delays allowed will be deemed to be an admission of liability and a waiver of available defenses.
- (4) The registered owner may, without waiving judicial review, appeal an HOV violation by notifying the department in writing, by either regular mail or electronic mail, that he is waiving the right to a hearing and requesting a review and written disposition of the HOV violation from a department violation clerk by mail or electronic mail. Requires the appeal be signed and explain the basis for the appeal. Require the signed statement be accompanied by signed statements from witnesses, police officers, government officials, or other relevant parties or photographs, diagrams, maps, or other relevant documents submitted by the registered owner. Requires statements or materials sent to a violation clerk for review have attached to them the name, address, and electronic mail address of the registered owner as well as the number of the HOV violation notice and the date of the HOV violation. Specifies that the violation clerk must, within 60 days of receipt of such material, review the material and dismiss or uphold the HOV violation and notify the registered owner of the disposition by regular mail or electronic mail. Specifies that if the appeal by request for written disposition is denied, the violation clerk must explain the reasons for the determination. Authorizes the violation clerk to waive the administrative fee, in whole or in part, for good cause shown.
- (5) A registered owner issued an HOV violation notice can make a written statement for an appeal hearing before an agent designated by the department. Requires the violation clerk, within 30 days of receipt of a request for an appeal, notify the registered owner in writing by first-class mail of the date, time, and place of the hearing. Specifies the hearing is informal, may be conducted by phone, the rules of evidence will not apply, the Administrative Procedure Act will not apply, and the decision of the agent will be final, subject to judicial review. Provides for notice and requires each written appeal decision contain a statement of reasons for the decision, including a determination of each issue of fact necessary to the decision. Specifies that failure to appear at the date, time, and place specified on the hearing notice will automatically result in denial of the appeal.
- (6) The electronic mail sent by the registered owner to the address provided in the HOV violation notice will be presumptive evidence of the receipt by the department. Specifies that electronic mail sent by the department to the address provided by the registered owner will be presumptive evidence of receipt by the registered owner.

Proposed law authorizes the department to impose charges and sanctions as follows:

- (1) A registered owner who fails to submit payment or otherwise respond to an HOV violation notice as provided in proposed law within 30 calendar days after the date of the issuance of the HOV violation notice may incur a \$5 late charge to cover additional costs of collecting the penalty.
- (2) If the registered owner fails to submit payment or otherwise respond to an HOV violation notice as provided in proposed law within 60 calendar days after the date of issuance, the department may pursue civil action against the registered owner as it deems appropriate to collect penalties and administrative fees assessed in the notice. Requires the violation clerk notify the registered owner by first-class mail of the delinquency and consequences.
- (3) In addition to the above procedures, the department will promulgate rules and regulations for the identification of motor vehicles that frequently engage in HOV violations and for providing notice to registered owners of motor vehicles meeting such criteria. Requires a frequent violator who fails to submit payment or respond to a notice within 60 days of the notice be prohibited from any renewal or reissuance of their driver's license and vehicle registration until all HOV violations are disposed of pursuant to proposed law.

Proposed law requires a registered owner's appeal of his classification as a frequent violator be conducted in the same manner as an appeal of an HOV violation, and applicable to the provisions of the Administrative Procedure Act as it relates to notice of the hearing decision, any request for rehearing, and any petition for judicial review.

Proposed law requires the violation clerk notify the OMV of the violation record, place the matter on record, and block the renewal or reissuance, including any duplicated, of the violator's driver's license and vehicle registration pursuant to proposed law.

Proposed law requires a video recording, photograph, or other electronic data produced by an HOV monitoring system be admissible in a proceeding to collect a penalty, administrative fee, or other charge of the department for an HOV violation.

Proposed law provides an original or facsimile of a certificate, sworn to or affirmed by an agent of the department specifying an HOV violation occurred and is based upon a personal inspection of a video recording, photograph, or other electronic data produced by an HOV monitoring system, as defined in proposed law, is prima facie evidence of the facts contained in the certificate. Proposed law provides any other provision of present law to the contrary, a video recording, photograph, or other electronic data prepared for enforcement of HOV lane requirements is for the exclusive use of the department and the office of motor vehicles in the discharge of their duties under proposed law.

Proposed law requires the department from time to time designate one or more violation clerks and agents to perform functions specified in proposed law at the discretion of the department and for a time deemed necessary. Requires the department supervise and coordinate the processing of HOV violation notices in accordance with proposed law. Authorizes the department to hire or designate personnel and organize sections or contract for such services to carry out the provisions in proposed law. Requires hearing agents and violation clerks have the authority to waive late fees.

Proposed law provides the provisions of proposed law are intended to supplement the laws governing motor vehicles and traffic regulation appearing in present law (Title 32), and requires nothing contained in proposed law be construed as precluding any police officer from enforcement within a designated HOV lane. Requires a defense from enforcement by the department for a registered owner of a motor vehicle be a previously issued citation from law enforcement for the same conduct that resulted in an HOV violation.

Effective upon signature of the governor.

(Adds R.S. 47:820.5.9)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Delete a provision of proposed law that provides it is not a defense to liability that a registered owner was not operating the motor vehicle at the time of the failure to pay.
3. Delete a prohibition of proposed law that prohibits a registered owner from being liable under proposed law if a report that the motor vehicle was stolen is given to a law enforcement officer or agency before the HOV violation occurs or within 48 hours after the registered owner becomes aware of the theft.
4. Require a \$25 administrative fee to recover the cost of collecting the penalty subject to provisions.
5. Add a provision to include a presumption that the ownership status of the motor vehicle is *prima facie* evidence of liability. However, there is a rebuttable presumption by providing proof the vehicle was sold, or otherwise transferred prior to the HOV violation.
6. Require a \$5 late charge to cover additional costs of collecting the penalty for a registered owner who fails to submit payment or respond within 30 days after the date of issuance of the HOV violation notice.
7. Add a provision that requires a registered owner's appeal of his classification as a frequent violator be conducted in the same manner as an appeal of an HOV violation, but not applicable to the provisions of the Administrative Procedure Act as it relates to notice of the hearing decision, any request for rehearing, and any petition for judicial review.
8. Delete a provision that provides after notice to the OMV, the department will not be required to send additional notices; however, penalties and administrative fees will continue to accumulate.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the reengrossed bill

1. Adds motorcycle to the definition of qualified HOV.
2. Provides that an administrative hearing shall apply in the same manner as an appeal.