

Out-of-State Violation Enforcement Reciprocity Meeting
Washington, DC May 12, 2010

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State-to-State Enforcement Reciprocity Meeting
Wednesday, May 12, 2010
10:00 a.m. – 3:00 p.m.

MEETING MINUTES

Attendees:

In Person:

David Kristick, E-470
Jim Crawford, IAG
Neil Gray, IBTTA
Willoughby (Tim) Sheane, Legislative Attorney
Randy Brown, Maryland Turnpike Authority
Jen Lewandowski, Maryland Turnpike Authority
J.R. Fenske, North Carolina Turnpike Authority
Phil Miller, PBS&J
Chris Garlick, PBS&J
Michael Crowell, UNC School of Government

By Phone:*

PJ Wilkins, Delaware DOT
Michael Harrell, Delaware DMV
Orlando Torres, Florida Turnpike Enterprise
Anna Salvagin, HNTB
Hal Worrall, Innovative Transportation
Mark Mahoney, Massachusetts DOT
Ebony Pittman, North Carolina DOJ
Charlie Diehl, North Carolina DOT
David Joyner, North Carolina Turnpike Authority
JJ Eden, North Carolina Turnpike Authority
David Burgess, PBS&J
Russell Trottier, Port Authority NY/NJ
Carlene McIntyre, Port Authority NY/NJ
Steve Kern, Port Authority NY/NJ
Buddy Croft, Rhode Island Turnpike and Bridge
Keith Barrack, South Jersey Transportation Authority
John Hogan, New Jersey Turnpike Authority

*With several people on and off the phone throughout the day, I may have missed you. Please email me at jr.fenske@ncturnpike.org, if you were on the phone and I did not list you on the attendee list.

Meeting Summary

In February 2010, a group of US toll authorities began discussing options to combat out-of-state toll violations on projects using All Electronic Toll Collection (AETC) systems. Initially, expectations were geared toward utilizing a national compact that would parallel current compacts already in place such as the Non Resident Violators Compact established through the American Association of Motor Vehicle Administrators (AAMVA). Following the February 2010 meeting, given the high level of interest, a committee was formed to examine related issues and solutions surrounding out-of-state toll enforcement. The committee included two legislative attorneys, as well as several attorneys and toll operators from various toll authorities across the US.

On March 17, 2010, a meeting was held in Raleigh, N.C. with the committee members, at which point the committee drafted a set of essential elements and outlined a proposed process by which each state could potentially enforce out-of-state violations through registration holds.

A third meeting was held in Washington, DC on May 12, 2010 to further refine the proposed process and discuss elements that were outlined at the March meeting. At the meeting, several important questions were addressed and answered with a majority consensus, as outlined below.

1. Is state legislation necessary, or could toll payments be enforced for out-of-state violators by other means?

Legislation appeared to be the most uniform, straightforward and effective means of establishing reciprocity for out-of-state enforcement. However, legislation would be enacted on a state by state basis, rather than through a wholesale compact type agreement. Several states have begun researching the use of Memorandums of Understanding (MOU's) which, if sufficient for that individual state and the states under agreement with that state, could be a viable option with a state to state agreement. Nevertheless, legislation will still be required for most participating states. A subcommittee was established to begin drafting model legislation for discussion purposes.

The need for specific tolling definitions was also discussed and will be addressed by the committee with the assistance of the International Bridge Tunnel and Toll Authority (IBTTA).

2. Is a "registration hold" the best enforcement tool (hammer) to ensure toll payments from violators?

Registration holds are familiar to the toll industry and the most widely accepted means to ensure toll payment. A potential alternative to a registration hold for habitual violators that possess several violations throughout multiple states would be for a state to exercise its long-arm jurisdiction over the out-of-state resident to obtain a civil judgment for the unpaid tolls and then attempt to collect that judgment. Another possibility would be to report the unpaid toll debt to credit agencies. Additional research will need to occur prior to moving forward with this type of approach due to potential cost and legal issues.

3. How should due-process be handled between the states and should language dictate this process in draft legislation?

Adjudication and due-process will be handled on an individual state level whereas each state will establish its own procedures through their individual business rules for providing due process. Only essential guidelines will be included in the draft legislative language which will be determined in subsequent subcommittee meetings.

4. Should there be a mutually agreed to threshold for the number of violations someone must accrue before the interstate enforcement procedures begin?

Most states agreed that a threshold is needed, however, it should be set on an individual state basis dependant upon their operating procedures and agreements with their DMVs, as well as taking into account regional hurdles.

5. Should a violation be considered a civil, criminal or neutral type of offense?

Since each individual state treats violations differently according to their state statutes, business rules and operating procedures, this would be determined on an individual state basis. The only common agreement needed will be that each state will withhold registration for a resident who does not pay out-of-state tolls/violations.

6. What issues arise by adding AAMVA or DMVs to the process? Is an AAMVA-type organization necessary?

It is essential to keep the impacts on our DMVs to a minimum and to ensure DMVs are reimbursed for additional processes, personnel, system upgrades, etc. The group agreed that it is very important to begin conversations with the individual DMVs and AAMVA to ensure requirements and processes minimally impact other state institutions. A subcommittee was created to work with AAMVA and DMVs to address potential issues, restrictions and modifications. All participants were also requested to touch base with their states DMV and report to the group with any potential issues.

In regard to creating an organization to oversee or facilitate registration holds, the consensus was to begin operations on a state by state or even a regional level and address the potential need for an independent central agency or registry at a later date if needed.

7. What effects will the proposed process have on trucking and fleet type organizations?

Potentially, a trucking or fleet company registered in a state that does not participate in the reciprocity agreement, could significantly impact the proposed model. A subcommittee was created to address this issue as well as issues with title transfer or title cancellation on a vehicle with outstanding toll balances in another state.

At the conclusion of the meeting, a clear path was established to begin preliminary drafting of legislation for the various parties to review, and a subcommittee was created for this purpose. Two other subcommittees were formed to address areas of concern as outlined above. The full committee will continue to meet every other month, with the next meeting planned for late June or early July.

Committee Overview

Legislation Drafting Committee

Committee Members: Michael Crowell, Willoughby (Tim) Sheane, David Joyner,

This committee will begin to address language needed for inclusion in sample legislation, toll terminology, and existing legislation which may impact language adopted by each individual state. This committee will provide draft language for review and comment.

AAMVA/DMV Committee

Committee Members: Neil Gray, David Joyner, JR Fenske, Chris Garlick, Orlando Torres

This committee will begin conversations with AAMVA to coordinate decisions in the draft language which may effect the process and/or each individual states DMVs. The committee will review current DMV language, systems, and processes and provide an outline of DMV language, issues and system changes.

Registration and Commercial Vehicle Issues Committee

Committee Members: Randy Brown,

This committee will research the effects of title transfer, title cancellation on vehicles with outstanding toll balances and provide potential solutions to be included in model language. The committee will also address potential issues with fleet or commercial vehicles that are registered in states that may or may not participate in a state-to-state reciprocity agreement and make recommendations for language to be included in the draft legislation.

Next Steps / Action Items

- Group: Contact JR to sign up for a committee!
- Group: Each participating state should provide a copy of their states current DMV legislation as well as a point of contact for their DMV office to JR
 - Does your DMV have the authority to withhold registration currently?
- Neil Gray: Provide copy of 'legislative terms' currently in use
- Group: Provide thoughts on 'legislative terms' that may be essential in the legislation
- Group: Provide current in-state and out-of-state violation enforcement policies or business rules
- Michael Crowell: Provide updated 'Essential Elements' and 'Example Process' per 5/12/10 conversation
- JR: Establish bi-weekly committee phone calls, time lines, needs, and goals
- JR: Finalize meeting 5/12/10 meeting minutes and circulate to all interested parties
- JR: Begin planning for follow up meeting at the end of June 2010/early July
- Mark Mahoney: Provide feedback on utilizing MOUs with neighboring states
- Dave Kristick: Provide feed back on utilizing Department of Revenue and informal agreements with neighboring states

Please send all requested information to JR at jr.fenske@ncturnpike.org

Outline of Open Discussion

Is enforcement legislation necessary?

Crowell -- Legislation may be necessary in most states because the DMVs do not have the legal ability to withhold registration over non-payment of tolls.

-- If the DMV has the legal ability to withhold registration in general, and enter into agreements with other states, is legislation still necessary?

Massachusetts and New Jersey are currently able to withhold registration if agreement is in place with another state.

Crowell – North Carolina legislators would likely ask what guarantee do we have that our drivers (home state) are being treated fairly by the away states? Agreement must be reciprocal.

Can a state act as an agent for another state? Why can't these be considered commercial transactions?

Barrack – long arm will work, but you still can't collect because of cost. Can we establish an agreement that skips the domestication process? Only utilize long arm jurisdiction if violator has violations in multiple jurisdictions – states can then ban together to process violator?

Joyner – issue for NC to move forward without legislation in place. Issue of 'Authority'.

Legislation will be required in states that do not already have it in place. Most states will have to be provided 'authority' to enter into this agreement to withhold registration.

Several DMV's may already have this authority but need to establish circumstances.

If the DMV does not have this authority, does the agency have the authority to enter into an agreement with agencies in other states?

Does it have to be a registration hold? What are the other options?

Patrol at toll zones? Is that too expensive and time consuming? This only works for habitual violators – in an AETC environment, the person has not been given the opportunity to pay the toll unless they are already established in a 'hot list'.

Registration withhold is the 'norm' – Can we defend or promote other types of penalties. Consensus was no.

Joyner -- Establish reciprocity on a regional level rather than try to incorporate all 50 states, can employ whichever solution works (MOU, or legislative, etc.)? Crawford could pose issue with trucking issue registering "out side of regions included"

Issues with regions – where do you stop the 'region'? It should at least be a movement towards a national program but can start regionally.

Reciprocal agreements can grow state-by-state – "you enforce ours, we'll enforce yours".

Will this become a Compact? Agreement at 3/17 meeting was that it did not because it did not change the balance of power between states, etc. Appears to not need congressional approval. We will need somebody to look closer at the issue however, we can move forward until it becomes an issue.

Move forward with drafting suggested legislation to be implemented on a state to state basis with the potential to become a national solution.

What type of process or procedures could be used for out of state collections without legislation? (Long arm, credit reporting, demerit) What do states do for parking enforcement?

MassDOT is researching MOU's. But only for the New England states. May pose issue if we tried to work out agreements with all 50 states. Crawford – who will be exercising the MOU? Mahoney, Secretary of Transportation -- looking at State Transportation laws which would include the DMV laws.

Brown – if they work out MOU's with 5 states, would solve about 80% of violations in Maryland. Delaware would only need agreements with 6 states to solve the majority of theirs.

Barrack – how do you deal with the 'processes' established in other states.

Crowell – two questions on MOU – does DMV have authority to withhold registration? If DMV does have the authority, does that agency also have the authority to enter into an agreement with agencies in other states?

Miller – isn't that more on a state-by-state basis, some already have authority others will need to work towards a legislative solution

Crowell – Long arm jurisdiction is the ability of the state to exercise jurisdiction over somebody who does not live in that state. Dependent on ‘what type of contact a person has had with the state’ otherwise it becomes a federal issue. If NC has long-arm jurisdiction over someone it can make that person a defendant in NC state court; that would be the means for filling a civil lawsuit against an out-of-state resident to collect NC tolls. But a civil lawsuit is too much trouble, too expensive. For NC to have clout to collect toll, it must have the cooperation of the other states to uphold punishment. Legislation is needed because the NCDMV doesn’t have the authority to block registration on it’s citizens for non-payment of toll in another state.

Crawford – many of the violators will violate in more than one jurisdiction. Time is right to establish a list of all plates that are considered ‘habitual’ violators. If the states can come together to try to demand payment for all tolls owed (over multiple jurisdictions).

Kern – must adjudicate there was a violation in that state, which then must be transmitted. How do you adjudicate the initial violation? Due process is still necessary to determine violation. Crawford, assuming they have been notified send one or two notices first.

Sheane – Long arm isn’t an issue because the person (vehicle) was ‘present’ in the state. What is the actual relationship between the driver and the state?

Joyner – long arm wouldn’t be cost effective except for habitual violators. Interstate International Commission Act (?) – establishes minimum criteria for long arm to keep processes fair and provide due notice.

Note – If this was in reference to the Uniform Interstate and International Procedures Act (UIIPA), context of this act needs to be further investigated as it appears this act is now considered obsolete.

Kristick – currently Colorado is utilizing CO Department of Revenue to uphold final order of liability from violation enforcement administrative law court for in-state violators. This summer, CO will use the same process for out-of-state violators but rather than going through the Dept of Revenue, they will utilize long arm jurisdiction (when permitted) and request the violators home state to post a lien or flag the vehicles registration for non-renewal. This accommodates six of the eight surrounding states. Kristick will keep the committee updated on his progress, pros/cons, etc.

Why go through a court system – use NC legislation as example. Kristick – in CO legislative due process is an issue because of geographical issues, etc., and more importantly it is a burden to county courts.

Crowell – utilizing the ‘extended’ process (legislation), may provide better results with having other states accept violation/due process and request for registration hold from another state.

MD can currently only hold registration for MD tolls – will probably take legislation to change that. This goes beyond tolling.

Crawford – court process (done by another party) vs. toll authorities working with other states DMVs?

NJ currently accepts out of state violations but loss of reciprocity – maybe just need to tweak current language.

Definitions that need to be included in legislative language – what is considered a toll, all electronic tolling, etc.

It has been suggested that we should develop legislation that is acceptable to two or three states initially that can be modified and adopted by other states later. How do you feel about that approach?

Should there be a mutually agreed to threshold for the number of violations someone should have before there is an interstate enforcement procedure?

Burden to agency who has more violating residents – overload?
Leave legislation open-ended?

Allow each state to set their own threshold – do not put it in language (DE issue)

Should a violation be a civil, criminal or neutral type of offense? Does it matter?

Crowell – civil judgment does not seem to make sense, too expensive and time consuming for a few tolls.

Crawford – criminal might require an actual observation

Barrack – theft of services

Crowell have to keep in mind it is not a violation until they have ignored the notice of toll mailed to them.

It doesn't appear to matter how another state handles this.

Should there be stronger penalties for habitual offenders?

Potentially utilize long arm with multiple states.

Is a single photograph of a license plate sufficient evidence for enforcement?

At this point, it does not appear to pose as a problem.

How do we address due process? What are the steps to establish a person as a violator?

Does Away Agency provide ample due process – by phone and/or in person? By representation?

Must be set forth in language – DMV language is a good example/starting point.

Should home agency also offer its customer 2nd due process on registration hold and / or violation?

This will be determined and established in individual agencies business rules/operating policies.

Does the 'long arm' statutes cover this issue? Is that overly costly to the violator?

See previous remarks.

Is a teleconference hearing or video conference or mail sufficient to answer to due process issue?

It appears that it is.

When does an individual become a violator?

Is this something that needs to be agreed upon in the language, or is this a business rule decision made by each individual state?

Should be determined in the business rules as a violation may be different in each state depending on the type of system they use (ORT, AETC, etc.)

Who oversees the process? Individual Toll Authorities, DMV, or independent AAMVA type agency? What issues arise by adding DMVs to the process?

Need to minimize the requirements on the DMV

Do they have to send notices under their own laws when a hold is requested or is a notice from the toll authority sufficient?

Away state would send notice to violator that a request has been made, DMV's would follow home state rules for recording and informing registration hold. Does not need to be specified in language.

Brown – suggests automated systems. Effect on DMV's? Effect on authorities?

Can there be a solution without having to impose on DMV's?

Short answer – no. DMVs will have to be included if a registration hold is the hammer.

Can an independent AAMVA-type organization be formed to help coordinate enforcement reciprocity? Or should we try to work through AAMVA? Would such an organization be enabled to enforcement rules/regulations? Would such activity by an independent organization jeopardize the group's status as it relates to the Interstate Compact clause?

Initially – reciprocity should be up by each individual state (state to state agreements). However a registry might be worth exploring. Important that AAMVA provide comments, feedback, etc. in our proposed draft language. Bring up at regional or board meeting?

What would be the role of this Independent organization?

Allow interested states to meet on a regular basis, discuss issues, needs, legislation, technical standards, facilitate the exchange of information, BUT not act as enforcer.

Should such an agency try to facilitate same day settlement process, i.e. phone or web based payment process, so that the Vehicle Owner can quickly settle pending violations?

If this is a possibility, states should strive for this policy. However, we must keep in mind many DMV systems are too outdated to comply to this.

Trucking / Fleet Issues

Transfer of title issues

Sale of car before toll becomes violation or vehicle associated with old violations (major issue if plates stay with vehicle)

Language must also include registration cancellation/transfer

Issue of value of vehicle? If tolls are more than value of vehicle, can we then suspend the drivers license? Could work on individual level, but not corporation. Can you suspend a drivers license with photo of vehicle – no proof of driver.

Issues (establish committees):

1. Title transfer/cancellation and fleet vehicles (Bamonte/IL? Diehl)
2. Minimizing the effects on DMVs (Gray, Joyner)
3. Bill drafting (model legislation for states to enact) (Sheane, Crowell)

Follow up meeting in June

Closing Comments:

Crawford: Successes or failures in New England area, as well as Kristick's trial in CO.

Joyner: Open door to outsiders who may have expertise or opinions for committees

Gray: Would like to visit with AAMVA – important to make sure they are comfortable.

Sheane: Final product will be reviewed/applied by people outside of the toll industry. Important to craft 'toll' definitions. What are the current definitions?

Careful not to create something that conflicts or is inconsistent with laws in any of the states (applicable to tolls and related fields). Need to review laws and legal implications in all states involved.

Rank essential elements between crucial, moderate and non-issue

Crowell: Don't forget documents that are already in place (AAMVA, IAG, etc.) when drafting language.

What issues should be left as 'business rules' (left up to each individual state) and which issues need to be included in the legislation? Where does title transfer/cancellation stand?

Write language simple – want to keep commonality. Detail does not have to be the same in every state, but each state that is being reciprocal must be satisfied by the language of another state (fairness to their residents)

People reviewing these documents should be familiar with their local situations (business rules, politics, etc.) Legislation should relate more to enabling and authorizing agencies to make agreements.

Brown: Don't restrict our views to just AETC, but keep all types of toll systems in mind

Trottier: Attack on a state to state level but need to work together. Start small. Some states have restrictions on how violation information can be used. AAMVA is going to be a critical piece – meet in the middle.

Barrack: States have some type of uniformity and agree on essential elements of draft language. Should begin drafting language sooner rather than later.