

Date of Hearing: January 8, 2018

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

AB 971 (Choi) – As Amended March 28, 2017

FOR TESTIMONY ONLY

SUBJECT: Vehicles: driving offenses: falling items

SUMMARY: Requires items being transported in a vehicle to be secured; provides that, if an item falls from a vehicle and results in a fatality, the driver of the vehicle from which the item fell must be charged with vehicular manslaughter. Specifically, **this bill:**

- 1) Provides that a driver transporting an item in a vehicle or truck bed must ensure the item is reasonably secured before driving the vehicle.
- 2) Requires a driver, upon discovering an item is missing, to report to the California Highway Patrol (CHP) the loss of any heavy debris, metal, glass or any other item that falls from a vehicle or truck bed while being transported.
- 3) Makes, notwithstanding any other provision of law, a violation of either failing to adequately secure a load or failing to report a missing item, an infraction punishable by the following:
 - a) A fine of \$200 for a first offense;
 - b) A fine of \$400 for a second offense within a year of a prior offense;
 - c) A fine of \$800 for a third or subsequent offense within a year of the prior two or more offenses.
- 4) Requires that, if an item falls from a vehicle and proximately causes a fatality, the driver of the vehicle from which the item fell is to be charged with vehicular manslaughter, and, upon conviction, is to be punished by imprisonment in state prison or county jail for between one and ten years.

EXISTING LAW:

- 1) Requires vehicle loads to be secured so the load cannot escape the vehicle; failure to do so is punishable by a base fine of \$35.
- 2) Makes it unlawful to do any of the following:
 - a) Throw or discharge onto a highway any lighted or non-lighted cigarette, cigar, match, or any flaming or glowing substance, punishable by a fine of \$100.
 - b) Throw or deposit on a highway any bottle, can, garbage, glass, nail, offal, paper, wire, any substance likely to injure or damage traffic, or any noisome, nauseous, or offensive matter of any kind, punishable by a fine of \$100.

- c) Dump or spill hazardous material without appropriately notifying authorities, as prescribed, punishable by a mandatory fine of a least \$2,000.
- 3) Provides that a vehicle used for illegal dumping of waste matter on public property is subject to impoundment.
- 4) Requires that any person that drops, dumps, deposits, places, or throws onto a highway any bottle, can, garbage, glass, nail, offal, paper, wire, any substance likely to injure or damage traffic, any noisome, nauseous, offensive matter of any kind, or aggregate material must immediately remove the material or cause it to be removed.
- 5) Authorizes the government agency that is responsible for the maintenance of the highway to remove the material and charge the cost of removal to the person responsible for the dumping.
- 6) Defines "vehicular manslaughter" to mean:
 - a) Driving a vehicle in the commission of an unlawful act, not amounting to a felony, and with gross negligence, or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence; punishable by either imprisonment in a county jail for not more than a year or by imprisonment in state prison for two, four, or six years.
 - b) Driving a vehicle in the commission of an unlawful act, not amounting to a felony, but without gross negligence, or driving a vehicle in the commission of a lawful act which might produce death, in an unlawful manner, but without gross negligence; punishable by imprisonment in county jail for not more than one year.
 - c) Knowingly causing or participating in a vehicular collision or vehicular accident for financial gain and proximately resulting in the death of any person; punishable in state prison for four, six, or ten years.

FISCAL EFFECT: Unknown

COMMENTS: According to the author, driving on highways with items that may fall from a vehicle poses a significant threat to life and the base fine of \$35 does not match that danger; hence, the greater base fines established in this bill. Furthermore, the author asserts that "AB 971 clarifies that a death caused by an item that falls in the road is punishable under [the Penal Code] as vehicular manslaughter." The author cites as evidence to support this bill an August 2016 study published by the AAA Foundation for Traffic Safety entitled, *The Prevalence of Motor Vehicle Crashes Involving Road Debris, United States, 2011-2014 (2016)*. The study sought to identify the magnitude and characteristics of safety issues presented by vehicle-related road debris.

For purposes of the study, "road debris" was defined as debris from any source, including but not limited to vehicles that can pose a significant safety hazard. (Animals in the road, trees that fell onto vehicles, debris caused by a previous crash, and construction-related materials in active work zones were not included in the definition.) Also for purposes of the study, a crash was considered to have been debris-related if it involved a vehicle that:

- 1) Struck or was struck by an object that fell from another vehicle;
- 2) Struck a non-fixed object in the travel lane of the roadway; or,
- 3) Attempted to avoid a non-fixed object in the travel lane of the roadway and subsequently crashed.

The study reported the following key findings:

- 1) About two-thirds of debris-related crashes are the result of items falling from a vehicle due to improper maintenance and unsecured loads.
- 2) The most common types of vehicle debris are:
 - a) Parts becoming detached from a vehicle (e.g., tires, wheels, etc.) and falling onto the roadway;
 - b) Unsecured cargo like furniture, appliances, and other items falling onto the roadway; and,
 - c) Tow trailers becoming separated and hitting another vehicle or landing on the roadway.

The study also found that, of debris-related crashes in the United States between 2011 and 2014:

- 1) An annual average of 38% (19,304) of crashes involved a vehicle being struck by or striking an object that fell from another vehicle. Of these crashes, an estimated annual average of 3,142 involved injuries and 27 involved deaths.
- 2) An annual average of 46% (23,509) of crashes involved a vehicle striking a non-fixed object on the roadway. Of these crashes, an estimated annual average of 3,322 involved injuries and 52 involved deaths.
- 3) An annual average of 15% (7,844) crashes were the result of the driver attempting to avoid a non-fixed object on the roadway. Of these crashes, an estimated 3,341 involved in injuries and 47 involved deaths.

As a result of this study, the AAA Foundation for Traffic Safety suggested drivers can decrease their chances of being involved in a road debris-related crash by doing the following:

- 1) Maintaining their vehicles: Badly worn or underinflated tires often suffer blowouts that can leave pieces of tire on the roadway. Exhaust systems and the hardware that attach to the vehicle can also rust and corrode, causing mufflers and other parts to drag and eventually break loose.
- 2) Securing vehicle loads: To properly secure a load, drivers should:
 - a) Tie down load with rope, netting or straps;
 - b) Tie large objects directly to the vehicle or trailer;
 - c) Cover the entire load with a sturdy tarp or netting;

- d) Avoid overloading the vehicle; and,
 - e) Double check the load to make sure it is secure.
- 3) Driving defensively: Drivers should avoid tailgating and continually search the road at least 12 to 15 seconds ahead for debris.

The California Highway Patrol reports that it issues approximately 1,200 citations annually for violations involving a driver's failure to adequately secure a load. It also reports that roughly 800 crashes occur annually for which the primary collision factor is debris on the roadway. Of these collisions, roughly 70 crashes annually result in injuries. Additionally, of these collisions, 3 crashes over a six-year period resulted in death: 1 in 2010 and 2 in 2015.

Committee concerns:

- 1) The penalties prescribed by this bill are excessive. Generally, the Vehicle Code assigns higher penalties to traffic violations with potential for injury or death. Most moving violations (e.g., failing to yield right of way in a crosswalk or unsafe turn or lane change) result in base fines of \$35. The base fine for running a red light, throwing lighted materials on the highway, or failure to use child safety seats, however, is \$100. This higher base fine reflects a greater level of potential harm and intent or negligence.

This bill imposes a base fine of \$200 for the first offense of either improperly securing a load or failing to notify officials as soon as a missing item is discovered. As a result, the base fine, for example, for inadvertently dropping an ice chest from the back of a truck would be equivalent to the base fine for driving over 100 miles per hour. Furthermore, should the ice chest fall and cause another vehicle to swerve and result in a fatal crash, the driver of the truck with the ice chest would, if convicted, be required to be charged with vehicular manslaughter, even if the driver that swerved was, for example, driving too fast for conditions, or tailgating.

- 2) The evidence that there is a substantial need to address the issue of road-related debris is questionable. For example, the author cites the 2016 AAA study as evidence to support the need for the bill. That study was intended to update information from a previous study, done in 2004, entitled, *The Safety Impact of Vehicle-Related Road Debris (Forbes & Robinson, 2004)*. The earlier study noted that a literature review of the issue found that debris-related crashes constitute a very small proportion of all crashes, ranging from 0.1% to 0.5%. (The 2016 study did not re-visit this aspect of the earlier study.) Furthermore, road debris caused by lost cargo, at which this bill is focused, makes up only a portion of the universe of road debris reflected in the crash statistics cited. Other debris includes, for example, tires, tire tread, and vehicle parts, such as wheel flaps.
- 3) This bill ignores the responsibility of other drivers to drive defensively and at sufficient distance from other vehicles so that, should they encounter debris on the roadway, they can take evasive action safely.

Related legislation: AB 972 (Choi) requires items carried in a vehicle cargo area to be labeled so that the owner can be identified should the item fall from the vehicle. AB 972 is scheduled to be heard in Assembly Transportation Committee on January 8, 2018.

AB 1395 (Chu) requires, by January 1, 2019, the California Department of Transportation to develop a litter and graffiti remediation plan to address debris buildup on the state highway and freeway systems. AB 1395 is scheduled to be heard in Assembly Transportation Committee on January 8, 2019.

REGISTERED SUPPORT / OPPOSITION:

Support

One private citizen

Opposition

California Trucking Association

Analysis Prepared by: Janet Dawson / TRANS. /