

An Audit Report on

The Department of Public Safety's Implementation of the Driver Responsibility Program

July 2005

Report No. 05-040



The Department of Public Safety's Implementation of the Driver Responsibility Program

Overall Conclusion

The Department of Public Safety (Department) has not fully implemented the Driver Responsibility Program (Program), which became effective on September 1, 2003. More than a year and a half after the Program's effective date, the Department is not assessing and billing all statutorily required surcharges outlined in Chapter 708 of the Texas Transportation Code. As of the end of February 2005, it had not assessed and billed at least \$25 million.

Of the amount that had been assessed and billed as of the end of February 2005, only 20 percent had been collected. The Program was projected to have a collection rate of 66 percent for the first three years. However, the Department's fiscal analyses for the Program-related bills noted that the projected collection rate may have been overestimated because it was based on fees that were much lower than the proposed Program surcharges.

Minimal collection efforts have contributed to the lower-than-projected collection rate. Thirty-five percent of offender accounts are in compliance, meaning that these offenders have either paid in full or are current on their installment payments.

Because the Department lacks sufficient monitoring, it cannot provide assurance that the collections vendor has adequate collection and accounting processes and is depositing all the collected surcharges into the Treasury. We identified significant weaknesses in the vendor's collection and accounting processes that increase the risk of errors, theft, and fraud.

The Department is currently conducting a criminal investigation into allegations that some Program funds have been stolen. For the purposes of this report, the amounts allegedly stolen are not material when compared with the amount assessed and collected. However, this situation illustrates the risks created by the weaknesses in the vendor's operations.

Background

The 78th Legislature (Regular Session) established the Driver Responsibility Program. The requirements for the Program are set forth in Chapter 708 of the Texas Transportation Code (see Appendix 3 for a copy of the chapter).

In fiscal years 2004 and 2005, collected surcharges provide additional revenue for the Trauma Facility and Emergency Medical Services Account and the Texas Mobility Fund.

Beginning in fiscal year 2006, surcharges will provide additional revenue to the Trauma Facility and Emergency Medical Services Account and the General Revenue fund. Once the surcharge revenue in the General Revenue fund reaches a certain level, any additional funds will go to the Texas Mobility Fund.



Key Points

The Program has not met projections for the surcharge amount to be generated or collected.

The Program has not generated the amount of revenue it was projected to generate when it was established by House Bill 3588 of the 78th Legislature. The bill's fiscal note projected that the Program would raise \$119.8 million in fiscal year 2004, \$227.4 million in fiscal year 2005, and \$335.1 million in each subsequent year in surcharges.

However, the Department assessed and billed only \$89 million in surcharges during fiscal year 2004 and the first six months of fiscal year 2005, partly because it does not assess all statutorily required surcharges. The computer program used to compile the list of offenders subject to a surcharge does not capture all surcharge information from the Driver's License System. As of February 2005, the vendor had collected \$18 million of the \$89 million assessed and billed. Minimal collection efforts have contributed to the lower-than-projected collection rate.

The Department does not sufficiently monitor the collections vendor to ensure that all surcharges are collected, deposited, and protected against errors, theft, and fraud.

Audit work identified significant weaknesses in the vendor's accounting and collections processes that monitoring would have helped the Department identify. These weaknesses include a lack of segregation of duties in the vendor's staff who process payments and a lack of physical security over payment processing. They prevent the Department and the vendor from being able to provide assurance that the vendor is depositing all the collected surcharges into the Treasury.

For example, we noted one instance in which a vendor employee misapplied a payment to the employee's own account. This individual is still employed by the vendor. As of May 2005, the Department had not placed any requirement on the vendor regarding this issue.

The Department does not track the information it needs to accurately present the Program's financial position to decision makers.

The Department is not identifying and recording the Program's outstanding accounts receivable. State auditors were unable to completely quantify the actual outstanding receivable balance because the Department is not assessing and billing all surcharges. However, based on the information provided by the Department and the vendor, the amount was at least \$96 million as of the end of February 2005. As a result of not identifying and recording the Program's outstanding accounts receivable, the Department cannot accurately present the Program's

financial position to decision makers: the assets that the Program has rights to at the end of any accounting period and the Program's revenue are understated.

The vendor has established adequate controls for its collections system and network, but further improvements are needed to protect information from unauthorized and inappropriate use.

While the vendor's collections system and its network have generally effective access and security controls in place, some general controls need improvement. It is important that the vendor have adequate controls to protect the confidential and financial information from unauthorized and inappropriate use.

In addition, opportunities exist for the vendor to improve its controls over other aspects of its information technology resources. These include its disaster recovery plan, network security, and physical security.

Summary of Management's Response

The Department agrees with this report's findings and recommendations. See Appendix 2 for a summary of the Department management's response. See the individual chapters for detailed responses.

Summary of Information Technology Review

At the Department, information technology audit work focused on the accuracy of data in the Driver's License System. Using this system, the Department generates a daily billing file for the vendor that lists individuals and surcharge amounts owed. We found that the program that generates the daily billing file does not capture all surcharge information from the Driver's License System, and conviction information in the system is incomplete. As a result, the Department is not assessing and billing all statutorily required surcharges (see Chapter 1). Auditors also identified a vulnerability in the transfer of Program data and addressed this directly with the Department.

Information technology audit work at the vendor focused on the accuracy of the data and controls associated with the vendor's collections system and the network through which the system can be accessed. We found that the system's password security settings increase the risk that unauthorized users could modify data in the collections system, such as payment information. In addition, the Department's and the vendor's ability to recover Program data from the system in the event of a disaster can be improved (see Chapter 4).

The vendor has a disaster recovery plan and adequate levels of network and physical security. However, auditors noted opportunities to improve in these areas.

Summary of Objective, Scope, and Methodology

Our objective was to determine whether the Department's implementation of the Program ensures that all surcharges are collected and that statutory requirements for the Program are met.

The scope of our audit covered the Department's implementation of the Program with regard to Texas Transportation Code, Chapter 708, and Texas Health and Safety Code, Chapter 780. We audited the Department and the vendor for the time period of September 1, 2003, to February 28, 2005.

The audit methodology consisted of conducting interviews; collecting and reviewing information; and performing tests, procedures, and analyses against predetermined criteria.

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Detailed Results

Chapter 1

The Program Has Not Met Projections for the Surcharge Amount to Be Generated or Collected

The Driver Responsibility Program (Program) has not generated the amount of revenue it was projected to generate when the Program was established by House Bill 3588 of the 78th Legislature. The bill's fiscal note projected that the Program would raise \$119.8 million in fiscal year 2004, \$227.4 million in fiscal year 2005, and \$335.1 in each subsequent year in surcharges. However, the Department of Public Safety (Department) assessed and billed only \$89 million in surcharges during fiscal year 2004 and the first six months of fiscal year 2005. As of the end of February 2005, the collections vendor had collected \$18 million of the \$89 million assessed and billed.

The Department does not assess all statutorily required surcharges (see Appendix 3 for Chapter 708 of the Texas Transportation Code). As of the end of February 2005, the Department had not assessed and billed at least \$25 million. In addition, the collection rate is less than half the rate projected in the fiscal note. However, the Department's fiscal analyses for the Program-related bills noted that the 66 percent collection rate may have been overestimated because it was based on fees that were much lower than the proposed Program surcharges.

Funding Allocations from Program Surcharges

49.5 percent - Trauma Facility and Emergency Medical Services Account

49.5 percent - Texas Mobility Fund (fiscal years 2004 and 2005); beginning in fiscal year 2006, this portion will go first to the General Revenue fund. If in any fiscal year this portion exceeds \$250 million, the excess will be deposited to the Texas Mobility Fund.

1 percent - Department of Public Safety to administer the Program

In fiscal years 2004 and 2005, collected surcharges provide additional revenue for the Trauma Facility and Emergency Medical Services Account and the Texas Mobility Fund. Beginning in fiscal year 2006, surcharges will provide additional revenue to the Trauma Facility and Emergency Medical Services Account and the General Revenue fund. Once the surcharge revenue in the General Revenue fund reaches a certain level, any additional funds will go to the Texas Mobility Fund (see text box).

Chapter 1-A

The Department Does Not Assess and Bill All Statutorily Required Program Surcharges

As mentioned above, auditors identified at least \$25 million in statutorily required surcharges that the Department had not assessed or billed as of the end of February 2005. (See Chapter 5 for more information about the Program's compliance with statutory requirements.)

Using its Driver's License System, the Department generates a daily billing file for the vendor that lists individuals and surcharge amounts owed. It then

provides this list to the vendor. However, the program that generates the daily billing file does not capture all surcharge information from the Driver's License System, and conviction information in the system is incomplete. These two issues keep the Department from assessing surcharges on the following offenders:

- Offenders convicted of a serious violation, such as driving while intoxicated (DWI), who cannot be matched to a record in the Driver's License System. The Department stores such conviction information under a system-generated number or the offender's Texas identification number, if applicable. However, it does not assess surcharges on these convictions because, according to the Department, the program that compiles the daily billing file cannot prevent double-billing if the offender applies for a driver's license between the time the conviction is entered and the time the daily billing file is created.
- Drivers who have accumulated six or more points since September 30, 2004. The Department does not assess surcharges on drivers in the Driver's License System who accumulate six or more points for moving violations because the program that creates the daily billing file cannot accurately determine the surcharges owed. (See Appendix 3 for information on driver's license points.) The Department was able to assess surcharges for accumulated points during the first year of the Program because the time period for which surcharges were assessed was the same for all drivers at that time. However, in the subsequent years of the Program, the time period for points increased in complexity. For example, drivers incur surcharges only if they accumulate six points within 36 months, so the program that generates the daily billing file would have to determine the time frame during which the points were accumulated.

Furthermore, if a driver convicted of a moving violation cannot be matched to a record in the Driver's License System, the Department discards the conviction information. This practice creates inaccuracies in some drivers' records and keeps the Department from assessing some surcharges. The Department does not track the discarded moving violation convictions; therefore, it cannot estimate how many surcharges have not been assessed and the resulting loss of revenue.

Reporting Requirements
Texas Transportation Code, Chapters 523 and 543, outlines the requirements for reporting traffic law convictions to the Department. However, statute does not provide the Department with any recourse or remedy if a court and/or state does not report such convictions in an accurate and/or timely manner. Specifically, the statute requires the court to submit the conviction information to the Department no later than the thirtieth day after the date of conviction of an individual.

According to the Department, the program that generates the daily billing file has yet to be finalized for the following reasons: (1) the nature of the programming needed considering the age of the Driver's License System is complex, (2) there is only one programmer who has the

necessary expertise, and (3) this programmer was not notified of the need to finalize the programming and given the necessary information until the end of August 2004. The billing was scheduled to begin September 28, 2004.

In addition, the Department's process for entering conviction information when it has a driver's license number creates a risk that some convictions may not be entered. The Department's Driver Improvement Bureau reviews incoming conviction information from the courts and writes the offense codes for data entry on the documents. It then forwards the conviction documentation to the Driver Records Bureau, which enters the information into the Driver's License System. According to the Department, the Driver Improvement Bureau receives weekly reports and spot-checks items on the reports against original source documents. However, the Driver Improvement Bureau does not track the number of convictions that it sends to the Driver Records Bureau. As a result, it has no way to know if all the convictions were entered into the Driver's License System.

Recommendations

The Department should:

- Develop and implement a plan, with time frames, for completing and testing the computer program that compiles the list of surcharge assessments so that it captures:
 - ♦ Offenders of serious violations whose convictions are stored in the Driver's License System under a system-generated number or a Texas identification card number.
 - ♦ Offenders who have accumulated six or more points.
- Designate and train a backup programmer for the Program.
- Track moving violation convictions that cannot be associated with a record in the Driver's License System rather than discarding them and use this conviction information to determine the amount of revenue lost as a result of not billing the offenders.
- Establish controls to ensure that all convictions sent to the Driver Records Bureau for data entry are entered in the Driver's License System.

Management's Response

The Department agrees to develop and implement a plan for completing and testing applications to fully implement statutorily required program changes.

During the initial program evaluation, a determination was made that a strong potential existed for “double billing” individuals who held both a Texas driver license and a Texas Identification Card. Manual intervention to address this concern would have required a significant number of full time employees (FTEs). A business decision was made to research and develop a solution incorporating automated functions. As stated earlier, the capacity for automation is labor intensive due to the aging mainframe system; therefore, programming has required additional time. The Department’s estimated implementation for this final phase is August 2005.

Computer programming has been completed and implemented to assess surcharges against individuals who hold a Texas driver license. This included drivers with convictions for driving while intoxicated (DWI), driving while license invalid (DWLI), no liability insurance, driving without a valid license and those who accumulated six (6) or more points as a result of moving traffic violations. In September, the total backlog of drivers meeting the criteria for surcharges was sent to the Vendor for processing. The Vendor processed the backlog sending 5000 notices per day through December 13, 2004. In January, daily updates were referred for a notice except for point calculations. An application update was completed to process point calculations in May. Since May of 2005 all licensed drivers who accumulate six (6) or more points are also referred daily to the Driver Responsibility Program Vendor.

The Department agrees with the recommendation to designate and train a backup programmer for the Driver Responsibility Program. One goal for the Driver License Reengineering project is to utilize software and programming methods which would provide the end user with the ability to make minor modifications without the need for a dedicated programmer. In the interim, efforts will be made to accomplish the task of training a backup programmer in a timely manner. Current staffing of programmers assigned to this Program include:

- *One programmer is assigned to the development of user interfaces.*
- *One programmer is assigned for modification to existing programs as needed for the purpose of establishing reports and providing tools for editing of existing driver history.*
- *One programmer is assigned to application programming of the Driver Responsibility software.*

The Department agrees to track convictions that are not associable to a driver record. Potential surcharges for convictions and of persons who are not associated to a reliable record will be calculated to determine lost revenue.

The Department agrees with the recommendation to establish better accountability and tracking of moving violation convictions reported for

offenses such as Driving While Intoxicated. The Driver Improvement Bureau has developed and implemented business processes which established a tracking and verification process.

Chapter 1-B

The Collection Rate for Assessed and Billed Surcharges Is Less than Half the Rate that the Fiscal Note Projected It Would Be

The Program was estimated to have a collection rate of 66 percent for the first three years. However, the Department's fiscal analyses for the Program-related bills noted that the 66 percent collection rate may have been overestimated because it was based on fees that were much lower than the proposed Program surcharges.

Of the amount that had been assessed and billed as of February 2005, only 20 percent (\$18 million) had been collected. Thirty-five percent of offender accounts are in compliance, meaning that these offenders have either paid in full or are current on their installment payments. The following issues contribute to the lower-than-projected collection rate:

- The Department uses only minimal collection efforts, even though it received proposals from four collections vendors offering various levels of collection efforts. (See Appendix 4-A for more information on the bidders' proposals.) The Department's efforts consist of an initial letter notifying the individual that he or she owes a surcharge and another letter notifying the individual that his or her license will be suspended because the required payment is late. The selected vendor receives a 4 percent collection fee, service and convenience fees, and interest earned on funds collected for these collection efforts. Together these equal approximately 7 percent of the collected surcharges and related costs. Statute allows the vendor to be compensated up to 30 percent of the collected surcharges and related costs.
- The Department provided the first list of assessed surcharges to the vendor a year after the Program's effective date. As more time passes between conviction, assessment, and billing, the vendor's chances of locating the individual and collecting the surcharge decrease.
- Offenders' payment options are limited: offenders can mail their payments, make them over the phone, or make them in person at one location in Austin. The contract with the vendor outlines the Department's and the vendor's responsibilities regarding the use of TexasOnline so offenders can make payments over the Internet. However, this option has not yet been implemented.
- According to statute, the consequence for not paying an assessed surcharge is suspension of the driver's license. However, this is not an incentive for offenders whose licenses have already been suspended (as is

the case with some DWI offenders) or offenders who do not have a license. Similar programs in other states include additional consequences such as garnishment of wages. (See Appendix 4-D for background information on other states' programs.)

Recommendations

The Department should:

- Develop and implement a plan, with time frames, for working with the vendor to use TexasOnline as a tool to collect payments.
- Limit, as much as possible, the amount of time between conviction, assessment, and billing.

Options to Consider for Improving the Program's Collection Rate

The Department could consider the following options that might help raise the Program's collection rate:

- Establish more locations for individuals to pay their surcharges.
- Solicit changes to the Program's statute so that it allows for additional consequences when offenders do not pay their assessed surcharges, such as those used by the Office of the Attorney General and other states (see Appendices 4-B and 4-D).
- Solicit changes to the Program's statute so that it allows local jurisdictions to collect surcharges when offenders pay the local jurisdictions their conviction fees.
- Research other collection efforts, such as:
 - ♦ Collecting surcharge payments at other state, county, and/or municipal offices, such as driver's license, tax assessor, or county clerk offices. A memorandum of understanding could be established to allow these entities to collect from offenders a set fee similar to the fee that the vendor is contractually allowed to collect.
 - ♦ Implementing a tiered approach to the fees that the vendor is allowed to charge offenders, such as those proposed by the various bidding vendors. For example, the Department could allow the vendor to charge offenders a higher fee (up to 30 percent) if it collects outstanding surcharges that are 60, 90, or 120 days old or older.

Management's Response

The Department is aware of the statutory requirement to utilize Texas Online for receipt of payment via the Internet and plans to do so in the future. After conducting numerous meetings with the Vendor and the Texas Online contract Vendor, Bearing Point, the Department was advised by Bearing Point that at this time, developing a system that would provide adequate services for the customer might be impacted by pending legislation. They indicated cost recovery for application development may be slow and a decision was made to postpone negotiations until after the Legislative Session ended. Upon implementation of the changes designated by HB 2470, the Department has contacted Bearing Point relating to this program and is moving toward implementing this service. Implementation of on-line payments will significantly increase access for payment collections. It is anticipated that the Texas Online payment option will be implemented by September 1, 2005.

The Department acknowledges that the first group of assessed surcharges was provided to the vendor a year after the Program's effective date, however daily notices to the vendor for licensed drivers have been provided since January 2005. Texas Transportation Code, Section 543.203 requires courts to report final convictions to the Department within 30 days. The Department encourages courts to meet this requirement but has no authority to enforce this statute. However, the Department has received and distributed more than \$1.2 million of Federal Motor Carrier Safety grant money to support increased electronic reporting. Currently, 506 courts report conviction data electronically. The Department anticipates that an additional 243 municipal and justice of the peace courts will be equipped to transmit final convictions to the Department by the end of fiscal year 2005. This will positively impact the Department's ability to receive and process convictions in a standardized format and in a more timely manner.

The Department will consider additional locations and services to provide more options to pay assessed penalties. In addition to the payment options outlined in the audit, the Vendor offers Western Union Quick Collect. Currently, drivers have the ability to send Quick Collects from any Western Union Payment location around the world. This offers customers access to over 3.5 million merchant locations globally.

The Department is limited to the authority granted by the legislature to enforce the Driver Responsibility Program. Chapter 708 of the Texas Transportation Code governs the Driver Responsibility Program and provides only for the Department to send notification to the individual of the surcharge, and to suspend the driver license for failure to comply with the requirements. The statute does not authorize the Department to pursue full collection options such as garnishing wages, placing liens on property or reporting to credit bureaus. Legislation passed by HB 2470 in the 79th Legislative Session

extended payment time periods rather than increasing the Department's collection options.

During the interim period between legislative sessions, the Department will consider the feasibility of having driver responsibility fees paid in conjunction with court costs.

The Department continues to research viable methods of increasing collection efforts including obtaining valid addresses for persons assessed a driver responsibility program surcharge. We will research options for additional collection sites as well as tiered payment recommendations.

The Department Does Not Sufficiently Monitor the Collections Vendor to Ensure that All Surcharges Are Collected, Deposited, and Protected Against Errors, Theft, and Fraud

The Department does not sufficiently monitor the collections vendor to ensure that all surcharges are collected, deposited, and protected against errors, theft, and fraud. As of April 2005, the vendor had been billing and collecting Program surcharges for approximately six months, but the Department had not established a comprehensive process for monitoring the vendor.

Audit work identified significant weaknesses in the vendor's accounting and collections processes that monitoring would have helped the Department identify. These weaknesses prevent the Department and the vendor from being able to provide assurance that the vendor is depositing all the collected surcharges into the Treasury.

Chapter 2-A

The Department Has Not Established a Comprehensive Monitoring Process as Outlined in the Building and Procurement Commission's *Contract Management Guide*

The Department does not have a comprehensive process for monitoring the vendor. According to the Building and Procurement Commission's *Contract Management Guide*, the purpose of monitoring is for the monitoring agency to "ensure that the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address any developing problems or issues."

The Department does not ensure that the vendor meets its contractual requirements. Specifically:

- The Department does not ensure that the vendor uses the Department's background-check function to conduct fingerprint background checks on all vendor employees as required by the contract. A March 2005 e-mail from the vendor shows that the Department was aware that the vendor was not meeting this requirement. Testing of a sample of employees as of April 2005 found that the vendor was (1) conducting background checks through a third-party vendor instead of through the Department, (2) relying on the temporary-employment company to conduct background checks for its temporary employees, and (3) not conducting background checks on employees hired prior to the establishment of the contract with the Department. Third-party background checks may not be as thorough as the Department's background checks.
- The Department does not determine whether the vendor is meeting the contract's performance measures. For example, the Department receives a contractually required report from the vendor regarding its telephone call

center. However, this report does not include information that the Department needs to determine whether the vendor is meeting the contractual performance measures to (1) have at least 40 percent of the customer phone representatives fluent in Spanish at any given time or (2) answer 90 percent of calls within four minutes.

The Department has not requested that the vendor provide the information necessary to monitor these and other contractual requirements. This issue is similar to one discussed in Chapter 3 regarding reports the Department could use to help it determine whether the vendor is accurately reporting the amount collected and how that amount compares with what was assessed.

- The vendor has not implemented the use of TexasOnline. Texas Government Code, Section 2054.111, requires agencies to use TexasOnline if it is suited to their purposes. Additionally, the amendment to the contract outlines the Department's and the vendor's responsibilities regarding the use of TexasOnline. The Department is to work with the TexasOnline vendor to establish a contract for the online payment system, and the vendor is required to provide the technical staff to develop the system.

The Department does not have a formal complaint process or conduct on-site monitoring to help it identify and correct problems with the vendor. According to the Department, offenders will complain if their accounts do not accurately reflect payments or if their driver's licenses are suspended in error, thereby providing a good method for monitoring the vendor. However, the Department has not developed a formal process to track and monitor these complaints, which prevents it from ensuring that all complaints are resolved and from tracking trends related to the vendor and its employees.

In addition, the Department does not conduct routine, on-site monitoring, which would help it identify problems with the vendor's operations and ensure that they are resolved. It attends bi-weekly meetings with the vendor, but it does not use this opportunity to review the vendor's controls. The Department requested some changes in the vendor's processes and security after accompanying state auditors on a walk-through of the vendor's operations in February 2005. However, as of April 2005, the vendor had not made the requested changes. The Department does not follow up on known problems to ensure that corrective action is taken. As a result, auditors identified these and other significant weaknesses in the vendor's operations, which are discussed in Chapter 2-B.

Recommendations

The Department should:

- Monitor the vendor to ensure that all contractual requirements are met, including:
 - ♦ Departmental background checks of vendor employees
 - ♦ Vendor performance measures
 - ♦ Timely submission of complete and accurate performance reports
- Establish and monitor a plan with time lines for the Department and the vendor to implement TexasOnline.
- Establish and perform routine and random on-site monitoring of the vendor. The Department should facilitate and document the monitoring by using a checklist of items to review and observe, such as accounting and security controls, call center activity, and offender payments and complaints.
- Communicate to the vendor all exceptions noted through monitoring, request corrections within an established time frame, follow up to ensure that the corrections are made, and sanction the vendor if necessary.
- Track and follow up on all offender complaints regarding payments or vendor services to ensure that all complaints are resolved and to identify trends and problems that require follow-up action or monitoring.
- Consider surveying offenders to gauge the accuracy of payments reported by the vendor and to obtain feedback about the vendor's performance.

Management's Response

The Department agrees that a comprehensive monitoring process must be developed and implemented for this program. A task force is being convened to ensure all State Auditor and DPS recommendations are implemented providing a more secure and efficient program. It is anticipated the task force will make additional recommendations to ensure a comprehensive monitoring system based on the findings of their review and information provided in this report from the State Auditor's Office.

The Department agrees with this recommendation and is working with the Vendor to implement the required fingerprint based background check for all employees with access to any aspect of the Driver Responsibility Program. All current and new employees will be required to pass the background check.

The anticipated completion date for all necessary background checks is August 15, 2005.

The task force will establish Vendor performance measures regarding Driver Responsibility Program activities including complete and accurate performance reports.

The Department agrees with and is pursuing the implementation of Texas Online for payment processing of credit card transactions. As stated in Chapter 1, we anticipate completion of this action by September 1, 2005.

The Department agrees with and has committed the task force to develop a monitoring plan for the vendor. The plan will include vendor accounting and security controls, call center activity, and offender payments and complaints. The Vendor is scheduled to install and fully implement an upgraded telephone system in October 2005. Upon completion, additional data will be available for reporting purposes. The monitoring plan will be completed by September 1, 2005 and will address notice and resolution procedures for exceptions.

The Department agrees with the recommendation to track and follow up on all customer complaints regarding payments or vendor services. The Department and Vendor will monitor an on-line application that will allow for more detailed tracking of complaints. The application will provide status reports for action items, duration of the time until resolution, and access to Department personnel for management. The Department will ensure that refund transactions are promptly processed and that complaints are expeditiously resolved. Additionally, the Department will monitor complaints received in a local data file.

The Department agrees that feedback is useful in determining Vendor performance. The task force will consider the means and extent to survey drivers who have complied with their Program assessment notice.

Chapter 2-B

The Vendor Does Not Adequately Safeguard Program Funds

As a result of significant weaknesses in the vendor's collection and accounting processes, it and the Department cannot ensure that all collected surcharges are deposited to the State Treasury. The Department's contract with the vendor requires it to have safeguards in place to effectively detect and deter the occurrence of fraud such as misappropriation of surcharge payments and theft of identity information. The vendor has not met this requirement.

When weaknesses such as the lack of segregated duties and physical security are compounded with manual processes and new employees, the potential for errors, theft, and fraud is greatly increased.

The vendor has not adequately segregated the duties of some staff members. Specifically:

- The internal auditor has the following duties, which could allow this person to process and approve unauthorized transactions without being detected:
 - ♦ Balances the daily deposits, reviews payment transactions, prepares corrections, and prepares the month-end invoices. No one reviews this person's work.
 - ♦ Sends and receives daily electronic information to and from the Department, which gives this person the ability to make unauthorized changes directly to the collections system and indirectly to the Driver's License System.
 - ♦ Initiates requests for the vendor to issue refunds to offenders.
- The duties of the vendor's accounting staff are also not adequately segregated. Specifically, we noted the following:
 - ♦ Daily mail containing surcharge payments is opened by only one accounting clerk at a time. The accounting clerk who opens the day's mail also endorses checks received and prepares receipts for cash payments. The same person also prepares the deposit and enters it into the collections system, which posts payments to the paying offenders' accounts. In addition, the vendor has not taken sufficient advantage of its collections system's capabilities to limit access to certain functions based on job duties. Because of the access that accounting clerks have to the collections system, they could keep collected funds for their personal use and alter accounting information to obscure the audit trail.
 - ♦ The accounting supervisor retrieves the payments (some in cash) from the drop box, counts the payments, prepares the deposit slip, and posts the payments into the collections system. No one reconciles the drop-box payments to ensure that they are all posted to offenders' accounts.

In addition to the lack of adequate segregation of duties in the vendor's staff, the vendor's revenue accounts were not adequately segregated until recently. At the beginning of fieldwork in March 2005, the vendor maintained Program funds in the same account with revenue from all its other collection contracts. This structure made it difficult for state auditors to verify the accuracy of collections deposited into the State Treasury. Later in March 2005, the vendor established a separate bank account for Program funds after the auditors notified it of this situation.

Further, the vendor's payment processing room, where all payments are processed by the accounting clerks discussed above, lacks physical security. The room's two doors do not have security features to restrict access to only authorized personnel. State auditors observed that the doors were usually propped open. The room is located across from the employee break room, which leads to an outside patio. The room also does not have security cameras. Accounting clerks are allowed to keep personal items such as purses, bags, food, and drinks at their workstations while posting payments, and deposits are placed on a table in the room until they are transferred to the safe.

Lastly, improvements are needed to deter the vendor's employees who owe surcharges from misapplying surcharges they process to their own accounts. According to the vendor, it allows employees who owe a surcharge to work on the Program if the employee pays the surcharge in full or is making installment payments. However, the vendor does not have a formal written policy to address this issue. Consequently, an employee who owed a surcharge posted another offender's payment to the employee's own account while processing payments. The employee is still employed by the vendor. As of May 2005, the Department has not placed any requirement on the vendor regarding this issue.

Recommendations

- The Department should monitor the vendor to ensure that it meets the contractual requirement of implementing safeguards to detect and deter occurrences of fraud such as misappropriation of surcharge payments and theft of identity information.
- The Department should amend its contract with the vendor to include a requirement that the vendor keep the Program funds separate from its other funds.
- The Department should require the vendor to:
 - ♦ Establish and implement comprehensive written policies and procedures that address the control weaknesses. The policies and procedures should establish adequate segregation of duties. The Department should follow up to ensure that (1) the policies and procedures are adequate, (2) vendor employees are aware of the policies and procedures, and (3) the policies and procedures are actually being followed.
 - ♦ Establish physical security procedures and install physical security features that help protect Program funds against theft and fraud.
 - ♦ Place only permanent, experienced personnel in key roles and limit the number of temporary employees.

- ♦ Restrict employees who owe surcharges from working on the Program.
- ♦ Review all employees' access to its collections system and use the system's capabilities to limit their access based on job duties.

Management's Response

The Department agrees with the recommendation to establish and monitor procedures to ensure that state funds are properly safeguarded against fraud and/or theft. The task force will ensure this goal is accomplished.

The Vendor has implemented numerous changes to general operations and enhanced security measures since this audit was initiated. The following is an outline of those changes:

- *Vendor has established a separate account for Program funds.*
- *Vendor is revising standard operating procedures relating to all aspects of account handling. This includes collection scripts, correspondence letters, payment processing guidelines, funds transfer guidelines, account research processes and requirements. Vendor will distribute appropriate sections of the operations manual to all personnel and will implement additional control points for every affected area of the business to ensure that processes are being followed. The Department will work closely to ensure any changes meet statutory and contract requirements prior to implementation.*
- *On May 9, 2005, the Vendor reorganized the duties of the internal auditor; is currently assembling a secondary Quality Assurance team (accountable directly to senior management) to provide a third level of transaction verification on a line-by-line basis the subsequent day of posting; and redistributed the duties associated with preparing the month-end invoice effective for the end of June invoice cycle.*
- *Beginning with the June invoicing cycle, a Client Accounting Representative will maintain a listing of all refunds initiated by Vendor. This will be provided to Department along with monthly invoices for audit and informational purposes.*
- *Effective May 9, 2005, the Vendor shifted payment handling and processing from the Finance Department to the Operations Department. In addition, the Vendor has created an improved processing system of financial controls, including the segregation of duties of personnel.*
- *Payment posting personnel no longer handle live negotiable instruments. They post payments via photocopies and/or scans of the original items. Live funds are stored in the Vendor's secure Cash Room (hereunto*

referred to as Cash Room) from delivery until removed by an authorized bank courier.

- *Mail is opened and separate individuals in the Cash Room endorse the negotiable instruments.*
- *Four motion sensor-activated, infrared/night-vision enabled cameras continually survey the Cash Room.*
- *Cash Room personnel and specific members of management are the only individuals authorized to freely enter and leave that part of the office. Non-assigned personnel, including members of senior management in some cases, must be signed in and out by cash room personnel. Key FOB (security card) swipe modules restrict access to the room to only authorized personnel.*
- *Cash Room personnel are not allowed to bring personal effects, including containers, purses, and other such items, into the room. Personal lockers have been installed outside the Cash Room for employees' use. Employee lockers are protected by Vendor-issued combination padlocks.*
- *In addition, in April 2005, Vendor retained the services of two professional consultants to assist in the reorganization and transfer of Payment Processing and related functions from the Finance Department to the Operations Department.*
- *Vendor has adopted a zero-tolerance policy on errors that extend beyond the scope identified as acceptable within the contract/SLA.*
- *The Vendor informs the Department of all instances involving misapplication of funds within 24 hours. A contact system has been established including the ability to contact Department personnel 24/7.*

The Department and the Vendor agree that employees should be properly trained and committed to this program. All key personnel shall be tenured employees of Vendor. The Vendor has established controls limiting access to application functions to the applicable level of duties.

The Department agrees with the recommendation to restrict employees who owe a surcharge from working on the Program. Each case will be reviewed on an individual basis to determine if the employee should be reassigned with final approval provided by the Department.

The Department agrees that access to Vendor applications should be limited to job functions. The Vendor has implemented this level of application control and the Department will monitor the effectiveness during on-site monitoring of the Vendor facilities.

The Vendor Does Not Have a Comprehensive Review Process in Place to Ensure that Surcharge Payments Are Processed Correctly or to Resolve Any Errors in a Timely Manner

Audit testing (see text box) identified errors that, while not material to the total amount collected, are indicative of the lack of an adequate review process as well as a lack of segregated duties and physical security as discussed in Chapter 2-B. For example:

Vendor's Records Tested

- Offender payment transactions
 - Bank deposits
 - Monthly invoices
 - Misapplied and misplaced payments
 - Overpayments and refunds
 - State Treasury deposits
- Payments were posted to the wrong accounts. When the vendor becomes aware of a misapplied payment, the research and subsequent correction can take an excessively long time. For example, for two misapplied payments, 118 and 140 days elapsed between the time the payments were received and the time they were identified and posted correctly. Misapplied payments can cause offenders to be incorrectly reported as in default, which results in the suspension of their driver's licenses. Likewise, noncompliant offenders can be reported as compliant when others' payments are incorrectly credited to their accounts.

- Payments could not be located. A cash payment for \$1,040 that was brought into the vendor's office and that could not be located was later replaced by the vendor after 126 days. In addition to our payment testing, the vendor identified 15 additional walk-in payments totaling \$944 that were logged as received but never posted to the offenders' accounts. The vendor replaced all of these payments and covered them as a loss. At the time of audit testing, another payment for \$262 had not been resolved after 125 days.

The vendor's internal auditor previously performed transaction audits of surcharge payments, but they were discontinued in December 2004. The vendor now relies mostly on offender complaints and inquiries to identify payments that are not processed correctly. Therefore, the population of payments (which the vendor provided to the auditors) that were posted to the wrong accounts or that could not be located consisted only of those that the vendor was aware of at the time of our testing.

- Overpayments were converted to convenience fees in violation of the service-level agreement in place at the end of October 2004.
- Incorrect amounts were refunded for 20 percent (6 of 30) of the overpayments tested.
- An incorrect allocation of payments was made between the surcharge and convenience/commission fees.

We also noted that the vendor's collections system does not accurately report to the Department the compliance status of the offender accounts. Seventy-two percent (76 of 106) of noncompliant offenders were not reported to the Department within 35 days of missing a payment deadline, which would have resulted in the suspension of their driver's licenses.

In addition to the weaknesses and errors noted by the state auditors, the Department is currently conducting a criminal investigation, which began in April 2005, into allegations that some Program funds have been stolen. With regard to the investigation, the vendor has not met two contract provisions that require the vendor to (1) diligently pursue and enforce security and fraud breaches by its employees or subcontracting entities and (2) report to the Department any problem affecting the Program as soon as the vendor becomes aware but no later than 24 hours.

Recommendations

The Department should:

- Monitor the vendor to ensure that it meets the contractual requirements to diligently pursue and enforce security and fraud breaches and to notify the Department of any problems affecting the Program within 24 hours.
- Amend its contract with the vendor to include a requirement that the vendor resolve missing or misapplied payments within an established time frame.
- Research and resolve any outstanding items on the vendor's missing and misapplied list.
- Research and resolve issues related to overpayments, refunds, and allocation of payments (including any applicable funds due to the State or offenders).
- Require the vendor to correct issues with its collections system to ensure that the compliance status is accurately reported.
- Sanction the vendor if corrections are not made in a timely manner.

Management's Response

The Department agrees to monitor the vendor and to aggressively pursue and enforce security and fraud breaches. The notice requirement will be formalized when the contract amendment is completed.

The Department agrees with the recommendation to research and resolve any outstanding items on the vendor's missing and misapplied list. This has been

an ongoing effort since February 2005. Currently, DPS and Vendor staff members are conducting a line item review of each case. A verbal agreement was reached between both parties establishing a maximum resolution time of three days. When the contract is reviewed for amendment, this item will be added as a specific requirement to be met by the Vendor.

The Department agrees with the recommendation to research and resolve issues related to overpayments, refunds, and allocation of payments (including any applicable funds due to the State or offenders.) As noted above, this review has been ongoing since February and significant changes have been made to ensure accuracy. The Department conducted a line item review of all outstanding cases identified through the payment period from September 2004 through February 2005 and will complete the same process for the months of March 2005 through May 2005 by the end of July. The Department anticipates refunds will be processed beginning in July 2005.

The Department agrees that Vendor sanctions are a necessary element to a service contract of this type. Appropriate sanctions will be developed during contract and service level agreement amendments with the Vendor

The Department Does Not Track the Information It Needs to Accurately Present the Program's Financial Position to Decision Makers

The Department does not identify or record the Program's outstanding accounts receivable. State auditors were unable to completely quantify the actual outstanding accounts receivable balance. However, based on the information provided by the Department and the vendor, the amount was at least \$96 million as of the end of February 2005. As a result of not identifying and recording the Program's outstanding accounts receivable, the Department cannot accurately present the Program's financial position to decision makers: the assets that the Program has rights to at the end of any accounting period and the Program's revenue are understated.

Because the Department is not assessing and billing all surcharges (as discussed in Chapter 1), the Department is lacking two sets of information, which it currently does not track, that it needs in order to determine the total receivable balance:

- A verified amount of what the vendor has collected and how that compares with what the Department assessed
- The amount of surcharges the Department should be billing but is not

Because surcharges are based on a three-year rolling period, none of the convictions associated with the Program will drop off of any offenders' records until fiscal year 2007. As a result, the outstanding receivable balance will grow substantially as the Department continues to work to correct these issues. As more time passes before these surcharges are billed, the likelihood that the surcharges will be collected decreases.

The Department does not verify the amount of surcharges that the vendor has collected, nor does it compare the collected amount against what the Department assessed. As a result, the Department does not know whether the amount the vendor deposits to the State Treasury is the complete amount owed. Likewise, it does not know whether the outstanding balances are correct. The Department has information and reports that could help it determine whether the vendor is accurately reporting the amount collected and how that amount compares with what was assessed:

- Although the Department generates daily billing files of surcharges owed and transmits them to the vendor for collection, it does not use these files to estimate and reconcile the funds that the vendor should be depositing into the Treasury. As discussed in Chapter 4, audit testing of the data transmission identified vulnerabilities that were discussed with the Department. Addressing these vulnerabilities would also help the Department estimate and reconcile the funds that the vendor should be

depositing to the State Treasury. Additionally, the Department does not maintain complete archives of the daily billing files. Without access to these files, the Department may have difficulty accurately reconciling the funds deposited into the Treasury and accurately calculating the amount of receivables associated with the Program.

- The Department receives a monthly invoice from the vendor, which the Department uses to make sure that the total net amount listed on the invoice agrees with the amount deposited to the State Treasury. However, the Department does not verify that the vendor calculated the total net amount accurately.¹ The monthly invoices provide detailed information regarding surcharges and fees collected, but the Department does not use this information to reconcile account activity. Doing so would enable the Department to ensure the total's accuracy.
- The Department does not have information regarding the actual amounts paid by offenders, which would assist the Department with its reconciliation of the Program funds. While the Department receives information regarding payment compliance from the vendor, it does not include actual payment amounts. Actual amounts paid by offenders are available in the vendor's collections system, but the Department is not using its access to the collections system to obtain this information.

The Department does not track the full amount of surcharges it should be collecting but is not. As a result, the Department cannot determine the Program's revenue. As discussed in Chapter 1, the Department is not assessing and billing all statutorily required surcharges. Some of the associated conviction information is tracked in the Driver's License System and could be used to determine Program revenue. However, some of the conviction information for moving violations is discarded rather than entered into the Driver's License System or tracked in another way. In addition, the Department's process for entering other conviction information creates a risk that some convictions may not be entered into the Driver's License System.

Recommendations

The Department should:

- Reconcile the monthly invoices, the monthly deposits to the State Treasury, and the daily billing files provided to the vendor.
- Beginning in fiscal year 2006, (1) ensure that the vendor deposits all collections into the State Treasury and (2) process vendor compensation

¹ Beginning in fiscal year 2006, Rider 50 of the Department's appropriation (Senate Bill 1, 79th Legislature, page V-52) will require that all Program funds, including the vendor's fees, be deposited to the State Treasury. After the deposit of all funds, the vendor will be compensated.

and fees in accordance with the procedures established by the Office of the Comptroller of Public Accounts as required by Rider 50 of the Department's appropriation (Senate Bill 1, 79th Legislature, page V-52).

- Maintain the necessary documentation needed to accurately determine the outstanding accounts receivable balance. This should include archiving the daily billing files prepared from the Driver's License System.
- Track and quantify the conviction surcharges not billed.

Management's Response

The Department agrees with the audit findings regarding our ability to present the Program's financial position to decision makers. The Department will implement practices to ensure that the overall status of the Driver Responsibility Program accounts is provided in a clear and accurate manner on a monthly basis.

The Department agrees with the recommendation to reconcile the monthly invoices, the monthly deposits to the State Treasury, and the daily billing files provided to the Vendor. This recommendation will be implemented.

The Department recognizes the need to ensure new statutory requirement regarding deposits of collections are implemented beginning in fiscal year 2006 (as required by Rider 50 of the Department's appropriation (Senate Bill 1, 79th Legislature, page V-52). The Department is reviewing this statutory requirement and making the necessary adjustments as needed regarding the Driver Responsibility Program.

The Department agrees with the recommendation to maintain the documentation to accurately determine the outstanding accounts receivable balance, including archiving the daily billing files prepared from the Driver License System. Currently, all reports generated by the Driver License System are archived in an electronic format.

The Department agrees with the recommendation to track and quantify the conviction surcharges not billed. The Department will begin to quantify the outstanding convictions that have not been billed in relation to unlicensed drivers.

The Vendor Has Established Adequate Controls for Its Collections System and Network, but Further Improvements Are Needed to Protect Information from Unauthorized and Inappropriate Use

While the vendor's collections system and its network have generally effective access and security controls in place, some general controls need improvement. It is important that the vendor have adequate controls to protect the confidential and financial information in the system from unauthorized and inappropriate use.

In addition, there are opportunities for the vendor to improve its controls over other aspects of its information technology resources. These include its disaster recovery plan, network security, and physical security.

Chapter 4-A

The Vendor Can Strengthen Controls to Reduce the Risk of Inappropriate and Unauthorized Use of Program Data

Insufficient password security increases the risk that unauthorized users could modify data in the collections system, such as payment information. In addition, the Department's and vendor's ability to recover Program data from the vendor's collections system in the event of a disaster can be improved.

Auditors also identified a vulnerability in the transfer of Program data that has been addressed directly with the Department.

Password security for the collections system. While the vendor's corporate policy requires that passwords be sufficiently complex, the vendor does not require users of the collections system to periodically change their passwords. When passwords are changed, the system administrator changes them and keeps a written copy of all users' passwords. Allowing users to keep their passwords indefinitely increases the risk that the passwords will not be kept confidential. Also, allowing the administrator to change and track passwords gives this person the ability to use any other person's password to change data in the system.

In addition, the system does not lock individuals out after a certain number of invalid access attempts. While these events are logged and reviewed, allowing an unlimited number of attempts to access the system increases the risk that unauthorized users could access the system and compromise Program data without being detected.

Storage of collections system backup tapes. Overall, the vendor has a sufficient strategy for the routine backup of Program data. However, the vendor stores daily backup tapes in non-fire-resistant plastic cases inside the computer room until they are taken off site each week. A disaster could result in the loss of an

entire week's worth of data should the on-site daily backup tapes and the servers that they back up be destroyed in the same disaster.

Access to program collection information. The vendor does not have the ability to extract a copy of all Program data from the collections system. Although the Program data is the property of the State, the Department and the vendor must rely on the software vendor for such a data extraction due to proprietary restrictions in the software. This lack of direct access to all Program data could limit the Department's and the vendor's ability to continue billing and collecting surcharges in case of a disaster or a change in vendor.

Recommendations

The Department should amend its contract with the vendor if necessary to ensure that the vendor makes the following changes:

- Implement password protection practices as outlined in the Texas Department of Information Resources' *Practices for Protecting Information Resource Assets*. Specifically, the vendor should enable the users to change their own passwords and require users to change their passwords at least every 90 days. Passwords should not be written down. The vendor should also lock individuals out of the collections system after a certain number of invalid access attempts.
- Improve backup tape storage through one of the following options: (1) store the tapes in a fire-safe container while they are in the computer room, (2) store the tapes in a secure location other than the computer room, or (3) take the tapes off site more frequently so that fewer tapes remain on-site at any given time.
- Establish a provision with the software vendor by which the Department can obtain and is entitled to a generic copy of Program data, upon request and at no charge to the State.

Management's Response

The Department agrees with the recommendation to establish password guidelines. As part of the Operations Manual and the forthcoming revised SLA, the Department will require the Vendor to meet standard password guidelines.

The Department agrees with the recommendation to ensure back-up data is stored safely. As a result, the Vendor has purchased a fire-safe container to store tapes within the computer room. Additional requirements will be established and monitored to ensure that backups are also stored off-site from the Vendor premises.

The Department agrees that the Vendor software should be provided to the State at no charge. The Department will pursue this during contract amendment negotiations.

Chapter 4-B

Opportunities Exist for the Vendor to Enhance Disaster Recovery, Network, and Physical Security Controls

The vendor has a disaster recovery plan and adequate levels of network and physical security. However, auditors noted opportunities to improve in these areas.

Disaster recovery plan. The vendor has a documented computer disaster recovery plan and recently performed a risk assessment of its automated systems. The vendor performed a walk-through of the plan in 2002; however, it has not conducted a full test of the plan.

The Department of Information Resources' *Business Continuity Planning Guidelines* (December 2004) outlines the elements of a recovery plan. The vendor's disaster recovery plan does not contain several elements recommended in the guidelines, such as the following:

- The functions, members, and specific responsibilities of the teams needed to perform the recovery
- An inventory of the vendor's hardware and software categorized by criticality
- Provisions for a temporary location at which to conduct disaster recovery operations
- Evidence of executive management approval of the plan

Network security. Overall, the vendor has an adequate level of network security. We did note some areas that could be improved to further strengthen security:

- The vendor has not updated its assessment of individual users' needs for access rights since 2002. Updating this assessment annually can help the vendor ensure that access levels are appropriate, and it can decrease the risk that former employees or other unauthorized users will have access to the vendor's information technology resources.
- Default password settings could be strengthened, as could the controls to lock accounts after unsuccessful log-in attempts. In addition, system and security event logs do not contain adequate information and are not reviewed frequently enough. Insufficient password settings, account lockout, and security log review increase the risk of an unauthorized user

penetrating the network, resulting in the disclosure or unauthorized modification of Program data.

- The vendor does not conduct periodic security training for its employees. According to the vendor, such training is planned. Periodic training decreases the risk inherent in lax security practices and increases employees' awareness of security issues.

Physical security. The vendor has made a reasonable effort to protect the physical safety of its computing resources. The vendor could further strengthen physical security by addressing the following situations:

- The computer room contains only one fire extinguisher. It does not have an inspection tag and is not rated specifically for computers, which could damage the equipment if used.
- The computer room shares a wall with the break room, which contains water pipes, increasing the risk of water damage to computer equipment. In addition, the floor in the computer room is not raised to protect the equipment in case the room is flooded.
- The computer room does not have a back-up air conditioning unit, which increases the risk of equipment damage and loss of Program information should the main unit fail.

Recommendations

The Department should amend its contract with the vendor if necessary to ensure that the vendor:

- Develops and maintains a disaster recovery plan as outlined in the Department of Information Resources' *Business Continuity Planning Guidelines*. In addition, the vendor should test the plan at least annually.
- Re-evaluates access rights for its users at least annually and modifies their rights, if necessary, to ensure that their rights correspond to their job duties.
- Implements stricter password requirements and account lockout parameters as outlined in the Department of Information Resources' *Practices for Protecting Information Resources Assets* (Appendix H-1).
- Reviews security event logs on a more frequent basis (i.e., daily for high-risk events and weekly for other events) for potential security breaches. Potential events should be investigated and corrective action taken where necessary.

- Conducts security awareness training upon employment and annually for staff who process Driver Responsibility Program transactions.
- Installs at least one additional hand-held fire extinguisher in the computer room. All extinguishers located inside the computer room should be specifically rated for computer equipment.
- Raises all key computing, telecommunications, and supporting electrical equipment (such as the uninterruptible power units) off of the subflooring in the computer room.
- Installs a supplemental or back-up air-conditioning unit in the computer room. The supplemental unit should be independent of the general building air-conditioning.

Management's Response

The Department agrees with the recommendation to review the Vendor's disaster recovery plan and to strengthen security controls. The Vendor will initiate the following plan:

- *Vendor will review the guidelines defined in Business Continuity Planning Guidelines, and the forthcoming revised SLA will define changes to Disaster Recovery Plan, if any. Vendor will perform an annual business continuity test of the Disaster Recovery Plan.*
- *Based on early audit recommendations, beginning in June 2005, Vendor implemented a quarterly review of users and access rights to ensure they correspond to the user's job duties.*
- *Vendor will implement a process for a daily and weekly review of high-impact security events.*
- *Three computer-safe fire extinguishers are in the computer room.*
- *Vendor has ensured all key hardware components within the computer room are raised to ensure protection in the event of a flood.*
- *Vendor is evaluating portable backup air conditioning units to service the computer room in the event of primary unit breakdown.*

The Department agrees with the additional recommendations and will ensure that the Vendor implements stricter user password controls and conducts security awareness training for employees processing Driver Responsibility Program transactions.

The Department Has Not Fully Implemented the Program

The Department has not fully implemented the Program, which became effective on September 1, 2003. The Department has implemented the majority (14 of 19) of the statutory requirements for the Program. However, it has only minimally implemented four of the eight statutory requirements the auditors identified as the most significant to the operation of the Program.

Difficulties in computer programming for the Department's aging Driver's License System contributed to the delay in the implementation of the Program.

The Department's contract with the vendor for the collection of surcharges contains provisions that, if enforced, would help protect Program revenue and the State's interests.

Chapter 5-A

The Department Has Implemented Four of the Eight Statutory Requirements that Auditors Identified as Most Significant to the Operation of the Program

The four significant requirements that have not been implemented relate to specific offenses that should be assessed a surcharge under the Program. As noted in Chapter 1 and Table 1, the Department has not been assessing surcharges for those offenders who it cannot match to a record in its Driver's License System. It also has not assessed surcharges since September 30, 2004, for moving violations that bring a driver's total number of points to six or more. (See Appendix 3 for information about driver's license points.)

In addition, the Department has not implemented the requirement to notify licensed drivers who have accumulated five points for moving violations. As noted above and in Chapter 1, the Department is unable to compile a list of drivers who have accumulated six points since September 30, 2004. For the same reasons, it has not been sending the required notifications to those offenders who have accumulated five points because it has not been assessing the points surcharges.

Table 1 contains complete information about the implementation status of the requirements.

Table 1

Status of the Department of Public Safety's Implementation of Transportation Code Chapter 708 - Driver Responsibility Program					
Transportation Code, Chapter 708 Requirement	Fully Implemented	Implemented with Conflicts	Minimally Implemented	Not Implemented	Comments
Significance: High					
Each year, assess surcharge on license of person who has accumulated 6 points or more during preceding 36 month period			X		Between September 1, 2003, and September 30, 2004, the Department assessed and billed offenders who had six or more points and could be identified in the Driver's License System. Since September 30, 2004, the Department has not assessed and billed offenders with points; we estimate that approximately 800 offenders should have been assessed \$86,425 as of March 28, 2005. In addition, the Department discards moving violation convictions that cannot be matched to a record in its Driver's License System. We cannot estimate the surcharges that could have been assessed based on the discarded convictions because the Department keeps no record of them.
Each year, assess surcharge on license of person who during preceding 36 month period has been finally convicted of an offense relating to operating a motor vehicle while intoxicated			X		The Department assesses and bills surcharges for these three types of more serious convictions if the offenders can be matched to a record in the Driver's License System. If the offender cannot be matched to a record, the Department tracks the conviction but does not assess and bill surcharges because of programming limitations. We estimate the total amount of unbilled surcharges to be at least \$24.7 million as of February 28, 2005.
Each year, assess surcharge on license of person who during preceding 36 month period has been convicted of driving while license invalid or without financial responsibility			X		
Each year, assess surcharge on license of person who during preceding 36 month period has been convicted of driving without valid license			X		
Notify holder of driver's license of assessment of surcharge on license by first class mail to person's most recent address as shown on Department's records	X				
Suspend license if before the 30th day after the date the Department sends a notice the person fails to pay the surcharge or enter into an installment agreement		X			The Department suspends a license if the offender does not pay or enter an installment agreement. However, it suspends the license after the thirty-fifth day to allow for processing of payments received on the thirtieth day.
License remains suspended until the person pays the amount of the surcharge and any related costs	X				
Health & Safety Code 780.002: Department shall remit the surcharges collected during the previous month under the Program to the comptroller on the first Monday of each month	X				
Significance: Medium					
Amount of points surcharge is \$100 for first 6 points, and \$25 for each additional point	X				

Table 1

Status of the Department of Public Safety's Implementation of Transportation Code Chapter 708 - Driver Responsibility Program					
Transportation Code, Chapter 708 Requirement	Fully Implemented	Implemented with Conflicts	Minimally Implemented	Not Implemented	Comments
The amount of surcharge for a conviction of operating a motor vehicle while intoxicated is \$1,000 per year, except \$1,500 per year for a second or subsequent conviction within a 36-month period, and \$2,000 for a first or subsequent conviction if offender's blood, breath, or urine showed an alcohol level of 0.16 or more	X				
The amount of surcharge for a conviction of driving while license invalid or without financial responsibility is \$250 per year	X				
The amount of surcharge for a conviction of driving without valid license is \$100 per year	X				
Notice must specify the date by which the surcharge must be paid and state the consequences of a failure to pay	X				
Notify holder of driver's license of assignment of 5th point by first class mail to person's most recent address as shown on Department's records				X	The Department is still working on the computer program that determines when people accumulate six points, and therefore it has not sent notices to those with five points.
Provide for the payment of a surcharge in installments	X				
May not permit person to pay a surcharge of less than \$2,300 in period greater than 12 months, or equal to or greater than \$2,300 in period greater than 24 months		X			The Department has implemented installment agreements; however, the thresholds on the notification letters and their proposed changes to Texas Administrative Code (TAC), Section 15.162, contradicted statute. During fieldwork, the thresholds on the notification letter and their changes to TAC 15.162 were changed to be in compliance with statute. Effective September 1, 2005, House Bill 2470 (79th Legislature) abolishes the thresholds and allows payments to be made over 36 months.
Total amount of compensation for a contract with private vendor may not exceed 30% of the amount of surcharges and related costs collected	X				
Significance: Low					
Department shall adopt and enforce rules to implement and enforce Chapter 708	X				
Department shall designate offenses that constitute moving violation of traffic law	X				
Implementation Status by Significance:					
High	3	1	4	0	
Medium	7	1	0	1	
Low	2	0	0	0	

Recommendations

The Department should establish time lines and dates to complete the implementation of the portions of the Program not fully implemented to date, and management should monitor progress. The portions to be completely implemented include:

- Billing surcharges for the points portion of the Program.
- Mailing notifications to those offenders who have accumulated five points.
- Considering alternatives to enable the Department to bill for those surcharges not currently billed (those offenders for whom the Department cannot identify a valid Texas driver's license).

In addition, the Department should ensure that it develops a plan to implement changes as outlined in House Bill 2470.

Management's Response

The Department agrees and offers the following comments.

- *Every attempt will be made to identify individuals convicted of a violation and to establish an unlicensed driver record for those cases where a license record does not exist.*
- *The Points calculation was updated and incorporated into the Program in May 2005.*
- *Implementation to mail notifications to offenders who have accumulated five points is anticipated to begin no later than August 31, 2005.*
- *The Department will develop new administrative rules to incorporate changes as outlined in HB 2470. In addition, the Vendor contract will be amended for this requirement.*

Chapter 5-B

Difficulties in Programming the Department's Driver's License System and the Lack of a Formal Comprehensive Plan Contributed to the Delay in the Implementation of the Program

The Department's management indicated that the complex nature of the computer programming needed (given the age of the Department's Driver's License System) contributed to the delay in the implementation of the Program.

The Department prepared a detailed document that discussed the programming necessary to compile a list of offenders and calculate the surcharges. Specifically, the document addressed:

- New driver's license codes needed for the Program offenses outlined in statute
- Program requirements that affected the driver history in the system
- Computer system calculations for accumulating points from moving violations
- Sample notices for offenders owing a Program surcharge

While the document was adequate for implementing programming changes to the Driver's License System, it did not address the implementation of the Program as a whole.

A comprehensive plan was not developed to establish time lines or task completion dates for the implementation of the Program. Other important issues not addressed include staffing requirements, overpayment and refund processes, and interface testing. While a documented implementation plan is not a requirement, such a document could have helped the Department identify issues. For example, the Department and the vendor are holding more than \$58,500 that more than 700 offenders overpaid between September 30, 2004, and February 28, 2005. We identified one refund that was overdue by more than six months from the time of the offender's initial payment. The overpayments have many causes, including the following:

- Offenders remitting the incorrect amounts
- Vendor incorrectly calculating the amount due for offenders
- Department erroneously including offenders in the surcharge lists

The following list outlines the time line for the Department's implementation of the Program:

- The Program was created by House Bill 3588, which passed in June 2003 and became effective September 1, 2003.
- House Bill 2, which became effective in January 2004, created the funding structure and allowed the Department to contract for the collection of Program surcharges.
- The Department posted its request for proposals to select a collections vendor in April 2004. The vendor was selected in August 2004.
- Computer programming to compile the list of offenders and surcharges from the Driver's License System began after a vendor had been selected.
- The first list of offenders owing Program surcharges was completed on September 30, 2004.

- The vendor began collecting surcharges in October 2004.

Although they have not been approved by management, the Department did develop business rules for the Program by September 23, 2004. These business rules are adequate policies and procedures for the Department's daily operations of the Program. They encompass:

- The processes that the Department's mainframe computer goes through to evaluate the driver histories.
- Driver record correction issues.
- Policies and procedures for offender notification, compliance, occupational licenses, deceased offenders, and offenders residing in nursing homes.

Recommendations

The Department should:

- Consider creating a formal plan to complete the implementation of the Program that includes specific time lines and dates for completing the various components that are not yet fully implemented.
- In the future, consider creating a formal implementation plan for all new projects or programs. The plans should contain time lines and task completion dates and should address possible scenarios to reduce the risk of problems arising once the program is operational. The plan should include input from all applicable divisions within the Department, such as accounting, legal, purchasing, internal audit, information systems, and others.
- Establish policies and procedures for ensuring that all overpayments are refunded in a timely manner.

Management's Response

The Department agrees to complete a formal plan to complete the implementation of the Driver Responsibility Program. The plan will include dates, timelines, and assigned responsibilities to fully implement the program.

The Department agrees that future implementations of major projects should include a formal planning process with input from all affected areas of the agency.

The Department has developed a task force to conduct a complete and thorough review of all aspects of the Program and will make the necessary

adjustments. Performance standards will be established for the Program and will include provisions for refund processing.

Chapter 5-C

The Department's Contract with the Vendor Contains Provisions That, if Enforced, Would Help Protect the State's Interests

The Department's contract with the vendor includes the contract, the service level agreement, and the request for proposal (RFP). State auditors found that the contract generally contained the provisions required by the Texas Government Code, Chapters 2261 and 2262, and the Texas Building and Procurement Commission's *Contract Management Guide* (which became effective after the Department executed the Program contract with its vendor). These provisions, if enforced, will help protect Program revenue and the State's interests.

Recommendation

As discussed in Chapter 2, the Department should monitor the vendor to ensure that it meets the contractual requirements.

Management's Response

The Department agrees and the task force will develop and implement procedures to enforce contract provisions and protect the interests of the State.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

Our objective was to determine whether the Department of Public Safety's (Department) implementation of the Driver Responsibility Program (Program) ensures that all surcharges are collected and that statutory requirements for the Program are met.

Scope

The scope of our audit covered the Department's implementation of the Program with regard to the Texas Transportation Code, Chapter 708, and the Texas Health and Safety Code, Chapter 780. We audited the Department and the collections vendor for the time period of September 1, 2003, to February 28, 2005.

Methodology

The audit methodology consisted of conducting interviews; collecting and reviewing information; and performing tests, procedures, and analyses against predetermined criteria.

Information collected included the following:

- Interviews with management and staff of the Department, the collections vendor, and the Office of the Comptroller of Public Accounts (Comptroller's Office)
- Documentary evidence such as:
 - ♦ Policies and procedures for the Department and vendor
 - ♦ Applicable state statutes and guidelines
 - ♦ The contract and service level agreement between the Department and the vendor
 - ♦ The Department's request for proposal (RFP) and bids submitted in response
 - ♦ The Department's specification documents for the computer programming portion of the implementation of the Program

- ♦ The Department's fiscal analyses for the Program
- ♦ Program invoices
- ♦ Vendor's refund/overpayment report
- ♦ Vendor's cash journals and payment records
- ♦ Vendor's misapplied payment report
- ♦ Report of all vendor employees for September 1, 2003, to May 6, 2005
- ♦ Unlicensed driver conviction report
- ♦ Unbilled point violations report

Procedures, tests, and analyses conducted included the following:

- Observed the Department's and the collections vendor's processes related to the Program
- Reviewed and analyzed the contract, service level agreement, RFP, submitted responses, RFP evaluation process, and specification documents
- Reviewed and analyzed policies and procedures for the Department and the vendor
- Tested a random sample of convictions for driving while intoxicated (DWI) and driving with license invalid (DWLI) against the vendor's collections system to determine accuracy of information transferred from the Department to the vendor
- Tested judgmental sample of hard-copy DWI and DWLI court documents against the conviction entries in the Driver's License System to determine the accuracy of data entry
- Tested a statistical sample of Program payments from October 2004 to February 2005 against the collections system to determine the accuracy and completeness of information in the collections system
- Traced a random sample of surcharge payments to determine whether they were deposited into the vendor's bank account
- Tested a random sample of misapplied payments
- Tested a statistical sample of overpayments
- Tested a report of all vendor employees from October 2004 to May 2005 against the Driver's License System and the collections system to determine whether any employees had Program surcharges or accounts

- Tested a report of all vendor employees from October 2004 to May 2005 against the State's Human Resource Information System (HRIS), Standardized Payroll/Personnel Reporting System (SPRS), and Uniform Statewide Payroll/Personnel System (USPS) to determine whether any vendor employees were also State employees
- Compared Program deposits in the State Treasury to the monthly invoices to determine the accuracy of deposits
- Calculated an estimated amount of interest earned by the vendor
- Calculated the amount of surcharges not assessed for unlicensed drivers and unbilled points violations

Criteria used included the following:

- Building and Procurement Commission's (formerly General Services Commission) *Request for Proposal (RFP) Guidelines for State Agencies: RFP Handbook*, May 1998, and its *Contract Management Guide*, October 2004
- Texas Transportation Code, Chapters 523, 543, and 708
- Texas Government Code, Chapters 2054, 2261, and 2262
- Texas Health and Safety Code, Chapter 780
- Texas Administrative Code, Sections 202.23–26 and 202.74
- Texas State Library and Archives Commission's *Texas State Records Management Manual*
- Department of Information Resources' *Business Continuity Planning Guidelines*, December 2004, and its *Practices for Protecting Information Resources Assets*
- *Federal Information System Controls Audit Manual*, Chapter 3
- Department's contract and service level agreement with the vendor
- Department's RFP
- Department's evaluation and selection plan for the proposals received for the Program
- Department's evaluation scoring documentation
- Vendors' submitted responses

Other Information

We conducted fieldwork from February 2005 to May 2005. The audit was conducted in accordance with generally accepted government auditing standards. The following members of the State Auditor's staff performed this audit:

- Kimberlee N. McDonald (Project Manager)
- Robert G. Kiker (Assistant Project Manager)
- Harriet A. Fortson, MAcy
- Clifford Hudson
- Brianna Lehman
- Juan R. Sanchez, MPA
- Phatsavinh B. Somsith
- Lisa Thompson
- Dean Duan, CISA (Information Systems Audit Team member)
- Joseph Kozak, CPA, CISA (Information Systems Audit Team member)
- Charles P. Dunlap, Jr., CPA (Quality Control Reviewer)
- Nicole M. Guerrero, MBA (Audit Manager)
- Michael C Apperley, CPA (Audit Manager)

The Department's Summary of Its Management's Response

TEXAS DEPARTMENT OF PUBLIC SAFETY

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CARLOS H. CASCOS
COMMISSIONERS

July 7, 2005

John Keel, CPA
State Auditor of Texas
P.O. Box 12067
Austin, Texas 78711-2067

RE: State Audit of Implementation of the Driver Responsibility Program by the Texas
Department of Public Safety

Dear Mr. Keel:

Please find enclosed the Department's response regarding implementation of the Driver
Responsibility Program.

The Department is committed to ensuring the overall success and efficiency of the Driver
Responsibility Program. We will carefully consider the findings and make adjustments as
necessary to ensure all statutory obligations are met.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Davis, Jr.".

Thomas A. Davis, Jr.
Director

Enclosure

TAD/Bw

COURTESY • SERVICE • PROTECTION

SUMMARY OF MANAGEMENT'S RESPONSE

The Department fully accepts the responsibility to provide oversight of the Driver Responsibility Program and the Vendor to ensure that statutory requirements are met. This program was in the first four months of collections at the time the audit was announced, and the Department had not yet conducted a thorough review of Vendor's processes. We appreciate the State Auditor's Office expertise and dedication to conducting a complete program review and respect the recommendations. We are prepared to carefully research each recommendation and consider adjustments to ensure compliance with statutory mandates as well as ensuring the overall effectiveness of the Driver Responsibility Program.

The Department is developing a task force to review the recommendations made by the State Auditor's Office. The task force will ensure that the necessary adjustments are made regarding the Driver Responsibility Program as a result of this audit.

The Department anticipates that the Driver Responsibility Program will be further enhanced through the Driver License Reengineering Project, which will address the current programming limitations encountered during implementation. The newly designed driver license system will replace an antiquated computer system, providing the Department with the tools necessary to automate reconciliation of accounting reports; will aide in determining overall collection rates; and provide the ability to make system changes as necessary in a timely, efficient manner.

Transportation Code, Chapter 708 - Driver Responsibility Program

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 708.001. DEFINITIONS. In this chapter, “department” and “license” have the meanings assigned by Section 521.001.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.002. RULES. The department shall adopt and enforce rules to implement and enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.003. FINAL CONVICTIONS. For purposes of this chapter, a conviction for an offense to which this chapter applies is a final conviction, regardless of whether the sentence is probated.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

SUBCHAPTER B. DRIVER'S LICENSE POINTS SURCHARGE

Sec. 708.051. NONAPPLICABILITY. This subchapter does not apply to:

- (1) an offense committed before September 1, 2003; or
- (2) an offense covered by Subchapter C.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 2.03, eff. Jan. 11, 2004.

Sec. 708.052. ASSIGNMENT OF POINTS FOR CERTAIN CONVICTIONS.

- (a) The driver’s license of a person accumulates a point under this subchapter as of the date the department records a conviction of the person under Section 521.042 or other applicable law.
- (b) For each conviction arising out of a separate transaction, the department shall assign points to a person’s license as follows:
 - (1) two points for a moving violation of the traffic law of this state or another state that is not described by Subdivision (2); and
 - (2) three points for a moving violation of the traffic law of this state, another state, or a political subdivision of this or another state that resulted in an accident.

- (c) The department by rule shall designate the offenses that constitute a moving violation of the traffic law under this section.
- (d) Notwithstanding Subsection (b), the department may not assign points to a person's driver's license if the offense of which the person was convicted is the offense of speeding and the person was at the time of the offense driving less than 10 percent faster than the posted speed limit. This subsection does not apply to an offense committed in a school crossing zone as defined by Section 541.302.
- (e) Notwithstanding Subsection (b), the department may not assign points to a person's license if the offense committed by the person was adjudicated under Article 45.051 or 45.0511, Code of Criminal Procedure.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.053. ANNUAL SURCHARGE FOR POINTS. Each year, the department shall assess a surcharge on the license of a person who has accumulated six or more points under this subchapter during the preceding 36-month period.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.054. AMOUNT OF POINTS SURCHARGE. The amount of a surcharge under this chapter is \$100 for the first six points and \$25 for each additional point.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.055. NOTICE OF ASSIGNMENT OF FIFTH POINT. The department shall notify the holder of a driver's license of the assignment of a fifth point on that license by first class mail sent to the person's most recent address as shown on the records of the department.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

SUBCHAPTER C. SURCHARGES FOR CERTAIN CONVICTIONS AND LICENSE SUSPENSIONS

Sec. 708.101. NONAPPLICABILITY. This subchapter does not apply to an offense committed before September 1, 2003.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.
Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 2.03, eff. Jan. 11, 2004.

Sec. 708.102. SURCHARGE FOR CONVICTION OF CERTAIN INTOXICATED DRIVER OFFENSES.

- (a) In this section, “offense relating to the operating of a motor vehicle while intoxicated” has the meaning assigned by Section 49.09, Penal Code.
- (b) Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated.
- (c) The amount of a surcharge under this section is \$1,000 per year, except that the amount of the surcharge is:
 - (1) \$1,500 per year for a second or subsequent conviction within a 36-month period; and
 - (2) \$2,000 for a first or subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person’s blood, breath, or urine showed an alcohol concentration level of 0.16 or more at the time the analysis was performed.
- (d) A surcharge under this section for the same conviction may not be assessed in more than three years.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.103. SURCHARGE FOR CONVICTION OF DRIVING WHILE LICENSE INVALID OR WITHOUT FINANCIAL RESPONSIBILITY.

- (a) Each year the department shall assess a surcharge on the license of each person who during the preceding 36-month period has been convicted of an offense under Section 521.457, 601.191, or 601.371.
- (b) The amount of a surcharge under this section is \$250 per year.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.104. SURCHARGE FOR CONVICTION OF DRIVING WITHOUT VALID LICENSE.

- (a) Each year the department shall assess a surcharge on the license of a person who during the preceding 36-month period has been convicted of an offense under Section 521.021.
- (b) The amount of a surcharge under this section is \$100 per year.

- (c) A surcharge under this section for the same conviction may not be assessed in more than three years.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

SUBCHAPTER D. COLLECTION OF SURCHARGES

Sec. 708.151. NOTICE OF SURCHARGE. The department shall notify the holder of a driver's license of the assessment of a surcharge on that license by first class mail sent to the person's most recent address as shown on the records of the department. The notice must specify the date by which the surcharge must be paid and state the consequences of a failure to pay the surcharge.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.152. FAILURE TO PAY SURCHARGE.

- (a) If before the 30th day after the date the department sends a notice under Section 708.151 the person fails to pay the amount of a surcharge on the person's license or fails to enter into an installment payment agreement with the department, the license of the person is automatically suspended.
- (b) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.153. INSTALLMENT PAYMENT OF SURCHARGE.

- (a) The department by rule shall provide for the payment of a surcharge in installments.
- (b) A rule under this section:
 - (1) may not permit a person to pay a surcharge:
 - (A) of less than \$2,300 over a period of more than 12 consecutive months; or
 - (B) of \$2,300 or more over a period of more than 24 consecutive months; and
 - (2) may provide that if the person fails to make a required installment payment, the department may declare the amount of the unpaid surcharge immediately due and payable.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.154. CREDIT CARD PAYMENT OF SURCHARGE.

- (a) The department by rule may authorize the payment of a surcharge by use of a credit card. The rules shall require the person to pay all costs incurred by the department in connection with the acceptance of the credit card.
- (b) If a surcharge or a related cost is paid by credit card and the amount is subsequently reversed by the issuer of the credit card, the license of the person is automatically suspended.
- (c) A license suspended under this section remains suspended until the person pays the amount of the surcharge and any related costs.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Sec. 708.155. CONTRACTS FOR COLLECTION OF SURCHARGES. The department may enter into a contract with a private attorney or a public or private vendor for the provision of services for the collection of surcharges receivable and related costs under this chapter. The total amount of compensation may not exceed 30 percent of the amount of the surcharges and related costs collected.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.
Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 8, Sec. 2.04, eff. Jan. 11, 2004.

Sec. 708.156. REMITTANCE OF SURCHARGES COLLECTED TO COMPTROLLER. Each surcharge collected by the department under this chapter shall be remitted to the comptroller as required by Section 780.002, Health and Safety Code.

Added by Acts 2003, 78th Leg., ch. 1325, Sec. 10.01, eff. Sept. 1, 2003.

Additional Information on the Driver Responsibility Program

Appendix 4-A

Background Information on the Driver Responsibility Program

House Bill 3588 of the 78th Legislature (Regular Session) created the Program in Chapter 708 of the Texas Transportation Code, which became effective September 1, 2003.

For each year over a three-year period, a surcharge is assessed for all final convictions of certain offenses committed on or after September 1, 2003. The following offenses qualify for the assessment of Program surcharges, which may be paid in installments:

- Driving while intoxicated (DWI) = \$1,000, \$1,500, or \$2,000, depending on the number of DWI convictions and level of intoxication
- Driving while license invalid (DWLI), which is driving with a suspended or revoked license = \$250
- Failure to maintain financial responsibility (no insurance) = \$250
- Driving without a license, which is for not having a license or driving with an expired license = \$100
- Accumulating six or more points from certain moving violations = \$100 for six points and \$25 for each additional point

Statute assigns the responsibility for administering the Program to the Department. Statute allows for the Department to contract for services to administer the Program and to pay the vendor up to a 30 percent fee.

A vendor was solicited to bill and collect the Program surcharges. The Department published an RFP and received bids from four vendors. The proposals offered a variety of services, such as multiple notification letters, outbound collection calls, automated dialer campaigns, and credit bureau reporting.

Due to the variety of services offered, the four bids had fees that ranged from 5.9 to 30.0 percent. Three of the four vendors offered a tiered-fee structure where the rate would increase as the receivable aged and collection efforts became greater (for example, one vendor proposed 5.9 percent if the surcharge was paid within the first 30 days, 15.9 percent if the surcharge was paid between the thirty-first and ninetieth days, and 19.9 percent if the surcharge was paid after the ninety-first day). The Department, however, decided to limit the vendor's services to only mailing notification letters and receiving incoming calls from drivers. The selected vendor charges offenders a fee of 4 percent per surcharge for the Department's chosen level of

collection efforts, plus convenience fees for payments made using check-by-phone, credit card, and/or installment agreements.

The vendor collects all surcharges and fees paid throughout the month and deposits them into its bank. On the first Monday of each month, the vendor deposits the previous month's net amount of surcharges into the State Treasury.

The vendor does not remit all surcharges and fees collected. Instead, the vendor deposits the net amount to the State Treasury, retaining its fee, convenience fees, and any other adjustments.² These fees are not recorded in the Uniform Statewide Accounting System (USAS). In addition to the fees, the vendor retains all interest it earns on the surcharges during the month prior to depositing them into the State Treasury. The vendor retained approximately \$153,050 in interest for October 2004 through February 2005. (We based this estimate on the vendor's average daily balances and Treasury rates for that time period.) The Texas Transportation Code, Chapter 708, does not address the issue of depositing all funds collected or the issue of interest earned.

Once the surcharges are deposited into the State Treasury, the Comptroller's Office transfers the funds into three different accounts:

- 49.5 percent to the Trauma Facilities and Emergency Medical Services Fund
- 49.5 percent to the Texas Mobility Fund (fiscal years 2004 and 2005); beginning in fiscal year 2006, this portion will go first to the General Revenue fund. (If in any fiscal year this portion exceeds \$250 million, the excess will be deposited to the Texas Mobility Fund.)
- 1 percent to the Department for management of the Program.

As of February 28, 2005, the Program had a collection rate of 20 percent and a compliance rate of 35 percent. The Program had collected \$18 million of the \$89 million in surcharges assessed.

Appendix 4-B

Collections Efforts for Another Texas Program

The Texas Office of the Attorney General (OAG) collects and distributes child support payments for the State of Texas. It uses a higher level of collection efforts: it sends automated letters, makes outbound calls, and researches inbound call leads (for example, when a mother who is owed child

² Beginning in fiscal year 2006, Rider 50 of the Department's appropriation (Senate Bill 1, 79th Legislature, page V-52) will require that all Program funds, including the vendor's fees, be deposited to the State Treasury. After the deposit of all funds, the vendor will be compensated.

support calls with the location of the father). The OAG also requires employers to report all of their newly hired employees.

The consequences for non-payment of child support include garnishing wages (income withholding); intercepting Internal Revenue Service refunds and lottery winnings; filing liens against property or other assets; suspending driver's, professional, hunting, and fishing licenses; denying passports; ordering credit bureau reports; placing non-payers on probation; or requesting that jail time be ordered. Some of these consequences would require constitutional or statutory changes if they were to be used for the Driver Responsibility Program.

In fiscal year 2004, the OAG collected \$1.7 billion in child support, with about 70 percent of that amount coming from income withholding. The current child support collection rate for fiscal year 2005 to date is 60.3 percent (total dollar amount of child support disbursed/total dollar amount of child support due).

Appendix 4-C

Accounting of Fees Collected by Another Texas Program

TexasOnline is the State of Texas Web site that allows residents and businesses to pay city, county, and state fees via the Internet. The accounting process that TexasOnline uses to collect payments and vendors' convenience fees is different from the process used for the Driver Responsibility Program. All payment amounts made via TexasOnline, including the vendors' convenience fees, are deposited directly into the State Treasury each day. The Comptroller's Office wires the total convenience fees to each vendor daily. All convenience fees are tracked in USAS so that the State, as well as each agency, can accurately report its expenses. The monthly bank statements are reconciled to the transactions in USAS.

Appendix 4-D

Other States' Driver Responsibility Programs

On January 1, 1984, the New Jersey Motor Vehicle Commission (Commission) began assessing surcharges for all convictions of driving under the influence (DUI) and moving violations. The Commission recorded an initial collection rate of 77 percent for the first year and averaged 62 percent for the first 11 years of its program's existence. All drivers who are convicted of a moving violation, including offenses committed while operating a motorized bicycle or a vessel/boat, are assessed points for each conviction. An accumulation of six points in the preceding 36 months results in the assessment of a surcharge. Surcharges are assessed as follows:

- Six points = \$150
- Each additional point = \$25

- Driving while unlicensed = \$100
- Driving while suspended = \$250
- Failing to insure a moped = \$100
- Operating an uninsured vehicle = \$250
- Pleading guilty to “unsafe driving” = \$250
- Driving under the influence:
 - ♦ First or second conviction within three years = \$1,000 per year for three years
 - ♦ Third conviction within three years = \$1,500 per year for three years
 - ♦ DUI enforcement surcharge = \$100

Surcharges can be paid by mail, by phone, on the Commission’s Web site, or in person at any Motor Vehicle Commission Regional Center. Failure to pay a surcharge results in the indefinite suspension of a driver’s license, and a judgment action may be filed for any unpaid surcharges. The judgment action may include a lien secured against any real property, garnishment of wages, or similar actions. An accumulation of 12 or more points results in an automatic driver’s license suspension.

Michigan also has a driver responsibility program, which is administered by its state treasury department. Its collection efforts include wage levies, income tax offset, and levies against bank accounts and other assets.

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable David Dewhurst, Lieutenant Governor, Joint Chair
The Honorable Tom Craddick, Speaker of the House, Joint Chair
The Honorable Steve Ogden, Senate Finance Committee
The Honorable Thomas “Tommy” Williams, Member, Texas Senate
The Honorable Jim Pitts, House Appropriations Committee
The Honorable Jim Keffer, House Ways and Means Committee

Office of the Governor

The Honorable Rick Perry, Governor

Department of Public Safety

Ms. Colleen McHugh, Chair, Public Safety Commission
Mr. Ernest Angelo, Jr., Member, Public Safety Commission
Mr. Carlos H. Cascos, Member, Public Safety Commission
Colonel Thomas A. Davis, Jr., Director



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