

1 **SENATE FLOOR VERSION**

2 February 17, 2015

3 SENATE BILL NO. 389

By: Newberry

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5
6 An Act relating to the Oklahoma Electronic Toll
7 Collection Act; amending 47 O.S. 2011, Section 11-
8 1401.2, as last amended by Section 28, Chapter 15,
9 O.S.L. 2013 (47 O.S. Supp. 2014, Section 11-1401.2),
10 which relates to toll evasion violation penalties;
11 adding certain definitions; modifying certain term;
12 modifying certain means by which a toll violation can
13 be recorded; clarifying recipients of certain notice;
14 clarifying protection of certain information of
15 certain persons; and providing an effective date.

16 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

17 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-1401.2,
18 as last amended by Section 28, Chapter 15, O.S.L. 2013 (47 O.S.
19 Supp. 2014, Section 11-1401.2), is amended to read as follows:

20 Section 11-1401.2. A. For purposes of this section:

- 21 1. "Authority" means the Oklahoma Turnpike Authority;
- 22 2. "Commission" means the Oklahoma Tax Commission;
- 23 3. "Electronic toll collection system" means a system of
24 collecting tolls or charges which is capable of charging an account
holder the appropriate toll or charge by transmission of information
from an electronic device on a motor vehicle to the toll lane, which

1 information is used to charge the account the appropriate toll or
2 charge;

3 4. "Owner" means any person, corporation, partnership, firm,
4 agency, association, or organization who, at the time of the
5 violation and with respect to the vehicle identified in the notice
6 of toll evasion violation:

7 a. is the beneficial or equitable owner of the vehicle,

8 b. has title to the vehicle,

9 c. is the registrant or coregistrant of the vehicle which
10 is registered with the Oklahoma Tax Commission or
11 similar registering agency of any other state,
12 territory, district, province, nation or other
13 jurisdiction,

14 d. subject to the liability limitations set forth in
15 paragraph 12 of subsection B of this section, uses the
16 vehicle in its vehicle renting and/or leasing
17 businesses, or

18 e. is a person entitled to the use and possession of a
19 vehicle subject to a security interest in another
20 person;

21 5. "Photo-monitoring system" means a vehicle sensor installed
22 to work in conjunction with a toll collection facility which
23 automatically produces one or more photographs, one or more
24 microphotographs, a videotape or other recorded images of each

1 vehicle at the time it is used or operated ~~in violation of toll~~
2 ~~collection regulations~~ on the turnpikes under the Authority's
3 jurisdiction;

4 6. "Toll collection regulations" means those rules and
5 regulations of the Oklahoma Turnpike Authority or statutes providing
6 for and requiring the payment of tolls and/or charges prescribed by
7 the Authority for the use of turnpikes under its jurisdiction or
8 those rules and regulations of the Authority or statutes making it
9 unlawful to refuse to pay or to evade or to attempt to evade the
10 payment of all or part of any toll and/or charge for the use of
11 turnpikes under the jurisdiction of the Authority; ~~and~~

12 7. "Toll evasion violation" means a failure to comply with the
13 Authority's toll collection regulations, including the failure to
14 pay an invoice submitted by the Authority via its video toll
15 collection system;

16 8. "Vehicle" means every device in, upon or by which a person
17 or property is or may be transported or drawn upon a highway, except
18 devices used exclusively upon stationary rails or tracks; and

19 9. "Video toll collection system" means a photo-monitoring
20 system used to charge and collect tolls from owners of vehicles
21 imaged using the turnpike system; the owner of a vehicle imaged by
22 the photo-monitoring system may or may not be an Authority account
23 holder.

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1 B. 1. Notwithstanding any other provision of law, there shall
2 be imposed monetary liability on the owner of a vehicle for failure
3 of an operator thereof to comply with the toll collection
4 regulations of the Oklahoma Turnpike Authority in accordance with
5 the provisions of this section.

6 2. The owner of a vehicle shall be liable for a civil penalty
7 imposed pursuant to this section if the vehicle was used or operated
8 with the permission of the owner, express or implied, in violation
9 of the toll collection regulations, and such violation is evidence
10 by information obtained from a photo-monitoring system. However, no
11 owner of a vehicle shall be liable for a penalty imposed pursuant to
12 this section where the operator of the vehicle has been convicted of
13 a violation of toll collection regulations for the same incident.

14 3. A certificate, sworn to or affirmed by an agent of the
15 Authority, or facsimile thereof, based upon inspection of
16 photographs, microphotographs, videotape or other recorded images
17 produced by a photo-monitoring system shall be prima facie evidence
18 of the facts contained therein and shall be admissible in any
19 proceeding charging a violation of toll collection regulations. The
20 photographs, microphotographs, videotape or other recorded images
21 evidencing such a violation shall be available for inspection and
22 admission into evidence in any proceeding to adjudicate the
23 liability for the violation. Each photo-monitoring system shall be
24 checked bi-monthly for accuracy~~7~~ and shall be maintained, adjusted

1 or replaced if necessary to ensure the systems are operating
2 properly.

3 4. An owner found liable for a violation of toll collection
4 regulations pursuant to this section shall be liable for a monetary
5 penalty of Twenty-five Dollars (\$25.00) for each violation.

6 5. An imposition of liability pursuant to this section shall be
7 based upon a preponderance of evidence as submitted. An imposition
8 of liability pursuant to this section shall not be deemed a
9 conviction as an operator and shall not be made part of the motor
10 vehicle operating record of the person upon whom such liability is
11 imposed nor shall it be used for insurance purposes in the provision
12 of motor vehicle insurance coverage.

13 6. a. A notice of toll evasion violation shall be sent by
14 regular first-class mail to each person alleged to be
15 liable as an owner for a violation of toll collection
16 regulations. The notice shall be mailed no later than
17 forty-five (45) days after the alleged violation. A
18 manual or automatic record of mailing prepared in the
19 ordinary course of business shall be prima facie
20 evidence of the receipt of the notice.

21 b. A notice of toll evasion violation shall contain the
22 name and address of the person alleged to be liable as
23 an owner for a violation of toll collection
24 regulations pursuant to this section, the registration

1 or the license tag number of the vehicle involved in
2 the violation, the location where the ~~violation took~~
3 ~~place~~ photo-monitoring system recorded the vehicle's
4 image, the date and time of the ~~violation~~ image, and
5 the identification number of the photo-monitoring
6 system which recorded the ~~violation~~ image or other
7 document locator number, and the nature of the
8 violation.

9 c. Notice of toll evasion violation shall be prepared and
10 mailed by the Authority or its agents and shall
11 contain information advising the person of the
12 applicable monetary penalty and method of payment
13 thereof and the manner and the time in which the
14 person may contest the liability alleged in the
15 notice. The notice of toll evasion violation shall
16 contain, or be accompanied with, an affidavit of
17 nonliability and information of what constitutes
18 nonliability, information as to the effect of
19 executing the affidavit and instructions for returning
20 the affidavit to the Authority and shall also contain
21 a warning to advise the persons charged that failure
22 to contest in the manner and time provided shall be
23 deemed an admission of liability and that the penalty
24 shall be imposed and may be collected as authorized by

1 law. In addition to the notice required by
2 subparagraph a of this paragraph, the Authority may
3 elect to send a subsequent notice of toll evasion
4 violation by certified mail. Such notice shall
5 contain a statement to the registered owner that,
6 unless the registered owner pays the toll evasion
7 penalty or contests the notice within twenty-one (21)
8 days after receipt of the certified mail notice of
9 toll evasion violation or completes and files the
10 affidavit of nonliability, the renewal of the vehicle
11 registration shall be contingent upon compliance with
12 the notice of toll evasion violation.

13 d. If the toll evasion penalty is received by the
14 Authority and there is no contest as to that toll
15 evasion violation, the proceedings under this section
16 shall terminate.

17 e. If the registered owner fails to pay the toll evasion
18 penalty as required in this section, or fails to
19 contest the notice of toll evasion violation issued
20 pursuant to subparagraph c of this paragraph as
21 provided in subparagraph a of paragraph 7 of this
22 subsection, the registered owner shall be deemed
23 liable for the violation by operation of law. The
24 toll evasion penalty and any administrative fees or

1 charges shall be considered a debt due and owing the
2 Authority by the registered owner and the Authority
3 may proceed to collect such penalty, fees or charges
4 under paragraph 9 of this subsection.

- 5 7. a. Within twenty-one (21) days after receipt of a notice
6 of toll evasion violation a person may contest a
7 notice of toll evasion violation. In that case, the
8 Authority shall do the following:

9 (1) the Authority shall investigate the circumstances
10 of the notice with respect to the contestant's
11 written explanation of reasons for contesting the
12 toll evasion violation. If, based upon the
13 results of the investigation, the Authority is
14 satisfied that the violation did not occur or
15 that the registered owner was not responsible for
16 the violation, the Authority shall maintain an
17 adequate record of the findings of the
18 investigation. Within thirty (30) days of
19 receipt of a notice of contest the Authority
20 shall complete such investigation and mail the
21 results of the investigation to the person who
22 contested the notice of toll evasion violation,
23 and
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1 (2) if the person contesting a notice of toll evasion
2 violation is not satisfied with the results of
3 the investigation provided for in division (1) of
4 this subparagraph, the person may, within fifteen
5 (15) days of the mailing of the results of the
6 investigation, deposit the amount of the toll
7 evasion penalty and request an administrative
8 review. An administrative review shall be held
9 within ninety (90) calendar days following the
10 receipt of a request for an administrative
11 review, excluding any continuance time. The
12 person requesting the review may request and
13 shall be allowed one continuance, not to exceed
14 twenty-one (21) calendar days.

15 b. The administrative review procedure shall consist of
16 the following:

17 (1) the person requesting an administrative review
18 shall indicate to the Authority his or her
19 election for a review by mail or personal
20 conference and may provide materials in support
21 of the contest of the results of the
22 investigation,

23 (2) upon ten (10) days' written notice mailed to the
24 contestant, the administrative review shall be

1 conducted before an examiner designated to
2 conduct review by the Authority's governing body
3 or Director of the Oklahoma Turnpike Authority.
4 In addition to any other requirements of
5 employment, an examiner shall demonstrate those
6 qualifications, training, and objectivity
7 prescribed by the Authority's governing body or
8 Director as are necessary and which are
9 consistent with the duties and responsibilities
10 set forth in this section and Section 11-1401.1
11 et seq. of this title,

12 (3) the officer or person authorized to issue a
13 notice of toll evasion violation shall be
14 required to participate in an administrative
15 review. The Authority shall not be required to
16 produce any evidence other than the notice of
17 toll evasion violation or copy thereof, a
18 photograph of the rear of the vehicle,
19 information received from the Commission
20 identifying the registered owner of the vehicle,
21 and a notarized statement from the person
22 reporting the violations. The documentation in
23 proper form shall be considered prima facie
24 evidence of the violation, and

1 (4) the review shall be conducted in accordance with
2 paragraph 5 of this subsection and in accordance
3 with the written procedure established by the
4 Authority which shall ensure fair and impartial
5 review of contested toll evasion violations. The
6 examiner's final decision shall be in writing and
7 shall be delivered personally or by registered
8 mail to the contestant within ten (10) days of
9 the review. A manual or automatic record of
10 mailing prepared in the ordinary course of
11 business shall be prima facie evidence of the
12 receipt of such decision.

13 8. a. Within twenty (20) days after receipt of the final
14 decision described in division (4) of subparagraph b
15 of paragraph 7 of this subsection, the contestant may
16 seek review by filing an appeal to the district court
17 having jurisdiction in the county in which the
18 contestant lives, where the same shall be heard on the
19 record. A copy of the notice of appeal shall be
20 served in person or by first-class mail upon the
21 Authority by the contestants. For purposes of
22 computing the twenty-day period, the Code of Civil
23 Procedure, Section 2006 of Title 12 of the Oklahoma
24 Statutes, shall be applicable.

1 b. The conduct of the hearing on appeal under this
2 section is a subordinate judicial duty which may be
3 performed by referees, masters or other subordinate
4 judicial officials at the direction of the district
5 court.

6 c. If no notice of appeal of the Authority's decision is
7 filed within the period set forth in subparagraph a of
8 this paragraph, the examiner's decision shall be
9 deemed final.

10 9. Except as otherwise provided in paragraphs 10 and 11 of this
11 subsection, the Authority shall proceed under one or more of the
12 following options to collect an unpaid toll evasion penalty:

13 a. the Authority may file an itemization of unpaid toll
14 evasion penalties and administrative and service fees
15 with the Commission for collection at the time of
16 registration of the vehicle pursuant to paragraph 17
17 of this subsection, or

18 b. the Authority may contract with a collection agency to
19 collect unpaid toll evasion penalties, fees, and
20 charges.

21 10. The Authority shall not file a civil judgment with the
22 district court relating to a toll evasion violation which has been
23 filed with the Commission unless the Authority has determined that
24 the registration of the vehicle has not been renewed for sixty (60)

1 days beyond the renewal date and the notice has not been mailed by
2 the Commission pursuant to paragraph 17 of this subsection.

3 11. If an owner receives a notice of toll evasion violation
4 pursuant to this paragraph for any time period during which the
5 vehicle was reported to the police department as having been stolen,
6 it shall be a valid defense to an allegation of liability for a
7 violation of toll collection regulations that the vehicle had been
8 reported to the police as stolen prior to the time the violation
9 occurred and had not been recovered by such time. If an owner
10 receives a notice of toll evasion violation pursuant to this
11 paragraph for any time period during which the vehicle was stolen,
12 but not yet reported to the police as having been stolen, it shall
13 be a valid defense to an allegation of liability for a violation of
14 toll collection regulations pursuant to this paragraph that the
15 vehicle was reported as stolen within two (2) hours after the
16 discovery of the theft by the owner. For purposes of asserting the
17 defense provided by this subsection it shall be sufficient that a
18 certified copy of the police report of the stolen vehicle be sent by
19 first-class mail to the Authority and the district court having
20 jurisdiction.

21 12. An owner of a vehicle to which a notice of toll evasion
22 violation was issued pursuant to paragraph 6 of this subsection
23 shall not be liable for the violation of the toll collection
24 regulations provided that the owner sends to the Authority the

1 affidavit of nonliability described in paragraph 6 of this
2 subsection, within twenty-one (21) days after receiving the original
3 notice of toll evasion violation. Failure to send such information
4 within the time period shall render the owner liable for the penalty
5 prescribed by this section. If the owner complies with the
6 provisions of this subsection, the operator of the vehicle on the
7 date of the violation shall be subject to liability for the
8 violation of toll collection regulations, provided that the
9 Authority mails a notice of toll evasion violation to the operator
10 within ten (10) days after receipt of such information.

11 13. In connection with the preparation and mailing of a notice
12 of toll evasion violation, the Authority shall ensure adequate and
13 timely notice to all video toll collection system and electronic
14 toll collection system account holders to inform them when their
15 accounts are delinquent. An owner who is an account holder under
16 the video toll collection system or the electronic toll collection
17 system shall not be found liable for a violation of this section
18 unless the Authority has first sent a notice of delinquency to the
19 account holder and the account holder was in fact delinquent at the
20 time of the violation.

21 14. Nothing in this section shall be construed to limit the
22 liability of an operator of a vehicle for any violation of toll
23 collection laws or regulations.

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1 15. Notwithstanding any other provision of law, all
2 photographs, microphotographs, videotape or other recorded images
3 prepared pursuant to this section shall be for the exclusive use of
4 the Authority in the discharge of its duties under this section and
5 shall not be open to the public nor be used in any court in any
6 action or proceeding pending therein unless the action or proceeding
7 relates to the imposition of or indemnification for liability
8 pursuant to this section. The Authority shall not sell, distribute
9 or make available in any way, the names and addresses of video toll
10 collection system and electronic toll collection system account
11 holders or Authority patrons, without the consent of the account
12 holders or patrons, to any entity that will use the information for
13 any commercial purpose.

14 16. a. Except as provided in subparagraph c of this
15 paragraph, the Commission shall refuse to renew the
16 registration of any vehicle if the registered owner or
17 lessee has been mailed by certified mail a notice of
18 toll evasion violation as provided in subparagraph c
19 of paragraph 6 of this subsection, the Authority has
20 transmitted to the Commission an itemization of unpaid
21 toll evasion penalties, including administrative fees,
22 pursuant to paragraph 9 of this subsection, and the
23 toll evasion penalty and administrative fee have not
24 been paid pursuant to paragraph 8 of this subsection,

1 unless the full amount of all outstanding toll evasion
2 penalties and administrative fees, as shown by records
3 of the Commission, are paid to the Commission at the
4 time of application for renewal.

5 b. The Authority shall issue a notice of disposition of
6 toll evasion violation to a lessor, if the lessor
7 provides the Authority with the name, address, and
8 ~~driver's~~ driver license number of the lessee at the
9 time of the occurrence of the toll evasion violation.

10 c. The Commission shall renew the registration of any
11 vehicle if the applicant provides the Commission with
12 the notice of disposition of toll evasion violation
13 issued pursuant to subparagraph b of this paragraph
14 for clearing all outstanding toll evasion penalties,
15 fees and assessments, as shown by the records of the
16 Commission, and the applicant has met all other
17 requirements for registration.

18 17. The Commission shall include on each vehicle registration
19 renewal notice issued for use at the time of renewal, or on an
20 accompanying document, an itemization of unpaid toll evasion
21 penalties, fees, and assessments, showing the amount thereof and the
22 date of toll evasion relating thereto, which the registered owner or
23 lessee is required to pay pursuant to paragraph 16 of this
24 subsection.

1 18. a. Except as provided in subparagraph b of this
2 paragraph, the Commission shall remit all toll evasion
3 penalties, fees, and assessments collected, after
4 deducting the administrative fee authorized by
5 paragraph 19 of this subsection, for each notice of
6 toll evasion violation for which toll evasion
7 penalties, fees, and assessments have been collected
8 pursuant to paragraph 16 of this subsection, ~~to the~~
9 Authority. Within forty-five (45) days from the time
10 penalties, fees, and assessments are paid to the
11 Commission, the Commission shall inform the Authority
12 which of its notices of toll evasion violation have
13 been collected.

14 b. For each notice of toll evasion violation for which
15 toll evasion penalties, fees, and assessments have
16 been collected by the Commission pursuant to paragraph
17 16 of this subsection, the Authority is due an amount
18 equal to the sum of the unpaid toll, administrative
19 fees, other costs incurred by the Authority that are
20 related to toll evasion, process service fees, and
21 fees and collection costs related to civil debt
22 collection. After deducting the Commission's
23 administrative fee authorized by paragraph 19 of this
24 subsection, the Commission shall promptly pay to the

1 Authority the amounts due the Authority for unpaid
2 tolls, administrative fees, other costs incurred by
3 the Authority that are related to toll evasion,
4 process service fees, and fees and collection costs
5 related to civil debt collection.

6 19. The Commission shall assess a fee for the recording of the
7 notice of toll evasion violation, which is given to the Commission
8 pursuant to paragraph 9 of this subsection, in an amount, as
9 determined by the Commission, that is sufficient to provide a total
10 amount equal to at least its actual costs of administering
11 paragraphs 16, 17, and 20 of this subsection.

12 20. Whenever a vehicle is transferred or not renewed for two
13 (2) renewal periods and the former registered owner or lessee of the
14 vehicle owes a toll evasion penalty and administrative fees for a
15 notice of toll evasion violation filed with the Commission pursuant
16 to paragraph 9 of this subsection, the Commission shall notify the
17 Authority of that fact and is not required thereafter to attempt
18 collection of the toll evasion penalty and administrative fees.

19 This legislation shall not be construed to affect in any way the
20 power which the Oklahoma Turnpike Authority possesses to establish
21 tolls and other charges in connection with their turnpike
22 facilities, including the authority to establish a one-way toll
23 collection system for any of its facilities or a toll discount
24

1 structure for certain classes of patrons using any of its
2 facilities.

3 SECTION 2. This act shall become effective November 1, 2015.

4 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION
5 February 17, 2015 - DO PASS
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