STATE OF OKLAHOM

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1640 By: Marlatt

AS INTRODUCED

An Act relating to the Oklahoma Turnpike Authority; amending 47 O.S. 2011, Section 11-1401.2, which relates to toll collection; modifying certain penalty; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-1401.2, is amended to read as follows:

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

1. "Authority" means the Oklahoma Turnpike Authority;

2. "Commission" means the Oklahoma Tax Commission;

3. "Electronic toll collection system" means a system of 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 information is used to charge the account the appropriate toll or charge;

4. "Owner" means any person, corporation, partnership, firm, agency, association, or organization who, at the time of the

violation and with respect to the vehicle identified in the notice of toll evasion violation:

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

b. has title to the vehicle,

c. is the registrant or co-registrant of the vehicle which is registered with the Oklahoma Tax Commission or similar registering agency of any other state, territory, district, province, nation or other jurisdiction,

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

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

5. "Photo-monitoring system" means a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations;

6. "Toll collection regulations" means those rules and regulations of the Oklahoma Turnpike Authority or statutes providing

for and requiring the payment of tolls and/or charges prescribed by the Authority for the use of turnpikes under its jurisdiction or those rules and regulations of the Authority or statutes making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll and/or charge for the use of turnpikes under the jurisdiction of the Authority; and

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

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

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

3. A certificate, sworn to or affirmed by an agent of the Authority, or facsimile thereof, based upon inspection of

photographs, microphotographs, videotape or other recorded images produced by a photo-monitoring system shall be prima facie evidence of the facts contained therein and shall be admissible in any proceeding charging a violation of toll collection regulations. The photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection and admission into evidence in any proceeding to adjudicate the liability for the violation. Each photo-monitoring system shall be checked bi-monthly for accuracy, and shall be maintained, adjusted or replaced if necessary to ensure the systems are operating properly.

4. An owner found liable for a violation of toll collection regulations pursuant to this section ~~for a first violation~~ shall be liable for a monetary penalty of Twenty-five Dollars ($25.00)~~; for a second violation within eighteen (18) months of the first violation, shall be liable for a monetary penalty of Fifty Dollars ($50.00); and for a third or any subsequent violation within eighteen (18) months of the first violation, shall be liable for a monetary penalty of Seventy-five Dollars ($75.00)~~ <u>for each violation</u>.

5. An imposition of liability pursuant to this section shall be based upon a preponderance of evidence as submitted. An imposition of liability pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the motor vehicle operating record of the person upon whom such liability is

imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

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

b. A notice of toll evasion violation shall contain the name and address of the person alleged to be liable as an owner for a violation of toll collection regulations pursuant to this section, the registration or the license tag number of the vehicle involved in the violation, the location where the violation took place, the date and time of the violation and the identification number of the photo-monitoring system which recorded the violation or other document locator number.

c. Notice of toll evasion violation shall be prepared and mailed by the Authority or its agents and shall contain information advising the person of the applicable monetary penalty and method of payment

thereof and the manner and the time in which the person may contest the liability alleged in the notice. The notice of toll evasion violation shall contain, or be accompanied with, an affidavit of nonliability and information of what constitutes nonliability, information as to the effect of executing the affidavit and instructions for returning the affidavit to the Authority and shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that the penalty shall be imposed and may be collected as authorized by law. Additionally, the notice of toll evasion violation shall contain a notice to the registered owner that, unless the registered owner pays the toll evasion penalty or contests the notice within twenty-one (21) days after receipt of the notice of toll evasion violation or completes and files the affidavit of nonliability, the renewal of the vehicle registration shall be contingent upon compliance with the notice of toll evasion violation.

d. If the toll evasion penalty is received by the Authority and there is no contest as to that toll

evasion violation, the proceedings under this section shall terminate.

e. If the registered owner fails to pay the toll evasion penalty as required in this section, or fails to contest the violation as provided in subparagraph a of paragraph 7 of this subsection, the registered owner shall be deemed liable for the violation by operation of law. The toll evasion penalty and any administrative fees or charges shall be considered a debt due and owing the Authority by the registered owner and the Authority may proceed to collect such penalty, fees or charges under paragraph 9 of this subsection.

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

(1) the Authority shall investigate the circumstances of the notice with respect to the contestant's written explanation of reasons for contesting the toll evasion violation. If, based upon the results of the investigation, the Authority is satisfied that the violation did not occur or that the registered owner was not responsible for

the violation, the Authority shall maintain an adequate record of the findings of the investigation. Within thirty (30) days of receipt of a notice of contest the Authority shall complete such investigation and mail the results of the investigation to the person who contested the notice of toll evasion violation, and

(2) if the person contesting a notice of toll evasion violation is not satisfied with the results of the investigation provided for in division (1) of this subparagraph, the person may, within fifteen (15) days of the mailing of the results of the investigation, deposit the amount of the toll evasion penalty and request an administrative review. An administrative review shall be held within ninety (90) calendar days following the receipt of a request for an administrative review, excluding any continuance time. The person requesting the review may request and shall be allowed one continuance, not to exceed twenty-one (21) calendar days.

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

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

(2) upon ten (10) days' written notice mailed to the contestant, the administrative review shall be conducted before an examiner designated to conduct review by the Authority's governing body or Director of the Oklahoma Turnpike Authority. In addition to any other requirements of employment, an examiner shall demonstrate those qualifications, training, and objectivity prescribed by the Authority's governing body or Director as are necessary and which are consistent with the duties and responsibilities set forth in this ~~act~~ Section and Section 11-1401.1 of this title,

(3) the officer or person authorized to issue a notice of toll evasion violation shall be required to participate in an administrative review. The Authority shall not be required to produce any evidence other than the notice of

toll evasion violation or copy thereof, a photograph of the rear of the vehicle, information received from the Commission identifying the registered owner of the vehicle, and a notarized statement from the person reporting the violations. The documentation in proper form shall be considered prima facie evidence of the violation, and

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

8. a. Within twenty (20) days after receipt of the final decision described in division (4) of subparagraph b of paragraph 7 of this subsection, the contestant may seek review by filing an appeal to the district court

having jurisdiction in the county in which the contestant lives, where the same shall be heard on the record. A copy of the notice of appeal shall be served in person or by first-class mail upon the Authority by the contestants. For purposes of computing the twenty-day period, the Code of Civil Procedure, Section 2006 of Title 12 of the Oklahoma Statutes, shall be applicable.

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

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

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

a. the Authority may file an itemization of unpaid toll evasion penalties and administrative and service fees with the Commission for collection at the time of

registration of the vehicle pursuant to paragraph 17 of this subsection, or

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

10. The Authority shall not file a civil judgment with the district court relating to a toll evasion violation which has been filed with the Commission unless the Authority has determined that the registration of the vehicle has not been renewed for sixty (60) days beyond the renewal date and the notice has not been mailed by the Commission pursuant to paragraph 17 of this subsection.

11. If an owner receives a notice of toll evasion violation pursuant to this paragraph for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. If an owner receives a notice of toll evasion violation pursuant to this paragraph for any time period during which the vehicle was stolen, but not yet reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations pursuant to this paragraph that the vehicle was reported as stolen within two (2) hours after the

discovery of the theft by the owner. For purposes of asserting the defense provided by this subsection it shall be sufficient that a certified copy of the police report of the stolen vehicle be sent by first-class mail to the Authority and the district court having jurisdiction.

12. An owner of a vehicle to which a notice of toll evasion violation was issued pursuant to paragraph 6 of this subsection shall not be liable for the violation of the toll collection regulations provided that the owner sends to the Authority the affidavit of nonliability described in paragraph 6 of this subsection, within twenty-one (21) days after receiving the original notice of toll evasion violation. Failure to send such information within the time period shall render the owner liable for the penalty prescribed by this section. If the owner complies with the provisions of this subsection, the operator of the vehicle on the date of the violation shall be subject to liability for the violation of toll collection regulations, provided that the Authority mails a notice of toll evasion violation to the operator within ten (10) days after receipt of such information.

13. In connection with the preparation and mailing of a notice of toll evasion violation, the Authority shall ensure adequate and timely notice to all electronic toll collection system account holders to inform them when their accounts are delinquent. An owner who is an account holder under the electronic toll collection system

shall not be found liable for a violation of this section unless the Authority has first sent a notice of delinquency to the account holder and the account holder was in fact delinquent at the time of the violation.

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

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

16. a. Except as provided in subparagraph c of this paragraph, the Commission shall refuse to renew the registration of any vehicle if the registered owner or lessee has been mailed a notice of toll evasion violation, the Authority has transmitted to the

Commission an itemization of unpaid toll evasion penalties, including administrative fees, pursuant to paragraph 9 of this subsection, and the toll evasion penalty and administrative fee have not been paid pursuant to paragraph 8 of this subsection, unless the full amount of all outstanding toll evasion penalties and administrative fees, as shown by records of the Commission are paid to the Commission at the time of application for renewal.

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

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

17. The Commission shall include on each vehicle registration renewal notice issued for use at the time of renewal, or on an

accompanying document, an itemization of unpaid toll evasion penalties, fees and assessments, showing the amount thereof and the date of toll evasion relating thereto, which the registered owner or lessee is required to pay pursuant to paragraph 16 of this subsection.

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

b. For each notice of toll evasion for which toll evasion penalties, fees and assessments have been collected by the Commission pursuant to paragraph 16 of this subsection, the Authority is due an amount equal to the sum of the unpaid toll, administrative fees, other costs incurred by the Authority that are related to

toll evasion, process service fees, and fees and collection costs related to civil debt collection. After deducting the Commission's administrative fee authorized by paragraph 19 of this subsection, the Commission shall promptly pay to the Authority the amounts due the Authority for unpaid tolls, administrative fees, other costs incurred by the Authority that are related to toll evasion, process service fees, and fees and collection costs related to civil debt collection.

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

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

This legislation shall not be construed to affect in any way the power which the Oklahoma Turnpike Authority possesses to establish tolls and other charges in connection with their turnpike facilities, including the authority to establish a one-way toll collection system for any of its facilities or a toll discount structure for certain classes of patrons using any of its facilities.

SECTION 2. This act shall become effective November 1, 2012.

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