

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2358

AN ACT

AMENDING TITLE 28, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-412; AMENDING SECTIONS 28-446, 28-449, 28-455, 28-7705 AND 28-7706, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 22, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; AMENDING SECTION 41-1005, ARIZONA REVISED STATUTES; RELATING TO PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 28, chapter 2, article 4, Arizona Revised Statutes,
3 is amended by adding section 28-412, to read:

4 28-412. Agreements with other jurisdictions; exchange of
5 records and reciprocal action for toll enforcement

6 THE DIRECTOR MAY ENTER INTO AGREEMENTS WITH OTHER JURISDICTIONS ON
7 BEHALF OF THIS STATE RELATING TO THE FOLLOWING:

8 1. THE EXCHANGE OF RECORD INFORMATION FOR TOLL FACILITY ENFORCEMENT
9 PURPOSES.

10 2. IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES OF THIS STATE AND
11 THE OTHER JURISDICTION, REFUSING, SUSPENDING OR REVOKING A VEHICLE
12 REGISTRATION OR SUSPENDING OR REVOKING A DRIVER LICENSE IF A TOLL OPERATOR IN
13 EITHER JURISDICTION REPORTS TO THE OTHER JURISDICTION RECEIPT OF A FINAL
14 DECISION, ORDER OR JUDGMENT AGAINST THE REGISTRANT OR LICENSEE OF LIABILITY
15 TO THE TOLL OPERATOR FOR UNPAID TOLLS AND RELATED PENALTIES AND AMOUNTS UNTIL
16 EVIDENCE OF SATISFACTION OF THE LIABILITY IS RECEIVED.

17 Sec. 2. Section 28-446, Arizona Revised Statutes, is amended to read:

18 28-446. Fees for copies; exemptions

19 A. The department may furnish information from the records that are
20 required to be kept by this title or may furnish copies from the records.
21 The department may charge a fee for providing the information or copies that
22 does not exceed three dollars for each item.

23 B. The department shall not charge any of the following for copies of
24 records, for certified copies of records or for information furnished from
25 its records:

- 26 1. This state or its departments, agencies or political subdivisions.
- 27 2. A court.
- 28 3. The federal government or its agencies.
- 29 4. A law enforcement agency in a foreign country.
- 30 5. A TOLL OPERATOR AS DEFINED IN SECTION 28-7751.

31 C. The department shall furnish either of the following to any person
32 on payment of a fee of five dollars:

- 33 1. Certified copies of public records designated pursuant to section
34 28-447.
- 35 2. Vehicle title history information.

36 D. This section does not apply to information required by law to be
37 kept confidential or to statistical information, the purpose of which relates
38 to traffic accidents, traffic offenses or traffic enforcement.

39 E. The director shall deposit, pursuant to sections 35-146 and 35-147,
40 fees collected under this section in the Arizona highway user revenue fund.

41 Sec. 3. Section 28-449, Arizona Revised Statutes, is amended to read:

42 28-449. Information requests for public records

43 A. The director may designate as custodian of the department's public
44 records as many employees of the department as the director deems necessary.

1 B. A person who requests a copy of or information from a public record
2 designated pursuant to section 28-447 shall present personal identification
3 and state the reason for making the request. The department shall verify the
4 name and address of the person making the request by requiring the person to
5 produce information the department determines is necessary to ensure that the
6 name and address of the person are the person's true name and address.

7 C. The department may supply the requested information by mail OR
8 ELECTRONICALLY.

9 D. The department shall maintain a file of requests for information
10 for six months. The department shall maintain the file by the name of the
11 person whose record was requested.

12 Sec. 4. Section 28-455, Arizona Revised Statutes, is amended to read:
13 28-455. Release of personal information; fees

14 A. In accordance with section 28-458 and the driver's privacy
15 protection act of 1994 (18 United States Code sections 2721 through 2725) and
16 notwithstanding section 28-447, the department shall not knowingly disclose
17 or otherwise make available to any person:

18 1. Personal information obtained by the department in connection with
19 a motor vehicle record except as otherwise provided in this section.

20 2. Highly restricted personal information obtained by the department
21 in connection with a motor vehicle record without the express consent of the
22 person to whom the information applies except for uses allowed in subsection
23 C, paragraphs 1, 4, 6 and 9 of this section. This paragraph does not affect
24 the use of organ donation information on an individual's driver license or
25 affect the administration of organ donation in this state.

26 B. The department shall disclose personal information for use in
27 connection with the following matters:

28 1. Motor vehicle or driver safety and theft.

29 2. Motor vehicle emissions.

30 3. Motor vehicle product alterations, recalls or advisories.

31 4. Performance monitoring of motor vehicles and dealers by motor
32 vehicle manufacturers.

33 5. Removal of nonowner records from the original owner records of
34 motor vehicle manufacturers to carry out the purposes of titles I and IV of
35 the anti car theft act of 1992 (18 United States Code sections 2311 through
36 2322), the automobile information disclosure act (15 United States Code
37 sections 1231, 1232 and 1233), the clean air act of 1963 (42 United States
38 Code sections 7401 through ~~7671~~ 7671q) and 49 United States Code chapters
39 301, 305 and 321 through 331.

40 C. Subject to subsection A of this section, the department may
41 disclose personal information as follows:

42 1. For use by any government agency, including any court or law
43 enforcement agency, in carrying out its functions or any private person or
44 entity acting on behalf of a government agency in carrying out its functions.

- 1 2. For use in connection with matters of:
2 (a) Performance monitoring of motor vehicles, motor vehicle parts and
3 dealers.
4 (b) Motor vehicle market research activities, including survey
5 research.
6 (c) Removal of nonowner records from the original owner records of
7 motor vehicle manufacturers.
- 8 3. For use in the normal course of business by a legitimate business
9 or its agents, employees or contractors, but only:
10 (a) To verify the accuracy of personal information submitted by the
11 individual to the business or its agents, employees or contractors.
12 (b) If the information submitted is not correct or is no longer
13 correct, to obtain the correct information for the purpose of preventing
14 fraud by, pursuing legal remedies against or recovering on a debt or security
15 interest against the individual.
- 16 4. For use by an attorney licensed to practice law or by a licensed
17 private investigator in connection with any civil, criminal, administrative
18 or arbitration proceeding in any court or government agency or before any
19 self-regulatory body, including the service of process, investigation in
20 anticipation of litigation and the execution or enforcement of judgments and
21 orders, or pursuant to a court order.
- 22 5. For use in research activities and for use in producing statistical
23 reports if the personal information is not published, redisclosed or used to
24 contact individuals.
- 25 6. For use by any insurer that writes automobile liability or motor
26 vehicle liability policies and that is under the jurisdiction of the
27 department of insurance or insurance support organization or by a
28 self-insured entity or its agents, employees or contractors in connection
29 with claims investigation activities, antifraud activities, rating or
30 underwriting.
- 31 7. For use in providing notice to the owners of towed or impounded
32 vehicles.
- 33 8. For use by any licensed private investigative agency or licensed
34 security service for any purpose allowed under this section.
- 35 9. For use by an employer or its agent or insurer to obtain or verify
36 information relating to a holder of a commercial driver license that is
37 required under ~~the commercial motor vehicle safety act of 1986~~ (49 United
38 States Code sections 31301 through 31317).
- 39 10. For use **BY A TOLL OPERATOR AS DEFINED IN SECTION 28-7751** in
40 connection with the operation of ~~private toll transportation facilities~~ **A**
41 **TOLL FACILITY OR THE ENFORCEMENT OF TOLLS, ADMINISTRATIVE CHARGES AND**
42 **PENALTIES AS DEFINED IN SECTION 28-7751.**
- 43 11. For any other use in response to requests for individual motor
44 vehicle records if the state has obtained the express consent of the person
45 to whom the personal information pertains.

1 12. For bulk distribution for surveys, marketing or solicitations if
2 the department has obtained the express consent of the person to whom the
3 personal information pertains.

4 13. For use by any requester if the requester demonstrates it has
5 obtained the written consent of the individual to whom the information
6 pertains.

7 14. For any other use that is specifically authorized by law and that
8 is related to the operation of a motor vehicle or public safety, including
9 the following:

10 (a) Use by a financial institution or enterprise under the
11 jurisdiction of the department of financial institutions or a federal
12 monetary authority.

13 (b) Use by a motor vehicle dealer who is licensed and bonded by the
14 department or a state organization of licensed and bonded motor vehicle
15 dealers.

16 (c) Use by a person who is involved in an accident or the owner of a
17 vehicle involved in an accident if the person who requests the information
18 submits proof to the department of involvement in the accident.

19 (d) Use by a person applying for a bonded title if all of the
20 following conditions exist:

21 (i) The requester verifies to the satisfaction of the director that
22 the vehicle on which the requester is requesting the record is in the
23 requester's possession.

24 (ii) The record is requested in order for the requester to notify the
25 registered owner of the requester's intent to apply to the department for a
26 bonded title.

27 (iii) The requester provides a verification of a vehicle inspection
28 that was performed by an authorized department employee or agent.

29 (e) Use by an operator of a self-service storage facility who alleges
30 both of the following:

31 (i) That the vehicle on which the operator is requesting the record is
32 in the operator's possession.

33 (ii) That the record is requested to allow the operator to notify the
34 registered owner and any lienholders of record of the operator's intent to
35 foreclose its lien and to sell the vehicle.

36 (f) For any other use as determined by the director and established by
37 rule.

38 D. The department may establish and carry out procedures under which
39 the department, on receiving a request for personal information that does not
40 fall within one of the exceptions prescribed in subsection B or C of this
41 section, may mail a copy of the request to the individual about whom the
42 information was requested. The mailing shall inform the individual of the
43 request and contain a statement that the information will not be released
44 unless the individual waives the individual's right to privacy under this
45 section.

1 E. In addition to the permissible uses prescribed in subsection C of
2 this section, the department may disclose its motor vehicle records
3 information, including personal information, as a bulk record only under any
4 of the following conditions:

5 1. If the director determines either of the following:

6 (a) The sale or release of the record is necessary for the public
7 health or safety.

8 (b) The use is for general research or general statistical purposes
9 that do not provide specific factors from a record.

10 2. For surveys, marketing or solicitations if the department has
11 obtained the express consent of the person to whom the personal information
12 pertains.

13 3. For the release of motor vehicle title and motor vehicle
14 registration information, vehicle identification numbers, title brands,
15 odometer readings and brands and title lien information to a requester if the
16 requester is in the business of preparing vehicle history reports and the
17 information is used to develop a vehicle history report.

18 F. The director shall provide in a clear and conspicuous manner on
19 forms for the issuance or renewal of driver licenses, nonoperating
20 identification licenses and title and registration, ~~the opportunity for~~
21 express consent so that each person who is the subject of a record of the
22 department may opt in, for any purpose as prescribed by the director.
23 Express consent shall be conveyed in a form prescribed by the director and
24 shall include at least the following:

25 1. Clear and conspicuous notice informing the person who is giving
26 express consent that by giving express consent, ~~the person is allowing the~~
27 department to disclose information contained in the person's motor vehicle
28 record to any person requesting information for any purpose.

29 2. A written signature or an electronic signature.

30 3. An explanation of the difference between a one-time authorization
31 and general consent or opt in.

32 G. Subject to the requirements of subsection F of this section,
33 express consent may be conveyed as either of the following:

34 1. A one-time authorization submitted by a requester on a consent to
35 release form or by other written format as prescribed by the director.

36 2. General consent or opt in on certain department forms.

37 H. Driver histories shall not be disclosed under subsection E of this
38 section.

39 I. Except as provided in subsection J of this section and section
40 28-446, subsection B, records provided pursuant to subsections B and C of
41 this section are subject to the fees prescribed in section 28-446,
42 subsections A and C.

43 J. For records searched and provided for the purposes described in
44 subsection E of this section, the director:

- 1 1. Shall charge a search fee that is a minimum of six hundred dollars
2 per million records searched.
- 3 2. Shall charge a records fee that is a minimum of thirty dollars per
4 thousand records provided.
- 5 3. May prorate the charge for fractional quantities that are searched
6 or provided.
- 7 4. May charge only the search fee if the request is in accordance with
8 subsection E, paragraph 2 of this section.
- 9 K. Records requests that require a database search for specific
10 criteria within a record are subject to a search fee. In addition to this
11 search fee, each motor vehicle record provided to a records requester as a
12 result of a criteria search incurs record fees in accordance with subsection
13 I of this section.
- 14 Sec. 5. Section 28-7705, Arizona Revised Statutes, is amended to read:
15 28-7705. Public-private partnership agreements
- 16 A. In any public-private partnership or other agreement for any
17 eligible facility under this chapter, the department may include provisions
18 that:
- 19 1. Authorize the department or the private partner to **ESTABLISH AND**
20 collect user ~~fees~~ **CHARGES**, tolls, fares, rents, advertising and sponsorship
21 ~~fees~~ **CHARGES**, service ~~fees~~ **CHARGES** or similar charges, including provisions
22 that:
- 23 (a) Specify technology to be used in the facility.
- 24 (b) Establish circumstances under which the department may receive all
25 or a share of revenues from such charges.
- 26 (c) Govern enforcement of tolls, including provisions for use of
27 cameras or other mechanisms to ensure that users have paid tolls that are due
28 and provisions that allow the private partner access to relevant databases
29 for enforcement purposes. Misuse of the data contained in the databases,
30 including negligence in securing the data properly, shall result in a civil
31 penalty of ten thousand dollars for each violation. Civil penalties
32 collected pursuant to this subdivision shall be deposited in the state
33 general fund.
- 34 (d) Authorize the department to continue or cease collection of user
35 ~~fees~~ **CHARGES**, tolls, fares or similar charges after the end of the term of
36 the agreement.
- 37 2. Allow for payments to be made by this state to the private partner,
38 including availability payments or performance based payments.
- 39 3. Allow the department to accept payments of monies and share
40 revenues with the private partner.
- 41 4. Address how the partners will share management of the risks of the
42 project.
- 43 5. Specify how the partners will share the costs of development of the
44 project.
- 45 6. Allocate financial responsibility for cost overruns.

- 1 7. Establish the damages to be assessed for nonperformance.
2 8. Establish performance criteria or incentives, or both.
3 9. Address the acquisition of rights-of-way and other property
4 interests that may be required, including provisions that address the
5 exercise of eminent domain as provided in section 28-7709. This state shall
6 not relinquish its power of eminent domain authority to the private partner.
7 10. Establish record keeping, accounting and auditing standards to be
8 used for the project.
9 11. For a project that reverts to public ownership, address
10 responsibility for reconstruction or renovations that are required in order
11 for a facility to meet all applicable government standards on reversion of
12 the facility to this state.
13 12. Provide for patrolling and law enforcement on public facilities.
14 13. Identify any department specifications that must be satisfied,
15 including provisions allowing the private partner to request and receive
16 authorization to deviate from the specifications on making a showing
17 satisfactory to the department.
18 14. Require a private partner to provide performance and payment bonds,
19 parent company guarantees, letters of credit or other acceptable forms of
20 security or a combination of any of these, the penal sum or amount of which
21 may be less than one hundred per cent of the value of the contract involved
22 based on the department's determination, made on a facility-by-facility
23 basis, of what is required to adequately protect this state.
24 15. Authorize the private partner in any concession agreement to
25 ESTABLISH AND collect user ~~fees~~ CHARGES, tolls, fares, rents, advertising and
26 sponsorship ~~fees~~ CHARGES, service ~~fees~~ CHARGES or similar charges to cover
27 its costs and provide for a reasonable rate of return on the private
28 partner's investment, including provisions such as the following:
29 (a) The charges may be collected directly by the private partner or by
30 a third party engaged for that purpose.
31 (b) A formula for the adjustment of user ~~fees~~ CHARGES, tolls, fares,
32 rents, advertising and sponsorship ~~fees~~ CHARGES, service ~~fees~~ CHARGES or
33 similar charges during the term of the agreement.
34 (c) For an agreement that does not include a formula described in
35 subdivision (b) of this paragraph, provisions regulating the private
36 partner's return on investment.
37 (d) A variety of traffic management strategies, including:
38 (i) General purpose toll lanes.
39 (ii) High occupancy vehicle lanes where single or low occupancy
40 vehicles may use higher occupancy vehicle lanes by paying a toll.
41 (iii) Lanes or facilities in which the tolls may vary during the
42 course of the day or week or according to levels of congestion anticipated or
43 experienced.

1 (iv) Combinations of, or variations on, items (i), (ii) and (iii), or
2 other strategies the department determines are appropriate on a
3 facility-by-facility basis.

4 16. Specify remedies available and dispute resolution procedures,
5 including the right of the private partner to institute legal proceedings to
6 obtain an enforceable judgment or award against the department in the event
7 of a default by the department and procedures for use of dispute review
8 boards, mediation, facilitated negotiation, arbitration and other alternative
9 dispute resolution procedures.

10 17. Allow the department to acquire real property that is needed for
11 and related to eligible facilities, including acquisition by exchange for
12 other real property that is owned by the department. An acquisition pursuant
13 to this paragraph is exempt from chapter 20, articles 6 and 8 of this title.

14 B. Notwithstanding any other law, the department may enter into
15 agreements, whether a concession agreement or other form of agreement, with
16 any private partner that includes provisions described in subsection A of
17 this section. Agreements may be for a term not to exceed fifty years but may
18 be extended for additional terms.

19 C. The department may approve any request from another unit of
20 government to develop an eligible facility in a manner similar to that used
21 by the department under this chapter.

22 D. Notwithstanding any other law, agreements under this chapter that
23 are properly developed, operated or held by a private partner under a
24 concession agreement pursuant to this chapter are exempt from all state and
25 local ad valorem and property taxes that otherwise might be applicable.

26 ~~E. A person who pays a toll to operate a motor vehicle on a roadway
27 project that is constructed or operated pursuant to this article is entitled
28 to and may apply for a refund or credit from the state for motor vehicle fuel
29 license taxes, use fuel taxes or motor carrier fees paid while operating the
30 motor vehicle on the roadway project. The director shall establish by rule
31 the procedures for granting refunds and credits.~~

32 ~~F.~~ E. The agreement shall contain a provision by which the private
33 partner expressly agrees that it is to be barred from seeking injunctive or
34 other equitable relief to delay, prevent or otherwise hinder the department
35 from developing or constructing any facility that was planned as of the time
36 the public-private partnership agreement was executed and that would or might
37 impact the revenue that the private partner would or might derive from the
38 facility developed under the agreement, except that the agreement may provide
39 for reasonable compensation to the private partner for the adverse effect on
40 toll revenues or other user fee revenues resulting from development and
41 construction of an unplanned revenue impacting facility.

42 ~~G.~~ F. The agreement shall contain a provision that prohibits photo
43 traffic enforcement of chapter 3, article 6 of this title on toll lanes.

44 ~~H.~~ G. Any foreign private entity that enters into an agreement with
45 the department pursuant to this section must provide satisfactory evidence to

1 the board that the foreign entity is in compliance with the requirements of
2 title 10, chapter 38.

3 ~~I~~ H. The agreement shall contain a provision that all public-private
4 partnerships are subject to chapter 20, article 3 of this title.

5 Sec. 6. Section 28-7706, Arizona Revised Statutes, is amended to read:
6 28-7706. Funding and financing

7 A. Any lawful source of funding may be used for the development or
8 operation of an eligible facility under this chapter, including:

9 1. The proceeds of grant anticipation revenue bonds authorized by 23
10 United States Code section 122 or any other applicable federal or state law.

11 2. Grants, loans, loan guarantees, lines of credit, revolving lines of
12 credit or other arrangements available under the transportation
13 infrastructure finance and innovation act of 1998 (P.L. 105-178; 112 Stat.
14 241; 23 United States Code sections 601 through 610) or any other federal or
15 state law.

16 3. Federal, state or local revenues.

17 4. User ~~fees~~ CHARGES, tolls, fares, charges, lease proceeds, rents,
18 availability payments, gross or net receipts from sales, proceeds from the
19 sale of development rights, franchise ~~fees~~ CHARGES, permit ~~fees~~ CHARGES,
20 rents, advertising and sponsorship ~~fees~~ CHARGES, service ~~fees~~ CHARGES or any
21 other lawful form of consideration.

22 5. Private activity bonds as described by 26 United States Code
23 section 141 and other forms of private capital.

24 6. Other forms of public and private capital that are available.

25 B. As security for the payment of financing described in this section,
26 the revenues from the project may be pledged, but no pledge of revenues
27 constitutes in any manner or to any extent a general obligation of this
28 state. Any financing may be structured on a senior, parity or subordinate
29 basis to any other financing.

30 C. The department may issue toll revenue bonds or notes to provide
31 monies for any project under this chapter.

32 D. The department may accept from the United States or any of its
33 agencies monies that are available to this state or to any other unit of
34 government for carrying out the purposes of this chapter, whether the monies
35 are made available by grant, loan or other financing arrangement. The
36 department may enter into agreements and other arrangements with the United
37 States or any of its agencies as may be necessary, proper and convenient for
38 carrying out this chapter.

39 E. The department may accept from any source any grant, donation, gift
40 or other form of conveyance of land, money, other real or personal property
41 or other valuable thing made to this state, the department or a local
42 government for carrying out this chapter.

43 F. Any eligible facility may be funded in whole or in part by
44 contribution of any monies or property made by any private entity or public

1 sector partner that is a party to any agreement entered into under this
2 chapter.

3 G. Notwithstanding any other law, federal, state and local monies may
4 be combined with any private sector monies for any project purposes.

5 H. Revenue bonds issued pursuant to this section are not general
6 obligations of this state and are not secured by or payable from any monies
7 or assets of this state other than the monies and revenues specifically
8 pledged to the repayment of the revenue bonds.

9 Sec. 7. Title 28, chapter 22, Arizona Revised Statutes, is amended by
10 adding article 2, to read:

11 ARTICLE 2. TOLL COLLECTION AND ENFORCEMENT

12 28-7751. Definitions

13 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

14 1. "ADMINISTRATIVE CHARGE" MEANS THE AMOUNT THAT MAY BE ASSESSED FOR
15 THE COSTS OF PROCESSING A NOTICE OF PAYMENT DUE OR NOTICE OF TOLL EVASION,
16 INCLUDING THE COSTS TO COLLECT UNPAID TOLLS AND TO PURSUE AN ADMINISTRATIVE
17 HEARING TO ENFORCE A TOLL EVASION.

18 2. "DELIVER" MEANS TO SEND, TRANSMIT OR TRANSFER INFORMATION OR
19 DOCUMENTS, INCLUDING BY UNITED STATES MAIL, ELECTRONIC MAIL, HAND DELIVERY OR
20 FAX.

21 3. "ELECTRONIC TRANSACTION AND PAYMENT TECHNOLOGY" MEANS A SYSTEM FOR
22 RECORDING AND PAYING A TOLL ELECTRONICALLY, INCLUDING USING A TRANSPONDER, A
23 READER SYSTEM, AUTOMATIC VEHICLE LICENSE PLATE RECOGNITION TECHNOLOGY, A
24 GLOBAL POSITIONING SYSTEM OR ANY OTHER ELECTRONIC MEANS.

25 4. "LESSEE":

26 (a) MEANS ANY PERSON WHO RENTS, LEASES OR CONTRACTS FOR THE USE OF ONE
27 OR MORE MOTOR VEHICLES AND WHO HAS EXCLUSIVE USE OF THE MOTOR VEHICLE FOR ANY
28 PERIOD OF TIME.

29 (b) INCLUDES THE VENDEE OR LESSEE UNDER A WRITTEN AGREEMENT FOR THE
30 CONDITIONAL SALE OR LEASE OF A MOTOR VEHICLE WITH THE RIGHT TO PURCHASE IN
31 FAVOR OF THE VENDEE OR LESSEE ON PERFORMANCE OF THE CONDITIONS STATED IN THE
32 AGREEMENT.

33 5. "LESSOR":

34 (a) MEANS ANY PERSON WHO IS ENGAGED IN THE BUSINESS OF RENTING OR
35 LEASING MOTOR VEHICLES TO ANY LESSEE UNDER A WRITTEN RENTAL AGREEMENT, LEASE
36 OR OTHER AGREEMENT THAT PROVIDES THAT THE LESSEE HAS EXCLUSIVE USE OF THE
37 MOTOR VEHICLE FOR ANY PERIOD OF TIME.

38 (b) INCLUDES BOTH OF THE FOLLOWING:

39 (i) THE VENDOR OR LESSOR UNDER A WRITTEN AGREEMENT FOR CONDITIONAL
40 SALE OR LEASE OF A MOTOR VEHICLE WITH THE RIGHT TO PURCHASE IN FAVOR OF THE
41 VENDEE OR LESSEE ON PERFORMANCE OF THE CONDITIONS STATED IN THE AGREEMENT.

42 (ii) A COMMERCIAL LEASING OR RENTAL ENTITY.

43 6. "NOTICE OF PAYMENT DUE" MEANS THE WRITTEN NOTICE TO PAY THE
44 REQUIRED TOLLS AND ADMINISTRATIVE CHARGES FOR VEHICULAR USE OF A TOLL
45 FACILITY.

- 1 7. "NOTICE OF TOLL EVASION" MEANS THE SECOND WRITTEN NOTICE OF FAILURE
2 TO PAY A REQUIRED PAYMENT AS DESCRIBED IN SECTION 28-7759 THAT IS DELIVERED
3 AFTER NOTICE OF PAYMENT DUE IS DELIVERED.
- 4 8. "PENALTIES" MEANS PENALTIES IMPOSED PURSUANT TO SECTION 28-7753.
- 5 9. "PUBLIC-PRIVATE AGREEMENT" MEANS AN AGREEMENT ENTERED INTO PURSUANT
6 TO ARTICLE 1 OF THIS CHAPTER.
- 7 10. "REPEAT TOLL EVADER" MEANS A REGISTERED OWNER OR ANY OTHER PERSON
8 TO WHOM, IN A THREE-MONTH PERIOD, MORE THAN FOUR NOTICES OF TOLL EVASION FOR
9 TOLL NONPAYMENTS OCCURRING ON MORE THAN FOUR SEPARATE DATES HAVE BEEN ISSUED
10 PURSUANT TO SECTION 28-7759.
- 11 11. "TOLL" MEANS THE PRICE, FARE, CHARGE OR COST ESTABLISHED FOR THE
12 USE OF A TOLL FACILITY.
- 13 12. "TOLL EVASION" MEANS THE FAILURE TO PAY IN FULL A NOTICE OF PAYMENT
14 DUE WITHIN THE REQUIRED TIME.
- 15 13. "TOLL FACILITY" MEANS ANY HIGHWAY, ROADWAY, LANE, BRIDGE, TUNNEL OR
16 OTHER FACILITY FOR SURFACE TRANSPORT OF PEOPLE OR GOODS THAT IS SUBJECT TO
17 PAYMENT OF A TOLL FOR ITS USE, EXCEPT FOR RAIL OR OTHER FIXED GUIDEWAY
18 TRANSIT.
- 19 14. "TOLL NONPAYMENT" MEANS THE FAILURE TO PAY IN FULL AN APPLICABLE
20 TOLL FOR THE USE OF A TOLL FACILITY.
- 21 15. "TOLL OPERATOR" MEANS THE DEPARTMENT IN ITS CAPACITY OF IMPOSING
22 AND COLLECTING TOLLS FOR THE USE OF A TOLL FACILITY, ANY PUBLIC OR
23 QUASI-PUBLIC AGENCY APPOINTED BY THE DEPARTMENT TO IMPOSE OR COLLECT TOLLS
24 FOR THE USE OF A TOLL FACILITY THAT IS OWNED BY THE DEPARTMENT, ANY PRIVATE
25 PARTNER AUTHORIZED TO IMPOSE AND COLLECT TOLLS BY A PUBLIC-PRIVATE AGREEMENT
26 OR ANY CONTRACTOR OR VENDOR RETAINED BY THE DEPARTMENT, PUBLIC AGENCY OR
27 PRIVATE PARTNER TO CARRY OUT TOLL COLLECTION AND ENFORCEMENT AND RELATED
28 CUSTOMER SERVICE FUNCTIONS.
- 29 16. "VIDEO TOLL TRANSACTION" MEANS A TOLL OPERATOR'S USE OF ON-FACILITY
30 AUTOMATIC VEHICLE LICENSE PLATE RECOGNITION TECHNOLOGY TO RECORD TOLL
31 TRANSACTIONS AND PROCESS NOTICES OF PAYMENT DUE IN ACCORDANCE WITH POLICIES
32 ADOPTED BY THE TOLL OPERATOR.
- 33 28-7752. Toll evasion
34 TOLL EVASION IS A CIVIL VIOLATION.
- 35 28-7753. Tolls, administrative charges and penalties
- 36 A. A TOLL OPERATOR MAY COLLECT TOLLS, ADMINISTRATIVE CHARGES AND
37 PENALTIES.
- 38 B. SUBJECT TO SUBSECTION C OF THIS SECTION, IF A TOLL OPERATOR ISSUES
39 A NOTICE OF TOLL EVASION BECAUSE THE NOTICE OF PAYMENT DUE IS NOT PAID ON
40 TIME, THE TOLL OPERATOR MAY IMPOSE IN THE NOTICE OF TOLL EVASION AN
41 ADDITIONAL ADMINISTRATIVE CHARGE AND A PENALTY.
- 42 C. THE DEPARTMENT MAY DIRECT, CONTROL, REGULATE OR LIMIT THE AMOUNT
43 AND METHOD OF IMPOSING ADMINISTRATIVE CHARGES AND PENALTIES BY ANY PUBLIC
44 AGENCY OR PRIVATE PARTNER AUTHORIZED TO IMPOSE AND COLLECT TOLLS UNDER A

1 PUBLIC-PRIVATE AGREEMENT OR BY THE PUBLIC AGENCY'S OR PRIVATE PARTNER'S
2 CONTRACTOR OR VENDOR.

3 D. EACH TOLL OPERATOR SHALL USE ALTERNATIVE TECHNOLOGIES, INCLUDING AN
4 ELECTRONICALLY ACCESSIBLE FORMAT AND THE WORLDWIDE WEB, TO NOTIFY THE PUBLIC
5 OF ANY TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES THAT ARE ESTABLISHED.

6 E. A TOLL OPERATOR SHALL OFFER FREE PASSAGE ON A TOLL FACILITY TO THE
7 FOLLOWING:

- 8 1. ANY AUTHORIZED EMERGENCY VEHICLE RESPONDING TO AN EMERGENCY.
9 2. ANY MOTOR VEHICLE IF ORDERED BY THE DIRECTOR PURSUANT TO SECTION
10 28-364.

11 28-7754. Electronic toll payment devices; video toll
12 transactions

13 A. A TRANSPONDER USED BY A TOLL OPERATOR SHALL BE USABLE IN STATES
14 THAT ARE ADJACENT TO THIS STATE AND THAT USE TRANSPONDERS FOR TOLL
15 FACILITIES.

16 B. IF A TRANSPONDER OR OTHER ELECTRONIC TOLL PAYMENT DEVICE IS USED TO
17 PAY TOLLS OR OTHER CHARGES DUE, THE DEVICE SHALL BE LOCATED IN OR ON THE
18 MOTOR VEHICLE IN A MANNER PRESCRIBED BY THE TOLL OPERATOR AND CONSISTENT WITH
19 APPLICABLE LAW.

20 C. A TOLL OPERATOR IS NOT REQUIRED TO OFFER VIDEO TOLL TRANSACTIONS AS
21 A METHOD FOR PAYING TOLLS.

22 28-7755. Responsibility for tolls and other charges

23 A. THE OPERATOR OF A MOTOR VEHICLE ON A TOLL FACILITY IS LIABLE FOR
24 PAYING THE APPLICABLE TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES IMPOSED
25 PURSUANT TO THIS ARTICLE.

26 B. EXCEPT AS PROVIDED IN SECTIONS 28-7756 AND 28-7757, THE REGISTERED
27 OWNER OF THE MOTOR VEHICLE, EVEN IF THE REGISTERED OWNER OF THE MOTOR VEHICLE
28 IS NOT THE OPERATOR OF THE MOTOR VEHICLE, IS JOINTLY AND SEVERALLY LIABLE
29 WITH THE OPERATOR OF THE MOTOR VEHICLE FOR THE TOLLS, ADMINISTRATIVE CHARGES
30 AND PENALTIES IMPOSED PURSUANT TO THIS ARTICLE IF THE MOTOR VEHICLE WAS USED
31 OR OPERATED WITH THE EXPRESS OR IMPLIED PERMISSION OF THE REGISTERED OWNER AT
32 THE TIME THE TOLL TRANSACTION OCCURRED.

33 C. THE TRANSFEREE OF TITLE TO A MOTOR VEHICLE AS DESCRIBED IN SECTION
34 28-7756 IS JOINTLY AND SEVERALLY LIABLE WITH THE OPERATOR OF THE MOTOR
35 VEHICLE FOR THE TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES IMPOSED PURSUANT
36 TO THIS ARTICLE IF THE MOTOR VEHICLE WAS USED OR OPERATED WITH THE EXPRESS OR
37 IMPLIED PERMISSION OF THE TRANSFEREE AT THE TIME THE TOLL TRANSACTION
38 OCCURRED.

39 D. EXCEPT AS PROVIDED IN SECTION 28-7756, THE LESSEE OF A MOTOR
40 VEHICLE, EVEN IF THE LESSEE IS NOT THE OPERATOR OF THE MOTOR VEHICLE, IS
41 JOINTLY AND SEVERALLY LIABLE WITH THE OPERATOR OF THE MOTOR VEHICLE FOR THE
42 TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES IMPOSED PURSUANT TO THIS ARTICLE
43 IF THE MOTOR VEHICLE WAS USED OR OPERATED WITH THE EXPRESS OR IMPLIED
44 PERMISSION OF THE LESSEE AT THE TIME THE TOLL TRANSACTION OCCURRED.

1 E. THIS SECTION DOES NOT PRECLUDE A PERSON WHO PAYS A TOLL,
2 ADMINISTRATIVE CHARGE OR PENALTY FROM PURSUING A CIVIL CLAIM TO RECOVER THE
3 AMOUNT OF THE TOLL, ADMINISTRATIVE CHARGE OR PENALTY, ATTORNEY FEES AND COURT
4 COSTS FROM THE OPERATOR OF THE MOTOR VEHICLE AT THE TIME OF THE TOLL
5 TRANSACTION.

6 28-7756. Defenses of registered owners and lessees

7 A. THE REGISTERED OWNER OR LESSEE OF A MOTOR VEHICLE IS NOT LIABLE FOR
8 TOLL NONPAYMENT, TOLL EVASION OR RELATED TOLLS, ADMINISTRATIVE CHARGES AND
9 PENALTIES IF EITHER:

10 1. ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

11 (a) THE MOTOR VEHICLE INVOLVED IN THE TOLL NONPAYMENT WAS STOLEN
12 BEFORE THE TOLL TRANSACTION OCCURRED AND HAD NOT BEEN RECOVERED BEFORE THE
13 TOLL TRANSACTION OCCURRED.

14 (b) THE THEFT WAS REPORTED TO THE APPROPRIATE LAW ENFORCEMENT
15 AUTHORITY.

16 (c) BEFORE THE DUE DATE IN THE NOTICE OF PAYMENT DUE, THE REGISTERED
17 OWNER OR LESSEE DELIVERS TO THE TOLL OPERATOR A CERTIFIED COPY OF THE POLICE
18 REPORT SHOWING THAT THE MOTOR VEHICLE HAD BEEN REPORTED TO THE APPROPRIATE
19 LAW ENFORCEMENT AUTHORITY AS STOLEN AND REMAINED STOLEN AT THE TIME THE TOLL
20 TRANSACTION OCCURRED.

21 2. ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

22 (a) THE REGISTERED OWNER'S OR LESSEE'S LICENSE PLATE WAS STOLEN AND
23 APPEARED ON THE MOTOR VEHICLE INVOLVED IN THE TOLL NONPAYMENT.

24 (b) THE THEFT WAS REPORTED TO THE APPROPRIATE LAW ENFORCEMENT
25 AUTHORITY.

26 (c) BEFORE THE DUE DATE IN THE NOTICE OF PAYMENT DUE, THE REGISTERED
27 OWNER OR LESSEE DELIVERS TO THE TOLL OPERATOR A CERTIFIED COPY OF THE POLICE
28 REPORT SHOWING THAT THE LICENSE PLATE HAD BEEN REPORTED TO THE APPROPRIATE
29 LAW ENFORCEMENT AUTHORITY AS STOLEN AND REMAINED STOLEN AT THE TIME THE TOLL
30 TRANSACTION OCCURRED.

31 B. THE REGISTERED OWNER OF A MOTOR VEHICLE IS NOT LIABLE FOR TOLL
32 NONPAYMENT, TOLL EVASION OR RELATED TOLLS, ADMINISTRATIVE CHARGES AND
33 PENALTIES IF ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

34 1. THE REGISTERED OWNER OF THE MOTOR VEHICLE INVOLVED IN THE TOLL
35 NONPAYMENT TRANSFERRED OWNERSHIP OF THE MOTOR VEHICLE TO ANOTHER PERSON
36 BEFORE THE TOLL TRANSACTION OCCURRED.

37 2. THE REGISTERED OWNER WAS NOT THE OPERATOR OF THE MOTOR VEHICLE WHEN
38 THE TOLL TRANSACTION OCCURRED.

39 3. BEFORE THE DUE DATE IN THE NOTICE OF PAYMENT DUE, THE REGISTERED
40 OWNER DELIVERS TO THE TOLL OPERATOR A LEGIBLE COPY OF THE ASSIGNMENT OF TITLE
41 OR INTEREST AND WARRANTY THAT IS IN THE FORM PRESCRIBED BY THE DEPARTMENT
42 PURSUANT TO SECTION 28-2055, THAT IS SIGNED BY THE REGISTERED OWNER, THAT
43 IDENTIFIES THE MOTOR VEHICLE AND THE NAME AND ADDRESS OF THE TRANSFEREE AND
44 THAT EVIDENCES THE DATE OF TRANSFER.

1 C. WITHIN FOURTEEN CALENDAR DAYS AFTER RECEIVING INFORMATION FROM THE
2 REGISTERED OWNER OR LESSEE REGARDING THE MOTOR VEHICLE OR LICENSE PLATES AS
3 PRESCRIBED IN THIS SECTION, THE TOLL OPERATOR SHALL NOTIFY THE REGISTERED
4 OWNER OR LESSEE IN WRITING OF THE SUFFICIENCY OF THE INFORMATION AND WHETHER
5 THE REGISTERED OWNER OR LESSEE IS RELEASED FROM LIABILITY.

6 28-7757. Defenses of lessors

7 A. THE LESSOR OF A MOTOR VEHICLE IS JOINTLY AND SEVERALLY LIABLE WITH
8 THE LESSEE FOR THE TOLL NONPAYMENT, TOLL EVASION AND RELATED TOLLS,
9 ADMINISTRATIVE CHARGES AND PENALTIES UNLESS BOTH OF THE FOLLOWING CONDITIONS
10 ARE SATISFIED:

11 1. THE MOTOR VEHICLE INVOLVED IN THE TOLL NONPAYMENT IS REGISTERED IN
12 THE NAME OF THE LESSEE OF THE MOTOR VEHICLE AT THE TIME TOLL NONPAYMENT
13 OCCURS.

14 2. WITHIN FOURTEEN CALENDAR DAYS AFTER THE ISSUE DATE ON THE NOTICE OF
15 TOLL NONPAYMENT, THE LESSOR DELIVERS TO THE TOLL OPERATOR AN AFFIDAVIT THAT
16 IS CERTIFIED AND SIGNED BY AN AUTHORIZED OFFICER OF THE LESSOR THAT STATES
17 THAT THE MOTOR VEHICLE WAS THE SUBJECT OF A WRITTEN RENTAL AGREEMENT, LEASE
18 OR OTHER CONTRACT DOCUMENT AT THE TIME OF THE TOLL NONPAYMENT AND THAT
19 CONTAINS THE NAME AND ADDRESS OF THE LESSEE.

20 B. WITHIN FOURTEEN CALENDAR DAYS AFTER RECEIVING INFORMATION FROM THE
21 LESSOR AS PRESCRIBED IN SUBSECTION A OF THIS SECTION, THE TOLL OPERATOR SHALL
22 NOTIFY THE LESSOR IN WRITING OF THE SUFFICIENCY OF THE INFORMATION AND
23 WHETHER THE LESSOR IS RELEASED FROM LIABILITY.

24 C. A COPY OF THE MOTOR VEHICLE RENTAL AGREEMENT, LEASE OR OTHER
25 CONTRACT DOCUMENT OR AFFIDAVIT IDENTIFYING THE LESSEE OF THE MOTOR VEHICLE AT
26 THE TIME OF THE TOLL TRANSACTION IS PRIMA FACIE EVIDENCE THAT THE PERSON
27 NAMED IN THE RENTAL AGREEMENT, LEASE, OTHER CONTRACT DOCUMENT OR AFFIDAVIT
28 WAS OPERATING THE MOTOR VEHICLE AT ALL RELEVANT TIMES RELATING TO THE TOLL
29 TRANSACTION.

30 D. A LESSOR SHALL COOPERATE WITH THE TOLL OPERATOR IN THE ENFORCEMENT
31 OF AN ORDER, DECISION OR JUDGMENT RENDERED AGAINST THE LESSEE BY PROVIDING
32 THE TOLL OPERATOR, ON THE TOLL OPERATOR'S REQUEST, ANY ADDITIONAL INFORMATION
33 CONCERNING THE LESSEE CONTAINED IN THE LESSOR'S RECORD.

34 28-7758. Notice of payment due

35 A. IF A MOTOR VEHICLE IS FOUND BY ELECTRONIC TRANSACTION AND PAYMENT
36 TECHNOLOGY, BY VISUAL OBSERVATION OR BY ANY OTHER METHOD TO BE INVOLVED IN A
37 TOLL NONPAYMENT, THE TOLL OPERATOR MAY DELIVER TO THE REGISTERED OWNER OF THE
38 MOTOR VEHICLE A NOTICE OF PAYMENT DUE.

39 B. A NOTICE OF PAYMENT DUE MUST BE DELIVERED WITHIN FORTY-FIVE
40 CALENDAR DAYS AFTER THE TOLL NONPAYMENT OCCURS, EXCEPT THAT, IF INFORMATION
41 CONCERNING THE IDENTITY AND ADDRESS IS NOT AVAILABLE TO THE TOLL OPERATOR
42 WITHIN FORTY-FIVE CALENDAR DAYS AFTER THE TOLL TRANSACTION OCCURRED, THE TOLL
43 OPERATOR HAS AN ADDITIONAL FORTY-FIVE CALENDAR DAYS TO OBTAIN THE INFORMATION
44 AND DELIVER THE NOTICE OF PAYMENT DUE.

1 C. IF A TOLL OPERATOR RECEIVES INFORMATION THAT IDENTIFIES A PERSON
2 WHO IS NOT THE REGISTERED OWNER OF THE MOTOR VEHICLE AND WHO MAY BE
3 RESPONSIBLE FOR PAYING A TOLL PURSUANT TO THIS ARTICLE, THE TOLL OPERATOR MAY
4 DELIVER TO THAT PERSON A NOTICE OF PAYMENT DUE WITHIN FORTY-FIVE CALENDAR
5 DAYS AFTER THE TOLL OPERATOR RECEIVES THE INFORMATION THAT IDENTIFIES THE
6 PERSON AND THE PERSON'S ADDRESS, EXCEPT THAT, IF INFORMATION CONCERNING THE
7 IDENTITY AND ADDRESS OF THE PERSON PROVES TO BE INACCURATE, THE TOLL OPERATOR
8 HAS AN ADDITIONAL FORTY-FIVE CALENDAR DAYS TO OBTAIN THE INFORMATION AND
9 DELIVER THE NOTICE OF PAYMENT DUE.

10 D. THE NOTICE OF PAYMENT DUE SHALL INCLUDE ALL OF THE FOLLOWING:

11 1. THE DATE AND APPROXIMATE TIME OF THE TRANSACTION ON OR USE OF THE
12 TOLL FACILITY RESULTING IN THE TOLL NONPAYMENT AND THE APPROXIMATE LOCATION
13 WHERE THE TRANSACTION OR USE OCCURRED.

14 2. THE VEHICLE LICENSE PLATE NUMBER.

15 3. IF KNOWN, THE MAKE OF THE MOTOR VEHICLE.

16 4. IF POSSIBLE, A REPRESENTATIVE PHOTOGRAPH OR IMAGE OF THE LICENSE
17 PLATE ON THE MOTOR VEHICLE THAT INCURRED THE TOLL TRANSACTION.

18 5. THE AMOUNT OF THE TOLL AND ANY ADMINISTRATIVE CHARGES AND
19 PENALTIES, EACH STATED SEPARATELY.

20 6. THE DEADLINE BY WHICH PAYMENT MUST BE MADE TO AVOID INCURRING
21 ADDITIONAL CHARGES AND OTHER CONSEQUENCES PROVIDED BY LAW. THIS DEADLINE
22 SHALL NOT BE LESS THAN FOURTEEN CALENDAR DAYS AFTER THE DATE THAT THE NOTICE
23 OF PAYMENT DUE IS DELIVERED.

24 7. A STATEMENT THAT IF THE NOTICE OF PAYMENT DUE IS NOT PAID BY THE
25 DEADLINE THE NONPAYMENT IS A CIVIL VIOLATION SUBJECT TO ADDITIONAL CHARGES
26 AND ACTIONS AGAINST THE NOTICE RECIPIENT AS PROVIDED IN THIS ARTICLE AND ANY
27 OTHER APPLICABLE LAW.

28 8. THE ADDRESS OF THE PERSON TO WHOM PAYMENTS MAY BE SENT.

29 9. A STATEMENT DESCRIBING THE ACCEPTABLE METHODS FOR MAKING PAYMENT,
30 INCLUDING BY MAIL.

31 10. A STATEMENT REFERRING THE RECIPIENT TO THIS ARTICLE FOR FURTHER
32 INFORMATION ON THE LAW APPLICABLE TO ENFORCEMENT OF TOLLS AND THE RECIPIENT'S
33 RIGHTS AND OBLIGATIONS.

34 E. THE NOTICE OF PAYMENT DUE ALSO SHALL CONTAIN, OR BE ACCOMPANIED BY,
35 ALL OF THE FOLLOWING:

36 1. A FORM OF AFFIDAVIT OF DEFENSE FROM LIABILITY.

37 2. A BRIEF EXPLANATION OF WHAT CONSTITUTES DEFENSE FROM LIABILITY
38 PURSUANT TO SECTIONS 28-7756 AND 28-7757.

39 3. INFORMATION AS TO THE EFFECT OF EXECUTING THE AFFIDAVIT OF DEFENSE
40 FROM LIABILITY.

41 4. INSTRUCTIONS FOR RETURNING THE AFFIDAVIT OF DEFENSE FROM LIABILITY
42 AND SUPPORTING DOCUMENTATION TO THE TOLL OPERATOR.

43 28-7759. Notice of toll evasion

44 A. WITHIN THIRTY DAYS AFTER A TOLL EVASION OCCURS, THE TOLL OPERATOR
45 MAY DELIVER TO EACH PERSON LIABLE FOR THE TOLL A NOTICE OF TOLL EVASION.

1 B. THE NOTICE OF TOLL EVASION SHALL INCLUDE ALL OF THE FOLLOWING:
2 1. THE DATE AND APPROXIMATE TIME OF THE TRANSACTION ON OR USE OF THE
3 TOLL FACILITY RESULTING IN THE TOLL EVASION AND THE APPROXIMATE LOCATION
4 WHERE THE TRANSACTION OR USE OCCURRED.
5 2. THE VEHICLE LICENSE PLATE NUMBER.
6 3. IF KNOWN, THE MAKE OF THE MOTOR VEHICLE.
7 4. IF POSSIBLE, A REPRESENTATIVE PHOTOGRAPH OR IMAGE OF THE LICENSE
8 PLATE ON THE MOTOR VEHICLE THAT INCURRED THE TOLL TRANSACTION.
9 5. THE AMOUNT OF THE TOLL AND ANY ADMINISTRATIVE CHARGES AND
10 PENALTIES, EACH STATED SEPARATELY.
11 6. A STATEMENT THAT NOTICE OF PAYMENT DUE WAS SENT AND THE PERSON
12 FAILED TO REMIT PAYMENT AS REQUIRED.
13 7. THE DEADLINE BY WHICH PAYMENT MUST BE MADE TO AVOID INCURRING
14 ADDITIONAL CHARGES AND OTHER CONSEQUENCES PROVIDED BY LAW. THIS DEADLINE
15 SHALL NOT BE LESS THAN TWENTY CALENDAR DAYS AFTER THE DATE THAT THE NOTICE OF
16 TOLL EVASION IS DELIVERED.
17 8. A STATEMENT THAT IF THE NOTICE OF TOLL EVASION IS NOT PAID BY THE
18 DEADLINE THE NONPAYMENT IS A CIVIL VIOLATION SUBJECT TO ADDITIONAL CHARGES
19 AND ACTIONS AGAINST THE NOTICE RECIPIENT AS PROVIDED IN THIS ARTICLE AND ANY
20 OTHER APPLICABLE LAW.
21 9. THE ADDRESS OF THE PERSON TO WHOM PAYMENTS MAY BE SENT.
22 10. A STATEMENT DESCRIBING THE ACCEPTABLE METHODS FOR MAKING PAYMENT,
23 INCLUDING BY MAIL.
24 11. A CLEAR AND CONCISE EXPLANATION OF THE ADMINISTRATIVE PROCEDURES
25 UNDER THIS ARTICLE FOR CONTESTING THE NOTICE OF TOLL EVASION AND APPEALING AN
26 ADVERSE DECISION.
27 12. A STATEMENT REFERRING THE RECIPIENT TO THIS ARTICLE FOR FURTHER
28 INFORMATION ON THE LAW APPLICABLE TO ENFORCEMENT OF TOLLS AND THE RECIPIENT'S
29 RIGHTS AND OBLIGATIONS.
30 28-7760. Administrative hearings; rehearing; appeal; collection
31 A. A TOLL OPERATOR THAT SEEKS TO ENFORCE COLLECTION OF TOLLS,
32 ADMINISTRATIVE CHARGES AND PENALTIES, OR A PERSON WHO IS SUBJECT TO A NOTICE
33 OF TOLL EVASION THAT IS DELIVERED OR DEEMED TO BE DELIVERED PURSUANT TO
34 SECTION 28-7759 AND WHO SEEKS TO CONTEST THE ALLEGED TOLL EVASION AND
35 COLLECTION OF ASSOCIATED TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES, MAY
36 FILE A PETITION FOR AN ADMINISTRATIVE HEARING WITH THE DEPARTMENT PURSUANT TO
37 TITLE 41, CHAPTER 6, ARTICLE 6.
38 B. A TOLL OPERATOR MUST FILE A PETITION FOR AN ADMINISTRATIVE HEARING
39 WITHIN ONE YEAR AFTER THE DEADLINE PRESCRIBED IN THE NOTICE OF TOLL EVASION.
40 C. IF A TOLL OPERATOR FILES A PETITION FOR AN ADMINISTRATIVE HEARING,
41 A PERSON WHO IS SUBJECT TO A NOTICE OF TOLL EVASION THAT IS DELIVERED OR
42 DEEMED TO BE DELIVERED TO THAT PERSON PURSUANT TO SECTION 28-7759 MAY CONTEST
43 THE ALLEGED TOLL EVASION AND ASSOCIATED TOLLS, ADMINISTRATIVE CHARGES AND
44 PENALTIES EXCLUSIVELY AT THIS HEARING.

1 D. THE SCOPE OF THE DEPARTMENT'S ADMINISTRATIVE HEARING IS LIMITED TO
2 THE CONTEST OF TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES IDENTIFIED IN THE
3 NOTICE OF TOLL EVASION.

4 E. A TOLL OPERATOR OR ANY PERSON WHO IS SUBJECT TO A NOTICE OF TOLL
5 EVASION MAY RETAIN LEGAL COUNSEL TO REPRESENT THE TOLL OPERATOR OR PERSON WHO
6 IS SUBJECT TO THE NOTICE OF TOLL EVASION IN THE ADMINISTRATIVE HEARING.

7 F. ANY PARTY TO AN ADMINISTRATIVE HEARING PURSUANT TO THIS SECTION MAY
8 REQUEST A CONTINUANCE OF THE ADMINISTRATIVE HEARING PURSUANT TO RULES ADOPTED
9 BY THE DEPARTMENT.

10 G. IF THE EVIDENCE PRESENTED BY THE TOLL OPERATOR INCLUDES ALL OF THE
11 FOLLOWING, THE EVIDENCE CONSTITUTES PRIMA FACIE EVIDENCE OF THE TOLL EVASION
12 AND THE AMOUNTS STATED IN THE NOTICE OF TOLL EVASION:

13 1. THE NOTICE OF PAYMENT DUE.

14 2. THE NOTICE OF TOLL EVASION.

15 3. INFORMATION RECEIVED FROM THE DEPARTMENT OR ANY OTHER STATE AGENCY
16 OR JURISDICTION THAT IDENTIFIES THE REGISTERED OWNER OF THE MOTOR VEHICLE.

17 4. A CERTIFICATE SWORN TO OR AFFIRMED BY A PERSON EMPLOYED, ENGAGED OR
18 AUTHORIZED BY THE TOLL OPERATOR OR A COPY OF THE CERTIFICATE THAT STATES TO
19 THE PERSON'S PERSONAL KNOWLEDGE THAT ALL OF THE FOLLOWING APPLY:

20 (a) THE NOTICE OF PAYMENT DUE AND THE NOTICE OF TOLL EVASION ARE
21 AUTHENTIC.

22 (b) THE AMOUNT DUE IS ACCURATE.

23 (c) THE NOTICE OF PAYMENT DUE AND NOTICE OF TOLL EVASION WERE
24 DELIVERED AS REQUIRED BY THIS ARTICLE.

25 5. IF THE PERSON IDENTIFIED IN THE NOTICE OF TOLL EVASION IS A LESSEE,
26 A COPY OF THE RENTAL AGREEMENT, LEASE, CONTRACT DOCUMENT OR AFFIDAVIT THAT
27 IDENTIFIES THE LESSEE OF THE MOTOR VEHICLE AT THE TIME OF THE ALLEGED TOLL
28 NONPAYMENT.

29 6. IF THE PERSON IDENTIFIED IN THE NOTICE OF TOLL EVASION IS A
30 TRANSFEREE OF TITLE TO THE MOTOR VEHICLE, A COPY OF THE ASSIGNMENT OF TITLE
31 OR INTEREST AND WARRANTY TO THE TRANSFEREE THAT EVIDENCES A DATE OF TRANSFER
32 BEFORE THE DATE OF THE ALLEGED TOLL NONPAYMENT.

33 H. THE PERSON AUTHORIZED TO ISSUE A NOTICE OF PAYMENT DUE OR NOTICE OF
34 TOLL EVASION IS NOT REQUIRED TO PARTICIPATE IN THE ADMINISTRATIVE HEARING AND
35 IS NOT SUBJECT TO SUBPOENA, EXCEPT THAT THE HEARING OFFICER MAY PERMIT A
36 DEPOSITION TO BE TAKEN AND INTRODUCED INTO THE RECORD OF THE EVIDENTIARY
37 HEARING. IF THE DEPOSED PERSON DOES NOT APPEAR, THE SWORN STATEMENTS
38 CONTAINED IN THE DEPOSITION ARE ADMISSIBLE IN EVIDENCE AT THE ADMINISTRATIVE
39 HEARING.

40 I. IF A TOLL OPERATOR PETITIONS FOR AN ADMINISTRATIVE HEARING AND THE
41 PERSON TO WHOM THE NOTICE OF TOLL EVASION IS DELIVERED OR DEEMED DELIVERED
42 PURSUANT TO SECTION 28-7759 FAILS TO APPEAR AT THE TIME OF HEARING TO CONTEST
43 THE ALLEGED TOLL EVASION:

1 1. THE HEARING OFFICER SHALL MAKE A RECORD OF THE EVIDENCE
2 CONSTITUTING A PRIMA FACIE CASE OF TOLL EVASION AND SHALL ENTER A WRITTEN
3 DECISION OR ORDER BASED ON THE EVIDENCE PRESENTED BY THE TOLL OPERATOR.

4 2. A REQUEST FOR REHEARING BY A NONAPPEARING PARTY SHALL NOT BE
5 CONSIDERED UNLESS THE NONAPPEARING PARTY FIRST DEPOSITS THE FULL AMOUNT
6 AWARDED IN THE PREVIOUS WRITTEN DECISION OR ORDER WITH THE DEPARTMENT OR ITS
7 DESIGNEE, EXCEPT THAT THE HEARING OFFICER MAY WAIVE THE DEPOSIT FOR GOOD
8 CAUSE SHOWN FOR FAILURE TO APPEAR AT THE HEARING.

9 J. UNLESS THE HEARING OFFICER GRANTS A REHEARING ON WRITTEN MOTION OF
10 THE NONAPPEARING PARTY OR UNLESS ANY AGGRIEVED PARTY APPEALS THE DECISION OR
11 ORDER ENTERED AS PROVIDED IN THIS SUBSECTION, THE DECISION OR ORDER IS FINAL
12 AND MAY BE ENFORCED BY EXECUTION AND LEVY IN THE SAME MANNER AS A JUDGMENT OF
13 THE SUPERIOR COURT. THE NONPREVAILING PARTY MAY APPEAL THE DECISION OR ORDER
14 TO THE SUPERIOR COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AFTER A
15 DECISION OR ORDER BECOMES FINAL, EACH PERSON DETERMINED IN THE FINAL DECISION
16 OR ORDER TO BE LIABLE FOR THE TOLL EVASION IS CONSIDERED TO BE INDEBTED TO
17 THE TOLL OPERATOR OR THE TOLL OPERATOR'S DESIGNEE FOR THE TOLLS,
18 ADMINISTRATIVE CHARGES AND PENALTIES AS WELL AS ANY ASSESSED FILING FEES AND
19 POSTAWARD COLLECTION AND EXECUTION COSTS PROVIDED BY OPERATION OF LAW UNTIL
20 THOSE AMOUNTS ARE FULLY PAID OR COMPROMISED IN A MUTUALLY AGREED SETTLEMENT.

21 K. PROMPTLY AFTER A HEARING OFFICER ENTERS A DECISION OR ORDER FINDING
22 A PERSON LIABLE FOR A TOLL EVASION, THE HEARING OFFICER SHALL DELIVER IN
23 PERSON OR TO THE LAST KNOWN ADDRESS OF THE PERSON AND THE PERSON'S ATTORNEY
24 OF RECORD IN THE PROCEEDING, IF ANY, WRITTEN NOTICE INFORMING THE PERSON OF
25 THE PERSON'S RIGHT TO APPEAL TO THE SUPERIOR COURT PURSUANT TO TITLE 12,
26 CHAPTER 7, ARTICLE 6, THAT EXECUTION MAY BE LEVIED AGAINST THE PERSON'S
27 ASSETS, THAT LIENS MAY BE PLACED AGAINST THE PERSON'S PROPERTY, THAT THE
28 PERSON'S WAGES MAY BE GARNISHED AND THAT OTHER STEPS MAY BE TAKEN TO SATISFY
29 THE AWARD ONCE IT BECOMES FINAL. SUBJECT TO ANY STAY OR INJUNCTION, THE TOLL
30 OPERATOR MAY PROCEED TO EXECUTE ON THE AWARD FOLLOWING DELIVERY OF THIS
31 NOTICE.

32 L. ON ENTRY OF A DECISION OR ORDER FINDING A PERSON LIABLE FOR A TOLL
33 EVASION, A HEARING OFFICER SHALL DIRECT THE PERSON TO REMIT PAYMENT OF THE
34 APPLICABLE TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES TO THE APPROPRIATE
35 TOLL OPERATOR OR THE TOLL OPERATOR'S DESIGNEE. THE PAYMENT IS DUE WITHIN
36 TWENTY CALENDAR DAYS AFTER ENTRY OF THE DECISION OR ORDER.

37 M. EXECUTION MAY BE LEVIED AND OTHER STEPS MAY BE TAKEN FOR THE
38 COLLECTION OF A FINAL DECISION OR ORDER, OR OF A JUDGMENT ON APPEAL, AS
39 AUTHORIZED FOR THE COLLECTION OF AN UNPAID CIVIL JUDGMENT OF THE SUPERIOR
40 COURT ENTERED AGAINST A DEFENDANT IN AN ACTION ON A DEBT.

41 28-7761. Reporting to department; impact on driving record and
42 insurance

43 A. THE TOLL OPERATOR SHALL REPORT TO THE DEPARTMENT SATISFACTION OF
44 THE LIABILITY WITHIN FIVE CALENDAR DAYS AFTER THE TOLL OPERATOR RECEIVES
45 PAYMENT ON A FORM SUPPLIED BY THE DEPARTMENT.

1 B. LIABILITY FOR A TOLL EVASION OR ASSOCIATED TOLLS, ADMINISTRATIVE
2 CHARGES AND PENALTIES IS NOT A MOVING VIOLATION PURSUANT TO THIS TITLE, AND
3 AN INSURER SHALL NOT CONSIDER THE LIABILITY AGAINST THE PERSON FOR THE
4 PURPOSES OF ESTABLISHING RATES FOR MOTOR VEHICLE LIABILITY INSURANCE OR
5 DETERMINING THE INSURABILITY OF THE PERSON. AN INSURER SHALL NOT CANCEL OR
6 REFUSE TO RENEW ANY POLICY OF INSURANCE BECAUSE OF THE LIABILITY.

7 28-7762. Vehicle registration penalties

8 A. THE DIRECTOR SHALL REFUSE TO REGISTER A MOTOR VEHICLE, TRAILER OR
9 SEMITRAILER OWNED BY OR REGISTERED TO A PERSON WHO IS SUBJECT TO A FINAL
10 DECISION, ORDER OR JUDGMENT OF LIABILITY FOR A TOLL EVASION.

11 B. THE DEPARTMENT SHALL RENEW THE REGISTRATION AND LICENSE PLATE OF A
12 MOTOR VEHICLE, TRAILER OR SEMITRAILER REFUSED PURSUANT TO SUBSECTION A OF
13 THIS SECTION ONLY IF THE DEPARTMENT IS NOTIFIED BY EACH TOLL OPERATOR TO WHOM
14 PAYMENT IS OWING UNDER A FINAL DECISION, ORDER OR JUDGMENT THAT THE FULL
15 LIABILITY AND ANY POSTAWARD COLLECTION AND EXECUTION COSTS HAVE BEEN PAID OR
16 THE PERSON SUBMITS EVIDENCE SATISFACTORY TO THE DIRECTOR THAT THE FULL
17 LIABILITY AND ANY POSTAWARD COLLECTION AND EXECUTION COSTS HAVE BEEN PAID.

18 28-7763. Driver license suspension

19 THE DEPARTMENT SHALL SUSPEND THE LICENSE OF A DRIVER ON A SHOWING BY
20 DEPARTMENT RECORDS OR OTHER SUFFICIENT EVIDENCE THAT THE LICENSEE IS SUBJECT
21 TO A FINAL DECISION, ORDER OR JUDGMENT OF LIABILITY FOR TOLL EVASION FOR THE
22 LONGER OF THE FOLLOWING:

23 1. THIRTY DAYS.

24 2. UNTIL THE DEPARTMENT IS NOTIFIED BY EACH TOLL OPERATOR TO WHOM
25 PAYMENT IS OWING UNDER A FINAL DECISION, ORDER OR JUDGMENT THAT THE FULL
26 LIABILITY AND ANY POSTAWARD COLLECTION AND EXECUTION COSTS HAVE BEEN PAID OR
27 THE PERSON SUBMITS EVIDENCE SATISFACTORY TO THE DIRECTOR THAT THE FULL
28 LIABILITY AND ANY POSTAWARD COLLECTION AND EXECUTION COSTS HAVE BEEN PAID.

29 28-7764. Motor vehicle immobilization, tow and impoundment;
30 hearing; release of motor vehicle

31 A. ON PETITION BY A TOLL OPERATOR, A HEARING OFFICER MAY ORDER THAT A
32 MOTOR VEHICLE BE IMMOBILIZED, TOWED OR IMPOUNDED FOR THE PURPOSE OF
33 FACILITATING ENFORCEMENT OF ANY TOLL EVASION IF THE HEARING OFFICER FINDS
34 THAT THE PERSON IS A REPEAT TOLL EVADER AND HAS UNSATISFIED LIABILITY
35 INVOLVING THE MOTOR VEHICLE. THE HEARING OFFICER'S ORDER MAY BE ENFORCED BY
36 ANY PEACE OFFICER WITH JURISDICTION IN THE LOCATION IN WHICH THE MOTOR
37 VEHICLE IS FOUND.

38 B. THE REGISTERED OWNER OF A MOTOR VEHICLE THAT IS IMMOBILIZED, TOWED
39 OR IMPOUNDED FOR UNSATISFIED LIABILITY UNDER THIS SECTION, THE SPOUSE OF THE
40 REGISTERED OWNER AND EACH PERSON IDENTIFIED ON THE DEPARTMENT'S RECORD WITH
41 AN INTEREST IN THE MOTOR VEHICLE SHALL BE PROVIDED AN OPPORTUNITY FOR AN
42 IMMOBILIZATION OR POSTSTORAGE HEARING PURSUANT TO SECTION 28-3514 SOLELY FOR
43 THE PURPOSE OF CHALLENGING THE VALIDITY OF THE IMMOBILIZATION, TOW OR
44 IMPOUNDMENT. THIS HEARING SHALL NOT READJUDICATE THE MERITS OF ANY
45 PREVIOUSLY ADJUDICATED NOTICE OF TOLL EVASION.

- 1 C. AN IMMOBILIZED OR IMPOUNDED MOTOR VEHICLE SHALL BE RELEASED
2 IMMEDIATELY IF ALL OF THE FOLLOWING HAVE BEEN PAID:
- 3 1. THE FULL AMOUNT OF THE TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES.
 - 4 2. ASSESSED FILING FEES AND POSTAWARD COLLECTION AND EXECUTION COSTS.
 - 5 3. COSTS INCURRED FOR IMMOBILIZATION, TOWING AND STORAGE.
 - 6 4. ADMINISTRATIVE CHARGES ESTABLISHED PURSUANT TO SECTION 28-3513.
- 7 Sec. 8. Section 41-1005, Arizona Revised Statutes, is amended to read:
8 41-1005. Exemptions
- 9 A. This chapter does not apply to any:
- 10 1. Rule that relates to the use of public works, including streets and
11 highways, under the jurisdiction of an agency if the effect of the order is
12 indicated to the public by means of signs or signals.
 - 13 2. Order of the Arizona game and fish commission that opens, closes or
14 alters seasons or establishes bag or possession limits for wildlife.
 - 15 3. Rule relating to section 28-641 or to any rule regulating motor
16 vehicle operation that relates to speed, parking, standing, stopping or
17 passing enacted pursuant to title 28, chapter 3.
 - 18 4. Rule concerning only the internal management of an agency that does
19 not directly and substantially affect the procedural or substantive rights or
20 duties of any segment of the public.
 - 21 5. Rule that only establishes specific prices to be charged for
22 particular goods or services sold by an agency.
 - 23 6. Rule concerning only the physical servicing, maintenance or care of
24 agency owned or operated facilities or property.
 - 25 7. Rule or substantive policy statement concerning inmates or
26 committed youths of a correctional or detention facility in secure custody or
27 patients admitted to a hospital, if made by the state department of
28 corrections, the department of juvenile corrections, the board of executive
29 clemency or the department of health services or a facility or hospital under
30 the jurisdiction of the state department of corrections, the department of
31 juvenile corrections or the department of health services.
 - 32 8. Form whose contents or substantive requirements are prescribed by
33 rule or statute, and instructions for the execution or use of the form.
 - 34 9. Capped fee-for-service schedule adopted by the Arizona health care
35 cost containment system administration pursuant to title 36, chapter 29.
 - 36 10. Fees prescribed by section 6-125.
 - 37 11. Order of the director of water resources adopting or modifying a
38 management plan pursuant to title 45, chapter 2, article 9.
 - 39 12. Fees established under section 3-1086.
 - 40 13. Fee-for-service schedule adopted by the department of economic
41 security pursuant to section 8-512.
 - 42 14. Fees established under sections 41-2144 and 41-2189.
 - 43 15. Rule or other matter relating to agency contracts.
 - 44 16. Fees established under section 32-2067 or 32-2132.
 - 45 17. Rules made pursuant to section 5-111, subsection A.

- 1 18. Rules made by the Arizona state parks board concerning the
2 operation of the Tonto natural bridge state park, the facilities located in
3 the Tonto natural bridge state park and the entrance fees to the Tonto
4 natural bridge state park.
- 5 19. Fees or charges established under section 41-511.05.
- 6 20. Emergency medical services protocols except as provided in section
7 36-2205, subsection C.
- 8 21. Fee schedules established pursuant to section 36-3409.
- 9 22. Procedures of the state transportation board as prescribed in
10 section 28-7048.
- 11 23. Rules made by the state department of corrections.
- 12 24. Fees prescribed pursuant to section 32-1527.
- 13 25. Rules made by the department of economic security pursuant to
14 section 46-805.
- 15 26. Schedule of fees prescribed by section 23-908.
- 16 27. Procedure that is established pursuant to title 23, chapter 6,
17 article 5 or 6.
- 18 28. Rules, administrative policies, procedures and guidelines adopted
19 for any purpose by the Arizona commerce authority pursuant to chapter 10 of
20 this title if the authority provides, as appropriate under the circumstances,
21 for notice of an opportunity for comment on the proposed rules,
22 administrative policies, procedures and guidelines.
- 23 29. Rules made by a marketing commission or marketing committee
24 pursuant to section 3-414.
- 25 30. **USER CHARGES, TOLLS, FARES, RENTS, ADVERTISING AND SPONSORSHIP**
26 **CHARGES, SERVICES CHARGES OR SIMILAR CHARGES ESTABLISHED PURSUANT TO SECTION**
27 **28-7705.**
- 28 B. Notwithstanding subsection A, paragraph 22 of this section, at such
29 time as the federal highway administration authorizes the privatization of
30 rest areas, the state transportation board shall make rules governing the
31 lease or license by the department of transportation to a private entity for
32 the purposes of privatization of a rest area.
- 33 C. Coincident with the making of a rule pursuant to an exemption under
34 this section, the agency shall file a copy of the rule with the secretary of
35 state for publication pursuant to section 41-1012.
- 36 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
37 chapter do not apply to the Arizona board of regents and the institutions
38 under its jurisdiction, except that the Arizona board of regents shall make
39 policies or rules for the board and the institutions under its jurisdiction
40 that provide, as appropriate under the circumstances, for notice of and
41 opportunity for comment on the policies or rules proposed.
- 42 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
43 chapter do not apply to the Arizona state schools for the deaf and the blind,
44 except that the board of directors of all the state schools for the deaf and
45 the blind shall adopt policies for the board and the schools under its

1 jurisdiction that provide, as appropriate under the circumstances, for notice
2 of and opportunity for comment on the policies proposed for adoption.
3 F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
4 chapter do not apply to the state board of education, except that the state
5 board of education shall adopt policies or rules for the board and the
6 institutions under its jurisdiction that provide, as appropriate under the
7 circumstances, for notice of and opportunity for comment on the policies or
8 rules proposed for adoption. In order to implement or change any rule, the
9 state board of education shall provide at least two opportunities for public
10 comment.