

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
2012

SENATE BILL 1519

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, 28-2351 AND 28-2403, ARIZONA REVISED STATUTES; REPEALING SECTION 28-2430, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2011, CHAPTER 324, SECTION 3; AMENDING TITLE 28, CHAPTER 7, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-2449; AMENDING SECTIONS 28-6501, 28-6991, 28-6993 AND 28-7704, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-7704.01; AMENDING SECTIONS 28-7705 AND 28-7706, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 22, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; AMENDING SECTIONS 41-1005 AND 44-281, ARIZONA REVISED STATUTES; RELATING TO 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 MOTOR VEHICLE RECORD INFORMATION FOR TOLL FACILITY
9 ENFORCEMENT 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.

45 2. For use in connection with matters of:

- 1 (a) Performance monitoring of motor vehicles, motor vehicle parts and
2 dealers.
- 3 (b) Motor vehicle market research activities, including survey
4 research.
- 5 (c) Removal of nonowner records from the original owner records of
6 motor vehicle manufacturers.
- 7 3. For use in the normal course of business by a legitimate business
8 or its agents, employees or contractors, but only:
- 9 (a) To verify the accuracy of personal information submitted by the
10 individual to the business or its agents, employees or contractors.
- 11 (b) If the information submitted is not correct or is no longer
12 correct, to obtain the correct information for the purpose of preventing
13 fraud by, pursuing legal remedies against or recovering on a debt or security
14 interest against the individual.
- 15 4. For use by an attorney licensed to practice law or by a licensed
16 private investigator in connection with any civil, criminal, administrative
17 or arbitration proceeding in any court or government agency or before any
18 self-regulatory body, including the service of process, investigation in
19 anticipation of litigation and the execution or enforcement of judgments and
20 orders, or pursuant to a court order.
- 21 5. For use in research activities and for use in producing statistical
22 reports if the personal information is not published, redisclosed or used to
23 contact individuals.
- 24 6. For use by any insurer that writes automobile liability or motor
25 vehicle liability policies and that is under the jurisdiction of the
26 department of insurance or insurance support organization or by a
27 self-insured entity or its agents, employees or contractors in connection
28 with claims investigation activities, antifraud activities, rating or
29 underwriting.
- 30 7. For use in providing notice to the owners of towed or impounded
31 vehicles.
- 32 8. For use by any licensed private investigative agency or licensed
33 security service for any purpose allowed under this section.
- 34 9. For use by an employer or its agent or insurer to obtain or verify
35 information relating to a holder of a commercial driver license that is
36 required under ~~the commercial motor vehicle safety act of 1986~~ (49 United
37 States Code sections 31301 through 31317).
- 38 10. For use BY A TOLL OPERATOR AS DEFINED IN SECTION 28-7751 in
39 connection with the operation of ~~private toll transportation facilities~~ A
40 TOLL FACILITY OR THE ENFORCEMENT OF TOLLS, ADMINISTRATIVE CHARGES AND
41 PENALTIES AS DEFINED IN SECTION 28-7751.
- 42 11. For any other use in response to requests for individual motor
43 vehicle records if the state has obtained the express consent of the person
44 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 28-2351, Arizona Revised Statutes, is amended to read:
15 28-2351. License plate provided; design

16 A. The department shall provide to every owner one license plate for
17 each vehicle registered. At the request of the owner and on payment of any
18 required fee, the department shall provide either one or two license plates
19 for a vehicle for which a special plate is requested pursuant to this
20 chapter, except that the department shall provide one license plate if the
21 special plate is issued pursuant to section 28-2416 or 28-2416.01.

22 B. The license plate shall display the number assigned to the vehicle
23 and to the owner of the vehicle and the name of this state, which may be
24 abbreviated. The director shall coat the license plate with a reflective
25 material that is consistent with the determination of the department
26 regarding the color and design of license plates and special plates. The
27 director shall design the license plate and the letters and numerals on the
28 license plate to be of sufficient size to be plainly readable during daylight
29 from a distance of one hundred feet. In addition to the standard license
30 plate issued for a trailer before August 12, 2005, the director shall issue a
31 license plate for trailers that has a design that is similar to the standard
32 size license plate for trailers but that is the same size as the license
33 plate for motorcycles. The trailer owner shall notify the department which
34 size license plate the owner wants for the trailer.

35 C. Notwithstanding any other law, the department shall not contract
36 with a nongovernmental entity to purchase or secure reflective material for
37 the plates issued by the department unless the department has made a
38 reasonable effort to secure qualified bids or proposals from as many
39 individual responsible respondents as possible.

40 D. The department shall determine the color and design of the license
41 plate. All other plates issued by the department, except the plates issued
42 pursuant to sections 28-2404, 28-2412, 28-2413, 28-2414, 28-2416, 28-2416.01,
43 28-2417 through ~~28-2448~~ 28-2449, 28-2452, 28-2453, 28-2454 and 28-2455 and
44 article 14 of this chapter, shall be the same color as and similar in design
45 to the license plate as determined by the department.

1 E. A passenger motor vehicle rented without a driver shall receive the
2 same type of license plate as issued for a private passenger motor vehicle.

3 Sec. 6. Section 28-2403, Arizona Revised Statutes, is amended to read:
4 28-2403. Special plates; transfers; violation; classification

5 A. Except as otherwise provided in this article, the department shall
6 issue or renew special plates in lieu of the regular license plates pursuant
7 to the following conditions and procedures and only if the requirements
8 prescribed by this article for the requested special plates are met:

9 1. Except as provided in sections 28-2416 and 28-2416.01, a person who
10 is the registered owner of a vehicle registered with the department or who
11 applies for an original or renewal registration of a vehicle may submit to
12 the department a completed application form as prescribed by the department
13 with the fee prescribed by section 28-2402 for special plates in addition to
14 the registration fee prescribed by section 28-2003.

15 2. Except for plates issued pursuant to sections 28-2404, 28-2412,
16 28-2413, 28-2414, 28-2416, 28-2416.01, 28-2417 through ~~28-2448~~ 28-2449,
17 28-2452, 28-2453, 28-2454 and 28-2455 and article 14 of this chapter, the
18 special plates shall be the same color as and similar to the design of the
19 regular license plates that is determined by the department.

20 3. Except as provided in section 28-2416, the department shall issue
21 special plates only to the owner or lessee of a vehicle that is currently
22 registered, including any vehicle that has a declared gross weight, as
23 defined in section 28-5431, of twenty-six thousand pounds or less.

24 4. Except as provided in sections 28-2416 and 28-2416.01, the
25 department shall charge the fee prescribed by section 28-2402 for each annual
26 renewal of special plates in addition to the registration fee prescribed by
27 section 28-2003.

28 B. Except as provided in sections 28-2416 and 28-2416.01, on
29 notification to the department and on payment of the transfer fee prescribed
30 by section 28-2402, a person who is issued special plates may transfer the
31 special plates to another vehicle the person owns or leases. Persons who are
32 issued special plates for hearing impaired persons pursuant to section
33 28-2408 and international symbol of access special plates pursuant to section
34 28-2409 are exempt from the transfer fee. If a person who is issued special
35 plates sells, trades or otherwise releases ownership of the vehicle on which
36 the plates have been displayed, the person shall immediately report the
37 transfer of the plates to the department or the person shall surrender the
38 plates to the department as prescribed by the director. It is unlawful for a
39 person to whom the plates have been issued to knowingly permit them to be
40 displayed on a vehicle except the vehicle authorized by the department.

41 C. The special plates shall be affixed to the vehicle for which
42 registration is sought in lieu of the regular license plates.

43 D. A person is guilty of a class 3 misdemeanor who:

44 1. Violates subsection B of this section.

1 2. Fraudulently gives false or fictitious information in the
2 application for or renewal of special plates or placards issued pursuant to
3 this article.

4 3. Conceals a material fact or otherwise commits fraud in the
5 application for or renewal of special plates or placards issued pursuant to
6 this article.

7 Sec. 7. Repeal

8 Section 28-2430, Arizona Revised Statutes, as amended by Laws 2011,
9 chapter 324, section 3, is repealed.

10 Sec. 8. Title 28, chapter 7, article 12, Arizona Revised Statutes, is
11 amended by adding section 28-2449, to read:

12 28-2449. Fallen hero special plates; fund

13 A. IF, BY DECEMBER 31, 2012, A FOUNDATION DESCRIBED IN SUBSECTION D OF
14 THIS SECTION PAYS THIRTY-TWO THOUSAND DOLLARS TO THE DEPARTMENT FOR THE
15 IMPLEMENTATION OF THIS SECTION, THE DEPARTMENT SHALL ISSUE FALLEN HERO
16 SPECIAL PLATES FOR MOTOR VEHICLES, INCLUDING MOTORCYCLES. THE FOUNDATION
17 THAT PROVIDES THE THIRTY-TWO THOUSAND DOLLARS SHALL DESIGN THE FALLEN HERO
18 SPECIAL PLATES. THE DESIGN AND COLOR OF THE FALLEN HERO SPECIAL PLATES ARE
19 SUBJECT TO THE APPROVAL OF THE DEPARTMENT. THE DIRECTOR MAY ALLOW A REQUEST
20 FOR FALLEN HERO SPECIAL PLATES TO BE COMBINED WITH A REQUEST FOR PERSONALIZED
21 SPECIAL PLATES. IF THE DIRECTOR ALLOWS SUCH A COMBINATION, THE REQUEST SHALL
22 BE IN A FORM PRESCRIBED BY THE DIRECTOR AND IS SUBJECT TO THE FEES FOR THE
23 PERSONALIZED SPECIAL PLATES IN ADDITION TO THE FEES REQUIRED FOR THE FALLEN
24 HERO SPECIAL PLATES.

25 B. OF THE TWENTY-FIVE DOLLAR FEE REQUIRED BY SECTION 28-2402 FOR THE
26 ORIGINAL SPECIAL PLATES AND FOR RENEWAL OF SPECIAL PLATES, EIGHT DOLLARS IS A
27 SPECIAL PLATE ADMINISTRATION FEE AND SEVENTEEN DOLLARS IS AN ANNUAL DONATION.

28 C. THE DEPARTMENT SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND
29 35-147, ALL SPECIAL PLATE ADMINISTRATION FEES IN THE STATE HIGHWAY FUND
30 ESTABLISHED BY SECTION 28-6991 AND ALL DONATIONS COLLECTED PURSUANT TO THIS
31 SECTION IN THE FALLEN HERO SPECIAL PLATE FUND ESTABLISHED BY THIS SECTION.

32 D. THE FALLEN HERO SPECIAL PLATE FUND IS ESTABLISHED CONSISTING OF
33 MONIES DEPOSITED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL ADMINISTER THE
34 FUND. NOT MORE THAN TEN PER CENT OF MONIES DEPOSITED IN THE FUND ANNUALLY
35 SHALL BE USED FOR THE COST OF ADMINISTERING THE FUND. MONIES IN THE FUND ARE
36 CONTINUOUSLY APPROPRIATED. THE DIRECTOR SHALL ANNUALLY DISTRIBUTE ALL MONIES
37 DEPOSITED IN THE FUND, EXCLUDING ADMINISTRATIVE FEES, TO THE FOUNDATION THAT
38 PAID THE IMPLEMENTATION FEE TO THE DEPARTMENT PURSUANT TO SUBSECTION A OF
39 THIS SECTION. THE FOUNDATION MUST BE A NATIONAL LEADER IN PROVIDING
40 RESOURCES AND EDUCATIONAL SCHOLARSHIP SUPPORT TO VETERANS, ACTIVE SERVICE
41 MEMBERS AND DEPENDENTS OF VETERANS AND ACTIVE SERVICE MEMBERS AND SATISFY ALL
42 OF THE FOLLOWING REQUIREMENTS:

43 1. HAVE A SCHOLARSHIP PROGRAM THAT AIDS ALL VETERANS, SPECIFICALLY THE
44 GROWING POPULATION OF VETERANS AND DEPENDENTS OF VETERANS RESULTING FROM THE
45 IRAQ AND AFGHANISTAN CONFLICTS.

1 2. HAVE A MISSION THAT REQUIRES INVESTMENT IN VETERANS AND FAMILIES OF
2 VETERANS THROUGH EDUCATION AND COMMUNITY.

3 3. BE A CHARITABLE ORGANIZATION THAT IS QUALIFIED UNDER SECTION
4 501(c)(3) OF THE UNITED STATES INTERNAL REVENUE CODE FOR FEDERAL INCOME TAX
5 PURPOSES.

6 4. BE NAMED AFTER A PERSON WHO DIED OVERSEAS WHILE IN ACTIVE MILITARY
7 DUTY AND WHO GRADUATED FROM A UNIVERSITY IN THIS STATE.

8 E. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND
9 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED
10 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

11 Sec. 9. Section 28-6501, Arizona Revised Statutes, is amended to read:

12 28-6501. Definition of highway user revenues

13 In this article, unless the context otherwise requires or except as
14 otherwise provided by statute, "highway user revenues" means all monies
15 received in this state from licenses, taxes, penalties, interest and fees
16 authorized by the following:

17 1. Chapters 2, 7, 8 and 15 of this title, except for:

18 (a) The special plate administration fees prescribed in sections
19 28-2404, 28-2412 through ~~28-2448~~ 28-2449 and 28-2514.

20 (b) The donations prescribed in sections 28-2404, 28-2412 through
21 28-2415, 28-2417 through ~~28-2448~~ 28-2449, 28-2453, 28-2454 and 28-2455.

22 2. Section 28-1177.

23 3. Chapters 10 and 11 of this title.

24 4. Chapter 16, articles 1, 2 and 4 of this title, except as provided
25 in sections 28-5926 and 28-5927.

26 Sec. 10. Section 28-6991, Arizona Revised Statutes, is amended to
27 read:

28 28-6991. State highway fund; sources

29 A state highway fund is established that consists of:

30 1. Monies distributed from the Arizona highway user revenue fund
31 pursuant to chapter 18 of this title.

32 2. Monies appropriated by the legislature.

33 3. Monies received from donations for the construction, improvement or
34 maintenance of state highways or bridges. These monies shall be credited to
35 a special account and shall be spent only for the purpose indicated by the
36 donor.

37 4. Monies received from counties under cooperative agreements,
38 including proceeds from bond issues. The state treasurer shall deposit these
39 monies to the credit of the fund in a special account on delivery to the
40 treasurer of a concise written agreement between the department and the
41 county stating the purposes for which the monies are surrendered by the
42 county, and these monies shall be spent only as stated in the agreement.

43 5. Monies received from the United States under an act of Congress to
44 provide aid for the construction of rural post roads, but monies received on
45 projects for which the monies necessary to be provided by this state are

1 wholly derived from sources mentioned in paragraphs 2 and 3 of this section
2 shall be allotted by the department and deposited by the state treasurer in
3 the special account within the fund established for each project. On
4 completion of the project, on the satisfaction and discharge in full of all
5 obligations of any kind created and on request of the department, the
6 treasurer shall transfer the unexpended balance in the special account for
7 the project into the state highway fund, and the unexpended balance and any
8 further federal aid thereafter received on account of the project may be
9 spent under the general provisions of this title.

10 6. Monies in the custody of an officer or agent of this state from any
11 source that is to be used for the construction, improvement or maintenance of
12 state highways or bridges.

13 7. Monies deposited in the state general fund and arising from the
14 disposal of state personal property belonging to the department.

15 8. Receipts from the sale or disposal of any or all other property
16 held by the department and purchased with state highway monies.

17 9. Monies generated pursuant to section 28-410.

18 10. Monies distributed pursuant to section 28-5808, subsection B,
19 paragraph 2, subdivision (d).

20 11. Monies deposited pursuant to sections 28-1143, 28-2353 and 28-3003.

21 12. Except as provided in section 28-5101, the following monies:

22 (a) Monies deposited pursuant to section 28-2206 and section 28-5808,
23 subsection B, paragraph 2, subdivision (e).

24 (b) One dollar of each registration fee and one dollar of each title
25 fee collected pursuant to section 28-2003.

26 (c) Two dollars of each late registration penalty collected by the
27 director pursuant to section 28-2162.

28 (d) The air quality compliance fee collected pursuant to section
29 49-542.

30 (e) The special plate administration fees collected pursuant to
31 sections 28-2404, 28-2412 through 28-2416, 28-2416.01, 28-2417 through
32 ~~28-2448~~ 28-2449 and 28-2514.

33 (f) Monies collected pursuant to sections 28-372, 28-2155 and 28-2156
34 if the director is the registering officer.

35 13. Monies deposited pursuant to chapter 5, article 5 of this title.

36 14. Donations received pursuant to section 28-2269.

37 15. Dealer and registration monies collected pursuant to section
38 28-4304.

39 16. Abandoned vehicle administration monies deposited pursuant to
40 section 28-4804.

41 17. Monies deposited pursuant to section 28-710, subsection D,
42 paragraph 2.

43 18. Monies deposited pursuant to section 28-2065.

1 19. Monies deposited pursuant to section 28-7311.

2 20. Monies deposited pursuant to section 28-7059.

3 21. Monies deposited pursuant to section 28-1105.

4 22. Monies deposited pursuant to section 28-2448, subsection D.

5 Sec. 11. Section 28-6993, Arizona Revised Statutes, is amended to
6 read:

7 28-6993. State highway fund; authorized uses

8 A. Except as provided in subsection B of this section and section
9 28-6538, the state highway fund shall be used for any of the following
10 purposes in strict conformity with and subject to the budget as provided by
11 this section and by sections 28-6997 through 28-7003:

12 1. To pay salaries, wages, necessary travel expenses and other
13 expenses of officers and employees of the department and the incidental
14 office expenses, including telegraph, telephone, postal and express charges
15 and printing, stationery and advertising expenses.

16 2. To pay for both:

17 (a) Equipment, supplies, machines, tools, department offices and
18 laboratories established by the department.

19 (b) The construction and repair of buildings or yards of the
20 department.

21 3. To pay the cost of both:

22 (a) Engineering, construction, improvement and maintenance of state
23 highways and parts of highways forming state routes.

24 (b) Highways under cooperative agreements with the United States that
25 are entered into pursuant to this chapter and an act of Congress providing
26 for the construction of rural post roads.

27 4. To pay land damages incurred by reason of establishing, opening,
28 altering, relocating, widening or abandoning portions of a state route or
29 state highway.

30 5. To reimburse the department revolving account.

31 6. To pay premiums on authorized indemnity bonds and on compensation
32 insurance under the workers' compensation act.

33 7. To defray lawful expenses and costs required to administer and
34 carry out the intent, purposes and provisions of this title, including
35 repayment of obligations entered into pursuant to this title, payment of
36 interest on obligations entered into pursuant to this title, repayment of
37 loans and other financial assistance, including repayment of advances and
38 interest on advances made to the department pursuant to section 28-7677, and
39 payment of all other obligations and expenses of the board and department
40 pursuant to chapter 21 of this title.

41 8. To pay lawful bills and charges incurred by the state engineer.

42 9. To acquire, construct or improve entry roads to state parks or
43 roads within state parks.

44 10. To acquire, construct or improve entry roads to state prisons.

1 11. To pay the cost of relocating a utility facility pursuant to
2 section 28-7156.

3 12. For the purposes provided in subsections C, D and E of this section
4 and sections 28-1143, 28-2353 and 28-3003.

5 13. To pay the cost of issuing an Arizona centennial special plate
6 pursuant to section 28-2448.

7 B. For each fiscal year, the department of transportation shall
8 allocate and transfer monies in the state highway fund to the department of
9 public safety for funding a portion of highway patrol costs in eight
10 installments in each of the first eight months of a fiscal year that do not
11 exceed ten million dollars.

12 C. Subject to legislative appropriation, the department may use the
13 monies in the state highway fund as prescribed in section 28-6991, paragraph
14 12 to carry out the duties imposed by this title for registration or titling
15 of vehicles, to operate joint title, registration and driver licensing
16 offices, to cover the administrative costs of issuing the air quality
17 compliance sticker, modifying the year validating tab and issuing the
18 windshield sticker and to cover expenses and costs in issuing special plates
19 pursuant to sections 28-2404, 28-2412 through ~~28-2448~~ 28-2449 and 28-2514.

20 D. The department shall use monies deposited in the state highway fund
21 pursuant to chapter 5, article 5 of this title only as prescribed by that
22 article.

23 E. Monies deposited in the state highway fund pursuant to section
24 28-2269 shall be used only as prescribed by that section.

25 F. Monies deposited in the state highway fund pursuant to section
26 28-710, subsection D, paragraph 2 shall only be used for state highway work
27 zone traffic control devices.

28 G. The department may exchange monies distributed to the state highway
29 fund pursuant to section 28-6538, subsection A, paragraph 1 for local
30 government surface transportation program federal monies suballocated to
31 councils of government and metropolitan planning organizations if the local
32 government scheduled to receive the federal monies concurs. An exchange of
33 state highway fund monies pursuant to this subsection shall be in an amount
34 that is at least equal to ninety per cent of the federal obligation authority
35 that exists in the project for which the exchange is proposed.

36 Sec. 12. Section 28-7704, Arizona Revised Statutes, is amended to
37 read:

38 ~~28-7704.~~ Procurements

39 A. The department:

40 1. May procure services under this chapter using any of the following:

41 (a) Requests for project proposals in which the department describes a
42 class of transportation facilities or a geographic area in which private
43 entities are invited to submit proposals to develop transportation
44 facilities.

1 (b) Solicitations using requests for qualifications, short-listing of
2 qualified proposers, requests for proposals, negotiations, best and final
3 offers or other procurement procedures.

4 (c) Procurements seeking from the private sector development and
5 finance plans most suitable for the project.

6 (d) Best value selection procurements based on price or financial
7 proposals, or both, or other factors.

8 (e) Other procedures that the department determines may further the
9 implementation of this chapter.

10 2. Shall procure services under this chapter using unsolicited
11 proposals if the department determines that there is sufficient merit to
12 pursue any unsolicited proposal and a reasonable opportunity for other
13 entities to submit competing proposals for consideration and a possible
14 contract award as appropriate.

15 B. For any procurement in which the department issues a request for
16 qualifications, request for proposals or similar solicitation document, the
17 request shall generally set forth the factors that will be evaluated and the
18 manner in which responses will be evaluated.

19 C. In evaluating proposals, the department may accord such relative
20 weight to factors such as cost, financial commitment, innovative financing,
21 technical, scientific, technological or socioeconomic merit and other factors
22 as the department deems appropriate to obtain the best value for this state.

23 D. The department may pay a stipend to a proposer based on the
24 department's estimate, in its sole discretion, of the value of the work
25 product received, but only if the department has determined that the proposal
26 submitted was responsive to the department's request for proposals and met
27 all requirements established by the department for the project. In exchange
28 for the stipend, the department may require the recipient to grant to the
29 department the right to use any work product contained in the recipient's
30 proposal, including technologies, techniques, methods, processes and
31 information contained in the recipient's project design.

32 E. The department may charge and retain an administrative fee for the
33 evaluation of an unsolicited project proposal.

34 F. The department may procure services, award agreements and
35 administer revenues as authorized in this section notwithstanding any
36 requirements of any other state or local statute, regulation or law relating
37 to public bidding or other procurement procedures or other provisions
38 otherwise applicable to public works, services or utilities.

39 G. The department may retain financial, legal and other consultants
40 and experts inside or outside the public sector to assist in the evaluation,
41 negotiation and development of eligible facilities under this chapter with a
42 minimum of five years' experience working in that capacity with
43 public-private partnerships.

44 H. The department may spend monies that are reasonably necessary for
45 the development of procurements, evaluation of concepts or proposals,

1 negotiation of agreements and implementation of agreements for development or
2 operation of eligible facilities under this chapter.

3 I. BEFORE THE DEPARTMENT BEGINS THE PROCESS FOR PROCURING SERVICES AS
4 PRESCRIBED IN SUBSECTION A OF THIS SECTION, THE DEPARTMENT SHALL HOLD AT
5 LEAST ONE PUBLIC HEARING TO RECEIVE COMMENTS ON USER CHARGES, TOLLS, FARES OR
6 SIMILAR CHARGES.

7 Sec. 13. Title 28, chapter 22, article 1, Arizona Revised Statutes, is
8 amended by adding section 28-7704.01, to read:

9 28-7704.01. Evaluation criteria

10 BEFORE ENTERING INTO A PUBLIC-PRIVATE PARTNERSHIP OR OTHER AGREEMENT
11 FOR ANY ELIGIBLE FACILITY UNDER THIS CHAPTER, THE DEPARTMENT SHALL CONSIDER
12 THE FOLLOWING FACTORS:

13 1. THE ABILITY OF THE ELIGIBLE FACILITY TO IMPROVE SAFETY, REDUCE
14 CONGESTION, INCREASE CAPACITY AND PROMOTE ECONOMIC GROWTH.

15 2. THE PROPOSED COST AND FINANCIAL PLAN FOR THE ELIGIBLE FACILITY.

16 3. THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY EXPERIENCE AND
17 FINANCIAL CAPACITY OF THE PRIVATE PARTNER.

18 4. THE PROPOSED DESIGN, OPERATION AND FEASIBILITY OF THE ELIGIBLE
19 FACILITY.

20 5. COMMENTS FROM USERS, LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

21 6. BENEFITS TO THE PUBLIC.

22 7. THE SAFETY RECORD OF THE PRIVATE PARTNER.

23 8. OTHER CRITERIA THAT THE DEPARTMENT DEEMS APPROPRIATE.

24 Sec. 14. Section 28-7705, Arizona Revised Statutes, is amended to
25 read:

26 28-7705. Public-private partnership agreements

27 A. In any public-private partnership or other agreement for any
28 eligible facility under this chapter, the department may include provisions
29 that:

30 1. Authorize the department or the private partner to ESTABLISH AND
31 collect user ~~fees~~ CHARGES, tolls, fares, rents, advertising and sponsorship
32 ~~fees~~ CHARGES, service ~~fees~~ CHARGES or similar charges, including provisions
33 that:

34 (a) Specify technology to be used in the facility.

35 (b) Establish circumstances under which the department may receive all
36 or a share of revenues from such charges.

37 (c) Govern enforcement of tolls, including provisions for use of
38 cameras or other mechanisms to ensure that users have paid tolls that are due
39 and provisions that allow the private partner access to relevant databases
40 for enforcement purposes. Misuse of the data contained in the databases,
41 including negligence in securing the data properly, shall result in a civil
42 penalty of ten thousand dollars for each violation. Civil penalties
43 collected pursuant to this subdivision shall be deposited in the state
44 general fund.

1 (d) Authorize the department to continue or cease collection of user
2 ~~fees~~ CHARGES, tolls, fares or similar charges after the end of the term of
3 the agreement.

4 2. Allow for payments to be made by this state to the private partner,
5 including availability payments or performance based payments.

6 3. Allow the department to accept payments of monies and share
7 revenues with the private partner.

8 4. Address how the partners will share management of the risks of the
9 project.

10 5. Specify how the partners will share the costs of development of the
11 project.

12 6. Allocate financial responsibility for cost overruns.

13 7. Establish the damages to be assessed for nonperformance.

14 8. Establish performance criteria or incentives, or both.

15 9. Address the acquisition of rights-of-way and other property
16 interests that may be required, including provisions that address the
17 exercise of eminent domain as provided in section 28-7709. This state shall
18 not relinquish its power of eminent domain authority to the private partner.

19 10. Establish record keeping, accounting and auditing standards to be
20 used for the project.

21 11. For a project that reverts to public ownership, address
22 responsibility for reconstruction or renovations that are required in order
23 for a facility to meet all applicable government standards on reversion of
24 the facility to this state.

25 12. Provide for patrolling and law enforcement on public facilities.

26 13. Identify any department specifications that must be satisfied,
27 including provisions allowing the private partner to request and receive
28 authorization to deviate from the specifications on making a showing
29 satisfactory to the department.

30 14. Require a private partner to provide performance and payment bonds,
31 parent company guarantees, letters of credit or other acceptable forms of
32 security or a combination of any of these, the penal sum or amount of which
33 may be less than one hundred per cent of the value of the contract involved
34 based on the department's determination, made on a facility-by-facility
35 basis, of what is required to adequately protect this state.

36 15. Authorize the private partner in any concession agreement to
37 ESTABLISH AND collect user ~~fees~~ CHARGES, tolls, fares, rents, advertising and
38 sponsorship ~~fees~~ CHARGES, service ~~fees~~ CHARGES or similar charges to cover
39 its costs and provide for a reasonable rate of return on the private
40 partner's investment, including provisions such as the following:

41 (a) The charges may be collected directly by the private partner or by
42 a third party engaged for that purpose.

43 (b) A formula for the adjustment of user ~~fees~~ CHARGES, tolls, fares,
44 rents, advertising and sponsorship ~~fees~~ CHARGES, service ~~fees~~ CHARGES or
45 similar charges during the term of the agreement.

1 (c) For an agreement that does not include a formula described in
2 subdivision (b) of this paragraph, provisions regulating the private
3 partner's return on investment.

4 (d) A MAXIMUM MULTIPLIER THAT MAY BE APPLIED TO THE DIFFERENCE BETWEEN
5 PASSENGER AND COMMERCIAL VEHICLE USER CHARGES, TOLLS, FARES OR SIMILAR
6 CHARGES.

7 ~~(d)~~ (e) A variety of traffic management strategies, including:

8 (i) General purpose toll lanes.

9 (ii) High occupancy vehicle lanes where single or low occupancy
10 vehicles may use higher occupancy vehicle lanes by paying a toll.

11 (iii) Lanes or facilities in which the tolls may vary during the
12 course of the day or week or according to levels of congestion anticipated or
13 experienced.

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

17 (v) MECHANISMS FOR NOTICE TO DRIVERS OF AN UPCOMING FACILITY AND
18 OPTIONS TO PAY USER CHARGES, TOLLS, FARES OR SIMILAR CHARGES AT THE FACILITY
19 LOCATION.

20 16. Specify remedies available and dispute resolution procedures,
21 including the right of the private partner to institute legal proceedings to
22 obtain an enforceable judgment or award against the department in the event
23 of a default by the department and procedures for use of dispute review
24 boards, mediation, facilitated negotiation, arbitration and other alternative
25 dispute resolution procedures.

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

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

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

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

42 ~~E. A person who pays a toll to operate a motor vehicle on a roadway
43 project that is constructed or operated pursuant to this article is entitled
44 to and may apply for a refund or credit from the state for motor vehicle fuel
45 license taxes, use fuel taxes or motor carrier fees paid while operating the~~

1 ~~motor vehicle on the roadway project. The director shall establish by rule~~
2 ~~the procedures for granting refunds and credits.~~

3 ~~F.~~ E. The agreement shall contain a provision by which the private
4 partner expressly agrees that it is ~~to be barred~~ PROHIBITED from seeking
5 injunctive or other equitable relief to delay, prevent or otherwise hinder
6 the department OR ANY JURISDICTION from developing, ~~or~~ constructing OR
7 MAINTAINING any facility that was planned ~~as of the time the public private~~
8 ~~partnership agreement was executed~~ and that would or might impact the revenue
9 that the private partner would or might derive from the facility developed
10 under the agreement, except that the agreement may provide for reasonable
11 compensation to the private partner for the adverse effect on toll revenues
12 or other user fee revenues resulting from development, ~~and~~ construction AND
13 MAINTENANCE of an unplanned revenue impacting facility.

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

16 ~~H.~~ G. Any foreign private entity that enters into an agreement with
17 the department pursuant to this section must provide satisfactory evidence to
18 the board that the foreign entity is in compliance with the requirements of
19 title 10, chapter 38.

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

22 Sec. 15. Section 28-7706, Arizona Revised Statutes, is amended to
23 read:

24 28-7706. Funding and financing

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

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

29 2. Grants, loans, loan guarantees, lines of credit, revolving lines of
30 credit or other arrangements available under the transportation
31 infrastructure finance and innovation act of 1998 (P.L. 105-178; 112 Stat.
32 241; 23 United States Code sections 601 through 610) or any other federal or
33 state law.

34 3. Federal, state or local revenues.

35 4. User ~~fees~~ CHARGES, tolls, fares, charges, lease proceeds, rents,
36 availability payments, gross or net receipts from sales, proceeds from the
37 sale of development rights, franchise ~~fees~~ CHARGES, permit ~~fees~~ CHARGES,
38 rents, advertising and sponsorship ~~fees~~ CHARGES, service ~~fees~~ CHARGES or any
39 other lawful form of consideration.

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

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

43 B. As security for the payment of financing described in this section,
44 the revenues from the project may be pledged, but no pledge of revenues
45 constitutes in any manner or to any extent a general obligation of this

1 state. Any financing may be structured on a senior, parity or subordinate
2 basis to any other financing.

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

5 D. The department may accept from the United States or any of its
6 agencies monies that are available to this state or to any other unit of
7 government for carrying out the purposes of this chapter, whether the monies
8 are made available by grant, loan or other financing arrangement. The
9 department may enter into agreements and other arrangements with the United
10 States or any of its agencies as may be necessary, proper and convenient for
11 carrying out this chapter.

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

16 F. Any eligible facility may be funded in whole or in part by
17 contribution of any monies or property made by any private entity or public
18 sector partner that is a party to any agreement entered into under this
19 chapter.

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

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

26 Sec. 16. Title 28, chapter 22, Arizona Revised Statutes, is amended by
27 adding article 2, to read:

28 ARTICLE 2. TOLL COLLECTION AND ENFORCEMENT

29 28-7751. Definitions

30 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

35 2. "DELIVER" MEANS TO SEND, TRANSMIT OR TRANSFER INFORMATION OR
36 DOCUMENTS, INCLUDING BY UNITED STATES MAIL, ELECTRONIC MAIL, HAND DELIVERY OR
37 FAX.

38 3. "ELECTRONIC TRANSACTION AND PAYMENT TECHNOLOGY" MEANS A SYSTEM FOR
39 RECORDING AND PAYING A TOLL ELECTRONICALLY, INCLUDING USING A TRANSPONDER, A
40 READER SYSTEM, AUTOMATIC VEHICLE LICENSE PLATE RECOGNITION TECHNOLOGY, A
41 GLOBAL POSITIONING SYSTEM OR ANY OTHER ELECTRONIC MEANS.

42 4. "LESSEE":

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

1 (b) INCLUDES THE VENDEE OR LESSEE UNDER A WRITTEN AGREEMENT FOR THE
2 CONDITIONAL SALE OR LEASE OF A MOTOR VEHICLE WITH THE RIGHT TO PURCHASE IN
3 FAVOR OF THE VENDEE OR LESSEE ON PERFORMANCE OF THE CONDITIONS STATED IN THE
4 AGREEMENT.

5 5. "LESSOR":

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

10 (b) INCLUDES BOTH OF THE FOLLOWING:

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

14 (ii) A COMMERCIAL LEASING OR RENTAL ENTITY.

15 6. "NOTICE OF PAYMENT DUE" MEANS THE WRITTEN NOTICE TO PAY THE
16 REQUIRED TOLLS AND ADMINISTRATIVE CHARGES FOR VEHICULAR USE OF A TOLL
17 FACILITY.

18 7. "NOTICE OF TOLL EVASION" MEANS THE SECOND WRITTEN NOTICE OF FAILURE
19 TO PAY A REQUIRED PAYMENT AS DESCRIBED IN SECTION 28-7759 THAT IS DELIVERED
20 AFTER NOTICE OF PAYMENT DUE IS DELIVERED.

21 8. "PENALTIES" MEANS PENALTIES IMPOSED PURSUANT TO SECTION 28-7753.

22 9. "PUBLIC-PRIVATE AGREEMENT" MEANS AN AGREEMENT ENTERED INTO PURSUANT
23 TO ARTICLE 1 OF THIS CHAPTER.

24 10. "REPEAT TOLL EVADER" MEANS A REGISTERED OWNER OR ANY OTHER PERSON
25 TO WHOM, IN A THREE-MONTH PERIOD, MORE THAN FOUR NOTICES OF TOLL EVASION FOR
26 TOLL NONPAYMENTS OCCURRING ON MORE THAN FOUR SEPARATE DATES HAVE BEEN ISSUED
27 PURSUANT TO SECTION 28-7759.

28 11. "TOLL" MEANS THE PRICE, FARE, CHARGE OR COST ESTABLISHED FOR THE
29 USE OF A TOLL FACILITY.

30 12. "TOLL EVASION" MEANS THE FAILURE TO PAY IN FULL A NOTICE OF PAYMENT
31 DUE WITHIN THE REQUIRED TIME.

32 13. "TOLL FACILITY" MEANS EITHER OF THE FOLLOWING:

33 (a) ANY NEW HIGHWAY, ROADWAY, LANE, BRIDGE, TUNNEL OR OTHER FACILITY
34 FOR SURFACE TRANSPORT OF PEOPLE OR GOODS THAT IS SUBJECT TO PAYMENT OF A TOLL
35 FOR ITS USE, FOR WHICH AN ALTERNATIVE ROUTE EXISTS THAT ACCOMMODATES THE SAME
36 TYPE OF MOTOR VEHICLES, EXCEPT FOR RAIL OR OTHER FIXED GUIDEWAY TRANSIT.

37 (b) AN EXISTING HIGH OCCUPANCY VEHICLE LANE THAT IS CONVERTED TO A
38 LANE THAT ACCOMMODATES HIGH OCCUPANCY VEHICLES AND VEHICLES THAT ARE SUBJECT
39 TO A TOLL AS LONG AS NO GENERAL PURPOSE LANES ARE TOLLED ON THE SAME
40 FACILITY.

41 14. "TOLL NONPAYMENT" MEANS THE FAILURE TO PAY IN FULL AN APPLICABLE
42 TOLL FOR THE USE OF A TOLL FACILITY.

43 15. "TOLL OPERATOR" MEANS THE DEPARTMENT IN ITS CAPACITY OF IMPOSING
44 AND COLLECTING TOLLS FOR THE USE OF A TOLL FACILITY, ANY PUBLIC OR
45 QUASI-PUBLIC AGENCY APPOINTED BY THE DEPARTMENT TO IMPOSE OR COLLECT TOLLS

1 FOR THE USE OF A TOLL FACILITY THAT IS OWNED BY THE DEPARTMENT, ANY PRIVATE
2 PARTNER AUTHORIZED TO IMPOSE AND COLLECT TOLLS BY A PUBLIC-PRIVATE AGREEMENT
3 OR ANY CONTRACTOR OR VENDOR RETAINED BY THE DEPARTMENT, PUBLIC AGENCY OR
4 PRIVATE PARTNER TO CARRY OUT TOLL COLLECTION AND ENFORCEMENT AND RELATED
5 CUSTOMER SERVICE FUNCTIONS.

6 16. "VIDEO TOLL TRANSACTION" MEANS A TOLL OPERATOR'S USE OF ON-FACILITY
7 AUTOMATIC VEHICLE LICENSE PLATE RECOGNITION TECHNOLOGY TO RECORD TOLL
8 TRANSACTIONS AND PROCESS NOTICES OF PAYMENT DUE IN ACCORDANCE WITH POLICIES
9 ADOPTED BY THE TOLL OPERATOR.

10 28-7752. Toll evasion

11 TOLL EVASION IS A CIVIL VIOLATION.

12 28-7753. Tolls, administrative charges and penalties

13 A. A TOLL OPERATOR MAY COLLECT TOLLS, ADMINISTRATIVE CHARGES AND
14 PENALTIES.

15 B. SUBJECT TO SUBSECTION C OF THIS SECTION, IF A TOLL OPERATOR ISSUES
16 A NOTICE OF TOLL EVASION BECAUSE THE NOTICE OF PAYMENT DUE IS NOT PAID ON
17 TIME, THE TOLL OPERATOR MAY IMPOSE IN THE NOTICE OF TOLL EVASION AN
18 ADDITIONAL ADMINISTRATIVE CHARGE AND A PENALTY.

19 C. THE DEPARTMENT MAY DIRECT, CONTROL, REGULATE OR LIMIT THE AMOUNT
20 AND METHOD OF IMPOSING ADMINISTRATIVE CHARGES AND PENALTIES BY ANY PUBLIC
21 AGENCY OR PRIVATE PARTNER AUTHORIZED TO IMPOSE AND COLLECT TOLLS UNDER A
22 PUBLIC-PRIVATE AGREEMENT OR BY THE PUBLIC AGENCY'S OR PRIVATE PARTNER'S
23 CONTRACTOR OR VENDOR.

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

27 E. A TOLL OPERATOR SHALL OFFER FREE PASSAGE ON A TOLL FACILITY TO THE
28 FOLLOWING:

29 1. ANY AUTHORIZED EMERGENCY VEHICLE RESPONDING TO AN EMERGENCY.

30 2. ANY MOTOR VEHICLE IF ORDERED BY THE DIRECTOR PURSUANT TO SECTION
31 28-364.

32 28-7754. Electronic toll payment devices; video toll
33 transactions

34 A. IF A TRANSPONDER OR OTHER ELECTRONIC TOLL PAYMENT DEVICE IS USED TO
35 PAY TOLLS OR OTHER CHARGES DUE, THE DEVICE SHALL BE LOCATED IN OR ON THE
36 MOTOR VEHICLE IN A MANNER PRESCRIBED BY THE TOLL OPERATOR AND CONSISTENT WITH
37 APPLICABLE LAW.

38 B. A TOLL OPERATOR IS NOT REQUIRED TO OFFER VIDEO TOLL TRANSACTIONS AS
39 A METHOD FOR PAYING TOLLS.

40 28-7755. Responsibility for tolls and other charges

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

44 B. EXCEPT AS PROVIDED IN SECTIONS 28-7756 AND 28-7757, THE REGISTERED
45 OWNER OF THE MOTOR VEHICLE, EVEN IF THE REGISTERED OWNER OF THE MOTOR VEHICLE

1 IS NOT THE OPERATOR OF THE MOTOR VEHICLE, IS JOINTLY AND SEVERALLY LIABLE
2 WITH THE OPERATOR OF THE MOTOR VEHICLE FOR THE TOLLS, ADMINISTRATIVE CHARGES
3 AND PENALTIES IMPOSED PURSUANT TO THIS ARTICLE IF THE MOTOR VEHICLE WAS USED
4 OR OPERATED WITH THE EXPRESS OR IMPLIED PERMISSION OF THE REGISTERED OWNER AT
5 THE TIME THE TOLL TRANSACTION OCCURRED.

6 C. THE TRANSFEREE OF TITLE TO A MOTOR VEHICLE AS DESCRIBED IN SECTION
7 28-7756 IS JOINTLY AND SEVERALLY LIABLE WITH THE OPERATOR OF THE MOTOR
8 VEHICLE FOR THE TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES IMPOSED PURSUANT
9 TO THIS ARTICLE IF THE MOTOR VEHICLE WAS USED OR OPERATED WITH THE EXPRESS OR
10 IMPLIED PERMISSION OF THE TRANSFEREE AT THE TIME THE TOLL TRANSACTION
11 OCCURRED.

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

18 E. THIS SECTION DOES NOT PRECLUDE A PERSON WHO PAYS A TOLL,
19 ADMINISTRATIVE CHARGE OR PENALTY FROM PURSUING A CIVIL CLAIM TO RECOVER THE
20 AMOUNT OF THE TOLL, ADMINISTRATIVE CHARGE OR PENALTY, ATTORNEY FEES AND COURT
21 COSTS FROM THE OPERATOR OF THE MOTOR VEHICLE AT THE TIME OF THE TOLL
22 TRANSACTION.

23 28-7756. Defenses of registered owners and lessees

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

27 1. ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

28 (a) THE MOTOR VEHICLE INVOLVED IN THE TOLL NONPAYMENT WAS STOLEN
29 BEFORE THE TOLL TRANSACTION OCCURRED AND HAD NOT BEEN RECOVERED BEFORE THE
30 TOLL TRANSACTION OCCURRED.

31 (b) THE THEFT WAS REPORTED TO THE APPROPRIATE LAW ENFORCEMENT
32 AUTHORITY.

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

38 2. ALL OF THE FOLLOWING CONDITIONS ARE SATISFIED:

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

41 (b) THE THEFT WAS REPORTED TO THE APPROPRIATE LAW ENFORCEMENT
42 AUTHORITY.

43 (c) BEFORE THE DUE DATE IN THE NOTICE OF PAYMENT DUE, THE REGISTERED
44 OWNER OR LESSEE DELIVERS TO THE TOLL OPERATOR A CERTIFIED COPY OF THE POLICE
45 REPORT SHOWING THAT THE LICENSE PLATE HAD BEEN REPORTED TO THE APPROPRIATE

1 LAW ENFORCEMENT AUTHORITY AS STOLEN AND REMAINED STOLEN AT THE TIME THE TOLL
2 TRANSACTION OCCURRED.

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

6 1. THE REGISTERED OWNER OF THE MOTOR VEHICLE INVOLVED IN THE TOLL
7 NONPAYMENT TRANSFERRED OWNERSHIP OF THE MOTOR VEHICLE TO ANOTHER PERSON
8 BEFORE THE TOLL TRANSACTION OCCURRED.

9 2. THE REGISTERED OWNER WAS NOT THE OPERATOR OF THE MOTOR VEHICLE WHEN
10 THE TOLL TRANSACTION OCCURRED.

11 3. BEFORE THE DUE DATE IN THE NOTICE OF PAYMENT DUE, THE REGISTERED
12 OWNER DELIVERS TO THE TOLL OPERATOR A LEGIBLE COPY OF THE ASSIGNMENT OF TITLE
13 OR INTEREST AND WARRANTY THAT IS IN THE FORM PRESCRIBED BY THE DEPARTMENT
14 PURSUANT TO SECTION 28-2055, THAT IS SIGNED BY THE REGISTERED OWNER, THAT
15 IDENTIFIES THE MOTOR VEHICLE AND THE NAME AND ADDRESS OF THE TRANSFEREE AND
16 THAT EVIDENCES THE DATE OF TRANSFER.

17 C. WITHIN FOURTEEN CALENDAR DAYS AFTER RECEIVING INFORMATION FROM THE
18 REGISTERED OWNER OR LESSEE REGARDING THE MOTOR VEHICLE OR LICENSE PLATES AS
19 PRESCRIBED IN THIS SECTION, THE TOLL OPERATOR SHALL NOTIFY THE REGISTERED
20 OWNER OR LESSEE IN WRITING OF THE SUFFICIENCY OF THE INFORMATION AND WHETHER
21 THE REGISTERED OWNER OR LESSEE IS RELEASED FROM LIABILITY.

22 28-7757. Defenses of lessors

23 A. THE LESSOR OF A MOTOR VEHICLE IS JOINTLY AND SEVERALLY LIABLE WITH
24 THE LESSEE FOR THE TOLL NONPAYMENT, TOLL EVASION AND RELATED TOLLS,
25 ADMINISTRATIVE CHARGES AND PENALTIES UNLESS BOTH OF THE FOLLOWING CONDITIONS
26 ARE SATISFIED:

27 1. THE MOTOR VEHICLE INVOLVED IN THE TOLL NONPAYMENT IS REGISTERED IN
28 THE NAME OF THE LESSEE OF THE MOTOR VEHICLE AT THE TIME TOLL NONPAYMENT
29 OCCURS.

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

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

40 C. A COPY OF THE MOTOR VEHICLE RENTAL AGREEMENT, LEASE OR OTHER
41 CONTRACT DOCUMENT OR AFFIDAVIT IDENTIFYING THE LESSEE OF THE MOTOR VEHICLE AT
42 THE TIME OF THE TOLL TRANSACTION IS PRIMA FACIE EVIDENCE THAT THE PERSON
43 NAMED IN THE RENTAL AGREEMENT, LEASE, OTHER CONTRACT DOCUMENT OR AFFIDAVIT
44 WAS OPERATING THE MOTOR VEHICLE AT ALL RELEVANT TIMES RELATING TO THE TOLL
45 TRANSACTION.

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

5 28-7758. Notice of payment due

6 A. IF A MOTOR VEHICLE IS FOUND BY ELECTRONIC TRANSACTION AND PAYMENT
7 TECHNOLOGY OR BY VISUAL OBSERVATION TO BE INVOLVED IN A TOLL NONPAYMENT, THE
8 TOLL OPERATOR MAY DELIVER TO THE REGISTERED OWNER OF THE MOTOR VEHICLE A
9 NOTICE OF PAYMENT DUE.

10 B. A NOTICE OF PAYMENT DUE MUST BE DELIVERED WITHIN FORTY-FIVE
11 CALENDAR DAYS AFTER THE TOLL NONPAYMENT OCCURS, EXCEPT THAT, IF INFORMATION
12 CONCERNING THE IDENTITY AND ADDRESS IS NOT AVAILABLE TO THE TOLL OPERATOR
13 WITHIN FORTY-FIVE CALENDAR DAYS AFTER THE TOLL TRANSACTION OCCURRED, THE TOLL
14 OPERATOR HAS AN ADDITIONAL FORTY-FIVE CALENDAR DAYS TO OBTAIN THE INFORMATION
15 AND DELIVER THE NOTICE OF PAYMENT DUE.

16 C. IF A TOLL OPERATOR RECEIVES INFORMATION THAT IDENTIFIES A PERSON
17 WHO IS NOT THE REGISTERED OWNER OF THE MOTOR VEHICLE AND WHO MAY BE
18 RESPONSIBLE FOR PAYING A TOLL PURSUANT TO THIS ARTICLE, THE TOLL OPERATOR MAY
19 DELIVER TO THAT PERSON A NOTICE OF PAYMENT DUE WITHIN FORTY-FIVE CALENDAR
20 DAYS AFTER THE TOLL OPERATOR RECEIVES THE INFORMATION THAT IDENTIFIES THE
21 PERSON AND THE PERSON'S ADDRESS, EXCEPT THAT, IF INFORMATION CONCERNING THE
22 IDENTITY AND ADDRESS OF THE PERSON PROVES TO BE INACCURATE, THE TOLL OPERATOR
23 HAS AN ADDITIONAL FORTY-FIVE CALENDAR DAYS TO OBTAIN THE INFORMATION AND
24 DELIVER THE NOTICE OF PAYMENT DUE.

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

26 1. THE DATE AND APPROXIMATE TIME OF THE TRANSACTION ON OR USE OF THE
27 TOLL FACILITY RESULTING IN THE TOLL NONPAYMENT AND THE APPROXIMATE LOCATION
28 WHERE THE TRANSACTION OR USE OCCURRED.

29 2. THE VEHICLE LICENSE PLATE NUMBER.

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

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

33 5. THE AMOUNT OF THE TOLL AND ANY ADMINISTRATIVE CHARGES AND
34 PENALTIES, EACH STATED SEPARATELY.

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

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

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

44 9. A STATEMENT DESCRIBING THE ACCEPTABLE METHODS FOR MAKING PAYMENT,
45 INCLUDING BY MAIL.

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

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

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

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

9 3. INFORMATION AS TO THE EFFECT OF EXECUTING THE AFFIDAVIT OF DEFENSE
10 FROM LIABILITY.

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

13 F. THIS ARTICLE DOES NOT PROHIBIT ANY RECIPIENT OF A NOTICE OF PAYMENT
14 DUE FROM PROVIDING TO THE TOLL OPERATOR PROOF OF AN ERROR IN THE NOTICE OF
15 PAYMENT DUE.

16 28-7759. Notice of toll evasion

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

19 B. THE NOTICE OF TOLL EVASION SHALL INCLUDE ALL OF THE FOLLOWING:

20 1. THE DATE AND APPROXIMATE TIME OF THE TRANSACTION ON OR USE OF THE
21 TOLL FACILITY RESULTING IN THE TOLL EVASION AND THE APPROXIMATE LOCATION
22 WHERE THE TRANSACTION OR USE OCCURRED.

23 2. THE VEHICLE LICENSE PLATE NUMBER.

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

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

27 5. THE AMOUNT OF THE TOLL AND ANY ADMINISTRATIVE CHARGES AND
28 PENALTIES, EACH STATED SEPARATELY.

29 6. A STATEMENT THAT NOTICE OF PAYMENT DUE WAS SENT AND THE PERSON
30 FAILED TO REMIT PAYMENT AS REQUIRED.

31 7. THE DEADLINE BY WHICH PAYMENT MUST BE MADE TO AVOID INCURRING
32 ADDITIONAL CHARGES AND OTHER CONSEQUENCES PROVIDED BY LAW. THIS DEADLINE
33 SHALL NOT BE LESS THAN TWENTY CALENDAR DAYS AFTER THE DATE THAT THE NOTICE OF
34 TOLL EVASION IS DELIVERED.

35 8. A STATEMENT THAT IF THE NOTICE OF TOLL EVASION IS NOT PAID BY THE
36 DEADLINE THE NONPAYMENT IS A CIVIL VIOLATION SUBJECT TO ADDITIONAL CHARGES
37 AND ACTIONS AGAINST THE NOTICE RECIPIENT AS PROVIDED IN THIS ARTICLE AND ANY
38 OTHER APPLICABLE LAW.

39 9. THE ADDRESS OF THE PERSON TO WHOM PAYMENTS MAY BE SENT.

40 10. A STATEMENT DESCRIBING THE ACCEPTABLE METHODS FOR MAKING PAYMENT,
41 INCLUDING BY MAIL.

42 11. A CLEAR AND CONCISE EXPLANATION OF THE ADMINISTRATIVE PROCEDURES
43 UNDER THIS ARTICLE FOR CONTESTING THE NOTICE OF TOLL EVASION AND APPEALING AN
44 ADVERSE DECISION.

1 12. A STATEMENT REFERRING THE RECIPIENT TO THIS ARTICLE FOR FURTHER
2 INFORMATION ON THE LAW APPLICABLE TO ENFORCEMENT OF TOLLS AND THE RECIPIENT'S
3 RIGHTS AND OBLIGATIONS.

4 28-7760. Administrative hearings; rehearing; appeal; collection

5 A. A TOLL OPERATOR THAT SEEKS TO ENFORCE COLLECTION OF TOLLS,
6 ADMINISTRATIVE CHARGES AND PENALTIES, OR A PERSON WHO IS SUBJECT TO A NOTICE
7 OF TOLL EVASION THAT IS DELIVERED OR DEEMED TO BE DELIVERED PURSUANT TO
8 SECTION 28-7759 AND WHO SEEKS TO CONTEST THE ALLEGED TOLL EVASION AND
9 COLLECTION OF ASSOCIATED TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES, MAY
10 FILE A PETITION FOR AN ADMINISTRATIVE HEARING WITH THE DEPARTMENT PURSUANT TO
11 TITLE 41, CHAPTER 6, ARTICLE 6 AND ADMINISTRATIVE HEARING RULES ADOPTED BY
12 THE DEPARTMENT.

13 B. A TOLL OPERATOR OR A PERSON WHO IS SUBJECT TO A NOTICE OF TOLL
14 EVASION THAT IS DELIVERED OR DEEMED TO BE DELIVERED PURSUANT TO SECTION
15 28-7759 MUST FILE A PETITION FOR AN ADMINISTRATIVE HEARING WITHIN ONE YEAR
16 AFTER THE DEADLINE PRESCRIBED IN THE NOTICE OF TOLL EVASION.

17 C. IF A TOLL OPERATOR FILES A PETITION FOR AN ADMINISTRATIVE HEARING,
18 A PERSON WHO IS SUBJECT TO A NOTICE OF TOLL EVASION THAT IS DELIVERED OR
19 DEEMED TO BE DELIVERED TO THAT PERSON PURSUANT TO SECTION 28-7759 MAY CONTEST
20 THE ALLEGED TOLL EVASION AND ASSOCIATED TOLLS, ADMINISTRATIVE CHARGES AND
21 PENALTIES EXCLUSIVELY AT THIS HEARING.

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

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

28 F. ANY PARTY TO AN ADMINISTRATIVE HEARING PURSUANT TO THIS SECTION MAY
29 REQUEST A CONTINUANCE OF THE ADMINISTRATIVE HEARING PURSUANT TO RULES ADOPTED
30 BY THE DEPARTMENT.

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

34 1. THE NOTICE OF PAYMENT DUE.

35 2. THE NOTICE OF TOLL EVASION.

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

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

41 (a) THE NOTICE OF PAYMENT DUE AND THE NOTICE OF TOLL EVASION ARE
42 AUTHENTIC.

43 (b) THE AMOUNT DUE IS ACCURATE.

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

1 5. IF THE PERSON IDENTIFIED IN THE NOTICE OF TOLL EVASION IS A LESSEE,
2 A COPY OF THE RENTAL AGREEMENT, LEASE, CONTRACT DOCUMENT OR AFFIDAVIT THAT
3 IDENTIFIES THE LESSEE OF THE MOTOR VEHICLE AT THE TIME OF THE ALLEGED TOLL
4 NONPAYMENT.

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

9 H. THE PERSON AUTHORIZED TO ISSUE A NOTICE OF PAYMENT DUE OR NOTICE OF
10 TOLL EVASION IS NOT REQUIRED TO PARTICIPATE IN THE ADMINISTRATIVE HEARING AND
11 IS NOT SUBJECT TO SUBPOENA, EXCEPT THAT THE HEARING OFFICER MAY PERMIT A
12 DEPOSITION TO BE TAKEN AND INTRODUCED INTO THE RECORD OF THE EVIDENTIARY
13 HEARING. IF THE DEPOSED PERSON DOES NOT APPEAR, THE SWORN STATEMENTS
14 CONTAINED IN THE DEPOSITION ARE ADMISSIBLE IN EVIDENCE AT THE ADMINISTRATIVE
15 HEARING.

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

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

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

28 J. UNLESS THE HEARING OFFICER GRANTS A REHEARING ON WRITTEN MOTION OF
29 THE NONAPPEARING PARTY OR UNLESS ANY AGGRIEVED PARTY APPEALS THE DECISION OR
30 ORDER ENTERED AS PROVIDED IN THIS SUBSECTION, THE DECISION OR ORDER IS FINAL
31 AND MAY BE ENFORCED BY EXECUTION AND LEVY IN THE SAME MANNER AS A JUDGMENT OF
32 THE SUPERIOR COURT. THE NONPREVAILING PARTY MAY APPEAL THE DECISION OR ORDER
33 TO THE SUPERIOR COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AFTER A
34 DECISION OR ORDER BECOMES FINAL, EACH PERSON DETERMINED IN THE FINAL DECISION
35 OR ORDER TO BE LIABLE FOR THE TOLL EVASION IS CONSIDERED TO BE INDEBTED TO
36 THE TOLL OPERATOR OR THE TOLL OPERATOR'S DESIGNEE FOR THE TOLLS,
37 ADMINISTRATIVE CHARGES AND PENALTIES AS WELL AS ANY ASSESSED FILING FEES AND
38 POSTAWARD COLLECTION AND EXECUTION COSTS PROVIDED BY OPERATION OF LAW UNTIL
39 THOSE AMOUNTS ARE FULLY PAID OR COMPROMISED IN A MUTUALLY AGREED SETTLEMENT.

40 K. PROMPTLY AFTER A HEARING OFFICER ENTERS A DECISION OR ORDER FINDING
41 A PERSON LIABLE FOR A TOLL EVASION, THE HEARING OFFICER SHALL DELIVER IN
42 PERSON OR TO THE LAST KNOWN ADDRESS OF THE PERSON AND THE PERSON'S ATTORNEY
43 OF RECORD IN THE PROCEEDING, IF ANY, WRITTEN NOTICE INFORMING THE PERSON OF
44 THE PERSON'S RIGHT TO APPEAL TO THE SUPERIOR COURT PURSUANT TO TITLE 12,
45 CHAPTER 7, ARTICLE 6, THAT EXECUTION MAY BE LEVIED AGAINST THE PERSON'S

1 ASSETS, THAT LIENS MAY BE PLACED AGAINST THE PERSON'S PROPERTY, THAT THE
2 PERSON'S WAGES MAY BE GARNISHED AND THAT OTHER STEPS MAY BE TAKEN TO SATISFY
3 THE AWARD ONCE IT BECOMES FINAL. SUBJECT TO ANY STAY OR INJUNCTION, THE TOLL
4 OPERATOR MAY PROCEED TO EXECUTE ON THE AWARD FOLLOWING DELIVERY OF THIS
5 NOTICE.

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

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

15 28-7761. Reporting to department; impact on driving record and
16 insurance

17 A. THE TOLL OPERATOR SHALL REPORT TO THE DEPARTMENT SATISFACTION OF
18 THE LIABILITY WITHIN FIVE CALENDAR DAYS AFTER THE TOLL OPERATOR RECEIVES
19 PAYMENT ON A FORM SUPPLIED BY THE DEPARTMENT.

20 B. LIABILITY FOR A TOLL EVASION OR ASSOCIATED TOLLS, ADMINISTRATIVE
21 CHARGES AND PENALTIES IS NOT A MOVING VIOLATION PURSUANT TO THIS TITLE, AND
22 AN INSURER SHALL NOT CONSIDER THE LIABILITY AGAINST THE PERSON FOR THE
23 PURPOSES OF ESTABLISHING RATES FOR MOTOR VEHICLE LIABILITY INSURANCE OR
24 DETERMINING THE INSURABILITY OF THE PERSON. AN INSURER SHALL NOT CANCEL OR
25 REFUSE TO RENEW ANY POLICY OF INSURANCE BECAUSE OF THE LIABILITY.

26 28-7762. Vehicle registration penalties

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

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

37 28-7763. Driver license suspension

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

42 1. THIRTY DAYS.

43 2. UNTIL THE DEPARTMENT IS NOTIFIED BY EACH TOLL OPERATOR TO WHOM
44 PAYMENT IS OWING UNDER A FINAL DECISION, ORDER OR JUDGMENT THAT THE FULL
45 LIABILITY AND ANY POSTAWARD COLLECTION AND EXECUTION COSTS HAVE BEEN PAID OR

1 THE PERSON SUBMITS EVIDENCE SATISFACTORY TO THE DIRECTOR THAT THE FULL
2 LIABILITY AND ANY POSTAWARD COLLECTION AND EXECUTION COSTS HAVE BEEN PAID.

3 28-7764. Motor vehicle immobilization, tow and impoundment;
4 hearing; release of motor vehicle

5 A. ON PETITION BY A TOLL OPERATOR, A HEARING OFFICER MAY ORDER THAT A
6 MOTOR VEHICLE BE IMMOBILIZED, TOWED OR IMPOUNDED FOR THE PURPOSE OF
7 FACILITATING ENFORCEMENT OF ANY TOLL EVASION IF THE HEARING OFFICER FINDS
8 THAT THE PERSON IS A REPEAT TOLL EVADER AND HAS UNSATISFIED LIABILITY
9 INVOLVING THE MOTOR VEHICLE. THE HEARING OFFICER'S ORDER MAY BE ENFORCED BY
10 ANY PEACE OFFICER WITH JURISDICTION IN THE LOCATION IN WHICH THE MOTOR
11 VEHICLE IS FOUND.

12 B. THE REGISTERED OWNER OF A MOTOR VEHICLE THAT IS IMMOBILIZED, TOWED
13 OR IMPOUNDED FOR UNSATISFIED LIABILITY UNDER THIS SECTION, THE SPOUSE OF THE
14 REGISTERED OWNER AND EACH PERSON IDENTIFIED ON THE DEPARTMENT'S RECORD WITH
15 AN INTEREST IN THE MOTOR VEHICLE SHALL BE PROVIDED AN OPPORTUNITY FOR AN
16 IMMOBILIZATION OR POSTSTORAGE HEARING PURSUANT TO SECTION 28-3514 SOLELY FOR
17 THE PURPOSE OF CHALLENGING THE VALIDITY OF THE IMMOBILIZATION, TOW OR
18 IMPOUNDMENT. THIS HEARING SHALL NOT READJUDICATE THE MERITS OF ANY
19 PREVIOUSLY ADJUDICATED NOTICE OF TOLL EVASION.

20 C. AN IMMOBILIZED OR IMPOUNDED MOTOR VEHICLE SHALL BE RELEASED
21 IMMEDIATELY IF ALL OF THE FOLLOWING HAVE BEEN PAID:

- 22 1. THE FULL AMOUNT OF THE TOLLS, ADMINISTRATIVE CHARGES AND PENALTIES.
- 23 2. ASSESSED FILING FEES AND POSTAWARD COLLECTION AND EXECUTION COSTS.
- 24 3. COSTS INCURRED FOR IMMOBILIZATION, TOWING AND STORAGE.
- 25 4. ADMINISTRATIVE CHARGES ESTABLISHED PURSUANT TO SECTION 28-3513.

26 Sec. 17. Section 41-1005, Arizona Revised Statutes, is amended to
27 read:

28 41-1005. Exemptions

29 A. This chapter does not apply to any:

30 1. Rule that relates to the use of public works, including streets and
31 highways, under the jurisdiction of an agency if the effect of the order is
32 indicated to the public by means of signs or signals.

33 2. Order of the Arizona game and fish commission that opens, closes or
34 alters seasons or establishes bag or possession limits for wildlife.

35 3. Rule relating to section 28-641 or to any rule regulating motor
36 vehicle operation that relates to speed, parking, standing, stopping or
37 passing enacted pursuant to title 28, chapter 3.

38 4. Rule concerning only the internal management of an agency that does
39 not directly and substantially affect the procedural or substantive rights or
40 duties of any segment of the public.

41 5. Rule that only establishes specific prices to be charged for
42 particular goods or services sold by an agency.

43 6. Rule concerning only the physical servicing, maintenance or care of
44 agency owned or operated facilities or property.

1 7. Rule or substantive policy statement concerning inmates or
2 committed youths of a correctional or detention facility in secure custody or
3 patients admitted to a hospital, if made by the state department of
4 corrections, the department of juvenile corrections, the board of executive
5 clemency or the department of health services or a facility or hospital under
6 the jurisdiction of the state department of corrections, the department of
7 juvenile corrections or the department of health services.

8 8. Form whose contents or substantive requirements are prescribed by
9 rule or statute, and instructions for the execution or use of the form.

10 9. Capped fee-for-service schedule adopted by the Arizona health care
11 cost containment system administration pursuant to title 36, chapter 29.

12 10. Fees prescribed by section 6-125.

13 11. Order of the director of water resources adopting or modifying a
14 management plan pursuant to title 45, chapter 2, article 9.

15 12. Fees established under section 3-1086.

16 13. Fee-for-service schedule adopted by the department of economic
17 security pursuant to section 8-512.

18 14. Fees established under sections 41-2144 and 41-2189.

19 15. Rule or other matter relating to agency contracts.

20 16. Fees established under section 32-2067 or 32-2132.

21 17. Rules made pursuant to section 5-111, subsection A.

22 18. Rules made by the Arizona state parks board concerning the
23 operation of the Tonto natural bridge state park, the facilities located in
24 the Tonto natural bridge state park and the entrance fees to the Tonto
25 natural bridge state park.

26 19. Fees or charges established under section 41-511.05.

27 20. Emergency medical services protocols except as provided in section
28 36-2205, subsection C.

29 21. Fee schedules established pursuant to section 36-3409.

30 22. Procedures of the state transportation board as prescribed in
31 section 28-7048.

32 23. Rules made by the state department of corrections.

33 24. Fees prescribed pursuant to section 32-1527.

34 25. Rules made by the department of economic security pursuant to
35 section 46-805.

36 26. Schedule of fees prescribed by section 23-908.

37 27. Procedure that is established pursuant to title 23, chapter 6,
38 article 5 or 6.

39 28. Rules, administrative policies, procedures and guidelines adopted
40 for any purpose by the Arizona commerce authority pursuant to chapter 10 of
41 this title if the authority provides, as appropriate under the circumstances,
42 for notice of an opportunity for comment on the proposed rules,
43 administrative policies, procedures and guidelines.

44 29. Rules made by a marketing commission or marketing committee
45 pursuant to section 3-414.

1 30. USER CHARGES, TOLLS, FARES, RENTS, ADVERTISING AND SPONSORSHIP
2 CHARGES, SERVICE CHARGES OR SIMILAR CHARGES ESTABLISHED PURSUANT TO SECTION
3 28-7705.

4 B. Notwithstanding subsection A, paragraph 22 of this section, at such
5 time as the federal highway administration authorizes the privatization of
6 rest areas, the state transportation board shall make rules governing the
7 lease or license by the department of transportation to a private entity for
8 the purposes of privatization of a rest area.

9 C. Coincident with the making of a rule pursuant to an exemption under
10 this section, the agency shall file a copy of the rule with the secretary of
11 state for publication pursuant to section 41-1012.

12 D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
13 chapter do not apply to the Arizona board of regents and the institutions
14 under its jurisdiction, except that the Arizona board of regents shall make
15 policies or rules for the board and the institutions under its jurisdiction
16 that provide, as appropriate under the circumstances, for notice of and
17 opportunity for comment on the policies or rules proposed.

18 E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this
19 chapter do not apply to the Arizona state schools for the deaf and the blind,
20 except that the board of directors of all the state schools for the deaf and
21 the blind shall adopt policies for the board and the schools under its
22 jurisdiction that provide, as appropriate under the circumstances, for notice
23 of and opportunity for comment on the policies proposed for adoption.

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

32 Sec. 18. Section 44-281, Arizona Revised Statutes, is amended to read:
33 44-281. Definitions

34 In this article, unless the context otherwise requires:

35 1. "Administrator" means the superintendent of financial institutions.

36 2. "Cash sale price" means the price stated in a retail installment
37 contract for which the seller would have sold to the buyer, and the buyer
38 would have bought from the seller, the motor vehicle which is the subject
39 matter of the retail installment contract, if such sale had been a sale for
40 cash instead of a retail installment transaction. The cash sale price may
41 include charges for accessories and their installation and for delivery, and
42 servicing, repairing or improving the motor vehicle, and for charges for
43 other costs that are necessary or incidental to the transaction and that the
44 seller furnishes or agrees to pay on behalf of the buyer, including taxes,
45 assessor's fees, license fees and fees for filing, recording or otherwise

1 perfecting or releasing a reserved title or lien, and may include a
2 reasonable charge for the seller's services.

3 3. "Dealer" means any person who in any year sells on a noncash basis
4 three or more motor vehicles at retail.

5 4. "Finance charge" means the amount agreed upon between the buyer and
6 the seller, as limited herein, which in determining the cost of the motor
7 vehicle is added to the aggregate of the following: The cash sale price and
8 the amount, if any, included for insurance and other benefits where a
9 separate cost is assigned thereto.

10 5. "Holder" of a retail installment contract means the retail seller
11 of the motor vehicle under or subject to the contract or, if the contract is
12 purchased by a sales finance company or other assignee, the sales finance
13 company or other assignee.

14 6. "Motor vehicle" means any self-propelled device in or by which any
15 person or property is or may be transported or drawn on a public highway,
16 except:

17 (a) Devices that move upon or are guided by a track or travel through
18 the air.

19 (b) The following, if not designed primarily for highway
20 transportation, but which may incidentally be operated on a public highway:

21 (i) Tractors.

22 (ii) Buses.

23 (iii) Trucks.

24 (iv) Power shovels.

25 (v) Road machinery.

26 (vi) Agricultural machinery.

27 7. "Person" means an individual, partnership, association, trust,
28 corporation, or other legal entity.

29 8. "Retail buyer" or "buyer" means a person who buys a motor vehicle
30 from a retail seller, not for the purpose of resale, and who executes a
31 retail installment contract in connection therewith.

32 9. "Retail installment contract" or "contract":

33 (a) Means an agreement, entered into in this state, pursuant to which
34 the title to or a lien upon the motor vehicle, which is the subject matter of
35 a retail installment transaction, is retained or taken by a retail seller
36 from a retail buyer as security for the buyer's obligation.

37 (b) Includes:

38 (i) A conditional sales contract and a contract for the bailment or
39 leasing of a motor vehicle by which the bailee or lessee contracts to pay as
40 compensation for its use a sum substantially equivalent to or in excess of
41 its value and by which it is agreed that the bailee or lessee is bound to
42 become, or has the option of becoming, the owner of the motor vehicle for no
43 other or a nominal consideration upon full compliance with the provisions of
44 the contract.

45 (ii) A secondary motor vehicle finance transaction.

1 10. "Retail installment transaction" means any transaction evidenced by
2 a retail installment contract entered into between a retail buyer and a
3 retail seller wherein the retail buyer buys a motor vehicle from the retail
4 seller at a cost payable in one or more deferred installments. The cash sale
5 price of the motor vehicle, the amount included for insurance if a separate
6 charge is made and the finance charge shall together constitute the cost of
7 the motor vehicle.

8 11. "Retail seller" or "seller" means a person who sells a motor
9 vehicle to a retail buyer for purposes other than resale under or subject to
10 a retail installment contract. For the purposes of paragraph 13 of this
11 section "seller" means a person who sells and retains the use of the motor
12 vehicle.

13 12. "Sales finance company":

14 (a) Means a person engaged, in whole or in part, in the business of
15 purchasing retail installment contracts from one or more retail sellers.

16 (b) Includes a person engaged, in whole or in part, in the business of
17 creating or holding retail installment contracts that exceed a total
18 aggregate outstanding indebtedness of ~~twenty-five~~ FIFTY thousand dollars.

19 (c) Does not include the pledgee of an aggregate number of retail
20 installment contracts to secure a bona fide loan thereon.

21 (d) DOES NOT INCLUDE A DEALER WHO CREATES RETAIL INSTALLMENT CONTRACTS
22 AND ASSIGNS THE RETAIL INSTALLMENT CONTRACTS TO THIRD PARTY LENDERS OR
23 FINANCIAL INSTITUTIONS UNLESS THE DEALER HOLDS RETAIL INSTALLMENT CONTRACTS
24 THAT EXCEED A TOTAL AGGREGATE OUTSTANDING INDEBTEDNESS OF FIFTY THOUSAND
25 DOLLARS.

26 13. "Secondary motor vehicle finance transaction":

27 (a) Means any contract that includes provisions for either:

28 (i) Obtaining a security interest in or lien on a motor vehicle other
29 than in connection with the sale of that motor vehicle.

30 (ii) The sale or conditional sale of a motor vehicle and the seller's
31 right to retain use of the motor vehicle after the sale or conditional sale.

32 (b) Includes any conditional sales contract or contract for the
33 bailment or leasing of a motor vehicle in which the bailee or lessee agrees
34 to pay for use of the motor vehicle and the bailee or lessee is required to
35 become or has the option of becoming the owner of the vehicle for any or no
36 compensation.

37 (c) Does not include any commercial transaction as defined in section
38 44-291.

39 (NOT ENACTED)

40 Sec. 19. Emergency

41 This act is an emergency measure that is necessary to preserve the
42 public peace, health or safety and is operative immediately as provided by
43 law.