An Act To Simplify the Maine Turnpike Authority's Enforcement Procedures for Toll Violations

Submitted by the Maine Turnpike Authority pursuant to Joint Rule 204.

Received by the Secretary of the Senate on December 16, 2003. Referred to the Committee on Transportation pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Presented by Senator HATCH of Somerset.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 23 MRSA §1965, sub-§1, ¶V, as enacted by PL 2003, c. 311, §3, is amended to read:

V. Develop programs whereby a patron of the turnpike who uses the authority's electronic toll collection system, as defined in section 1980, subsection 2-A, paragraph B, may elect to use the patron's electronic toll collection system device to pay for services other than tolls for the use of the turnpike, whether those services are provided by the authority itself or 3rd parties, and allow the patron to participate in similar programs developed by other tolling authorities.

Sec. 2. 23 MRSA §1980, sub-§2-A, as amended by PL 2001, c. 154, §§1 to 4, is repealed and the following enacted in its place:

2-A. Toll violations. In addition to potential criminal liability under subsection 1-A, the registered owner of a vehicle may be liable for civil penalties for failure to pay a toll as set out in this subsection.

A. If an operator of a vehicle fails to pay a toll, the registered owner of that vehicle is liable for payment of the toll and is subject to a civil penalty of:

(1) Fifty dollars, except as provided in subparagraph (2) or (3);

(2) One hundred dollars, if a failure to pay a toll occurs within 18 months of a prior failure to pay; or

(3) One hundred fifty dollars, if a failure to pay a toll occurs within 18 months of 2 or more prior failures to pay.

B. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

(1) "Administrative fee" means the fee imposed pursuant to paragraph C, subparagraph (4).

(2) "Electronic toll collection system" means a system of collecting tolls or other charges that is capable of charging an account holder the appropriate amount by transmission of information between a device on a motor vehicle and a toll collection facility.
(3) "Pay" means paying a toll by cash, by permitting a charge against a valid account with the authority or by any other means of payment approved by the authority at the time.

(4) "Photo-monitoring system" means a motor vehicle sensor installed to work in conjunction with a toll collection facility that automatically produces a photograph, microphotograph, videotape or other recorded image of a motor vehicle when the operator of the motor vehicle fails to pay a toll.

(5) "Registered owner" means a person in whose name a motor vehicle is registered under the law of a jurisdiction, including a person issued a dealer or transporter registration plate.

(6) "Toll" or "tolls" means tolls or other charges prescribed by the authority for use of the turnpike or for other services provided to a turnpike patron under section 1965, subsection 1, paragraph V.

(7) "Violation clerk" means an employee of the authority designated by the authority to enforce violations and adjudicate appeals relating to those violations under this subsection.

C. The following procedures must be followed for the collection of tolls, administrative fees and civil penalties under this subsection.

(1) The authority shall send a notice of liability by first-class mail to a person alleged to be liable as a registered owner under this subsection. The notice must be sent to the address of the registered owner on record with the authority if the registered owner is an electronic toll collection patron of the authority or, if no such record exists, the address of the registered owner on record with the Secretary of State. A manual or automatic record of the mailing prepared in the ordinary course of business of the authority is prima facie evidence of the mailing of the notice.

(2) A notice of liability must include the name and address of the person alleged to be liable as a registered owner for the failure to pay a toll under this subsection, the amount of the toll not paid, the registration number of the vehicle involved, the toll collection facility at which the failure occurred and the date and the approximate time of the failure. The
notice must also include the name, address and telephone number of the violation clerk responsible for enforcing the penalty for the failure to pay.

(3) A notice of liability must include information advising the person liable under this subsection of the manner and time in which the liability alleged in the notice may be contested and the statutory defenses described in paragraph E. The notice must also include a warning that failure to contest in the manner and time provided is an admission of liability and a waiver of available defenses and may result in revocation of the registration certificate and plates issued for the vehicle.

(4) Within 30 calendar days after the date of the issuance of the notice of liability, the registered owner to whom the notice is issued must:

(a) Pay the amount of the toll for which the person is liable, the civil penalty or penalties provided for in paragraph A and an administrative fee of $20 for each toll for which the person is liable but has not paid;

(b) Send a written dispute by mail to the violation clerk named in the notice, as provided by paragraph I; or

(c) Request a hearing with the violation clerk named in the notice as provided by paragraph J.

D. Except as provided in paragraph E, it is not a defense to liability under this subsection that a registered owner was not operating the motor vehicle at the time of the failure to pay.

E. Defenses to liability under this subsection are as set out in this paragraph.

(1) If a person other than the registered owner of the motor vehicle is adjudicated criminally or civilly responsible for the failure to pay a toll, then the registered owner is not liable under this subsection.

(2) If the registered owner of the motor vehicle is the lessor of motor vehicles and at the time of the failure to pay an authority toll the motor vehicle was in the possession of a lessee and the lessor provides the authority with a copy of the lease agreement
containing the information required by Title 29-A, section 254, then the lessee, and not the lessor, is liable under this subsection.

(3) If the motor vehicle is operated using a dealer or transporter registration plate and at the time of the failure to pay the motor vehicle was under the custody or control of a person other than the dealer or transporter, and if the dealer or transporter provides the authority with the name and address of the person who had custody or control over the motor vehicle at the time of the failure to pay, then that person and not the dealer or transporter is liable under this subsection.

(4) If a report that the motor vehicle was stolen is given to a law enforcement officer or agency before the failure to pay occurs or within a reasonable time after the registered owner becomes aware of the theft, then the registered owner is not liable under this subsection.

F. Nothing in this subsection may be construed to limit the liability of an operator of a motor vehicle for a failure to pay an authority toll. If a person who is liable for a failure to pay under this subsection was not the operator of the motor vehicle at the time of the failure to pay, that person may maintain an action for indemnification against the operator to recover all tolls, administrative fees and civil penalties paid by that person under this subsection.

G. If a registered owner does not dispute a notice of liability or pay the tolls, administrative fees and civil penalties as required by paragraph C, subparagraph (4), or if the registered owner does not pay the tolls, administrative fees and civil penalties required by a final decision of a violation clerk as provided in paragraphs I and J, then the authority shall notify the Secretary of State, who shall, in accordance with Title 29-A, section 154, subsection 6, suspend the registration certificate and plates issued for the vehicle involved in the alleged failure to pay.

H. Combinations of vehicles involving a motor vehicle and one or more trailers or semitrailers equipped with a total of 3 or more axles, including motor vehicles with 6 or more tires towing a trailer, but not including motor vehicles with 4 tires or fewer towing a trailer, are not subject to an administrative fee under this subsection.
I. The registered owner may, without waiving the right to a hearing before a violation clerk as provided by paragraph J and also without waiving the right to judicial review as provided by Title 5, chapter 375, subchapter 7, appeal a notice of liability as provided by paragraph C, subparagraph (4) and receive a review and disposition of the violation from a violation clerk by mail. The appeal by mail must contain a signed statement from the registered owner explaining the basis for the appeal. The signed statement may be accompanied by signed statements from witnesses, police officers, government officials or other relevant parties or photographs, diagrams, maps or other relevant documents that the registered owner determines appropriate to submit. Statements or materials sent to a violation clerk for review must have attached to them the name and address of the registered owner as well as the number of the notice of liability and the date of the violation. All information submitted by the registered owner becomes part of the violation record. The violation clerk shall, within 60 days of receipt of such material, review the material and dismiss or uphold the violation and notify the registered owner of the disposition of the hearing in writing by mail. If the appeal by mail is denied, the violation clerk shall explain the reasons for the determination. The review and disposition handled by mail is informal, the rules of evidence do not apply and the decision is final, subject to the hearing provisions of paragraph J.

J. As provided by paragraph C, subparagraph (4) or within 30 days of the issuance of a decision by a violation clerk under paragraph I, a registered owner may make a written request for an appeal hearing before a violation clerk designated by the authority. The violation clerk shall then notify the registered owner in writing by first-class mail of the date, time and place of the hearing. The hearing is informal, the rules of evidence do not apply and the decision of the violation clerk is final. The violation clerk shall notify the parties in person or by mail of the decision following the hearing. Each written appeal decision must contain a statement of reasons for the decision including a determination of each issue of fact necessary to the decision. Failure to appear at the date, time and place specified on the hearing notice automatically results in the denial of the appeal.

K. Any decision by a violation clerk under this section is subject to judicial review of final agency action in the manner provided by Title 5, chapter 375, subchapter 7.
Sec. 3. 29-A MRSA §154, sub-§6, as enacted by PL 1995, c. 65, Pt. A, §84 and affected by §153 and Pt. C, §15, is amended to read:

6. Recovery of turnpike tolls. Upon receipt of an order of suspension notice from the court Maine Turnpike Authority in accordance with Title 23, section 1980, subsection 2-A, paragraph G, the Secretary of State shall promptly mail a notice to the person liable under that subsection for unpaid Maine Turnpike Authority tolls, warning the person that, if the amount due the Maine Turnpike Authority is not paid within 10 days from the date of mailing the notice, suspension of the registration certificate and plates issued for the vehicle in question will result. If the person fails to pay the required amount within 10 days after mailing of the notice, the Secretary of State shall suspend, pursuant to chapter 23, the registration certificate and plates issued for the vehicle in question. This subsection takes effect July 1, 1995. The Secretary of State may not reinstate the registration certificate and plates until the Maine Turnpike Authority provides notice that the toll and applicable fines and penalties have been paid. Notwithstanding any other provision of law, Title 5, section 9052, subsection 1 does not apply to a notice of suspension issued pursuant to this subsection.

SUMMARY

This bill amends the Maine Turnpike Authority's procedures for collecting fees and fines for failure to pay tolls.