

# Senate Bill 266

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits tollway operator from charging more for toll based solely on method of payment. Provides exception.

Prohibits person, other than tollway operator, from reading transponder.

Requires tollway operator to accept cash payment at toll booth and other similar facilities and to provide person anonymous method for funding account established for purpose of using electronic toll collection system.

Directs Department of Transportation to develop privacy policy and to provide copy of policy to account holders using electronic toll collection system.

Imposes civil penalty on tollway operator for failure to perform certain duties.

Requires that records and information used to collect and enforce tolls be destroyed within 30 days after receiving final payment, fees or penalties for toll.

Specifies that records and information used to collect and enforce tolls may be used only for toll collection. Provides exceptions.

## A BILL FOR AN ACT

1  
2 Relating to tollways; creating new provisions; and amending ORS 383.003, 383.006, 383.014, 383.075  
3 and 802.179.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 10 of this 2011 Act are added to and made a part of ORS 383.003**  
6 **to 383.075.**

7 **SECTION 2. Except to cover the costs associated with using a certain method of pay-**  
8 **ment, a tollway operator may not charge more for a toll based on the method of payment a**  
9 **person uses to pay a toll.**

10 **SECTION 3. (1) A person, other than a tollway operator, may not read or capture per-**  
11 **sonally identifiable information contained on another person's transponder.**

12 **(2) Subsection (1) of this section does not apply to a person who inadvertently reads a**  
13 **transponder while attempting to read another device, if the inadvertently received data are**  
14 **not stored, are promptly destroyed, are not disclosed to a third party and are not used for**  
15 **any purpose.**

16 **(3) In addition to any other remedy provided by law, an individual whose personally**  
17 **identifiable information is read or captured from a transponder in violation of this section**  
18 **may bring an action to recover actual damages or \$1,000, whichever is greater, and to obtain**  
19 **equitable relief, if equitable relief is available. A court shall award a prevailing plaintiff rea-**  
20 **sonable costs and attorney fees.**

21 **SECTION 4. A tollway operator shall:**

22 **(1) Accept cash payment from a person paying a toll at a toll plaza, toll booth or similar**  
23 **fixed toll collection facility;**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) Provide a method for cash deposit into an account established by a person for the  
2 purpose of using an electronic toll collection system; and

3 (3) Allow a person to establish an anonymous account for the purpose of using an elec-  
4 tronic toll collection system that is not linked to a specific vehicle.

5 **SECTION 5.** (1) The Department of Transportation shall, by rule, develop a privacy policy  
6 regarding the collection and use of personally identifiable information used in the operation  
7 of electronic toll collection systems.

8 (2) When a person establishes an account for the purpose of using an electronic toll col-  
9 lection system, the department shall provide to the account holder a copy of the privacy  
10 policy in a conspicuous and clear manner.

11 (3) The department shall post the privacy policy developed in subsection (1) of this sec-  
12 tion on its website.

13 (4) The privacy policy must include, but is not limited to, a description of the following:

14 (a) The types of personally identifiable information tollway operators are permitted to  
15 collect;

16 (b) Persons tollway operators may share personally identifiable information with and for  
17 what purposes;

18 (c) The types and methods of payment options available to account holders;

19 (d) The remedies available for violation of section 3 of this 2011 Act;

20 (e) The remedies available under section 6 of this 2011 Act for violation of the privacy  
21 policy developed in this section or for violation of ORS 383.075;

22 (f) The process by which the department shall notify account holders of material changes  
23 to the department's privacy policy;

24 (g) The effective date of the privacy policy; and

25 (h) The process by which an account holder may review and request changes to any of  
26 the account holder's personally identifiable information.

27 **SECTION 6.** In addition to any other remedy provided by law, an individual whose per-  
28 sonally identifiable information is collected, stored or otherwise used in violation of the pri-  
29 vacy policy developed by the Department of Transportation under section 5 of this 2011 Act  
30 or in violation of ORS 383.075 may bring an action to recover actual damages or \$1,000,  
31 whichever is greater, and to obtain equitable relief, if equitable relief is available. A court  
32 shall award a prevailing plaintiff reasonable costs and attorney fees.

33 **SECTION 7.** The Department of Transportation may inspect the records of a tollway op-  
34 erator, other than the department, for the purpose of determining compliance with any of  
35 the following:

36 (1) The regulation of tolls under section 2 of this 2011 Act;

37 (2) Section 4 of this 2011 Act; and

38 (3) The requirements for storage and destruction of personally identifiable information  
39 under section 10 of this 2011 Act.

40 **SECTION 8.** The Secretary of State may inspect the records of the Department of  
41 Transportation when the department is acting as a tollway operator, for the purpose of de-  
42 termining compliance with any of the following:

43 (1) The regulation of tolls under section 2 of this 2011 Act;

44 (2) Section 4 of this 2011 Act; and

45 (3) The requirements for storage and destruction of personally identifiable information

1 under section 10 of this 2011 Act.

2 **SECTION 9.** (1) The Department of Transportation shall impose a civil penalty of \$1,000  
3 if a tollway operator, other than the department, violates any provision of ORS 383.003 to  
4 383.075 or a rule adopted under ORS 383.003 to 383.075.

5 (2) A person may file with the Attorney General a written complaint alleging that the  
6 Department of Transportation committed a violation of a provision of ORS 383.003 to 383.075  
7 or a rule adopted under ORS 383.003 to 383.075, stating the reason for believing that the vi-  
8 olation occurred and providing any evidence relating to the violation. The Attorney General  
9 may not accept an anonymous complaint.

10 (3) Upon receipt of a complaint under subsection (2) of this section, the Attorney General  
11 immediately shall examine the complaint to determine whether the department committed  
12 a violation of a provision of ORS 383.003 to 383.075 or a rule adopted under ORS 383.003 to  
13 383.075 and shall make any investigation the Attorney General considers necessary.

14 (4) If the Attorney General believes after an investigation under subsection (3) of this  
15 section that the department committed a violation of a provision of ORS 383.003 to 383.075  
16 or a rule adopted under ORS 383.003 to 383.075, the Attorney General shall impose a civil  
17 penalty of \$1,000.

18 (5) Civil penalties under this section shall be imposed in the manner provided in ORS  
19 183.745 and may not be reduced.

20 **SECTION 10.** (1) Except as provided in subsection (2) of this section, personally identifi-  
21 able information used to collect and enforce tolls shall be destroyed no later than 30 days  
22 after the person has paid the toll, paid administrative fees or paid penalties.

23 (2) If a person establishes an account with a tollway operator for the purpose of using  
24 an electronic toll collection system, the tollway operator may store personally identifiable  
25 information longer than 30 days if the information is required to perform account functions  
26 such as billing account settlement or enforcement activities. After receiving written notice  
27 that the person wants to close the account, the tollway operator shall destroy the informa-  
28 tion within 30 days.

29 **SECTION 11.** ORS 383.003 is amended to read:

30 383.003. As used in ORS 383.003 to 383.075:

31 (1) "Department" means the Department of Transportation.

32 (2) "Electronic toll collection system" means a system that records use of a tollway by elec-  
33 tronic transmissions to or from the vehicle using the tollway and that collects tolls, or that is ca-  
34 pable of charging an account established by a person for use of the tollway.

35 (3) "Personally identifiable information" means any information that identifies or de-  
36 scribes a person, including, but not limited to, the person's travel pattern data, electronic  
37 toll collection system account number, address, telephone number, electronic mail address,  
38 driver license or identification card number, registration plate number, photograph, recorded  
39 images, bank account information or credit card number.

40 [(3)] (4) "Photo enforcement system" means a system of sensors installed to work in conjunction  
41 with an electronic toll collection system and other traffic control devices and that automatically  
42 produces videotape or one or more photographs, microphotographs or other recorded images of a  
43 vehicle in connection with the collection or enforcement of tolls.

44 [(4)] (5) "Private entity" means any nongovernmental entity, including a corporation, partner-  
45 ship, company or other legal entity, or any natural person.

1 [(5)] (6) "Related facility" means any real or personal property that:

2 (a) Will be used to operate, maintain, renovate or facilitate the use of the tollway;

3 (b) Will provide goods or services to the users of the tollway; or

4 (c) Can be developed efficiently when tollways are developed and will generate revenue that  
5 may be used to reduce tolls or will be deposited in the State Tollway Account.

6 [(6)] (7) "Toll" means any fee or charge for the use of a tollway.

7 [(7)] (8) "Toll booth collections" means the manual or mechanical collection of cash or charging  
8 of an account at a toll plaza, toll booth or similar fixed toll collection facility.

9 [(8)] (9) "Tollway" means any roadway, path, highway, bridge, tunnel, railroad track, bicycle  
10 path or other paved surface or structure specifically designed as a land vehicle transportation route,  
11 the construction, operation or maintenance of which is wholly or partially funded with toll revenues  
12 resulting from an agreement under ORS 383.005.

13 [(9)] (10) "Tollway operator" means the unit of government or the private entity that is re-  
14 sponsible for the construction, reconstruction, installation, improvement, maintenance, repair and  
15 operation of a tollway or a related facility.

16 [(10)] (11) "Tollway project" means any capital project involving the acquisition of land for, or  
17 the construction, reconstruction, improvement, installation, development or equipping of, a tollway,  
18 related facilities or any portion thereof.

19 (12) "Transponder" means a radio frequency identification unit attached to a person's  
20 vehicle that transmits a radio signal to a reader mounted in the toll collection facility. The  
21 purpose of a transponder is to automatically identify a person's vehicle as it passes through  
22 a toll collection facility and is used to facilitate electronic toll collection systems.

23 [(11)] (13) "Unit of government" means any department or agency of the federal government, any  
24 state, or any agency, office or department thereof, and any city, county, district, port or other public  
25 corporation organized and existing under statutory law or under a voter-approved charter.

26 **SECTION 12.** ORS 383.006 is amended to read:

27 383.006. **Subject to section 4 of this 2011 Act,** a tollway operator may operate toll booth col-  
28 lections, an electronic toll collection system, a photo enforcement system or any combination of toll  
29 booth collections, an electronic toll collection system and a photo enforcement system.

30 **SECTION 13.** ORS 383.014 is amended to read:

31 383.014. (1) **Except as provided in subsection (2) of this section,** the Oregon Transportation  
32 Commission shall set standards by rule for electronic toll collection systems and photo enforcement  
33 systems used on tollways in this state to ensure that systems used in Oregon and systems used in  
34 the State of Washington are compatible to the extent technology permits.

35 (2) **A photo enforcement system may not be used unless a sign is posted announcing**  
36 **"Tolling Photo Enforced." The sign posted under this subsection must:**

37 (a) **Be between 100 and 400 yards before the location of the photo enforcement system;**  
38 **and**

39 (b) **Be at least two feet above ground level.**

40 **SECTION 14.** ORS 383.075 is amended to read:

41 383.075. (1) Except as provided in subsections [(2) and (3)] (2), (3) and (4) of this section, records  
42 and **personally identifiable** information used to collect and enforce tolls are exempt from disclosure  
43 under public records law and are to be used solely for toll collection [*and traffic management by the*  
44 *Department of Transportation*].

45 (2) **Personally identifiable** information collected or maintained by an electronic toll collection

1 system may not be disclosed to anyone except:

- 2 (a) The owner of an account that is charged for the use of a tollway;
- 3 (b) A financial institution, as necessary to collect tolls owed;
- 4 (c) Employees of the [*department*] **Department of Transportation**;
- 5 (d) The tollway operator and authorized employees of the operator;
- 6 (e) A law enforcement officer who is acting in the officer's official capacity in connection with
- 7 toll enforcement; [*and*]
- 8 (f) An administrative law judge or court in an action or proceeding in relation to unpaid tolls
- 9 or administrative fees or civil penalties related to unpaid tolls[.]; **and**
- 10 **(g) The registered owner or apparent driver of the vehicle.**

11 (3) **Personally identifiable** information collected or maintained by a photo enforcement system  
 12 may not be disclosed to anyone except:

- 13 (a) The registered owner or apparent driver of the vehicle;
- 14 (b) Employees of the department;
- 15 (c) The tollway operator and authorized employees of the operator;
- 16 (d) A law enforcement officer who is acting in the officer's official capacity in connection with
- 17 toll enforcement; and
- 18 (e) An administrative law judge or court in an action or proceeding in relation to unpaid tolls
- 19 or administrative fees or civil penalties related to unpaid tolls.

20 **(4) For the purpose of traffic management and research, a tollway operator may aggregate and use information in records after removing personally identifiable information.**

21 **SECTION 15.** ORS 802.179 is amended to read:

22 802.179. (1) The Department of Transportation, upon request or as required by law, shall disclose  
 23 personal information from a motor vehicle record to a government agency for use in carrying out  
 24 its governmental functions.

25 (2) The department shall disclose personal information from a motor vehicle record for use in  
 26 connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor  
 27 vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and  
 28 dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner  
 29 records of motor vehicle manufacturers to carry out the purposes of any of the following federal  
 30 Acts:  
 31

- 32 (a) The Automobile Information Disclosure Act.
- 33 (b) The Motor Vehicle Information and Cost Saving Act.
- 34 (c) The National Traffic and Motor Vehicle Safety Act of 1966.
- 35 (d) The Anti-Car Theft Act of 1992.
- 36 (e) The Clean Air Act.

37 (3)(a) If the department determines that a business is a legitimate business, the department shall  
 38 disclose personal information to the business for use in the normal course of business in:

- 39 (A) Verifying the accuracy of personal information submitted to the business; or
- 40 (B) Correcting personal information submitted to the business, but only in order to:
  - 41 (i) Prevent fraud;
  - 42 (ii) Pursue legal remedies against the individual who submitted the personal information; or
  - 43 (iii) Recover a debt from, or satisfy a security interest against, the individual.

44 (b) The department shall adopt rules specifying the kind of information that the department will  
 45 accept as evidence that a business is a legitimate business.

1 (4) The department shall disclose personal information to:

2 (a) An attorney, a financial institution as defined in ORS chapter 706 or a collection agency  
3 registered under ORS 697.031 for use in connection with a civil, criminal, administrative or arbi-  
4 tration proceeding in any court, government agency or self-regulatory body. Permissible uses of  
5 personal information under this paragraph include, but are not limited to, service of process, inves-  
6 tigation in anticipation of litigation and the execution and enforcement of judgments and orders.

7 (b) A process server acting as an agent for an individual for use in serving documents in con-  
8 nection with an existing civil, criminal, administrative or arbitration proceeding, or a judgment, in  
9 any court, government agency or self-regulatory body. Nothing in this paragraph limits the activities  
10 of a process server when acting as an agent for an attorney, collection agency or like person or for  
11 a government agency.

12 (5) The department shall disclose personal information other than names to a researcher for use  
13 in researching health and educational questions and providing statistical reports, as long as the  
14 personal information is not published, redisclosed or used to contact individuals. The department  
15 may disclose information under this subsection only for research sponsored by an educational insti-  
16 tution or a health research institution.

17 (6) The department shall disclose personal information to an insurer, an insurance support or-  
18 ganization or a self-insured entity in connection with claims investigation activities, antifraud ac-  
19 tivities, underwriting or rating.

20 (7) The department shall disclose personal information regarding ownership or other financial  
21 interests in a vehicle to a person who is required by the state or federal Constitution, a statute or  
22 an ordinance to give notice to another person concerning the vehicle. Personal information disclosed  
23 under this subsection may be used only for giving the required notice. Persons authorized to receive  
24 personal information under this subsection include, but are not limited to:

25 (a) Tow companies;

26 (b) Persons who have or are entitled to have liens on the vehicle; and

27 (c) Persons taking an action that could affect ownership rights to the vehicle.

28 (8) The department shall disclose personal information to any private security professional cer-  
29 tified under ORS 181.878, to be used for the purpose of determining ownership of vehicles parked in  
30 a place over which the private security professional, acting within the scope of the professional's  
31 employment, exercises control.

32 (9) The department shall disclose personal information to the employer of an individual who  
33 holds a commercial driver license, or the insurer of the employer, to obtain or verify information  
34 about the holder of the commercial driver license.

35 (10) The department shall disclose [*personal*] **personally identifiable information, as defined in**  
36 **ORS 383.003**, to the operator of a private toll facility for use in collecting tolls.

37 (11) The department may not disclose personal information for bulk distributors of surveys,  
38 marketing materials or solicitations except as provided in this subsection. The department shall  
39 implement methods and procedures to ensure:

40 (a) That individuals are offered an opportunity to request that personal information about  
41 themselves be disclosed to bulk distributors; and

42 (b) That the personal information provided by the department will be used, rented or sold solely  
43 for bulk distribution of surveys, marketing materials and solicitations.

44 (12) The department shall disclose personal information to a person who requests the informa-  
45 tion if the requester provides the department with written permission from the individual whose

1 personal information is requested. The written permission from the individual must be notarized.

2 (13) The department shall disclose personal information to a person who is in the business of  
3 disseminating such information under the following conditions:

4 (a) In addition to any other requirements under the contract executed pursuant to paragraph (b)  
5 of this subsection, the person requesting the information must file a performance bond with the de-  
6 partment in the amount of \$25,000. The bond must be executed in favor of the State of Oregon and  
7 its form is subject to approval by the Attorney General.

8 (b) The disseminator shall enter into a contract with the department. A contract under this  
9 paragraph shall contain at least the following provisions:

10 (A) That the disseminator will not reproduce or distribute the personal information in bulk but  
11 only in response to an individual record inquiry.

12 (B) That the disseminator will provide the personal information only to a person or government  
13 agency authorized to receive the information under this section and only if the person or govern-  
14 ment agency has been authorized by the department to receive the information.

15 (C) That the disseminator will have a method of ensuring that the disseminator can delay for a  
16 period of up to two days the giving of personal information to a requester who is not a subscriber.

17 (14) The department shall disclose personal information to representatives of the news media for  
18 the gathering or dissemination of information related to the operation of a motor vehicle or to public  
19 safety.

20 (15) The department shall disclose personal information as provided in ORS 802.220 (5).

21 (16) The department shall adopt rules providing for the release of personal information from  
22 motor vehicle records to a person who has a financial interest in the vehicle. Rules adopted under  
23 this subsection may include, but need not be limited to, rules establishing procedures for the de-  
24 partment to verify the financial interest of the person making the request for personal information.

25 (17) The department shall adopt rules providing for the release of personal information from  
26 motor vehicle records to a person who is injured by the unsafe operation of a vehicle or who owns  
27 property that is damaged because of the unsafe operation of a vehicle.

28 (18) The department shall disclose personal information to a private investigator licensed by any  
29 licensing authority within the State of Oregon, to be used for any purpose permitted any person  
30 under this section. A licensed private investigator requesting information must prove to the de-  
31 partment that the person has a corporate surety bond, an irrevocable letter of credit issued by an  
32 insured institution as defined in ORS 706.008 or such other security as the Department of Public  
33 Safety Standards and Training may prescribe by rule in the minimum amount of \$5,000 or errors and  
34 omissions insurance in the minimum amount of \$5,000.

35 (19) The department shall disclose personal information to a procurement organization as de-  
36 fined in ORS 97.953 for the purpose of facilitating the making of anatomical gifts under the pro-  
37 visions of ORS 97.955.

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