

BILL NUMBER HB0038

BILL TITLE: Vehicle Laws - Failure to Pay Video Toll - Reform of Penalties

BILL CONTACT: Delegate Al Carr

POSITION: Strongly Support



February 6, 2020

TESTIMONY IN SUPPORT OF HB 38

Cristi Demnowicz, Chair Freedom to Drive

Maryland drivers risk being taken advantage of every time they drive through one of the eight toll ways throughout the state. The EZ Pass tolling system, currently managed by a third party vendor called Conduent, is deeply flawed and has been for years. Conduent has a history of bad business practices in numerous states (including Maryland,) which positions them to prey on unsuspecting drivers in order to increase their bottom line. The Maryland Transportation Authority has failed to act to protect Maryland drivers resulting in tens of thousands of drivers owing exorbitant debt to EZ Pass and Conduent. This debt ranges anywhere from a few hundred dollars (like myself) to over \$20,000. This debt, and EZ Pass/Conduent's poor customer service to remedy it, has caused bankruptcy, job loss, vehicle impoundment and more, not to mention severe depression and lack of faith in state government.

Anyone who drives in Maryland, even the most responsible person, can find themselves indebted to EZ Pass. It often happens through a mixture of bad signage, bad communication, bad billing practices, failing technology and poor customer service. On the pages four and five of this testimony I've included some common scenarios of how this debt can happen to anyone at any time.

I believe the biggest problem in the system is that the Maryland Transportation Authority has not effectively communicated to drivers what they need to do to stay compliant. The executive director of MdTA, James Ports JR, has gone on record with WTOP/Maryland Matters stating that if this bill passes, MdTA will not be able to fulfill their contractual responsibilities with Conduent. If that is the case, it makes it seem like MdTA is fine with drivers being abused as long as it helps them pay their bills.

to pay. That means fines are being paid 60 days late.

"That's a long time to pay your bill," he said. "That's much better than your mortgage company would allow you to do."

And, Ports said, a \$5 fine would not begin to cover the cost of the state's contract.

As part of Maryland Matters' content sharing agreement with WTOP, we feature this article from Kate Ryan. Click [here](#) for the WTOP News website.

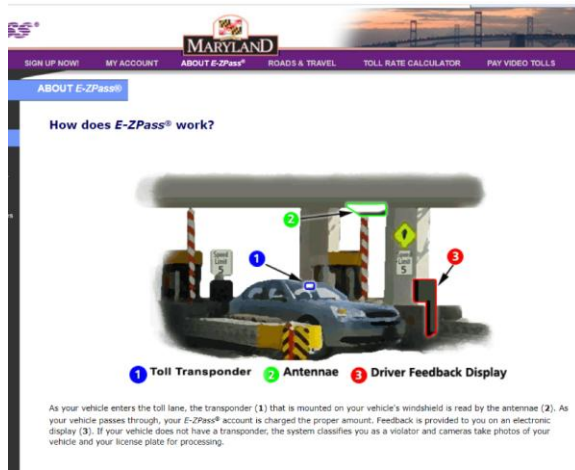
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(Source: <https://www.marylandmatters.org/2020/02/02/lawmakers-intensify-bipartisan-push-to-lower-late-fees-on-electronic-tolls/>)

Some examples of how MdTA has failed to communicate with drivers:

- They do not let new users know that transponders are battery operated devices and will eventually fail
- They do not impress upon the driver the importance of adding the license plate number of *every car they drive (rental cars, borrowed cars, etc)* to their account, as the back-up in situations of transponder failure
- Although it is still reported on the EZ Pass website, they have removed the “Driver Feedback Screens” from some tolls and covered them with trash bags and duct tape at all others. This screen used to tell drivers the status of their account with messages such as “EZ Pass GO” “Low Balance” or a blank screen, letting drivers know there might be a problem with their transponder. Now they have no way of knowing these things.



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○ Source: <https://www.ezpassmd.com/en/about/howit.shtml> (click on “How it works” tab)

- The 50% surcharge for video-tolls is not posted at any toll way. For drivers who might have forgotten their EZ Pass or know that it isn't working but haven't been able to get a new one yet, they do not know they will likely be charged more than the posted amount.
- The paper billing cycle is not posted anywhere (not even online) and EZ Pass/Conduent does not mail bills on a routine monthly or quarterly cycle. They state that bills are sent “by the bundle” but do not tell drivers what that means.
- Drivers do not always get their paper bills in the mail, even when their address is correctly on file with the MVA.
- The option to proactively pay for video tolls online is not posted anywhere public. Drivers are not informed that they can go online to pay their video-tolls instead of waiting for a paper bill. Knowing this would prevent most late fees from ever being assessed.

It is our belief that the responsibility of making sure every driver knows what they must do to stay in compliance with EZ Pass falls on the Maryland Transportation Authority as they oversee the system, one that is meant to create convenience. But by not doing everything they can and still charging drivers a \$50 late payment fine *per toll*, they actually causing more drivers problems by abusing them for profit.

Conduent has a history of these same abuses in other states with which they do business. The article below outlines how they have failed and preyed on drivers in California and New York, and how these actions have led to a class-action lawsuit filed against the New Jersey Tolling Authority, citing the \$50 fine is "cruel and unusual punishment."

Source: <https://www.lohud.com/story/news/2019/02/15/cashless-tolls-lawsuit-nj-fines-toll-violations-may-illegal/2871585002/>

Cashless tolls: Lawsuit claims New Jersey's \$50 fines for toll violations could be illegal

Frank Esposito, Rockland/Westchester Journal News Published 1:32 p.m. ET Feb. 15, 2019 | Updated 3:16 p.m. ET Feb. 15, 2019

If successful, the lawsuit could mean big changes to the way tolling is handled in the tri-state area, and maybe even some payback for drivers hit by the system.

"A class action lawsuit is challenging New Jersey's tolling authorities' ability to charge \$50 fines for toll violations. If successful, the lawsuit could mean big changes to the way tolling is handled in the tri-state area, and maybe even some payback for drivers hit by the system. The lawyer on the case estimates the restitution could reach as much as \$250 million and include any driver who paid tolling fines on some New Jersey roads.

The suit was filed at the end of 2017 in U.S. District Court in New Jersey, but is waiting on the decision of a New Jersey state court to determine if the \$50 fine is legal or not. Judges could decide to refund drivers all of the money some New Jersey-based tolling authorities charged them in fines from 2011 to the present, said Matthew Faranda-Diedrich, the lawyer for the plaintiffs.

Faranda-Diedrich — an attorney with the firm Royer Cooper Cohen Braunfeld — is based out of Philadelphia. The main plaintiff in the case is from Pennsylvania as well. Faranda-Diedrich's argues that since New Jersey law stipulates fines must be reasonable and based on the cost of collection, the \$50 fine violates multiple rules. Toll violations issued by New York tolling agencies also call for \$50 to \$100 for the second non-payment of a toll.

A \$50 fine, Faranda-Diedrich argues, exceeds the cost of printing and mailing out a notice. The suit also argues that the fee violates the 8th Amendment, which prohibits excessive fines, along with cruel and unusual punishment. New Jersey has some of the highest fines in the nation. "No other state in America charges \$50, except for New York," Faranda-Diedrich said. The New Jersey Turnpike Authority — which also runs the Garden State Parkway — did not return requests for comment.

What the lawsuit could mean for you

Everyone: *The suit's lead plaintiff isn't from New York or New Jersey. Yudelka Reynoso hails from Pennsylvania. She could see her \$150 in fines returned to her. If the judges decide to order refunds, that means drivers who paid fines on the New Jersey Turnpike or the Garden State Parkway from 2011 to the current date could get their money back. Faranda-Diedrich estimates that 5 million people were charged, and paid the fines. That could mean \$250 million in refunds for drivers around the country. A victory in New Jersey could also put a spotlight on a slowly growing crisis that — until about a year ago — went under the radar of many drivers and politicians. "I hope this will spark some attention to what is often something that is largely ignored, which is how these toll roads are administered," Faranda-Diedrich said.*

New Jersey: *A possible refund of any fines charged on the Garden State Parkway or the New Jersey Turnpike. Future fines could see a reduction or elimination depending on the judge's decision.*

New York: *A victory in New Jersey might not provide an end to New Yorkers' tolling woes. New York lacks the same statute that limits the fines to a reasonable level, or limits them to the cost of collection, Faranda-Diedrich said. "The authorizing statute in New York basically told the agencies like MTA, 'you can charge whatever you want to charge,'" Faranda-Diedrich said. And New York tolling authorities, like the Thruway, have been doing just that. From January 2015 to September 2018, the Thruway has charged \$55.9 million in E-ZPass administrative fees and another \$26.4 million in Tolls By Mail fees. For a time, the Thruway collected more money from fines than it did in tolls on the Gov. Mario M. Cuomo Bridge.*

Not the only suit out there

From coast to coast, drivers are joining lawsuits against states and tolling authorities for issues with the new cashless systems. New York State Assemblyman Tom Abinanti, D-Greenburgh, has been battling New York's governor over tolling issues in the state for the past year. Abinanti thinks the suits show how people feel about a system that's sweeping across the country. "People are waking up to the errors their governments have made with the toll collection process," Abinanti said.

New York: After nearly a year of billing headaches, threatening letters and calls from collection agencies, several New Yorkers — with the help of the Manhattan-based firm Squitieri and Fearon — have filed several suits involving cashless tolling. A class action suit was filed in April 2018 naming the Thruway Authority, the Port Authority of New York and New Jersey and the Metropolitan Transportation Authority. Also named was Conduent — a New Jersey-based, private company that controls nearly half of the U.S. electronic-tolling market — and debt collectors involved with the system. This case is pending a hearing from a federal judge, after fighting dismissal attempts from the tolling authorities. Stephen Fearon, partner at Squitieri and Fearon, is aware the problem has grown outside New York. "We're watching the other cases with interest," Fearon said.

California: Billing issues in California led to a class-action suit in 2017 that's still active. The suit claims that Conduent sent out 16,000 violation notices to people who never received the initial bills. That lawsuit claims that bills were sent to old addresses, even when the company knew the information was incorrect. The contract for the San Francisco area also included a bounty for every time Conduent mailed an initial violation notice. This case will go to trial on June 24, 2019.

If you drove on the New Jersey Turnpike or the Garden State Parkway from 2011 to the current date and have been charged a fine for missing a toll bill contact: mfd@rcclaw.com."

Examples of common scenarios which lead to EZ Pass debt:

Scenario #1:

A driver who works 10 hours days is excited because they finally saved enough to buy a safer, new-to-them car. They driver takes the Key Bridge five days a week, in both directions, being charged \$3.00 each time via their EZ Pass transponder standard account. The driver chose to enroll in the standard EZ Pass plan, not a commuter plan, because due to working paycheck to paycheck and saving money for a much needed newer vehicle, they could not take the risk of an auto-debit hitting their bank account without warning and sending them into the negative.

In their excitement of buying a newer, safer, and more reliable vehicle, they neglected to update their EZ Pass account with the new license plate number. Months go by with no issues. Then, a year later they receive a bill in the mail that says they owe \$240 in unpaid tolls and if not paid in 2 weeks, they will owe an additional \$2000 in late payment fines. Confused, the driver calls EZ Pass customer care to ask why they received a bill for so much when they have a transponder. They wait on hold for 35 minutes and finally must hang up without speaking to someone as their lunch break is over.

On a Monday evening 10 days later, they take off of work early and go to a customer service center that is open late and ask why they owe so much. The customer service agent tells them their transponder battery probably died and for them to go get it from their car. Sure enough, testing showed that it's no longer operational. The month of tolls accrued because the transponder wasn't connecting to the reader. The driver is stunned to learn that transponders have a limited life and must be replaced periodically.

The customer service agent is kind and tells the driver the late fees aren't due yet, but that they still owe the original \$240 for the tolls. The driver is confused again because they are used to paying \$3 per toll, which would have only added up to \$120. The customer service agent tells them they were charged as a video toll at a rate of \$6 each (50% more than the base price per toll) because their license plate wasn't listed showing that they have an EZ pass account. That is when the driver remembers that they never updated the account with their new license plate number.

The driver does not have \$240 at this time and cannot make the full payment, but they do pay the \$120 they had allotted for EZ Pass. The customer service agent tells them the additional \$120 is due in 4 days, or else they will be charged a \$50 late fee for each unpaid toll, for a total of \$1000. The driver asks why they didn't get a bill or notice sooner, and the customer service agent says they don't know but that it has something to do with "when bundles end and are mailed out."

Confused and worried, the driver leaves and starts to think about how they can come up with an additional \$120 in four days. If not, they know they'll be in big trouble as they definitely cannot pay that plus another \$1000.

Scenario #2

The car of a driver who is enrolled in an EZ pass commuter plan is broken into and their wallet is stolen. They immediately file a police report and begin the arduous process of canceling all of their debit and credit cards. They must wait for new cards to be sent in the mail but once received, they begin going through the process of updating their payment methods on all auto-debited accounts such as BGE, cell phone, school loan payments, etc. They forget about EZ Pass and do not update the account with the new card number.

While their car is in the shop being repaired, the driver is offered a rental car to continue commuting to and from work. Coincidentally, this is around the same time their commuter plan was set to expire and their credit card would be re-billed, however due to the card being cancelled, the payment doesn't go through. The driver does not receive an email or text notification of the failed payment.

They drive to work in the rental car for a full week, going through two EZ Pass toll booths each day. They are using the transponder from their own car, assuming it will work fine since they've never had a problem with it. Once their car is fixed, they return the rental car and continue using the EZ Pass as they had before, thankful everything is behind them and ready to move on.

Some time later the driver receives multiple envelopes in the mail from EZ pass. Confused and still reeling from their car being broken into, the driver dismisses them for a few weeks. Then, when they finally open them up they find multiple Notices of Toll Due. The photos show the rental car they drove while their car was being repaired. All tolls are charged at a rate of \$6 each. The driver is confused as to why they are being charged by paper bill and calls EZ pass. After waiting on hold for some time, the agent tells them that when it was time to renew their commuter plan, the card on file was declined. That is when the driver realized they never updated their EZ Pass account with the new credit card.

Because the driver never added the rental car license plate to their account, and because they didn't update their account with the new credit card number, they are being charged as a video-toll at a rate of \$6 each way. This adds up to \$60 for one week of tolls when they were used to paying \$14.

According to the date on the NOTD's, the driver has two weeks to make the payment. They go online to the website listed but when they sign into their EZ Pass account they do not see the tolls due. However, while there they do update their account with the new credit card info. The next day they call EZ pass for a second time to ask why the tolls aren't listed under their account and the agent tells them they are listed under "Pay Video Tolls" not "My Account."

The driver goes back to the site and clicks on the correct link where they are prompted to enter their transponder number, but nothing comes up. Then they enter their driver's license number, but nothing comes up. They do not remember the license plate number of the rental car and they have misplaced the paper NOTD. For a third time, they call EZ Pass Customer Service and are able to get the mailing number from the NOTD. With only a few days left before late fees are added, they make the \$60 payment and once again hope everything to do with their car being broken into is behind them.

This ordeal, that started with the trauma of their car being broken into and their wallet, identification, and credit cards being stolen, ended with three-hour long phone calls to EZ Pass, nearly an hour spent navigating the MD EZ Pass website while trying to make the payment, and an additional \$46 in tolls which they were not expecting to pay.