S T A T E O F N E W Y O R K

32

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the public authorities law and chapter 774 of the laws of 1950 relating to agreeing with the state of New Jersey with respect to rules and regulations governing traffic on vehicular crossings operated by the port of New York authority, in relation to requiring cash lanes to be made available at certain toll barriers and to repeal section 2985 of the public authorities law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2985 of the public authorities law is REPEALED.

S 2. Article 9 of the public authorities law is amended by adding a new title 12-B to read as follows:

TITLE 12-B

TOLL AND FARE COLLECTION

SECTION 2988. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH TOLL COLLECTION REGULATIONS.

2989. PLACEMENT OF ELECTRONIC TOLL COLLECTION SYSTEM LANES AT TOLL BARRIERS LOCATED WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE.

S 2988. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH TOLL COLLECTION REGULATIONS. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EVERY PUBLIC AUTHORITY WHICH OPERATES A TOLL HIGHWAY BRIDGE AND/OR TUNNEL FACILITY IS HEREBY AUTHORIZED AND EMPOWERED TO IMPOSE MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH THE TOLL COLLECTION REGULATIONS OF SUCH PUBLIC AUTHORITY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

2. THE OWNER OF A VEHICLE SHALL BE LIABLE FOR A CIVIL PENALTY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN VIOLATION OF TOLL

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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COLLECTION REGULATIONS, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A PHOTO-MONITORING SYSTEM, PROVIDED, HOWEVER, THAT NO OWNER OF A VEHICLE SHALL BE LIABLE FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE THE OPERATOR OF SUCH VEHICLE HAS BEEN CONVICTED OF A VIOLATION OF TOLL COLLECTION REGULATIONS FOR THE SAME INCIDENT.

3. FOR PURPOSES OF THIS SECTION, THE TERM "OWNER" SHALL MEAN ANY PERSON, CORPORATION, PARTNERSHIP, FIRM, AGENCY, ASSOCIATION, LESSOR OR ORGANIZATION WHO, AT THE TIME OF THE VIOLATION AND WITH RESPECT TO THE VEHICLE IDENTIFIED IN THE NOTICE OF LIABILITY: (A) IS THE BENEFICIAL OR EQUITABLE OWNER OF SUCH VEHICLE; OR (B) HAS TITLE TO SUCH VEHICLE; OR (C) IS THE REGISTRANT OR CO-REGISTRANT OF SUCH VEHICLE WHICH IS REGISTERED WITH THE DEPARTMENT OF MOTOR VEHICLES OF THIS STATE OR ANY OTHER STATE, TERRITORY, DISTRICT, PROVINCE, NATION OR OTHER JURISDICTION; OR (D) SUBJECT TO THE LIMITATIONS SET FORTH IN SUBDIVISION TEN OF THIS SECTION, USES SUCH VEHICLE IN ITS VEHICLE RENTING AND/OR LEASING BUSINESS; AND INCLUDES (E) A PERSON ENTITLED TO THE USE AND POSSESSION OF A VEHICLE SUBJECT TO A SECURITY INTEREST IN ANOTHER PERSON. FOR PURPOSES OF THIS SECTION, THE TERM "PHOTO-MONITORING SYSTEM" SHALL MEAN A VEHICLE SENSOR INSTALLED TO WORK IN CONJUNCTION WITH A TOLL COLLECTION FACILITY WHICH AUTOMATICALLY PRODUCES ONE OR MORE PHOTOGRAPHS, ONE OR MORE MICROPHOTOGRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH VEHICLE AT THE TIME IT IS USED OR OPERATED IN VIOLATION OF TOLL COLLECTION REGULATIONS. FOR PURPOSES OF THIS SECTION, THE TERM "TOLL COLLECTION REGULATIONS" SHALL MEAN: THOSE RULES AND REGULATIONS OF A PUBLIC AUTHORITY PROVIDING FOR AND REQUIRING THE PAYMENT OF TOLLS AND/OR CHARGES PRESCRIBED BY SUCH PUBLIC AUTHORITY FOR THE USE OF BRIDGES, TUNNELS OR HIGHWAYS UNDER ITS JURISDICTION OR THOSE RULES AND REGULATIONS OF A PUBLIC AUTHORITY MAKING IT UNLAWFUL TO REFUSE TO PAY OR TO EVADE OR TO ATTEMPT TO EVADE THE PAYMENT OF ALL OR PART OF ANY TOLL AND/OR CHARGE FOR THE USE OF BRIDGES, TUNNELS OR HIGHWAYS UNDER THE JURISDICTION OF SUCH PUBLIC AUTHORITY. FOR PURPOSES OF THIS SECTION, THE TERM "VEHICLE" SHALL MEAN EVERY DEVICE IN, UPON OR BY WHICH A PERSON OR PROPERTY IS OR MAY BE TRANSPORTED OR DRAWN UPON A HIGHWAY, EXCEPT DEVICES USED EXCLUSIVELY UPON STATIONARY RAILS OR TRACKS.

4. A CERTIFICATE, SWORN TO OR AFFIRMED BY AN AGENT OF THE PUBLIC AUTHORITY WHICH CHARGED THAT THE VIOLATION OCCURRED, OR A FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A PHOTO-MONITORING SYSTEM SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN AND SHALL BE ADMISSIBLE IN ANY PROCEEDING CHARGING A VIOLATION OF TOLL COLLECTION REGULATIONS, PROVIDED THAT ANY PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES EVIDENCING SUCH A VIOLATION SHALL BE AVAILABLE FOR INSPECTION AND ADMISSION INTO EVIDENCE IN ANY PROCEEDING TO ADJUDICATE THE LIABILITY FOR SUCH VIOLATION.

5. AN OWNER FOUND LIABLE FOR A VIOLATION OF TOLL COLLECTION REGULATIONS PURSUANT TO THIS SECTION SHALL FOR A FIRST VIOLATION THEREOF BE LIABLE FOR A MONETARY PENALTY NOT TO EXCEED FIFTY DOLLARS OR TWO TIMES THE TOLL EVADED WHICHEVER IS GREATER; FOR A SECOND VIOLATION THEREOF BOTH WITHIN EIGHTEEN MONTHS BE LIABLE FOR A MONETARY PENALTY NOT TO EXCEED ONE HUNDRED DOLLARS OR FIVE TIMES THE TOLL EVADED WHICHEVER IS GREATER; FOR A THIRD OR SUBSEQUENT VIOLATION THEREOF ALL WITHIN EIGHTEEN MONTHS BE LIABLE FOR A MONETARY PENALTY NOT TO EXCEED ONE HUNDRED FIFTY DOLLARS OR TEN TIMES THE TOLL EVADED WHICHEVER IS GREATER.

6. AN IMPOSITION OF LIABILITY PURSUANT TO THIS SECTION SHALL BE BASED UPON A PREPONDERANCE OF EVIDENCE AS SUBMITTED. AN IMPOSITION OF LIABILITY PURSUANT TO THIS SECTION SHALL NOT BE DEEMED A CONVICTION AS AN

OPERATOR AND SHALL NOT BE MADE PART OF THE MOTOR VEHICLE OPERATING RECORD, FURNISHED PURSUANT TO SECTION THREE HUNDRED FIFTY-FOUR OF THE VEHICLE AND TRAFFIC LAW, OF THE PERSON UPON WHOM SUCH LIABILITY IS IMPOSED NOR SHALL IT BE USED FOR INSURANCE PURPOSES IN THE PROVISION OF MOTOR VEHICLE INSURANCE COVERAGE.

7. (A) A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL TO EACH PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF TOLL COLLECTION REGULATIONS. SUCH NOTICE SHALL BE MAILED NO LATER THAN THIRTY DAYS AFTER THE ALLEGED VIOLATION. PERSONAL DELIVERY ON THE OWNER SHALL NOT BE REQUIRED. A MANUAL OR AUTOMATIC RECORD OF MAILING PREPARED IN THE ORDINARY COURSE OF BUSINESS SHALL BE PRIMA FACIE EVIDENCE OF THE MAILING OF THE NOTICE.

(B) A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF TOLL COLLECTION REGULATIONS PURSUANT TO THIS SECTION, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND TIME OF SUCH VIOLATION AND THE IDENTIFICATION NUMBER OF THE PHOTO-MONITORING SYSTEM WHICH RECORDED THE VIOLATION OR OTHER DOCUMENT LOCATOR NUMBER.

(C) THE NOTICE OF LIABILITY SHALL CONTAIN INFORMATION ADVISING THE PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH HE MAY CONTEST THE LIABILITY ALLEGED IN THE NOTICE. SUCH NOTICE OF LIABILITY SHALL ALSO CONTAIN A WARNING TO ADVISE THE PERSONS CHARGED THAT FAILURE TO CONTEST IN THE MANNER AND TIME PROVIDED SHALL BE DEEMED AN ADMISSION OF LIABILITY AND THAT A DEFAULT JUDGMENT MAY BE ENTERED THEREON.

(D) THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE PUBLIC AUTHORITY HAVING JURISDICTION OVER THE TOLL FACILITY WHERE THE VIOLATION OF TOLL COLLECTION REGULATIONS OCCURRED.

8. ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION SHALL BE BY THE ENTITY HAVING JURISDICTION OVER VIOLATIONS OF THE RULES AND REGULATIONS OF THE PUBLIC AUTHORITY SERVING THE NOTICE OF LIABILITY OR WHERE AUTHORIZED BY AN ADMINISTRATIVE TRIBUNAL AND ALL VIOLATIONS SHALL BE HEARD AND DETERMINED IN THE COUNTY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED, OR IN NEW YORK CITY AND UPON THE CONSENT OF BOTH PARTIES, IN ANY COUNTY WITHIN NEW YORK CITY IN WHICH THE PUBLIC AUTHORITY OPERATES OR MAINTAINS A FACILITY, AND IN THE SAME MANNER AS CHARGES OF OTHER REGULATORY VIOLATIONS OF SUCH PUBLIC AUTHORITY OR PURSUANT TO THE RULES AND REGULATIONS OF SUCH ADMINISTRATIVE TRIBUNAL AS THE CASE MAY BE.

9. IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO THE POLICE DEPARTMENT AS HAVING BEEN STOLEN, IT SHALL BE A VALID DEFENSE TO AN ALLEGATION OF LIABILITY FOR A VIOLATION OF TOLL COLLECTION REGULATIONS THAT THE VEHICLE HAD BEEN REPORTED TO THE POLICE AS STOLEN PRIOR TO THE TIME THE VIOLATION OCCURRED AND HAD NOT BEEN RECOVERED BY SUCH TIME. IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS STOLEN, BUT NOT AS YET REPORTED TO THE POLICE AS HAVING BEEN STOLEN, IT SHALL BE A VALID DEFENSE TO AN ALLEGATION OF LIABILITY FOR A VIOLATION OF TOLL COLLECTION REGULATIONS PURSUANT TO THIS SECTION THAT THE VEHICLE WAS REPORTED AS STOLEN WITHIN TWO HOURS AFTER THE DISCOVERY OF THE THEFT BY THE OWNER. FOR PURPOSES OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION IT SHALL BE SUFFICIENT THAT A CERTIFIED COPY OF THE POLICE REPORT ON THE STOLEN VEHICLE BE SENT BY FIRST CLASS MAIL TO THE COURT OR OTHER ENTITY HAVING JURISDICTION.

10. AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION SHALL NOT BE LIABLE FOR THE VIOLATION OF THE TOLL COLLECTION REGULATION PROVIDED THAT HE OR SHE SENDS TO THE PUBLIC AUTHORITY SERVING THE NOTICE OF LIABILITY AND TO THE COURT OR OTHER ENTITY HAVING JURISDICTION A COPY OF THE RENTAL, LEASE OR OTHER SUCH CONTRACT DOCUMENT COVERING SUCH VEHICLE ON THE DATE OF THE VIOLATION, WITH THE NAME AND ADDRESS OF THE LESSEE CLEARLY LEGIBLE, WITHIN THIRTY DAYS AFTER RECEIVING THE ORIGINAL NOTICE OF LIABILITY. FAILURE TO SEND SUCH INFORMATION WITHIN SUCH THIRTY DAY TIME PERIOD SHALL RENDER THE LESSOR LIABLE FOR THE PENALTY PRESCRIBED BY THIS SECTION. WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS SUBDIVISION, THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION SHALL BE DEEMED TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS SECTION AND SHALL BE SUBJECT TO LIABILITY FOR THE VIOLATION OF TOLL COLLECTION REGULATIONS, PROVIDED THAT THE PUBLIC AUTHORITY MAILS A NOTICE OF LIABILITY TO THE LESSEE WITHIN TEN DAYS AFTER THE COURT, OR OTHER ENTITY HAVING JURISDICTION, DEEMS THE LESSEE TO BE THE OWNER. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "LESSOR" SHALL MEAN ANY PERSON, CORPORATION, FIRM, PARTNERSHIP, AGENCY, ASSOCIATION OR ORGANIZATION ENGAGED IN THE BUSINESS OF RENTING OR LEASING VEHICLES TO ANY LESSEE UNDER A RENTAL AGREEMENT, LEASE OR OTHERWISE WHEREIN THE SAID LESSEE HAS THE EXCLUSIVE USE OF SAID VEHICLE FOR ANY PERIOD OF TIME. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "LESSEE" SHALL MEAN ANY PERSON, CORPORATION, FIRM, PARTNERSHIP, AGENCY, ASSOCIATION OR ORGANIZATION THAT RENTS, LEASES OR CONTRACTS FOR THE USE OF ONE OR MORE VEHICLES AND HAS EXCLUSIVE USE THEREOF FOR ANY PERIOD OF TIME.

11. EXCEPT AS PROVIDED IN SUBDIVISION TEN OF THIS SECTION, IF A PERSON RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS SECTION IT SHALL BE A VALID DEFENSE TO AN ALLEGATION OF LIABILITY FOR A VIOLATION OF TOLL COLLECTION REGULATIONS THAT THE INDIVIDUAL WHO RECEIVED THE NOTICE OF LIABILITY PURSUANT TO THIS SECTION WAS NOT THE OWNER OF THE VEHICLE AT THE TIME THE VIOLATION OCCURRED. IF THE OWNER LIABLE FOR A VIOLATION OF TOLL COLLECTION REGULATIONS PURSUANT TO THIS SECTION WAS NOT THE OPERATOR OF THE VEHICLE AT THE TIME OF THE VIOLATION, THE OWNER MAY MAINTAIN AN ACTION FOR INDEMNIFICATION AGAINST THE OPERATOR.

12. "ELECTRONIC TOLL COLLECTION SYSTEM" SHALL MEAN A SYSTEM OF COLLECTING TOLLS OR CHARGES WHICH IS CAPABLE OF CHARGING AN ACCOUNT HOLDER THE APPROPRIATE TOLL OR CHARGE BY TRANSMISSION OF INFORMATION FROM AN ELECTRONIC DEVICE ON A MOTOR VEHICLE TO THE TOLL LANE, WHICH INFORMATION IS USED TO CHARGE THE ACCOUNT THE APPROPRIATE TOLL OR CHARGE. IN ADOPTING PROCEDURES FOR THE PREPARATION AND MAILING OF A NOTICE OF LIABILITY, THE PUBLIC AUTHORITY HAVING JURISDICTION OVER THE TOLL FACILITY SHALL ADOPT GUIDELINES TO ENSURE ADEQUATE AND TIMELY NOTICE TO ALL ELECTRONIC TOLL COLLECTION SYSTEM ACCOUNT HOLDERS TO INFORM THEM WHEN THEIR ACCOUNTS ARE DELINQUENT. AN OWNER WHO IS AN ACCOUNT HOLDER UNDER THE ELECTRONIC TOLL COLLECTION SYSTEM SHALL NOT BE FOUND LIABLE FOR A VIOLATION OF THIS SECTION UNLESS SUCH AUTHORITY HAS FIRST SENT A NOTICE OF DELINQUENCY TO SUCH ACCOUNT HOLDER AND THE ACCOUNT HOLDER WAS IN FACT DELINQUENT AT THE TIME OF THE VIOLATION.

13. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE LIABILITY OF AN OPERATOR OF A VEHICLE FOR ANY VIOLATION OF TOLL COLLECTION REGULATIONS.

14. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, ALL PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PREPARED PURSUANT TO THIS SECTION SHALL BE FOR THE EXCLUSIVE USE OF A PUBLIC AUTHORITY IN THE DISCHARGE OF ITS DUTIES UNDER THIS SECTION AND SHALL NOT BE OPEN TO

THE PUBLIC NOR BE USED IN ANY COURT IN ANY ACTION OR PROCEEDING PENDING THEREIN UNLESS SUCH ACTION OR PROCEEDING RELATES TO THE IMPOSITION OF OR INDEMNIFICATION FOR LIABILITY PURSUANT TO THIS SECTION. THE PUBLIC AUTHORITY SHALL NOT SELL, DISTRIBUTE OR MAKE AVAILABLE IN ANY WAY, THE NAMES AND ADDRESSES OF ELECTRONIC TOLL COLLECTION SYSTEM ACCOUNT HOLDERS, WITHOUT SUCH ACCOUNT HOLDERS' CONSENT TO ANY ENTITY THAT WILL USE SUCH INFORMATION FOR ANY COMMERCIAL PURPOSE PROVIDED THAT THE FOREGOING RESTRICTION SHALL NOT BE DEEMED TO PRECLUDE THE EXCHANGE OF SUCH INFORMATION BETWEEN ANY ENTITIES WITH JURISDICTION OVER AND OR OPERATING A TOLL HIGHWAY BRIDGE AND/OR TUNNEL FACILITY.

S 2989. PLACEMENT OF ELECTRONIC TOLL COLLECTION SYSTEM LANES AT TOLL BARRIERS LOCATED WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE. THE COMMISSIONER OF TRANSPORTATION SHALL ESTABLISH, BY RULE OR REGULATION, REQUIREMENTS FOR THE PLACEMENT OF AT LEAST ONE CASH LANE TO BE MADE AVAILABLE FOR THE COLLECTION OF TOLLS AND FARES WHERE ELECTRONIC TOLL COLLECTION SYSTEMS, AS DEFINED IN SECTION TWENTY-NINE HUNDRED EIGHTY-EIGHT OF THIS TITLE, HAVE BEEN DESIGNATED AT THE TOLL BARRIERS OPERATED BY EVERY PUBLIC AUTHORITY WHICH OPERATES A TOLL HIGHWAY, BRIDGE, TUNNEL OR OTHER THOROUGHFARE LOCATED WITHIN A CITY HAVING A POPULATION OF ONE MILLION OR MORE. SUCH RULES AND REGULATIONS SHALL SPECIFY THE GENERAL LOCATION OF THE ROADWAY LANES IN WHICH CASH LANES SHALL BE LOCATED.

S 3. Chapter 774 of the laws of 1950, relating to agreeing with the state of New Jersey with respect to rules and regulations governing traffic on vehicular crossings operated by the port of New York authority, is amended by adding a new section 16-d to read as follows:

S 16-D. PLACEMENT OF ELECTRONIC TOLL COLLECTION SYSTEM LANES WITHIN THE CITY OF NEW YORK. THE COMMISSIONER OF TRANSPORTATION OF THE STATE OF NEW YORK SHALL ESTABLISH, BY RULE OR REGULATION, REQUIREMENTS FOR THE PLACEMENT OF AT LEAST ONE CASH LANE TO BE MADE AVAILABLE FOR THE COLLECTION OF TOLLS AND FARES WHERE ELECTRONIC TOLL COLLECTION SYSTEMS, AS DEFINED IN SECTION 16-B OF THIS ACT, HAVE BEEN DESIGNATED AT THE TOLL BARRIERS OPERATED BY THE PORT AUTHORITY WITHIN THE CITY OF NEW YORK. SUCH RULES AND REGULATIONS SHALL SPECIFY THE GENERAL LOCATION OF THE ROADWAY LANES IN WHICH CASH LANES SHALL BE LOCATED.

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided, however, that the commissioner of transportation is authorized and directed to promulgate any rules and regulations necessary to implement the provisions of this act on or before such effective date.