

4801--A

2013-2014 Regular Sessions

I N S E N A T E

April 24, 2013

Introduced by Sen. MARCELLINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to privacy of electronic fare and toll records

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

1 Section 1. Statement of legislative intent. The legislature finds and
2 declares that public entities increasingly are establishing electronic
3 toll and electronic fare payment systems, which have the potential for
4 great convenience to the general public. E-Z Pass, for example, allows
5 motorists to have toll charges automatically deducted from pre-established
6 accounts. Programs such as these have proven popular with consumers.
7 But some consumers, public officials and public entities have
8 raised legitimate questions about the extent to which records of individual
9 travel created by such electronic toll and fare programs should
10 be disclosed, and under what circumstances. This bill establishes
11 reasonable, uniform provisions for maintaining the confidentiality of
12 such records, while at the same time authorizing disclosure in cases of
13 legitimate law enforcement need.

14 S 2. The civil rights law is amended by adding a new section 50-f to
15 read as follows:

16 S 50-F. PRIVACY OF ELECTRONIC TOLL AND FARE RECORDS. 1. DEFINITIONS.
17 AS USED IN THIS SECTION:

18 A. "ELECTRONIC TOLL INFORMATION" SHALL MEAN RECORDS CREATED OR MAINTAINED
19 BY A PUBLIC ENTITY OR BY A CONTRACTOR ON BEHALF OF A PUBLIC ENTITY CONCERNING
20 A MOTORIST OR MOTOR VEHICLE REGARDING THE USE OF ANY HIGHWAY, BRIDGE, TUNNEL OR
21 OTHER THOROUGHFARE, INCLUDING BUT NOT LIMITED TO E-Z PASS RECORDS, WHICH
22 CONTAIN INFORMATION SUCH AS (BUT NOT LIMITED TO) THE NAME AND ADDRESS OF THE
23 REGISTERED VEHICLE OWNER OR ACCOUNT HOLDER,

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

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1 A DESCRIPTION AND/OR LICENSE PLATE NUMBER OF THE VEHICLE, THE DATE, TIME
2 AND LOCATION OF THE PASSAGE OF A VEHICLE THROUGH A TOLL COLLECTION
3 LOCATION, AND THE STATEMENTS OF ACCOUNT ADDITIONS AND/OR DEDUCTIONS
4 PREPARED FOR OR SENT TO THE ACCOUNT HOLDER.

5 B. "ELECTRONIC FARE INFORMATION" SHALL MEAN RECORDS CREATED OR MAIN-
6 TAINED BY A PUBLIC ENTITY OR BY A CONTRACTOR ON BEHALF OF A PUBLIC ENTI-
7 TY CONCERNING AN ACCOUNT HOLDER, INCLUDING BUT NOT LIMITED TO "METRO-
8 CARD" AND PASS CARD SYSTEM COMPUTER RECORDS CONCERNING COMMUTER RAILROAD
9 AND/OR TRANSIT FACILITY USE, WHICH CONTAIN INFORMATION SUCH AS (BUT NOT
10 LIMITED TO) THE NAME AND ADDRESS OF THE ACCOUNT HOLDER; THE DATE AND
11 TIME OF FARE CARD OR FARE MEDIA USE; IDENTIFICATION OF THE LOCATION OR
12 TRANSIT STATION WHERE SUCH FARE CARD OR FARE MEDIA WAS USED; AND THE
13 STATEMENTS OF ACCOUNT ADDITIONS AND/OR DEDUCTIONS PREPARED FOR OR SENT
14 TO THE ACCOUNT HOLDER.

15 C. "PUBLIC ENTITY" SHALL MEAN AND INCLUDE ANY STATE OR LOCAL DEPART-
16 MENT, AGENCY, BOARD, BUREAU, DIVISION, COMMISSION, PUBLIC AUTHORITY,
17 PUBLIC BENEFIT CORPORATION OR OFFICE OF THE STATE OR A POLITICAL SUBDI-
18 VISION OF THE STATE, OR ANY OTHER ENTITY PERFORMING A GOVERNMENTAL OR
19 PROPRIETARY FUNCTION FOR THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

20 D. "CONTRACTOR" SHALL MEAN ANY ENTITY ENGAGED IN PERFORMING CUSTOMER
21 SERVICE FUNCTIONS, INCLUDING VIOLATIONS PROCESSING, UNDER CONTRACT WITH
22 A PUBLIC ENTITY.

23 2. CONFIDENTIALITY OF RECORDS. ELECTRONIC TOLL INFORMATION AND ELEC-
24 TRONIC FARE INFORMATION IS CONFIDENTIAL INFORMATION. NOTWITHSTANDING THE
25 PROVISIONS OF ANY OTHER LAW, SUCH INFORMATION SHALL NOT BE OPEN TO THE
26 PUBLIC, NOR SUBJECT TO CIVIL OR CRIMINAL PROCESS OR DISCOVERY, NOR
27 SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW, NOR USED BY
28 ANY COURT OR ADMINISTRATIVE OR ADJUDICATORY BODY IN ANY ACTION OR
29 PROCEEDING THEREIN, AND NO PUBLIC ENTITY OR EMPLOYEE, OFFICER OR AGENT
30 THEREOF SHALL DISCLOSE SUCH INFORMATION, EXCEPT THAT SUCH INFORMATION:

31 A. SHALL BE AVAILABLE FOR INSPECTION AND COPYING AND USE BY THE
32 ACCOUNT HOLDER FOR SO LONG AS SUCH INFORMATION IS MAINTAINED BY SUCH
33 PUBLIC ENTITY, EMPLOYEE, OFFICER OR AGENT; AND

34 B. SHALL BE FURNISHED WHEN REQUESTED BY A LAW ENFORCEMENT AGENCY FOR A
35 LEGITIMATE LAW ENFORCEMENT PURPOSE, AS DETERMINED BY THE LAW ENFORCEMENT
36 AGENCY; AND

37 C. MAY BE OBTAINED AND, IF OTHERWISE ADMISSIBLE, BE USED IN A CIVIL
38 COURT OR OTHER CIVIL ADMINISTRATIVE OR ADJUDICATORY BODY IN ANY ACTION
39 OR PROCEEDING PENDING THEREIN WHEN SUCH ACTION OR PROCEEDING RELATES
40 DIRECTLY TO THE COLLECTION OF TOLL OR FARE REVENUES AND IT IS ALLEGED:

41 (I) BY THE PROVIDER OF SUCH SERVICES THAT TOLLS OR FARES PROPERLY
42 CHARGED TO THE ACCOUNT HOLDER REMAIN UNPAID; OR

43 (II) BY THE ACCOUNT HOLDER THAT TOLLS OR FARES WERE IMPROPERLY CHARGED
44 TO SUCH HOLDER'S ACCOUNT; AND

45 D. MAY BE USED BY SUCH PUBLIC ENTITY OR A CONTRACTOR ON BEHALF OF A
46 PUBLIC ENTITY FOR COMMUNICATIONS WITH THE ACCOUNT HOLDER, INCLUDING
47 MONTHLY STATEMENTS, ANNOUNCEMENTS AND NOTIFICATION OF ALLEGED
48 VIOLATIONS; AND

49 E. MAY BE USED BY SUCH PUBLIC ENTITY OR A CONTRACTOR ON BEHALF OF A
50 PUBLIC ENTITY FOR CUSTOMER SERVICE CENTER TO CUSTOMER SERVICE CENTER
51 COMMUNICATIONS IN CONNECTION WITH THE ADMINISTRATION OF SUCH ELECTRONIC
52 TOLL OR ELECTRONIC FARE INFORMATION SYSTEM; AND

53 F. LIMITED TO ELECTRONIC FARE INFORMATION MAY, UPON WRITTEN REQUEST OF
54 THE BOARD OF EDUCATION OF THE CITY OF NEW YORK IDENTIFYING A SPECIFIC
55 STUDENT HOLDING A STUDENT DISCOUNT CARD ISSUED BY THE METROPOLITAN
56 TRANSPORTATION AUTHORITY AND/OR ONE OF ITS SUBSIDIARY CORPORATIONS, BE

1 PROVIDED BY SUCH METROPOLITAN TRANSPORTATION AUTHORITY AND/OR SUBSIDIARY
2 CORPORATION TO SUCH BOARD OF EDUCATION OF THE CITY OF NEW YORK.

3 3. INFORMATION. NOTHING HEREIN SHALL PRECLUDE THE USE OF AGGREGATE
4 ELECTRONIC TOLL OR FARE INFORMATION WHICH DOES NOT IDENTIFY ANY INDIVID-
5 UAL ACCOUNT HOLDER IN AN ACTION OR PROCEEDING INVOLVING SUCH PUBLIC
6 ENTITY, NOR PRECLUDE THE USE, SALE OR DISTRIBUTION OF INFORMATION
7 COMPILED FROM ELECTRONIC TOLL OR FARE INFORMATION, WHERE SUCH COMPILED
8 INFORMATION DOES NOT IDENTIFY ANY INDIVIDUAL ACCOUNT HOLDER.

9 4. NOTICE. EVERY PUBLIC ENTITY THAT COLLECTS ELECTRONIC TOLL OR FARE
10 INFORMATION SHALL PROVIDE REGULAR AND CONSPICUOUS NOTICE, IN WRITING, TO
11 APPLICANTS AND ACCOUNT HOLDERS CONCERNING THE PROVISIONS OF THIS
12 SECTION, WHICH NOTICE SHALL ALSO DESCRIBE THE MEANS BY WHICH ACCOUNT
13 HOLDERS MAY OBTAIN COPIES OF THEIR INDIVIDUAL ACCOUNT RECORDS.

14 5. VIOLATIONS. ANY PERSON WHO KNOWINGLY RELEASES OR PERMITS THE
15 RELEASE OF ELECTRONIC TOLL OR ELECTRONIC FARE INFORMATION THAT IS CONFI-
16 DENTIAL UNDER THIS SECTION TO A PERSON OR ENTITY NOT ENTITLED TO RECEIVE
17 SUCH INFORMATION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO FIVE THOU-
18 SAND DOLLARS.

19 S 3. This act shall take effect immediately.