

5077

2009-2010 Regular Sessions

I N   S E N A T E

April 27, 2009

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

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  
21 OR 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, A DESCRIPTION AND/OR LICENSE  
24 PLATE NUMBER OF THE VEHICLE, THE DATE, TIME AND LOCATION OF THE PASSAGE  
25 OF A VEHICLE THROUGH A TOLL COLLECTION

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

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1 LOCATION, AND THE STATEMENTS OF ACCOUNT ADDITIONS AND/OR DEDUCTIONS  
2 PREPARED FOR OR SENT TO THE ACCOUNT HOLDER.

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

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

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

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

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

32 B. (I) SHALL BE FURNISHED WHEN DESCRIBED IN A SEARCH WARRANT ISSUED BY  
33 A COURT AUTHORIZED TO ISSUE SUCH A SEARCH WARRANT PURSUANT TO ARTICLE  
34 SIX HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW OR A FEDERAL COURT  
35 AUTHORIZED TO ISSUE SUCH A SEARCH WARRANT UNDER FEDERAL LAW, WHERE SUCH  
36 SEARCH WARRANT STATES THAT THERE IS REASONABLE CAUSE TO BELIEVE SUCH  
37 INFORMATION CONSTITUTES EVIDENCE OF, OR TENDS TO DEMONSTRATE THAT, A  
38 MISDEMEANOR OR FELONY OFFENSE WAS COMMITTED IN THIS STATE OR ANOTHER  
39 STATE, OR THAT A PARTICULAR PERSON PARTICIPATED IN THE COMMISSION OF A  
40 MISDEMEANOR OR FELONY OFFENSE IN THIS STATE OR ANOTHER STATE, PROVIDED,  
41 HOWEVER, THAT IF SUCH OFFENSE WAS AGAINST THE LAWS OF ANOTHER STATE, THE  
42 COURT SHALL ONLY ISSUE A WARRANT IF THE CONDUCT COMPRISING SUCH OFFENSE  
43 WOULD, IF OCCURRING IN THIS STATE, CONSTITUTE A MISDEMEANOR OR FELONY  
44 AGAINST THE LAWS OF THIS STATE; AND

45 (II) SHALL BE FURNISHED IN RESPONSE TO A SUBPOENA DUCES TECUM SIGNED  
46 BY A JUDGE OF COMPETENT JURISDICTION AND ISSUED PURSUANT TO ARTICLE SIX  
47 HUNDRED TEN OF THE CRIMINAL PROCEDURE LAW OR A JUDGE OR MAGISTRATE OF A  
48 FEDERAL COURT AUTHORIZED TO ISSUE SUCH A SUBPOENA DUCES TECUM UNDER  
49 FEDERAL LAW, WHERE THE JUDGE FINDS AND THE SUBPOENA STATES THAT THERE IS  
50 REASONABLE CAUSE TO BELIEVE SUCH INFORMATION IS RELEVANT AND MATERIAL TO  
51 THE PROSECUTION, OR THE DEFENSE, OR THE INVESTIGATION BY AN AUTHORIZED  
52 LAW ENFORCEMENT OFFICIAL, OF THE ALLEGED COMMISSION OF A MISDEMEANOR OR  
53 FELONY IN THIS STATE OR ANOTHER STATE, PROVIDED, HOWEVER, THAT IF SUCH  
54 OFFENSE WAS AGAINST THE LAWS OF ANOTHER STATE, SUCH JUDGE OR MAGISTRATE  
55 SHALL ONLY ISSUE SUCH SUBPOENA IF THE CONDUCT COMPRISING SUCH OFFENSE

1 WOULD, IF OCCURRING IN THIS STATE, CONSTITUTE A MISDEMEANOR OR FELONY IN  
2 THIS STATE; AND

3 (III) MAY, IF LAWFULLY OBTAINED PURSUANT TO PARAGRAPH A OF THIS SUBDI-  
4 VISION OR THIS PARAGRAPH AND OTHERWISE ADMISSIBLE, BE USED IN SUCH CRIM-  
5 INAL ACTION OR PROCEEDING; AND

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

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

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

14 D. MAY BE USED BY SUCH PUBLIC ENTITY OR A CONTRACTOR ON BEHALF OF A  
15 PUBLIC ENTITY FOR COMMUNICATIONS WITH THE ACCOUNT HOLDER, INCLUDING  
16 MONTHLY STATEMENTS, ANNOUNCEMENTS AND NOTIFICATION OF ALLEGED  
17 VIOLATIONS; AND

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

22 F. LIMITED TO ELECTRONIC FARE INFORMATION MAY, UPON WRITTEN REQUEST OF  
23 THE BOARD OF EDUCATION OF THE CITY OF NEW YORK IDENTIFYING A SPECIFIC  
24 STUDENT HOLDING A STUDENT DISCOUNT CARD ISSUED BY THE METROPOLITAN  
25 TRANSPORTATION AUTHORITY AND/OR ONE OF ITS SUBSIDIARY CORPORATIONS, BE  
26 PROVIDED BY SUCH METROPOLITAN TRANSPORTATION AUTHORITY AND/OR SUBSIDIARY  
27 CORPORATION TO SUCH BOARD OF EDUCATION OF THE CITY OF NEW YORK.

28 3. INFORMATION. NOTHING HEREIN SHALL PRECLUDE THE USE OF AGGREGATE  
29 ELECTRONIC TOLL OR FARE INFORMATION WHICH DOES NOT IDENTIFY ANY INDIVID-  
30 UAL ACCOUNT HOLDER IN AN ACTION OR PROCEEDING INVOLVING SUCH PUBLIC  
31 ENTITY, NOR PRECLUDE THE USE, SALE OR DISTRIBUTION OF INFORMATION  
32 COMPILED FROM ELECTRONIC TOLL OR FARE INFORMATION, WHERE SUCH COMPILED  
33 INFORMATION DOES NOT IDENTIFY ANY INDIVIDUAL ACCOUNT HOLDER.

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

39 5. VIOLATIONS. ANY PERSON WHO KNOWINGLY RELEASES OR PERMITS THE  
40 RELEASE OF ELECTRONIC TOLL OR ELECTRONIC FARE INFORMATION THAT IS CONFID-  
41 DENTIAL UNDER THIS SECTION TO A PERSON OR ENTITY NOT ENTITLED TO RECEIVE  
42 SUCH INFORMATION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO FIVE THOU-  
43 SAND DOLLARS.

44 S 3. This act shall take effect immediately.