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

1413

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Governmental Operations

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

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

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

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

A. "ELECTRONIC TOLL INFORMATION" SHALL MEAN RECORDS CREATED OR MAINTAINED BY A PUBLIC ENTITY OR BY A CONTRACTOR ON BEHALF OF A PUBLIC ENTITY CONCERNING A MOTORIST OR MOTOR VEHICLE REGARDING THE USE OF ANY HIGHWAY, BRIDGE, TUNNEL OR OTHER THOROUGHFARE, INCLUDING BUT NOT LIMITED TO E-Z PASS RECORDS, WHICH CONTAIN INFORMATION SUCH AS (BUT NOT LIMITED TO) THE NAME AND ADDRESS OF THE REGISTERED VEHICLE OWNER OR ACCOUNT HOLDER, A DESCRIPTION AND/OR LICENSE PLATE NUMBER OF THE VEHICLE, THE DATE, TIME AND LOCATION OF THE PASSAGE OF A VEHICLE THROUGH A TOLL COLLECTION LOCATION, AND THE STATEMENTS OF ACCOUNT ADDITIONS AND/OR DEDUCTIONS PREPARED FOR OR SENT TO THE ACCOUNT HOLDER.

B. "PUBLIC ENTITY" SHALL MEAN AND INCLUDE ANY STATE OR LOCAL DEPARTMENT, AGENCY, BOARD, BUREAU, DIVISION, COMMISSION, PUBLIC AUTHORITY, PUBLIC BENEFIT CORPORATION OR OFFICE OF THE STATE OR A POLITICAL SUBDIVISION OF THE STATE, OR ANY OTHER ENTITY PERFORMING A GOVERNMENTAL OR PROPRIETARY FUNCTION FOR THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS.

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

2. CONFIDENTIALITY OF RECORDS. ELECTRONIC TOLL INFORMATION IS CONFIDENTIAL INFORMATION. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW,

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

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SUCH INFORMATION SHALL NOT BE OPEN TO THE PUBLIC, NOR SUBJECT TO CIVIL OR CRIMINAL PROCESS OR DISCOVERY, NOR SUBJECT TO DISCLOSURE UNDER THE FREEDOM OF INFORMATION LAW, NOR USED BY ANY COURT OR ADMINISTRATIVE OR ADJUDICATORY BODY IN ANY ACTION OR PROCEEDING THEREIN, AND NO PUBLIC ENTITY OR EMPLOYEE, OFFICER OR AGENT THEREOF SHALL DISCLOSE SUCH INFORMATION, EXCEPT THAT SUCH INFORMATION:

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

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

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

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

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

D. MAY BE USED BY SUCH PUBLIC ENTITY OR A CONTRACTOR ON BEHALF OF A PUBLIC ENTITY FOR CUSTOMER SERVICE CENTER TO CUSTOMER SERVICE CENTER COMMUNICATIONS IN CONNECTION WITH THE ADMINISTRATION OF SUCH ELECTRONIC TOLL INFORMATION SYSTEM.

3. INFORMATION. NOTHING IN THIS SECTION SHALL PRECLUDE THE USE OF AGGREGATE ELECTRONIC TOLL INFORMATION WHICH DOES NOT IDENTIFY ANY INDIVIDUAL ACCOUNT HOLDER IN AN ACTION OR PROCEEDING INVOLVING SUCH PUBLIC ENTITY, NOR PRECLUDE THE USE, SALE OR DISTRIBUTION OF INFORMATION COMPILED FROM ELECTRONIC TOLL OR FARE INFORMATION, WHERE SUCH COMPILED INFORMATION DOES NOT IDENTIFY ANY INDIVIDUAL ACCOUNT HOLDER.

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

5. VIOLATIONS. ANY PERSON WHO KNOWINGLY RELEASES OR PERMITS THE RELEASE OF ELECTRONIC TOLL INFORMATION THAT IS CONFIDENTIAL UNDER THIS SECTION TO A PERSON OR ENTITY NOT ENTITLED TO RECEIVE SUCH INFORMATION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS.

S 2. This act shall take effect immediately.