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

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I N A S S E M B L Y

May 16, 2012

Introduced by M. of A. GOLDFEDER, ENGLEBRIGHT, CLARK, FARRELL, JAFFEE, LANCMAN, MARKEY, N. RIVERA, ROBERTS, SCHIMEL, STEVENSON, TITONE -- Multi-Sponsored by -- M. of A. CAHILL, COLTON, CYMBROWITZ, GALEF, GLICK, GOTTFRIED, HOOPER -- read once and referred to the Committee on Governmental Operations

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:

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

S 2. 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

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

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

B. "ELECTRONIC FARE INFORMATION" SHALL MEAN RECORDS CREATED OR MAINTAINED BY A PUBLIC ENTITY OR BY A CONTRACTOR ON BEHALF OF A PUBLIC ENTITY CONCERNING AN ACCOUNT HOLDER, INCLUDING BUT NOT LIMITED TO "METROCARD" AND PASS CARD SYSTEM COMPUTER RECORDS CONCERNING COMMUTER RAILROAD AND/OR TRANSIT FACILITY USE, WHICH CONTAIN INFORMATION SUCH AS (BUT NOT LIMITED TO) THE NAME AND ADDRESS OF THE ACCOUNT HOLDER; THE DATE AND TIME OF FARE CARD OR FARE MEDIA USE; IDENTIFICATION OF THE LOCATION OR TRANSIT STATION WHERE SUCH FARE CARD OR FARE MEDIA WAS USED; AND THE STATEMENTS OF ACCOUNT ADDITIONS AND/OR DEDUCTIONS PREPARED FOR OR SENT TO THE ACCOUNT HOLDER.

C. "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.

D. "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 AND ELECTRONIC FARE INFORMATION IS CONFIDENTIAL INFORMATION. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, 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. (I) SHALL BE FURNISHED WHEN DESCRIBED IN A SEARCH WARRANT ISSUED BY A COURT AUTHORIZED TO ISSUE SUCH A SEARCH WARRANT PURSUANT TO ARTICLE SIX HUNDRED NINETY OF THE CRIMINAL PROCEDURE LAW OR A FEDERAL COURT AUTHORIZED TO ISSUE SUCH A SEARCH WARRANT UNDER FEDERAL LAW, WHERE SUCH SEARCH WARRANT STATES THAT THERE IS REASONABLE CAUSE TO BELIEVE SUCH INFORMATION CONSTITUTES EVIDENCE OF, OR TENDS TO DEMONSTRATE THAT, A MISDEMEANOR OR FELONY OFFENSE WAS COMMITTED IN THIS STATE OR ANOTHER STATE, OR THAT A PARTICULAR PERSON PARTICIPATED IN THE COMMISSION OF A MISDEMEANOR OR FELONY OFFENSE IN THIS STATE OR ANOTHER STATE, PROVIDED, HOWEVER, THAT IF SUCH OFFENSE WAS AGAINST THE LAWS OF ANOTHER STATE, THE COURT SHALL ONLY ISSUE A WARRANT IF THE CONDUCT COMPRISING SUCH OFFENSE WOULD, IF OCCURRING IN THIS STATE, CONSTITUTE A MISDEMEANOR OR FELONY AGAINST THE LAWS OF THIS STATE; AND

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

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

(III) MAY, IF LAWFULLY OBTAINED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION OR THIS PARAGRAPH AND OTHERWISE ADMISSIBLE, BE USED IN SUCH CRIMINAL ACTION OR PROCEEDING; AND

C. 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 OR FARE REVENUES AND IT IS ALLEGED:

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

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

D. 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

E. 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 OR ELECTRONIC FARE INFORMATION SYSTEM; AND

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

3. INFORMATION. NOTHING HEREIN SHALL PRECLUDE THE USE OF AGGREGATE ELECTRONIC TOLL OR FARE 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 OR FARE 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 OR ELECTRONIC FARE 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 3. This act shall take effect immediately.