

2173

2015-2016 Regular Sessions

I N   S E N A T E

January 21, 2015

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Introduced by Sen. MARCELLINO -- 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 elec-  
tronic fare and toll records

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, 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-estab-  
6 lished accounts. Programs such as these have proven popular with consum-  
7 ers. But some consumers, public officials and public entities have  
8 raised legitimate questions about the extent to which records of indi-  
9 vidual 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 MAIN-  
19 TAINED BY A PUBLIC ENTITY OR BY A CONTRACTOR ON BEHALF OF A PUBLIC ENTI-  
20 TY CONCERNING A MOTORIST OR MOTOR VEHICLE REGARDING THE USE OF ANY HIGH-  
21 WAY, BRIDGE, TUNNEL OR OTHER THOROUGHFARE, INCLUDING BUT NOT LIMITED TO  
22 E-Z PASS RECORDS, WHICH CONTAIN INFORMATION SUCH AS (BUT NOT LIMITED TO)  
23 THE NAME AND ADDRESS OF THE REGISTERED VEHICLE OWNER OR ACCOUNT HOLDER,  
24 A DESCRIPTION AND/OR LICENSE PLATE NUMBER OF THE VEHICLE, THE DATE, TIME  
25 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.

LBD06375-02-5

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

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

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

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

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

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

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

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

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

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

17 S 3. This act shall take effect immediately.