

STATE OF NEW YORK

9805--A

IN ASSEMBLY

February 9, 2018

Introduced by M. of A. ABINANTI, ENGLEBRIGHT, SEPULVEDA, ERRIGO, WRIGHT, DINOWITZ, SCHIMMINGER, MAYER, JEAN-PIERRE, D'URSO, GALEF, LAWRENCE, LAVINE, RIVERA, JAFFEE, RA, CRESPO, BYRNE -- Multi-Sponsored by -- M. of A. DE LA ROSA -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public authorities law, in relation to enacting the "toll payer protection act"; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "toll payer protection act".

§ 2. Section 2985 of the public authorities law is REPEALED.

§ 3. Article 9 of the public authorities law is amended by adding a new title 11-A to read as follows:

TITLE 11-A

TOLL COLLECTIONS

Section 2985. Owner liability for failure of operator to comply with toll collection regulations.

2985-a. Cashless tolling.

§ 2985. Owner liability for failure of operator to comply with toll collection regulations. 1. Notwithstanding any other provision of law, every public authority which operates a toll highway bridge and/or tunnel facility is hereby authorized and empowered to impose monetary liability on the owner of a vehicle for failure of an operator thereof to comply with the toll collection regulations of such public authority in accordance with the provisions of this section.

2. The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of toll collection regulations, and such violation is evidenced by information obtained from a photo-monitoring system, provided, however, that no

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

LBD14156-08-8

1 owner of a vehicle shall be liable for a penalty imposed pursuant to
2 this section where the operator of such vehicle has been convicted of a
3 violation of toll collection regulations for the same incident.

4 3. For purposes of this section, the term "owner" shall mean any
5 person, corporation, partnership, firm, agency, association, lessor or
6 organization who, at the time of the violation and with respect to the
7 vehicle identified in the notice of liability: (a) is the beneficial or
8 equitable owner of such vehicle; or (b) has title to such vehicle; or
9 (c) is the registrant or co-registrant of such vehicle which is regis-
10 tered with the department of motor vehicles of this state or any other
11 state, territory, district, province, nation or other jurisdiction; or
12 (d) subject to the limitations set forth in subdivision ten of this
13 section, uses such vehicle in its vehicle renting and/or leasing busi-
14 ness; and includes (e) a person entitled to the use and possession of a
15 vehicle subject to a security interest in another person. For purposes
16 of this section, the term "photo-monitoring system" shall mean a vehicle
17 sensor installed to work in conjunction with a toll collection facility
18 which automatically produces one or more photographs, one or more micro-
19 photographs, a videotape or other recorded images of each vehicle at the
20 time it is used or operated in violation of toll collection regulations.
21 For purposes of this section, the term "toll collection regulations"
22 shall mean those rules and regulations of a public authority providing
23 for and requiring the payment of tolls and/or charges prescribed by such
24 public authority for the use of bridges, tunnels or highways under its
25 jurisdiction or those rules and regulations of a public authority making
26 it unlawful to refuse to pay or to evade or to attempt to evade the
27 payment of all or part of any toll and/or charge for the use of bridges,
28 tunnels or highways under the jurisdiction of such public authority. For
29 purposes of this section, the term "vehicle" shall mean every device in,
30 upon or by which a person or property is or may be transported or drawn
31 upon a highway, except devices used exclusively upon stationary rails or
32 tracks.

33 4. A certificate, sworn to or affirmed by an agent of the public
34 authority which charged that the violation occurred, or a facsimile
35 thereof, based upon inspection of photographs, microphotographs, vide-
36 otape or other recorded images produced by a photo-monitoring system
37 shall be prima facie evidence of the facts contained therein and shall
38 be admissible in any proceeding charging a violation of toll collection
39 regulations, provided that any photographs, microphotographs, videotape
40 or other recorded images evidencing such a violation shall be available
41 for inspection and admission into evidence in any proceeding to adjudi-
42 cate the liability for such violation.

43 5. An owner found liable for a violation of toll collection regu-
44 lations pursuant to this section shall for a first violation thereof be
45 liable for a monetary penalty not to exceed fifty dollars or two times
46 the toll evaded whichever is greater; for a second violation thereof
47 both within eighteen months be liable for a monetary penalty not to
48 exceed one hundred dollars or five times the toll evaded whichever is
49 greater; for a third or subsequent violation thereof all within eighteen
50 months be liable for a monetary penalty not to exceed one hundred fifty
51 dollars or ten times the toll evaded whichever is greater.

52 6. An imposition of liability pursuant to this section shall be based
53 upon a preponderance of evidence as submitted. An imposition of liabil-
54 ity pursuant to this section shall not be deemed a conviction as an
55 operator and shall not be made part of the motor vehicle operating
56 record, furnished pursuant to section three hundred fifty-four of the

1 vehicle and traffic law, of the person upon whom such liability is
2 imposed nor shall it be used for insurance purposes in the provision of
3 motor vehicle insurance coverage.

4 7. (a) A notice of liability shall be sent by first class mail to each
5 person alleged to be liable as an owner for a violation of toll
6 collection regulations. Such notice shall be mailed no later than thirty
7 days after the alleged violation. Personal delivery on the owner shall
8 not be required. A manual or automatic record of mailing prepared in the
9 ordinary course of business shall be prima facie evidence of the mailing
10 of the notice.

11 (b) A notice of liability shall contain the name and address of the
12 person alleged to be liable as an owner for a violation of toll
13 collection regulations pursuant to this section, the registration number
14 of the vehicle involved in such violation, the location where such
15 violation took place, the date and time of such violation and the iden-
16 tification number of the photo-monitoring system which recorded the
17 violation or other document locator number.

18 (c) The notice of liability shall contain information advising the
19 person charged of the manner and the time in which he may contest the
20 liability alleged in the notice. Such notice of liability shall also
21 contain a warning to advise the persons charged that failure to contest
22 in the manner and time provided shall be deemed an admission of liabil-
23 ity and that a default judgment may be entered thereon.

24 (d) The notice of liability shall be prepared and mailed by the public
25 authority having jurisdiction over the toll facility where the violation
26 of toll collection regulations occurred.

27 8. Adjudication of the liability imposed upon owners by this section
28 shall be by the entity having jurisdiction over violations of the rules
29 and regulations of the public authority serving the notice of liability
30 or where authorized by an administrative tribunal and all violations
31 shall be heard and determined in the county in which the violation is
32 alleged to have occurred, or in New York city and upon the consent of
33 both parties, in any county within New York city in which the public
34 authority operates or maintains a facility, and in the same manner as
35 charges of other regulatory violations of such public authority or
36 pursuant to the rules and regulations of such administrative tribunal as
37 the case may be.

38 9. If an owner receives a notice of liability pursuant to this section
39 for any time period during which the vehicle was reported to the police
40 department as having been stolen, it shall be a valid defense to an
41 allegation of liability for a violation of toll collection regulations
42 that the vehicle had been reported to the police as stolen prior to the
43 time the violation occurred and had not been recovered by such time. If
44 an owner receives a notice of liability pursuant to this section for any
45 time period during which the vehicle was stolen, but not as yet reported
46 to the police as having been stolen, it shall be a valid defense to an
47 allegation of liability for a violation of toll collection regulations
48 pursuant to this section that the vehicle was reported as stolen within
49 two hours after the discovery of the theft by the owner. For purposes
50 of asserting the defense provided by this subdivision it shall be suffi-
51 cient that a certified copy of the police report on the stolen vehicle
52 be sent by first class mail to the court or other entity having juris-
53 isdiction.

54 10. An owner who is a lessor of a vehicle to which a notice of liabil-
55 ity was issued pursuant to subdivision seven of this section shall not
56 be liable for the violation of the toll collection regulation provided

1 that he or she sends to the public authority serving the notice of
2 liability and to the court or other entity having jurisdiction a copy of
3 the rental, lease or other such contract document covering such vehicle
4 on the date of the violation, with the name and address of the lessee
5 clearly legible, within thirty days after receiving the original notice
6 of liability. Failure to send such information within such thirty day
7 time period shall render the lessor liable for the penalty prescribed by
8 this section. Where the lessor complies with the provisions of this
9 subdivision, the lessee of such vehicle on the date of such violation
10 shall be deemed to be the owner of such vehicle for purposes of this
11 section and shall be subject to liability for the violation of toll
12 collection regulations, provided that the public authority mails a
13 notice of liability to the lessee within ten days after the court, or
14 other entity having jurisdiction, deems the lessee to be the owner. For
15 purposes of this subdivision the term "lessor" shall mean any person,
16 corporation, firm, partnership, agency, association or organization
17 engaged in the business of renting or leasing vehicles to any lessee
18 under a rental agreement, lease or otherwise wherein the said lessee has
19 the exclusive use of said vehicle for any period of time. For purposes
20 of this subdivision, the term "lessee" shall mean any person, corpo-
21 ration, firm, partnership, agency, association or organization that
22 rents, leases or contracts for the use of one or more vehicles and has
23 exclusive use thereof for any period of time.

24 11. Except as provided in subdivision ten of this section, if a person
25 receives a notice of liability pursuant to this section it shall be a
26 valid defense to an allegation of liability for a violation of toll
27 collection regulations that the individual who received the notice of
28 liability pursuant to this section was not the owner of the vehicle at
29 the time the violation occurred. If the owner liable for a violation of
30 toll collection regulations pursuant to this section was not the opera-
31 tor of the vehicle at the time of the violation, the owner may maintain
32 an action for indemnification against the operator.

33 12. "Electronic toll collection system" shall mean a system of
34 collecting tolls or charges which is capable of charging an account
35 holder the appropriate toll or charge by transmission of information
36 from an electronic device on a motor vehicle to the toll lane, which
37 information is used to charge the account the appropriate toll or
38 charge. In adopting procedures for the preparation and mailing of a
39 notice of liability, the public authority having jurisdiction over the
40 toll facility shall adopt guidelines to ensure adequate and timely
41 notice to all electronic toll collection system account holders to
42 inform them when their accounts are delinquent. An owner who is an
43 account holder under the electronic toll collection system shall not be
44 found liable for a violation of this section unless such authority has
45 first sent a notice of delinquency to such account holder and the
46 account holder was in fact delinquent at the time of the violation.

47 13. Nothing in this section shall be construed to limit the liability
48 of an operator of a vehicle for any violation of toll collection regu-
49 lations.

50 14. Notwithstanding any other provision of law, all photographs,
51 microphotographs, videotape or other recorded images prepared pursuant
52 to this section shall be for the exclusive use of a public authority in
53 the discharge of its duties under this section and shall not be open to
54 the public nor be used in any court in any action or proceeding pending
55 therein unless such action or proceeding relates to the imposition of or
56 indemnification for liability pursuant to this section. The public

1 authority shall not sell, distribute or make available in any way, the
2 names and addresses of electronic toll collection system account hold-
3 ers, without such account holders' consent to any entity that will use
4 such information for any commercial purpose provided that the foregoing
5 restriction shall not be deemed to preclude the exchange of such infor-
6 mation between any entities with jurisdiction over and or operating a
7 toll highway bridge and/or tunnel facility.

8 § 2985-a. Cashless tolling. 1. For purposes of this section, the
9 following terms shall have the following meanings:

10 (a) "cashless tolling facility" shall mean a toll highway bridge or
11 tunnel facility that does not provide for the immediate on-site payment
12 in cash of a toll owed for the use of such facility;

13 (b) "owner" shall mean any person, corporation, partnership, firm,
14 agency, association, lessor or organization who, at the time of incur-
15 ring an obligation to pay a toll at a cashless tolling facility, and
16 with respect to the vehicle identified in the notice of toll due: (i) is
17 the beneficial or equitable owner of such vehicle; or (ii) has title to
18 such vehicle; or (iii) is the registrant or co-registrant of such vehi-
19 cle which is registered with the department of motor vehicles of this
20 state or any other state, territory, district, province, nation or other
21 jurisdiction; or (iv) is subject to the limitations set forth in subdi-
22 vision ten of section twenty-nine hundred eighty-five of this title,
23 uses such vehicle in its vehicle renting and/or leasing business; or (v)
24 is a person entitled to the use and possession of a vehicle subject to a
25 security interest in another person; and

26 (c) "notice of toll due" shall mean a notice sent to an owner notify-
27 ing such owner that the owner's vehicle has been used or operated in or
28 upon a cashless tolling facility and has incurred an obligation to pay a
29 toll.

30 2. (a) In the case of an owner who incurs an obligation to pay a toll
31 at a cashless tolling facility a notice of toll due shall be sent by
32 first class mail by the public authority which operates such cashless
33 tolling facility to the owner within thirty days of incurring the obli-
34 gation to pay the toll at such cashless tolling facility. The owner
35 shall have thirty days from the date the notice of toll due was sent by
36 first class mail to pay the assessed toll, without liability for any
37 other charges, fees, or monetary penalties. The notice of toll due
38 shall include: (i) the date, time, location, license plate number and
39 vehicle registration for each assessed toll due; (ii) the total amount
40 of the assessed toll due; (iii) the date by which payment of the
41 assessed toll is due; (iv) the authority to which the assessed toll must
42 be paid; and (v) any other information required by law or by the author-
43 ity. If an authority fails to send a timely notice of toll due, as set
44 forth in this section, the owner shall not be liable for payment of the
45 alleged tolls, monetary penalties, fees or other charges.

46 (b) If an owner fails to respond timely to such notice of toll due
47 within thirty days of the date the notice was sent, a second notice of
48 toll due shall be sent. Such second notice of toll due may include a fee
49 for late payment, but in no case shall such fee exceed five dollars. The
50 owner shall have thirty days from the date the second notice was sent to
51 pay the assessed toll and any fee.

52 (c) If an owner fails to respond timely to the second notice of toll
53 due the authority which operates the cashless tolling facility shall be
54 authorized to send a notice of liability. The notice of liability shall
55 contain the information described in subdivision seven of section twen-
56 ty-nine hundred eighty-five of this title. The owner shall have ninety

1 days from the date such notice of liability was sent to (i) pay the
2 assessed toll or (ii) contest the notice.

3 (d) If an owner fails to respond to the notice of liability or is
4 found liable for the assessed toll, the owner shall pay (i) the assessed
5 toll; (ii) any fees set by the authority, provided, however, that the
6 total amount of fees shall not exceed an amount equal to the amount of
7 the toll; and (iii) a monetary penalty which shall equal to twenty-five
8 dollars or double the amount of the toll due, whichever is greater.

9 3. Every public authority which operates a cashless tolling facility
10 shall promulgate rules and regulations that establish an installment
11 payment plan for the payment of any toll incurred at a cashless tolling
12 facility. Information related to such plan shall be included in the
13 notice of toll due and the notice of liability and shall be displayed
14 conspicuously on the authorities' website. Each owner, at his or her
15 election, may participate in such plan. The authority shall not charge
16 any additional fees or penalties for enrollment into a payment plan.

17 4. Every public authority which operates a cashless tolling facility
18 shall establish a procedure with which a person alleged to be liable may
19 contest such alleged liability or toll due including a hearing and the
20 right to appeal. The notice of toll due and notice of liability shall
21 contain information advising the person charged of the manner and the
22 time in which he or she may contest the assessed toll and any liability
23 alleged in the notice.

24 5. Any toll fee that will be charged for the usage of any bridge,
25 tunnel, road, or any other entity shall be displayed conspicuously and
26 prominently on signage of a reasonable size in a manner reasonably
27 calculated to provide ample and adequate notice.

28 6. (a) On or after the effective date of this section, no public
29 authority which operates a cashless tolling facility shall sell or
30 transfer any debt owed to the public authority by an owner for a
31 violation of toll collection regulations to a debt collection agency
32 unless one year has passed from the date the owner was found liable for
33 the violation of toll collection regulations associated with such debt,
34 or the owner has a total debt owed to the public authority of one thou-
35 sand dollars or more. The authority shall obtain a default judgment in a
36 court or administrative tribunal with jurisdiction over the assessed
37 toll before selling or transferring any debt to a debt collection agen-
38 cy.

39 (b) A notice shall be sent by first class mail advising the owner that
40 the above debt shall be sold or transferred by the authority to a debt
41 collection agency on a specified date no less than thirty days prior to
42 such sale or transfer.

43 (c) For purposes of this subdivision "debt collection agency" shall
44 mean a person, firm or corporation engaged in business, the principal
45 purpose of which is to regularly collect or attempt to collect debts
46 owed or due or asserted to be owed or due to another and shall also
47 include a buyer of delinquent debt who seeks to collect such debt either
48 directly or through the services of another by, including but not limit-
49 ed to, initiating or using legal processes or other means to collect or
50 attempt to collect such debt.

51 7. Notwithstanding the provisions of any other law, order, rule or
52 regulation to the contrary, no registration of a motor vehicle shall be
53 suspended resulting from an obligation to pay a toll at a cashless toll-
54 ing facility as described in this section and the commissioner of motor
55 vehicles shall not suspend the registration of a motor vehicle resulting

1 from an obligation to pay a toll at a cashless tolling facility as
2 described in this section.

3 8. Every public authority which operates a cashless tolling facility
4 shall undertake a public awareness campaign regarding the use of and
5 process involved with the payment of tolls at cashless tolling facili-
6 ties. Each public authority shall provide for sufficient methods to
7 obtain an electronic device for the charging of tolls through an elec-
8 tronic toll collection system as defined in subdivision twelve of
9 section twenty-nine hundred eighty-five of this title, including making
10 such devices available at any rest area owned or operated by each
11 authority. Any public authority that operates a cashless tolling facili-
12 ty shall maintain a website and toll-free phone number for any person to
13 receive updated information on any tolls or fees which are outstanding,
14 including, where feasible, the receiving of such updated information by
15 electronic mail or text message. Such website and phone number shall be
16 included on any notice of toll due or notice of liability sent by the
17 authority.

18 § 4. a. Within 90 days of the effective date of this act, the Tribor-
19 ough bridge and tunnel authority, the public authority created pursuant
20 to chapter 870 of the laws of 1939, herein after the authority, shall
21 implement an amnesty program for any person who owes tolls, fines, fees,
22 or penalties for a toll incurred at any cashless tolling facility oper-
23 ated by the authority. Such amnesty program shall be at least five weeks
24 in duration, and shall be available for any toll obligation incurred on
25 or after November 1, 2016. The amnesty program shall also be made avail-
26 able for any toll obligation incurred at a cashless tolling facility
27 operated by the authority that has been referred to a debt collections
28 agency or has resulted in the suspension of a vehicle registration. The
29 amnesty program shall provide for the waiver of all fees, fines, and
30 penalties associated with an outstanding toll balance if such outstand-
31 ing toll balance is paid in full by the end of the amnesty program. Upon
32 payment of an outstanding toll balance in full, the authority shall
33 advise the commissioner of motor vehicles, in such form and manner that
34 such commissioner shall have prescribed, that such person has responded
35 and has paid in full the outstanding balance owed through the amnesty
36 program.

37 b. The authority shall undertake a public awareness campaign for such
38 amnesty program, and shall maintain a public website for any person to
39 receive information on any outstanding tolls such person is liable for.
40 The authority shall provide for sufficient methods to pay the outstand-
41 ing toll balances, including but not limited to, by phone, by mail, or
42 through the internet. The authority shall, no later than thirty days
43 preceding the commencement of the amnesty program, send by first class
44 mail notice to all persons with outstanding toll balances of their
45 eligibility for the amnesty program.

46 § 5. This act shall take effect on the one hundred twentieth day after
47 it shall have become a law. Effective immediately, any authority or
48 agency shall take any actions necessary to adopt, amend or repeal regu-
49 lations in order to implement the provisions of this act by such effec-
50 tive date.