STATE OF NEW YORK

8946

IN SENATE

June 7, 2018

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

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 Section 2985 of the public authorities law is REPEALED.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 owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of a violation of toll collection regulations for the same incident.

3. For purposes of this section, the term "owner" shall mean any person, corporation, partnership, firm, agency, association, lessor or

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

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organization who, at the time of the violation and with respect to the vehicle identified in the notice of liability: (a) is the beneficial or equitable owner of such vehicle; or (b) has title to such vehicle; or (c) is the registrant or co-registrant of such vehicle which is registered with the department of motor vehicles of this state or any other state, territory, district, province, nation or other jurisdiction; or (d) subject to the limitations set forth in subdivision ten of this section, uses such vehicle in its vehicle renting and/or leasing business; and includes (e) a person entitled to the use and possession of a vehicle subject to a security interest in another person. For purposes of this section, the term "photo-monitoring system" shall mean a vehicle sensor installed to work in conjunction with a toll collection facility which automatically produces one or more photographs, one or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of toll collection regulations. For purposes of this section, the term "toll collection regulations" shall mean those rules and regulations of a public authority providing for and requiring the payment of tolls and/or charges prescribed by such public authority for the use of bridges, tunnels or highways under its jurisdiction or those rules and regulations of a public authority making it unlawful to refuse to pay or to evade or to attempt to evade the payment of all or part of any toll and/or charge for the use of bridges, tunnels or highways under the jurisdiction of such public authority. For purposes of this section, the term "vehicle" shall mean every device in, upon or by which a person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

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

5. An owner found liable for a violation of toll collection regulations pursuant to this section shall for a first violation thereof be liable for a monetary penalty not to exceed fifty dollars or two times the toll evaded whichever is greater; for a second violation thereof both within eighteen months be liable for a monetary penalty not to exceed one hundred dollars or five times the toll evaded whichever is greater; for a third or subsequent violation thereof all within eighteen months be liable for a monetary penalty not to exceed one hundred fifty dollars or ten times the toll evaded whichever is greater.

6. An imposition of liability pursuant to this section shall be based upon a preponderance of evidence as submitted. An imposition of liability pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the motor vehicle operating record, furnished pursuant to section three hundred fifty-four of the vehicle and traffic law, of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

7. (a) A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of toll

collection regulations. Such notice shall be mailed no later than thirty days after the alleged violation. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the mailing of the notice.

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

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

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

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

9. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was stolen, but not as yet reported to the police as having been stolen, it shall be a valid defense to an allegation of liability for a violation of toll collection regulations pursuant to this section that the vehicle was reported as stolen within two hours after the discovery of the theft by the owner. For purposes of asserting the defense provided by this subdivision it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the court or other entity having jurisdiction.

10. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision seven of this section shall not be liable for the violation of the toll collection regulation provided that he or she sends to the public authority serving the notice of liability and to the court or other entity having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty days after receiving the original notice

of liability. Failure to send such information within such thirty day time period shall render the lessor liable for the penalty prescribed by this section. Where the lessor complies with the provisions of this subdivision, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section and shall be subject to liability for the violation of toll collection regulations, provided that the public authority mails a notice of liability to the lessee within ten days after the court, or other entity having jurisdiction, deems the lessee to be the owner. For purposes of this subdivision the term "lessor" shall mean any person, corporation, firm, partnership, agency, association or organization engaged in the business of renting or leasing vehicles to any lessee under a rental agreement, lease or otherwise wherein the said lessee has the exclusive use of said vehicle for any period of time. For purposes of this subdivision, the term "lessee" shall mean any person, corporation, firm, partnership, agency, association or organization that rents, leases or contracts for the use of one or more vehicles and has exclusive use thereof for any period of time.

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

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

13. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of toll collection regulations.

14. Notwithstanding any other provision of law, all photographs, microphotographs, videotape or other recorded images prepared pursuant to this section shall be for the exclusive use of a public authority in the discharge of its duties under this section and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless such action or proceeding relates to the imposition of or indemnification for liability pursuant to this section. The public authority shall not sell, distribute or make available in any way, the names and addresses of electronic toll collection system account holders, without such account holders' consent to any entity that will use such information for any commercial purpose provided that the foregoing restriction shall not be deemed to preclude the exchange of such infor-

mation between any entities with jurisdiction over and or operating a toll highway bridge and/or tunnel facility.

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

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

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

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

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

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

(c) If an owner fails to respond timely to the second notice of toll due the authority which operates the cashless tolling facility shall be authorized to send a notice of liability. The notice of liability shall contain the information described in subdivision seven of section twenty-nine hundred eighty-five of this title. The owner shall have ninety days from the date such notice of liability was sent to (i) pay the assessed toll or (ii) contest the notice.

(d) If an owner fails to respond to the notice of liability or is found liable for the assessed toll, the owner shall pay (i) the assessed toll; (ii) any fees set by the authority, provided, however, that the

total amount of fees shall not exceed an amount equal to the amount of the toll; and (iii) a monetary penalty which shall equal to twenty-five dollars or double the amount of the toll due, whichever is greater.

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

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

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

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

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

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

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

8. Every public authority which operates a cashless tolling facility shall undertake a public awareness campaign regarding the use of and process involved with the payment of tolls at cashless tolling facilities. Each public authority shall provide for sufficient methods to

obtain an electronic device for the charging of tolls through an electronic toll collection system as defined in subdivision twelve of section twenty-nine hundred eighty-five of this title, including making such devices available at any rest area owned or operated by each authority. Any public authority that operates a cashless tolling facility shall maintain a website and toll-free phone number for any person to receive updated information on any tolls or fees which are outstanding, including, where feasible, the receiving of such updated information by electronic mail or text message. Such website and phone number shall be included on any notice of toll due or notice of liability sent by the authority.

§ 4. a. Within 90 days of the effective date of this act, the Triborough bridge and tunnel authority, the public authority created pursuant to chapter 870 of the laws of 1939, herein after the authority, shall implement an amnesty program for any person who owes tolls, fines, fees, or penalties for a toll incurred at any cashless tolling facility operated by the authority. Such amnesty program shall be at least five weeks in duration, and shall be available for any toll obligation incurred on or after November 1, 2016. The amnesty program shall also be made available for any toll obligation incurred at a cashless tolling facility operated by the authority that has been referred to a debt collections agency or has resulted in the suspension of a vehicle registration. The amnesty program shall provide for the waiver of all fees, fines, and penalties associated with an outstanding toll balance if such outstanding toll balance is paid in full by the end of the amnesty program. Upon payment of an outstanding toll balance in full, the authority shall advise the commissioner of motor vehicles, in such form and manner that such commissioner shall have prescribed, that such person has responded and has paid in full the outstanding balance owed through the amnesty program.

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

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, any authority or agency shall take any actions necessary to adopt, amend or repeal regulations in order to implement the provisions of this act by such effective date.