

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:

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

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 Section 2985 of the public authorities law is REPEALED.

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

TITLE 11-A

TOLL COLLECTIONS

6
7
8 Section 2985. Owner liability for failure of operator to comply with
9 toll collection regulations.

10 2985-a. Cashless tolling.

11 § 2985. Owner liability for failure of operator to comply with toll
12 collection regulations. 1. Notwithstanding any other provision of law,
13 every public authority which operates a toll highway bridge and/or
14 tunnel facility is hereby authorized and empowered to impose monetary
15 liability on the owner of a vehicle for failure of an operator thereof
16 to comply with the toll collection regulations of such public authority
17 in accordance with the provisions of this section.

18 2. The owner of a vehicle shall be liable for a civil penalty imposed
19 pursuant to this section if such vehicle was used or operated with the
20 permission of the owner, express or implied, in violation of toll
21 collection regulations, and such violation is evidenced by information
22 obtained from a photo-monitoring system, provided, however, that no
23 owner of a vehicle shall be liable for a penalty imposed pursuant to
24 this section where the operator of such vehicle has been convicted of a
25 violation of toll collection regulations for the same incident.

26 3. For purposes of this section, the term "owner" shall mean any
27 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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1 organization who, at the time of the violation and with respect to the
2 vehicle identified in the notice of liability: (a) is the beneficial or
3 equitable owner of such vehicle; or (b) has title to such vehicle; or
4 (c) is the registrant or co-registrant of such vehicle which is regis-
5 tered with the department of motor vehicles of this state or any other
6 state, territory, district, province, nation or other jurisdiction; or
7 (d) subject to the limitations set forth in subdivision ten of this
8 section, uses such vehicle in its vehicle renting and/or leasing busi-
9 ness; and includes (e) a person entitled to the use and possession of a
10 vehicle subject to a security interest in another person. For purposes
11 of this section, the term "photo-monitoring system" shall mean a vehicle
12 sensor installed to work in conjunction with a toll collection facility
13 which automatically produces one or more photographs, one or more micro-
14 photographs, a videotape or other recorded images of each vehicle at the
15 time it is used or operated in violation of toll collection regulations.
16 For purposes of this section, the term "toll collection regulations"
17 shall mean those rules and regulations of a public authority providing
18 for and requiring the payment of tolls and/or charges prescribed by such
19 public authority for the use of bridges, tunnels or highways under its
20 jurisdiction or those rules and regulations of a public authority making
21 it unlawful to refuse to pay or to evade or to attempt to evade the
22 payment of all or part of any toll and/or charge for the use of bridges,
23 tunnels or highways under the jurisdiction of such public authority. For
24 purposes of this section, the term "vehicle" shall mean every device in,
25 upon or by which a person or property is or may be transported or drawn
26 upon a highway, except devices used exclusively upon stationary rails or
27 tracks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 § 2985-a. Cashless tolling. 1. For purposes of this section, the
4 following terms shall have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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