STATE OF NEW YORK

6113

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

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

AN ACT to amend the public authorities law, in relation to enacting the "toll payer protection act"; and providing for the repeal of certain provisions upon expiration thereof

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 designated to title 11-A of article 9 of such law.

§ 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

§ 2985-a. Tolls by mail. 1. Applicability. This section shall apply to the tolls by mail program and shall not apply to the payment of tolls by means of an electronic toll device that transmits information through an electronic toll collection system as defined in subdivision twelve of section twenty-nine hundred eighty-five of this title.

2. Definitions. 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) "Cashless tolling monitoring system" shall mean a vehicle sensor which automatically produces a recorded image of a vehicle and license plate at the time it is used or operated at a cashless tolling facility and whose owner has incurred an obligation to pay a toll through the cashless tolling program.

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

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(c) "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.

(d) "Electronic means of communication" shall include but not be limited to electronic mail and text messaging.

(e) "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 operable electronic device on a motor vehicle to the toll lane, which information is used to charge the account the appropriate toll or charge.

(f) "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.

(g) "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 such lessee has the exclusive use of such vehicle for any period of time.

(h) "Notice of violation" shall mean a notice sent to an owner notifying such owner that a toll incurred at a cashless tolling facility by the owner has not been paid at the place and time and in the manner established for collection of such toll in the toll bill.

(i) "Operable electronic device" shall mean an electronic device that successfully transmits information through an electronic toll collection system.

(j) "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.

(k) "Penalty" shall mean any late payment fees, charges, or monetary penalties imposed by a public authority, exclusive of any toll or tolls incurred at the cashless tolling facility, for failure to timely pay an obligation to pay a toll.

(l) "Toll bill" shall mean a notice sent to an owner notifying such owner that the owner's vehicle has been used or operated at a cashless tolling facility, crossed a cashless tolling monitoring system without an operable electronic device and has incurred an obligation to pay a toll.

(m) "Tolls by mail program" shall mean any program operated by or on behalf of a public authority to identify vehicles that cross through a

cashless tolling facility without an operable electronic device and to send a toll bill or notice of violation to the owner of the vehicle.

(n) "Violation" shall mean the failure of the owner to timely respond to a toll bill.

3. Authorization for cashless tolling. (a) Notwithstanding any other provision of law, every public authority that operates a toll highway, bridge and/or tunnel facility and is authorized pursuant to section twenty-nine hundred eighty-five of this title to promulgate toll collection regulations and to impose monetary liability for failure to comply with such regulations is hereby authorized and empowered to operate a demonstration program for utilization of cashless tolling facilities, cashless tolling monitoring systems, and a tolls by mail program and to impose monetary liability on the owner of a vehicle for failure to comply with the toll collection regulations of such public authority so long as each public authority complies with the provisions of this section. Such public authority shall promulgate regulations establishing a demonstration program for the utilization of cashless tolling facilities, cashless tolling monitoring systems, and a tolls by mail program that comply with the provisions of this section. Such regulations may impose monetary liability on the owner of a vehicle for failure to comply with such regulations. No public authority shall own, operate or otherwise facilitate a cashless tolling facility, cashless tolling monitoring system, or tolls by mail program without first promulgating regulations pursuant to and in compliance with this section.

(b) Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that recorded images produced by such cashless tolling monitoring systems shall not include images that identify the driver, the passengers, or the contents of a vehicle. However, no toll bill or notice of violation issued pursuant to this section shall be invalid solely because a recorded image allows for the identification of the contents of a vehicle, provided that such public authority has made a reasonable effort to comply with the provisions of this paragraph.

(c) Every public authority that 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 sufficient methods for owners to obtain an operable electronic device for the electronic toll collection system, including making such devices available at all rest areas owned or operated by each authority.

(d) Every public authority that operates a cashless tolling facility shall maintain a website and toll-free phone number for any person to obtain current information on any outstanding tolls and shall implement a system to notify those owners who so request by electronic means of communication about tolls as they are incurred. Such website and phone number shall be printed on any toll bill or notice of violation.

4. Owner liability. (a) Within the jurisdiction of every public authority which has promulgated regulations pursuant to subdivision two of this section: (i) the owner shall incur an obligation to pay a toll when the owner's vehicle crosses through a cashless tolling facility pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, and such obligation is evidenced by information obtained from the cashless tolling monitoring system; or (ii) the owner of a vehicle shall incur an obligation to pay a toll when such vehicle crosses a cashless tolling facility without an

operable electronic device and is identified by a cashless tolling monitoring system.

(b) The owner of a vehicle shall be liable for a civil penalty imposed pursuant to this section if such owner incurred an obligation to pay a toll and fails to timely pay or respond to such toll in the manner set forth in the toll bill in accordance with this section and shall be liable for penalties in accordance with the penalties set forth herein. Provided, however, 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.

5. Toll bills and notices of violation. (a) Toll bill. The public authority shall within thirty days of an owner incurring an obligation to pay a toll send a toll bill by first-class mail to such owner. (i) Within thirty days of the mailing of the toll bill the owner shall (A) pay the toll, without liability for any penalty, or (B) contest such toll bill. (ii) The toll bill shall include: (A) the date, time, location, license plate number and vehicle registration for each toll; (B) the total amount of the toll due; (C) the date by which the toll must be paid; (D) the address for receipt of payment and methods of payment for such toll bill; (E) the procedure for contesting any toll; (F) information related to the failure to timely pay or respond to a toll bill; and (G) any other information required by law or by the authority. If an authority fails to send a toll bill as set forth in this section, the owner shall not be liable for payment of the tolls, or any penalty.

(b) Second toll bill. If an owner fails to respond to a toll bill within thirty days of the mailing of such toll bill, the public authority shall send a second toll bill by first-class mail within thirty days of the date the owner was required to respond to such toll bill. Such second toll bill may include a penalty for late payment, which shall not exceed five dollars and shall include all of the information required for a toll bill pursuant to paragraph (a) of this subdivision. Within thirty days of the mailing of the second toll bill the owner shall (i) pay the assessed toll and any penalty provided in such notice, or (ii) contest toll bill.

(c) Notice of violation. If an owner fails to respond to a second toll bill within thirty days of the mailing of such second toll bill, the public authority shall send by first-class mail a notice of violation within thirty days of the date the owner was required to respond to such second toll bill. (i) The notice of violation shall include: (A) the date, time, location, license plate number and vehicle registration for each toll; (B) the assessed toll and the total amount of all outstanding tolls and penalties as authorized by this section; (C) the date by which payment of such amounts are due; (D) the address for receipt of payment and methods of payment for the amounts due; (E) the procedure for contesting any such amounts; (F) information related to the failure to timely pay or respond to a notice of violation; and (G) any other information required by law or by the authority. The notice of violation may include a penalty which shall be no greater than twenty-five dollars. If the authority fails to send a timely notice of violation as set forth in this section, the owner shall not be liable for payment of the alleged tolls or any penalty. (ii) The owner shall have thirty days from the date such notice of violation was sent to (A) pay the assessed toll and penalties, or (B) contest the notice. If an owner fails to respond to

the notice of violation, the owner shall be liable for the assessed toll and any penalty as provided in such notice.

(d) Electronic notice. Any toll bill required by this section to be sent by first-class mail may instead be sent by electronic means of communication upon the affirmative consent of the owner in a form prescribed by the authority. Any notice of violation required by this section to be sent by first-class mail may in addition to first-class mail be sent by electronic means of communication upon the affirmative consent of the owner in a form prescribed by the authority. A manual or automatic record of electronic communications prepared in the ordinary course of business shall be sufficient record of electronic notice. Any affirmative consent to receive a toll bill or notice of violation by electronic means shall be revocable by the owner at any time with notice to the public authority or its agent and shall automatically be deemed revoked if the authority or its agent is unable to deliver two consecutive notices by electronic means of communication.

6. Procedure to contest. (a) Every public authority that operates a cashless tolling facility, cashless tolling monitoring system, and tolls by mail program shall promulgate regulations establishing a procedure by which a person alleged to be liable for the payment of a toll or a violation may (i) contest such alleged liability, (ii) submit the contest to a hearing, and (iii) have the right to appeal.

(b) Every toll bill and notice of violation shall on its face advise the owner of the manner and the time in which to contest the toll or any violation and also contain a warning 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.

7. Adjudication of liability. Adjudication of an owner's liability shall be by the entity having jurisdiction over the cashless tolling facility or, where authorized, by an administrative tribunal; and all such liability determinations shall be heard and determined either: (a) in the county in which the obligation to pay a toll through the cashless tolling program was alleged to occur, or (b) where the toll is alleged to have been incurred 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 cashless tolling facility. Such adjudications shall be heard and determined 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.

8. Evidence of obligation to pay a toll or violation. (a) A certificate sworn to or affirmed by an agent of the public authority which charged that a liability for an obligation to pay a toll or a violation has been incurred, or a facsimile thereof based upon inspection of recorded images produced by a cashless tolling monitoring system shall be prima facie evidence of the facts contained therein and shall be admissible in any proceeding charging a liability for a toll or a violation pursuant to this section.

(b) Any such recorded images and certificate evidencing such liability shall be available to the owner upon request for inspection and admission into evidence in any proceeding to adjudicate such liability.

(c) Any liability imposed pursuant to this section shall be based upon a preponderance of evidence as submitted.

9. Defenses. It shall be a valid defense to an allegation of liability for a toll and/or violation that:

(a) the vehicle was not used or operated in violation of this section or the regulations promulgated hereunder;

(b) the vehicle was used or operated without the permission of the owner, express or implied;

(c) the recipient of a toll bill or notice of violation was not the owner of the vehicle at the time the obligation to pay the toll occurred;

(d) the vehicle had been stolen prior to the time the obligation was incurred and was not in the possession of the owner at the time the obligation was incurred. For the purposes of asserting this defense, it shall be sufficient that a certified copy of the police report on the stolen vehicle is submitted to the public authority, court or other entity having jurisdiction;

(e) the vehicle had been leased at the time the obligation was incurred. For the purpose of asserting this defense, it shall be sufficient that a copy of the rental lease or other contract document covering the vehicle on the date and time the toll was incurred is submitted to the public authority, court or other entity having jurisdiction within thirty days of the lessor receiving the original toll bill or notice of violation. Such document shall include the name and address of the lessee. Failure to timely submit such information shall constitute a waiver of this defense. Where the lessor complies with the provisions of this section, the lessee shall be deemed to be the owner of the vehicle for purposes of this section and shall be subject to liability pursuant to this section, provided that the authority mails a toll bill to the lessee within ten days after the court or other entity having jurisdiction, deems the lessee to be the owner.

10. Finding of violation. (a) Any liability imposed 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, maintained by the commissioner of motor vehicles pursuant to 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.

(b) Notwithstanding the provisions of any other law, order, rule or regulation to the contrary, no registration of any motor vehicle may be suspended, revoked or denied renewal 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, revoke or deny renewal of the registration of a motor vehicle resulting from an obligation to pay a toll at a cashless tolling facility as described in this section.

11. Indemnification. Any owner who is found liable pursuant to this section who was not the operator of the vehicle at the time the obligation to pay the toll was incurred may maintain an action for indemnification against the operator.

12. Data protection. (a) Notwithstanding any other provision of law, all images, videos and other recorded images collected by the authority pursuant to this section shall be for the exclusive use of such 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.

(b) The authority shall not sell, distribute or make available in any way, the names and addresses of any owner that participates in the tolls by mail program, without such owner's 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

information between any entities with jurisdiction over or operating of a cashless tolling facility for the purpose of administering such tolls by mail program.

13. Display of toll charges. Any toll 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.

14. Debt collection. (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 not sell or transfer any debt to a debt collection agency unless such authority has first obtained a default judgment in a court or administrative tribunal with jurisdiction over the assessed toll.

(b) A notice shall be sent by first-class mail advising the owner that the debt described in paragraph (a) of this subdivision 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.

15. Installment payment plan. Every public authority that operates a cashless tolling facility, cashless tolling monitoring system, and tolls by mail program shall promulgate rules and regulations that establish an installment payment plan for the payment of any toll and penalty incurred at a cashless tolling facility. Information related to such plan shall be included in any toll bill and any notice of violation and shall be displayed conspicuously on the authorities' websites. Each owner, at his or her election, may participate in such plan. The public authority shall not charge any additional fees or penalties for enrollment in a payment plan.

16. Annual report. Every public authority that adopts a demonstration program pursuant to subdivision two of this section shall submit an annual report on the tolls by mail program to the governor, the temporary president of the senate and the speaker of the assembly and post on its website on or before the first day of June succeeding the effective date of this section and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

(a) the locations where vehicle sensors for cashless tolling monitoring systems were used;

(b) the aggregate number of tolls paid at the locations where cashless tolling facilities were used, including both through the use of an operable electronic device and through the tolls by mail program;

(c) the number of owners that paid their toll through the tolls by mail program;

(d) the number of owners that paid their toll upon receipt of the first toll bill;

(e) the number of owners that paid their toll upon receipt of the second toll bill;

(f) the number of owners that were charged a five dollar fee for late payment and the aggregate amount of fees for late payment collected by the authority;

(g) the number of owners that were charged a penalty, the amount of the penalty charged to owners and the aggregate amount of penalties collected by the authority;

(h) the number of owners that disputed the toll bill, the number of owners that successfully disputed such toll bill and an itemized breakdown of the reasons for successfully disputed tolls;

(i) the number of owners that disputed the notice of violation and the number of owners that successfully disputed such notice of violation;

(j) the number of owners that paid their toll upon receipt of the notice of violation;

(k) the aggregate amount of penalties charged to owners;

(l) a copy of all regulations the reporting authority promulgated pursuant to this section;

(m) the number of tolls adjudicated by every public authority and court, including any appeal of such adjudications, and the results of all adjudications including breakdowns of dispositions made for tolls recorded by such systems;

(n) the total amount of revenue realized by such authority from such adjudications;

(o) expenses incurred by such authority in connection with the tolls by mail program;

(p) the nature of the adjudication process and its results; and

(q) the number of owners whose toll bills and violation notices were returned to the public authority as undeliverable.

§ 4. a. Within 90 days of the effective date of this act, the Triborough Bridge and Tunnel Authority organized pursuant to section 552 of the public authorities law shall implement an amnesty program for all persons who, with respect to any toll obligation incurred on or after November 1, 2016 at a cashless tolling facility operated by the authority, (1) owe tolls, fines, fees, or penalties; (2) have been referred to a debt collection agency; or (3) have had their vehicle registration suspended. Such amnesty program shall be at least five weeks in duration and shall provide that upon an owner's payment or contesting the outstanding toll balance during the amnesty period (1) the authority shall waive all fees, fines, and penalties associated with the outstanding toll balance, and (2) 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 any registration suspension shall be rescinded.

b. The Triborough Bridge and Tunnel Authority shall undertake a public awareness campaign for such amnesty program, maintain a public website for any person to obtain information on any outstanding tolls and no later than 30 days preceding the commencement of the amnesty period, notify by first-class mail all persons with outstanding toll balances of their eligibility for the amnesty program. 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.

§ 5. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however that sections three and four of this act shall expire 5 years after such effective date when upon such date such provisions of this act shall be deemed repealed. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.