

STATE OF NEW YORK

6113--A

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

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

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 designated to title
4 11-A of article 9 of such law.

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

TITLE 11-A

TOLL COLLECTIONS

7
8
9 § 2985-a. Tolls by mail. 1. Applicability. This section shall apply to
10 the tolls by mail program and shall not apply to the payment of tolls by
11 means of an electronic toll device that transmits information through an
12 electronic toll collection system as defined in subdivision twelve of
13 section twenty-nine hundred eighty-five of this title.

14 2. Definitions. For purposes of this section, the following terms
15 shall have the following meanings:

16 (a) "Cashless tolling facility" shall mean a toll highway, bridge or
17 tunnel facility that does not provide for the immediate on-site payment
18 in cash of a toll owed for the use of such facility.

19 (b) "Cashless tolling monitoring system" shall mean a vehicle sensor
20 which automatically produces a recorded image of a vehicle and license
21 plate at the time it is used or operated at a cashless tolling facility

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

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1 and whose owner has incurred an obligation to pay a toll through the
2 cashless tolling program.

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

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

12 (e) "Electronic toll collection system" shall mean a system of
13 collecting tolls or charges which is capable of charging an account
14 holder the appropriate toll or charge by transmission of information
15 from an operable electronic device on a motor vehicle to the toll lane,
16 which information is used to charge the account the appropriate toll or
17 charge.

18 (f) "Lessee" shall mean any person, corporation, firm, partnership,
19 agency, association, or organization that rents, leases or contracts for
20 the use of one or more vehicles and has exclusive use thereof for any
21 period of time.

22 (g) "Lessor" shall mean any person, corporation, firm, partnership,
23 agency, association, or organization engaged in the business of renting
24 or leasing vehicles to any lessee under a rental agreement, lease or
25 otherwise wherein such lessee has the exclusive use of such vehicle for
26 any period of time.

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

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

34 (j) "Owner" shall mean any person, corporation, partnership, firm,
35 agency, association, lessor or organization who, at the time of incur-
36 ring an obligation to pay a toll at a cashless tolling facility, and
37 with respect to the vehicle identified in the notice of toll due: (i) is
38 the beneficial or equitable owner of such vehicle; or (ii) has title to
39 such vehicle; or (iii) is the registrant or co-registrant of such vehi-
40 cle which is registered with the department of motor vehicles of this
41 state or any other state, territory, district, province, nation or other
42 jurisdiction; or (iv) is subject to the limitations set forth in subdi-
43 vision ten of section twenty-nine hundred eighty-five of this title,
44 uses such vehicle in its vehicle renting and/or leasing business; or (v)
45 is a person entitled to the use and possession of a vehicle subject to a
46 security interest in another person.

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

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

1 (m) "Tolls by mail program" shall mean any program operated by or on
2 behalf of a public authority to identify vehicles that cross through a
3 cashless tolling facility without an operable electronic device and to
4 send a toll bill or notice of violation to the owner of the vehicle.

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

7 3. Authorization for cashless tolling. (a) Notwithstanding any other
8 provision of law, every public authority that operates a toll highway,
9 bridge and/or tunnel facility and is authorized pursuant to section
10 twenty-nine hundred eighty-five of this title to promulgate toll
11 collection regulations and to impose monetary liability for failure to
12 comply with such regulations is hereby authorized and empowered to oper-
13 ate a demonstration program for utilization of cashless tolling facili-
14 ties, cashless tolling monitoring systems, and a tolls by mail program
15 and to impose monetary liability on the owner of a vehicle for failure
16 to comply with the toll collection regulations of such public authority
17 so long as each public authority complies with the provisions of this
18 section. Such public authority shall promulgate regulations establishing
19 a demonstration program for the utilization of cashless tolling facili-
20 ties, cashless tolling monitoring systems, and a tolls by mail program
21 that comply with the provisions of this section. Such regulations may
22 impose monetary liability on the owner of a vehicle for failure to
23 comply with such regulations. No public authority shall own, operate or
24 otherwise facilitate a cashless tolling facility, cashless tolling moni-
25 toring system, or tolls by mail program without first promulgating regu-
26 lations pursuant to and in compliance with this section.

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

36 (c) Every public authority that operates a cashless tolling facility
37 shall undertake a public awareness campaign regarding the use of and
38 process involved with the payment of tolls at cashless tolling facili-
39 ties. Each public authority shall provide sufficient methods for owners
40 to obtain an operable electronic device for the electronic toll
41 collection system, including making such devices available at all rest
42 areas owned or operated by each authority.

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

49 4. Owner liability. (a) Within the jurisdiction of every public
50 authority which has promulgated regulations pursuant to subdivision
51 three of this section: (i) the owner shall incur an obligation to pay a
52 toll when the owner's vehicle crosses through a cashless tolling facili-
53 ty pursuant to this section if such vehicle was used or operated with
54 the permission of the owner, express or implied, and such obligation is
55 evidenced by information obtained from the cashless tolling monitoring
56 system; or (ii) the owner of a vehicle shall incur an obligation to pay

1 a toll when such vehicle crosses a cashless tolling facility without an
2 operable electronic device and is identified by a cashless tolling moni-
3 toring system.

4 (b) The owner of a vehicle shall be liable for a civil penalty imposed
5 pursuant to this section if such owner incurred an obligation to pay a
6 toll and fails to timely pay or respond to such toll in the manner set
7 forth in the toll bill in accordance with this section and shall be
8 liable for penalties in accordance with the penalties set forth herein.
9 Provided, however, no owner of a vehicle shall be liable for a penalty
10 imposed pursuant to this section where the operator of such vehicle has
11 been convicted of a violation of toll collection regulations for the
12 same incident.

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

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

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

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

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

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

23 (b) Every toll bill and notice of violation shall on its face advise
24 the owner of the manner and the time in which to contest the toll or any
25 violation and also contain a warning that failure to contest in the
26 manner and time provided shall be deemed an admission of liability and
27 that a default judgment may be entered thereon.

28 7. Adjudication of liability. Adjudication of an owner's liability
29 shall be by the entity having jurisdiction over the cashless tolling
30 facility or, where authorized, by an administrative tribunal; and all
31 such liability determinations shall be heard and determined either: (a)
32 in the county in which the obligation to pay a toll through the cashless
33 tolling program was alleged to occur, or (b) where the toll is alleged
34 to have been incurred in New York city and, upon the consent of both
35 parties, in any county within New York city in which the public authori-
36 ty operates or maintains a cashless tolling facility. Such adjudications
37 shall be heard and determined in the same manner as charges of other
38 regulatory violations of such public authority or pursuant to the rules
39 and regulations of such administrative tribunal as the case may be.

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

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

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

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

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

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

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

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

12 (e) the vehicle had been leased at the time the obligation was
13 incurred. For the purpose of asserting this defense, it shall be suffi-
14 cient that a copy of the rental lease or other contract document cover-
15 ing the vehicle on the date and time the toll was incurred is submitted
16 to the public authority, court or other entity having jurisdiction with-
17 in thirty days of the lessor receiving the original toll bill or notice
18 of violation. Such document shall include the name and address of the
19 lessee. Failure to timely submit such information shall constitute a
20 waiver of this defense. Where the lessor complies with the provisions of
21 this section, the lessee shall be deemed to be the owner of the vehicle
22 for purposes of this section and shall be subject to liability pursuant
23 to this section, provided that the authority mails a toll bill to the
24 lessee within ten days after the court or other entity having jurisdic-
25 tion, deems the lessee to be the owner.

26 10. Finding of violation. (a) Any liability imposed pursuant to this
27 section shall not be deemed a conviction as an operator and shall not be
28 made part of the motor vehicle operating record, maintained by the
29 commissioner of motor vehicles pursuant to the vehicle and traffic law,
30 of the person upon whom such liability is imposed nor shall it be used
31 for insurance purposes in the provision of motor vehicle insurance
32 coverage.

33 (b) Notwithstanding the provisions of any other law, order, rule or
34 regulation to the contrary, no registration of any motor vehicle may be
35 suspended, revoked or denied renewal resulting from an obligation to pay
36 a toll at a cashless tolling facility as described in this section and
37 the commissioner of motor vehicles shall not suspend, revoke or deny
38 renewal of the registration of a motor vehicle resulting from an obli-
39 gation to pay a toll at a cashless tolling facility as described in this
40 section.

41 11. Indemnification. Any owner who is found liable pursuant to this
42 section who was not the operator of the vehicle at the time the obli-
43 gation to pay the toll was incurred may maintain an action for indemni-
44 fication against the operator.

45 12. Data protection. (a) Notwithstanding any other provision of law,
46 all images, videos and other recorded images collected by the authority
47 pursuant to this section shall be for the exclusive use of such authori-
48 ty in the discharge of its duties under this section and shall not be
49 open to the public nor be used in any court in any action or proceeding
50 pending therein unless such action or proceeding relates to the imposi-
51 tion of or indemnification for liability pursuant to this section.

52 (b) The authority shall not sell, distribute or make available in any
53 way, the names and addresses of any owner that participates in the tolls
54 by mail program, without such owner's consent, to any entity that will
55 use such information for any commercial purpose provided that the fore-
56 going restriction shall not be deemed to preclude the exchange of such

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

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

8 14. Debt collection. (a) On or after the effective date of this
9 section, no public authority which operates a cashless tolling facility
10 shall sell or transfer any debt owed to the public authority by an owner
11 for a violation of toll collection regulations to a debt collection
12 agency unless one year has passed from the date the owner was found
13 liable for the violation of toll collection regulations associated with
14 such debt, or the owner has a total debt owed to the public authority of
15 one thousand dollars or more. The authority shall not sell or transfer
16 any debt to a debt collection agency unless such authority has first
17 obtained a default judgment in a court or administrative tribunal with
18 jurisdiction over the assessed toll.

19 (b) A notice shall be sent by first-class mail advising the owner that
20 the debt described in paragraph (a) of this subdivision shall be sold or
21 transferred by the authority to a debt collection agency on a specified
22 date no less than thirty days prior to such sale or transfer.

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

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

41 (a) the locations where vehicle sensors for cashless tolling monitor-
42 ing systems were used;

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

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

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

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

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

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

4 (h) the number of owners that disputed the toll bill, the number of
5 owners that successfully disputed such toll bill and an itemized break-
6 down of the reasons for successfully disputed tolls;

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

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

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

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

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

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

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

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

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

25 § 4. a. Within 90 days of the effective date of this act, the Tribor-
26 ough Bridge and Tunnel Authority organized pursuant to section 552 of
27 the public authorities law shall implement an amnesty program for all
28 persons who, with respect to any toll obligation incurred on or after
29 November 1, 2016 at a cashless tolling facility operated by the authori-
30 ty, (1) owe tolls, fines, fees, or penalties; (2) have been referred to
31 a debt collection agency; or (3) have had their vehicle registration
32 suspended. Such amnesty program shall be at least five weeks in duration
33 and shall provide that upon an owner's payment or contesting the
34 outstanding toll balance during the amnesty period (1) the authority
35 shall waive all fees, fines, and penalties associated with the outstand-
36 ing toll balance, and (2) the authority shall advise the commissioner of
37 motor vehicles, in such form and manner that such commissioner shall
38 have prescribed, that such person has responded and any registration
39 suspension shall be rescinded.

40 b. The Triborough Bridge and Tunnel Authority shall undertake a public
41 awareness campaign for such amnesty program, maintain a public website
42 for any person to obtain information on any outstanding tolls and no
43 later than 30 days preceding the commencement of the amnesty period,
44 notify by first-class mail all persons with outstanding toll balances of
45 their eligibility for the amnesty program. The authority shall provide
46 for sufficient methods to pay the outstanding toll balances, including
47 but not limited to, by phone, by mail, or through the internet.

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