

STATE OF NEW YORK

3801--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. ABINANTI, WEPRIN, WILLIAMS, CRUZ, MORINELLO, SMULLEN, REILLY, McDONOUGH, EPSTEIN -- Multi-Sponsored by -- M. of A. ENGLEBRIGHT, GRIFFIN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- 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

Section 2985-a. Tolls by mail.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (l) "Toll bill" shall mean a notice sent to an owner notifying such
55 owner that the owner's vehicle has been used or operated at a cashless
56 tolling facility, crossed a cashless tolling monitoring system without

1 an operable electronic device and has incurred an obligation to pay a
2 toll.

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

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

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

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

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

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

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

1 evidenced by information obtained from the cashless tolling monitoring
2 system; or (ii) the owner of a vehicle shall incur an obligation to pay
3 a toll when such vehicle crosses a cashless tolling facility without an
4 operable electronic device and is identified by a cashless tolling moni-
5 toring system.

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

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

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

41 (c) Notice of violation. If an owner fails to respond to a second toll
42 bill within thirty days of the mailing of such second toll bill, the
43 public authority shall send by first-class mail a notice of violation
44 within thirty days of the date the owner was required to respond to such
45 second toll bill. (i) The notice of violation shall include: (A) the
46 date, time, location, license plate number and vehicle registration for
47 each toll; (B) the assessed toll and the total amount of all outstanding
48 tolls and penalties as authorized by this section; (C) the date by which
49 payment of such amounts are due; (D) the address for receipt of payment
50 and methods of payment for the amounts due; (E) the procedure for
51 contesting any such amounts; (F) information related to the failure to
52 timely pay or respond to a notice of violation; (G) the website address
53 or hyperlink for the owner to access time-stamped photographs or footage
54 of each toll incurred; and (H) any other information required by law or
55 by the authority. The notice of violation may include a penalty which
56 shall be twenty-five dollars or two times the toll evaded, whichever is

1 greater. If the authority fails to send a timely notice of violation as
2 set forth in this section, the owner shall not be liable for payment of
3 the alleged tolls or any penalty. (ii) The owner shall have thirty days
4 from the date such notice of violation was sent to (A) pay the assessed
5 toll and penalties, or (B) contest the notice. If an owner fails to
6 respond to the notice of violation, the owner shall be liable for the
7 assessed toll and any penalty as provided in such notice.

8 (d) Electronic notice. Any toll bill required by this section to be
9 sent by first-class mail may instead be sent by electronic means of
10 communication upon the affirmative consent of the owner in a form
11 prescribed by the authority. Provided that, notwithstanding this subdi-
12 vision, a toll bill sent by electronic means of communication shall be
13 sent within seventy-two hours of an owner incurring an obligation to pay
14 a toll. Any notice of violation required by this section to be sent by
15 first-class mail may in addition to first-class mail be sent by elec-
16 tronic means of communication upon the affirmative consent of the owner
17 in a form prescribed by the authority. A manual or automatic record of
18 electronic communications prepared in the ordinary course of business
19 shall be sufficient record of electronic notice. Any affirmative consent
20 to receive a toll bill or notice of violation by electronic means shall
21 be revocable by the owner at any time with notice to the public authori-
22 ty or its agent and shall automatically be deemed revoked if the author-
23 ity or its agent is unable to deliver two consecutive notices by elec-
24 tronic means of communication.

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

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

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

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

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

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

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

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

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

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

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

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

35 10. Finding of violation. (a) Any liability imposed pursuant to this
36 section shall not be deemed a conviction as an operator and shall not be
37 made part of the motor vehicle operating record, maintained by the
38 commissioner of motor vehicles pursuant to the vehicle and traffic law,
39 of the person upon whom such liability is imposed nor shall it be used
40 for insurance purposes in the provision of motor vehicle insurance
41 coverage.

42 (b) Notwithstanding the provisions of any other law, order, rule or
43 regulation to the contrary, no registration of any non-commercial motor
44 vehicle may be suspended, revoked or denied renewal resulting from an
45 obligation to pay a toll at a cashless tolling facility as described in
46 this section and the commissioner of motor vehicles shall not suspend,
47 revoke or deny renewal of the registration of a non-commercial motor
48 vehicle resulting from an obligation to pay a toll at a cashless tolling
49 facility as described in this section unless such owner is found liable
50 for failure to pay or respond to five or more notices of unrelated toll
51 bills or is liable for no less than one hundred fifty dollars in
52 outstanding toll bills within an eighteen month period.

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

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

8 (b) The authority, including any subsidiary or contractor involved in
9 implementing or operating an electronic toll collection system or tolls
10 by mail program, shall not sell, distribute or make available in any
11 way, the names and addresses of any owner that participates in the tolls
12 by mail program, provided that the foregoing restriction shall not be
13 deemed to preclude the exchange of such information between any entities
14 with jurisdiction over or operating of a cashless tolling facility for
15 the purpose of administering such tolls by mail program.

16 13. Display of toll charges. Any toll that will be charged for the
17 usage of any bridge, tunnel, road, or any other entity by a passenger
18 motor vehicle shall be displayed conspicuously and prominently on
19 signage of a reasonable size in a manner reasonably calculated to
20 provide ample and adequate notice.

21 14. Debt collection. (a) On or after the effective date of this
22 section, no public authority which operates a cashless tolling facility
23 shall sell or transfer any debt owed to the public authority by an owner
24 for a violation of toll collection regulations to a debt collection
25 agency unless one year has passed from the date the owner was found
26 liable for the violation of toll collection regulations associated with
27 such debt, or the owner has a total debt owed to the public authority of
28 five hundred dollars or more. The authority shall not sell or transfer
29 any debt to a debt collection agency unless such authority has first
30 obtained a default judgment in a court or administrative tribunal with
31 jurisdiction over the assessed toll.

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

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

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

54 (a) the locations where vehicle sensors for cashless tolling monitor-
55 ing 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 eight 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

1 their eligibility for the amnesty program. The authority shall provide
2 for sufficient methods to pay the outstanding toll balances, including
3 but not limited to, by phone, by mail, or through the internet.
4 § 5. This act shall take effect on the one hundred twentieth day after
5 it shall have become a law; provided, however that sections two, three
6 and four of this act shall expire 5 years after such effective date when
7 upon such date such provisions of such sections shall be deemed
8 repealed. Effective immediately, the addition, amendment and/or repeal
9 of any rule or regulation necessary for the implementation of this act
10 on its effective date are authorized to be made and completed on or
11 before such effective date.