

# STATE OF NEW YORK

5214--B

2023-2024 Regular Sessions

## IN ASSEMBLY

March 7, 2023

Introduced by M. of A. BURGOS, RIVERA, EICHENSTEIN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- recommitted to the Committee on Codes 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 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. Short title. This act shall be known and may be cited as  
2 the "toll payer protection act".  
3 § 2. Subdivisions 3, 4 and 5 of section 2985 of the public authorities  
4 law, as added by chapter 379 of the laws of 1992, are amended and a new  
5 subdivision 4-a is added to read as follows:  
6 3. For purposes of this section, the ~~[term]~~ following terms shall have  
7 the following meanings:  
8 (a) "owner" shall mean any person, corporation, partnership, firm,  
9 agency, association, lessor or organization who, ~~[at the time of the~~  
10 ~~violation and]~~ with respect to the vehicle identified in the notice of  
11 liability: ~~[(a)]~~ (i) is the beneficial or equitable owner of such vehi-  
12 cle; or ~~[(b)]~~ (ii) has title to such vehicle; or ~~[(c)]~~ (iii) is the  
13 registrant or co-registrant of such vehicle which is registered with the  
14 department of motor vehicles of this state or any other state, territo-  
15 ry, district, province, nation or other jurisdiction; or ~~[(d)]~~ (iv)  
16 subject to the limitations set forth in subdivision ~~[ten]~~ nine of this  
17 section, uses such vehicle in its vehicle renting and/or leasing busi-  
18 ness; and (v) includes ~~[(e)]~~ a person entitled to the use and possession

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

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1 of a vehicle subject to a security interest in another person. [~~For~~  
2 ~~purposes of this section, the term~~]

3 (b) "photo-monitoring system" shall mean a vehicle sensor installed to  
4 work in conjunction with a toll collection facility which automatically  
5 produces one or more photographs, one or more microphotographs, a vide-  
6 otape or other recorded images of each vehicle [~~at the time it is used~~  
7 ~~or operated in violation of toll collection regulations~~]. [~~For purposes~~  
8 ~~of this section, the term~~]

9 (c) "toll collection regulations" shall mean: those rules and regu-  
10 lations of a public authority providing for and requiring the payment of  
11 tolls and/or charges prescribed by such public authority for the use of  
12 bridges, tunnels or highways under its jurisdiction or those rules and  
13 regulations of a public authority making it unlawful to refuse to pay or  
14 to evade or to attempt to evade the payment of all or part of any toll  
15 and/or charge for the use of bridges, tunnels or highways under the  
16 jurisdiction of such public authority. [~~For purposes of this section,~~  
17 ~~the term~~]

18 (d) "vehicle" shall mean every device in, upon or by which a person or  
19 property is or may be transported or drawn upon a highway, except  
20 devices used exclusively upon stationary rails or tracks.

21 (e) "violation" shall mean the failure of an owner to pay an assessed  
22 toll associated with the third notice of liability pursuant to subdivi-  
23 sion five of this section.

24 4. A certificate, sworn to or affirmed by an agent of the public  
25 authority which charged that [~~the violation occurred~~] a liability for an  
26 obligation to pay a toll has incurred, or a facsimile thereof, based  
27 upon inspection of photographs, microphotographs, videotape or other  
28 recorded images produced by a photo-monitoring system shall be prima  
29 facie evidence of the facts contained therein and shall be admissible in  
30 any proceeding charging a [~~violation of toll collection regulations~~]  
31 liability for a toll, provided that any photographs, microphotographs,  
32 videotape or other recorded images evidencing such [~~a violation~~] liabil-  
33 ity for a toll shall be available for inspection and admission into  
34 evidence in any proceeding to adjudicate the liability for such  
35 [~~violation~~] toll.

36 4-a. In adopting procedures for the preparation and mailing of a  
37 notice of liability pursuant to subdivision five of this section, the  
38 public authority having jurisdiction over the toll facility shall adopt  
39 guidelines to ensure adequate and timely notice to all electronic toll  
40 collection system account holders to inform them when their accounts are  
41 delinquent.

42 5. (a) The public authority shall, within thirty days of an owner  
43 incurring an obligation to pay a toll, send a first notice of liability  
44 by first-class mail to such owner. Such first notice of liability shall  
45 include: (i) the date, time, location, license plate number and vehicle  
46 registration for each toll incurred; (ii) the identification number of  
47 the photo-monitoring system which recorded the imposition of the toll or  
48 other document locator number; (iii) the total amount of the toll due;  
49 (iv) the date by which the toll must be paid; (v) the address for  
50 receipt of payment and methods of payment for the toll; (vi) the  
51 procedure for contesting any toll; (vii) information related to the  
52 failure to timely pay or respond to the notice of liability; (viii) the  
53 time-stamped photographs or footage of each toll incurred; and (ix) any  
54 other information required by law or by the authority. The owner shall  
55 have thirty days from the date such first notice of liability was sent  
56 to pay the assessed toll or appeal such liability.

1 (b) If an owner fails to pay the assessed toll associated with the  
2 first notice of liability within thirty days of incurring an obligation  
3 to pay a toll, the public authority shall send a second notice of  
4 liability by first-class mail within thirty days of the date the owner  
5 was required to respond to such first notice of liability. Such second  
6 notice of liability may include a penalty for late payment, which shall  
7 not exceed five dollars and shall include all of the information  
8 required pursuant to paragraph (a) of this subdivision. The owner shall  
9 have thirty days from the date such second notice of liability was sent  
10 to pay the assessed toll and penalties, or appeal such liability.

11 (c) If an owner fails to pay the assessed toll associated with the  
12 second notice of liability within thirty days of the mailing of such  
13 second notice of liability established in paragraph (b) of this subdivi-  
14 sion, the public authority shall send by first-class mail a third notice  
15 of liability within thirty days of the date the owner was required to  
16 respond to such second notice of liability. The third notice of liabil-  
17 ity may include a penalty which shall be twenty-five dollars or two  
18 times the toll evaded, whichever is greater and shall include all of the  
19 information required pursuant to paragraph (a) of this subdivision. The  
20 owner shall have thirty days from the date such third notice of liabil-  
21 ity was sent to pay the assessed toll and penalties, or appeal such  
22 liability.

23 (d) If the public authority fails to send any notice of liability  
24 within the timeframes set forth in this subdivision, the owner shall not  
25 be liable for payment of the tolls, or any penalty established or asso-  
26 ciated with such notice of liability.

27 (e) Any first notice of liability required by paragraph (a) of this  
28 subdivision to be sent by first-class mail may instead be sent by elec-  
29 tronic means of communication upon the affirmative consent of the owner  
30 in a form prescribed by the authority. Any affirmative consent to  
31 receive a first notice of liability by electronic means shall be revoca-  
32 ble by the owner at any time with notice to the public authority and  
33 shall automatically be deemed revoked if the authority is unable to  
34 deliver two consecutive notices by electronic means of communication.  
35 Any such affirmative consent shall be a separate consent and separate  
36 signature.

37 5-a. An owner found liable for a violation [~~of toll collection regu-~~  
38 ~~lations pursuant to this section], as defined in subdivision three of~~  
39 this section, shall for a first violation thereof be liable for a mone-  
40 etary penalty [~~not to exceed fifty dollars or two times the toll evaded~~  
41 ~~whichever is greater] in accordance with subdivision five of this~~  
42 section; for a second violation thereof both within eighteen months be  
43 liable for a monetary penalty not to exceed [~~one hundred~~] fifty dollars  
44 or five times the toll evaded whichever is greater; for a third or  
45 subsequent violation thereof all within eighteen months be liable for a  
46 monetary penalty not to exceed one hundred [~~fifty~~] dollars or ten times  
47 the toll evaded whichever is greater.

48 § 3. Subdivisions 7, 8, 9, 10 and 11 of section 2985 of the public  
49 authorities law are REPEALED and four new subdivisions 7, 8, 9 and 10  
50 are added to read as follows:

51 7. Every public authority that operates a cashless tolling facility,  
52 tolls by mail program, or any photo-monitoring system shall promulgate  
53 rules and regulations establishing a procedure by which a person alleged  
54 to be liable for the payment of a toll or a violation may appeal such  
55 alleged liability or violation. Such rules and regulations shall ensure  
56 such public authority completes its investigation and issues, within

1 thirty days, to the owner a final written determination of any appeal  
2 pursuant to this section. Such written determination shall include the  
3 relevant facts established, the reasons for the determination, what  
4 actions must be taken by the owner in association with the determi-  
5 nation, and what further procedures are available to the owner.

6 8. Adjudication of an owner's liability shall be by the entity having  
7 jurisdiction over the cashless tolling facility or, where authorized, by  
8 an administrative tribunal and all such liability determinations shall  
9 be heard and determined either: (a) in the county in which the obli-  
10 gation to pay a toll through the cashless tolling program was alleged to  
11 occur; or (b) where the toll is alleged to have been incurred in the  
12 city of New York and upon the consent of both parties, in any county  
13 within the city of New York in which the public authority operates or  
14 maintains a cashless tolling facility. Such adjudications shall be heard  
15 and determined in the same manner as charges of other regulatory  
16 violations of such public authority or pursuant to the rules and regu-  
17 lations of such administrative tribunal as the case may be.

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

20 (a) the vehicle was not used or operated in incurring a toll pursuant  
21 to this section or the regulations promulgated hereunder;

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

24 (c) the recipient of a notice of liability, pursuant to subdivision  
25 five of this section, was not the owner of the vehicle at the time the  
26 obligation to pay the toll occurred;

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

33 (e) the vehicle had been leased at the time the obligation was  
34 incurred. For the purpose of asserting this defense, it shall be suffi-  
35 cient that a copy of the rental lease or other contract document cover-  
36 ing the vehicle on the date and time the toll was incurred has been  
37 submitted to the public authority, court or other entity having juris-  
38 isdiction within sixty days of the lessor receiving the first notice of  
39 liability pursuant to subdivision five of this section. Such document  
40 shall include the name and address of the lessee. Failure to timely  
41 submit such information shall constitute a waiver of this defense. Where  
42 the lessor complies with the provisions of this section, the lessee  
43 shall be deemed to be the owner of the vehicle for purposes of this  
44 section and shall be subject to liability pursuant to this section,  
45 provided that the authority mails a toll bill to the lessee within ten  
46 days after the public authority, court or other entity having jurisdic-  
47 tion, deems the lessee to be the owner.

48 10. If the owner liable for a toll or violation pursuant to this  
49 section was not the operator of the vehicle at the time the toll was  
50 incurred, such owner may maintain an action for indemnification against  
51 the operator.

52 § 4. Subdivision 12 of section 2985 of the public authorities law is  
53 REPEALED and subdivisions 13 and 14 are renumbered subdivisions 11 and  
54 12.

1 § 5. Subdivision 12 of section 2985 of the public authorities law, as  
2 added by chapter 379 of the laws of 1992 and as renumbered by section  
3 four of this act, is amended to read as follows:

4 12. Notwithstanding any other provision of law, all photographs,  
5 microphotographs, videotape or other recorded images prepared pursuant  
6 to this section shall be for the exclusive use of a public authority in  
7 the discharge of its duties under this section and shall not be open to  
8 the public nor be used in any court in any action or proceeding pending  
9 therein unless such action or proceeding relates to the imposition of or  
10 indemnification for liability pursuant to this section. The public  
11 authority, including any subsidiary or contractor involved in implement-  
12 ing or operating any cashless tolling facility, photo-monitoring system,  
13 electronic toll collection system or toll by mail program, shall not  
14 sell, distribute or make available in any way, the names and addresses  
15 of electronic toll collection system account holders, or any owner that  
16 participates in, or is subject to, such systems or programs, without  
17 such account holders' or owners' consent to any entity that will use  
18 such information for any commercial purpose provided that the foregoing  
19 restriction shall not be deemed to preclude the exchange of such infor-  
20 mation between any entities with jurisdiction over [~~and~~] such system or  
21 programs or [~~operating~~] the operation of a toll highway bridge and/or  
22 tunnel facility.

23 § 6. Section 2985 of the public authorities law is amended by adding  
24 three new subdivisions 13, 14 and 15 to read as follows:

25 13. (a) On or after the effective date of this subdivision, no public  
26 authority which operates a cashless tolling facility, photo-monitoring  
27 system, electronic toll collection system or tolls by mail program shall  
28 sell or transfer any debt owed to the public authority by an owner for  
29 incurring a toll to a debt collection agency unless one year has passed  
30 from the date the public authority sent the first notice of liability,  
31 pursuant to subdivision five of this section, to the owner or the owner  
32 has a total debt owed to the public authority of one thousand dollars or  
33 more. The public authority shall not sell or transfer any debt to a debt  
34 collection agency unless such public authority has first obtained a  
35 default judgment in a court or administrative tribunal with jurisdiction  
36 over the assessed toll.

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

41 14. Every public authority that operates any cashless tolling facili-  
42 ty, photo-monitoring system, electronic toll collection system or tolls  
43 by mail program shall promulgate rules and regulations that establish  
44 the ability for owners to enter into installment payment plans for the  
45 payment of any toll and/or penalty incurred as part of any cashless  
46 tolling facility, photo-monitoring system, electronic toll collection  
47 system or tolls by mail program. Information related to such plan shall  
48 be included in any notice of liability pursuant to subdivision five of  
49 this section and shall be displayed conspicuously on the authority's  
50 websites. Each owner, at his or her election, may participate in such  
51 plan. The public authority shall not charge any additional fees or  
52 penalties for enrollment in a payment plan.

53 15. Every public authority that operates or maintains any cashless  
54 tolling facility, photo-monitoring system, electronic toll collection  
55 system or tolls by mail program shall submit an annual report on such  
56 system or program to the governor, the temporary president of the senate

1 and the speaker of the assembly and post such report on its website on  
2 or before January second each year. Such report shall include, but not  
3 be limited to, the following information relating to the immediately  
4 preceding calendar year:

5 (a) the locations where vehicle sensors for photo-monitoring systems  
6 were used;

7 (b) the aggregate number of tolls paid at the locations where cashless  
8 tolling facilities were used, including both through the use of an elec-  
9 tronic toll collection system and through the tolls by mail program;

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

12 (d) the number of owners that paid their toll upon receipt of the  
13 first notice of liability pursuant to subdivision five of this section,  
14 the number of owners that paid their toll upon receipt of the second  
15 notice of liability pursuant to subdivision five of this section, the  
16 number of owners that paid their toll upon receipt of the third notice  
17 of liability pursuant to subdivision five of this section, and the  
18 number of owners whose notices were returned to the public authority as  
19 undeliverable;

20 (e) the number of owners that were charged fees or penalties pursuant  
21 to this section, and the aggregate amount of fees or penalties, includ-  
22 ing fees or penalties for late payments, and fees or penalties collected  
23 by the authority broken down by the category of such fees or penalties;

24 (f) the number of owners that disputed a notice pursuant to this  
25 section, including a breakdown of the number of owners that successfully  
26 disputed such notice and an itemized breakdown of the reasons for  
27 successfully disputed tolls;

28 (g) a copy of all rules and regulations the public authority has  
29 promulgated pursuant to this section;

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

34 (i) the total amount of revenue realized by such public authority from  
35 such adjudications; and

36 (j) expenses incurred by such public authority in connection with any  
37 cashless tolling facility, cashless tolling monitoring system, electron-  
38 ic toll collection system or tolls by mail program implemented or oper-  
39 ated by the public authority.

40 § 7. This act shall take effect immediately.