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:

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

§ 2. Subdivisions 3, 4 and 5 of section 2985 of the public authorities law, as added by chapter 379 of the laws of 1992, are amended and a new subdivision 4-a is added to read as follows:

3. For purposes of this section, the [~~term~~] **following terms shall have the following meanings:**

(a) "owner" shall mean any person, corporation, partnership, firm, agency, association, lessor or organization who, [~~at the time of the violation and~~] with respect to the vehicle identified in the notice of liability: [~~(a)~~] **(i)** is the beneficial or equitable owner of such vehicle; or [~~(b)~~] **(ii)** has title to such vehicle; or [~~(c)~~] **(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 [~~(d)~~] **(iv)** subject to the limitations set forth in subdivision [~~ten~~] **nine** of this section, uses such vehicle in its vehicle renting and/or leasing business; 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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of a vehicle subject to a security interest in another person. [~~For purposes of this section, the term~~]

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

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

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

(e) "violation" shall mean the failure of an owner to pay an assessed toll associated with the third notice of liability pursuant to subdivision five of this section.

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

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

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

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

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

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

(e) Any first notice of liability required by paragraph (a) of this subdivision 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 affirmative consent to receive a first notice of liability by electronic means shall be revocable by the owner at any time with notice to the public authority and shall automatically be deemed revoked if the authority is unable to deliver two consecutive notices by electronic means of communication. Any such affirmative consent shall be a separate consent and separate signature.

5-a. An owner found liable for a violation [~~of toll collection regulations pursuant to this section~~], as defined in subdivision three of this section, shall for a first violation thereof be liable for a monetary penalty [~~not to exceed fifty dollars or two times the toll evaded whichever is greater~~] in accordance with subdivision five of this section; for a second violation thereof both within eighteen months be liable for a monetary penalty not to exceed [~~one hundred~~] fifty dollars or five times the toll evaded whichever is greater; for a third or subsequent violation thereof all within eighteen months be liable for a monetary penalty not to exceed one hundred [~~fifty~~] dollars or ten times the toll evaded whichever is greater.

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

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

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

8. 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 the city of New York and upon the consent of both parties, in any county within the city of New York 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.

9. 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 incurring a toll pursuant to 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 notice of liability, pursuant to subdivision five of this section, 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; and

(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 has been submitted to the public authority, court or other entity having jurisdiction within sixty days of the lessor receiving the first notice of liability pursuant to subdivision five of this section. 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 public authority, court or other entity having jurisdiction, deems the lessee to be the owner.

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

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

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

12. Notwithstanding any other provision of law, all photographs, microphotographs, videotape or other recorded images prepared pursuant to this section shall be for the exclusive use of a public 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. The public authority**, including any subsidiary or contractor involved in implementing or operating any cashless tolling facility, photo-monitoring system, electronic toll collection system or toll by mail program,** shall not sell, distribute or make available in any way, the names and addresses of electronic toll collection system account holders, **or any owner that participates in, or is subject to, such systems or programs,** without such account holders' **or owners'** 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 [~~and~~] **such system or programs** or [~~operating~~] **the operation of** a toll highway bridge and/or tunnel facility.

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

13. (a) On or after the effective date of this subdivision, no public authority which operates a cashless tolling facility, photo-monitoring system, electronic toll collection system or tolls by mail program shall sell or transfer any debt owed to the public authority by an owner for incurring a toll to a debt collection agency unless one year has passed from the date the public authority sent the first notice of liability, pursuant to subdivision five of this section, to the owner or the owner has a total debt owed to the public authority of one thousand dollars or more. The public authority shall not sell or transfer any debt to a debt collection agency unless such public 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.

14. Every public authority that operates any cashless tolling facility, photo-monitoring system, electronic toll collection system or tolls by mail program shall promulgate rules and regulations that establish the ability for owners to enter into installment payment plans for the payment of any toll and/or penalty incurred as part of any cashless tolling facility, photo-monitoring system, electronic toll collection system or tolls by mail program. Information related to such plan shall be included in any notice of liability pursuant to subdivision five of this section and shall be displayed conspicuously on the authority's 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.

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

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

(a) the locations where vehicle sensors for photo-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 electronic toll collection system 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 notice of liability pursuant to subdivision five of this section, the number of owners that paid their toll upon receipt of the second notice of liability pursuant to subdivision five of this section, the number of owners that paid their toll upon receipt of the third notice of liability pursuant to subdivision five of this section, and the number of owners whose notices were returned to the public authority as undeliverable;

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

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

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

(h) 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;

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

(j) expenses incurred by such public authority in connection with any cashless tolling facility, cashless tolling monitoring system, electronic toll collection system or tolls by mail program implemented or operated by the public authority.

§ 7. This act shall take effect immediately.