

STATE OF NEW YORK

3271--A

2023-2024 Regular Sessions

IN SENATE

January 30, 2023

Introduced by Sens. SEPULVEDA, COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, in relation to privacy of electronic fare and toll records

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Statement of legislative intent. The legislature finds and
2 declares that public entities increasingly are establishing electronic
3 toll and electronic fare payment systems, which have the potential for
4 great convenience to the general public. E-Z Pass, for example, allows
5 motorists to have toll charges automatically deducted from pre-estab-
6 lished accounts. Programs such as these have proven popular with consum-
7 ers. But some consumers, public officials and public entities have
8 raised legitimate questions about the extent to which records of indi-
9 vidual travel created by such electronic toll and fare programs should
10 be disclosed, and under what circumstances. This bill establishes
11 reasonable, uniform provisions for maintaining the confidentiality of
12 such records, while at the same time authorizing disclosure in cases of
13 legitimate law enforcement need.

14 § 2. The civil rights law is amended by adding a new section 50-h to
15 read as follows:

16 § 50-h. Privacy of electronic toll and fare records. 1. Definitions.
17 As used in this section:

18 a. "Electronic toll information" shall mean records created or main-
19 tained by a public entity or by a contractor on behalf of a public enti-
20 ty concerning a motorist or motor vehicle regarding the use of any high-
21 way, bridge, tunnel or other thoroughfare, including but not limited to
22 E-Z Pass records, which contain information such as, but not limited to,

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

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1 the name and address of the registered vehicle owner or account holder,
2 a description and/or license plate number of the vehicle, the date, time
3 and location of the passage of a vehicle through a toll collection
4 location, and the statements of account additions and/or deductions
5 prepared for or sent to the account holder.

6 b. "Electronic fare information" shall mean records created or main-
7 tained by a public entity or by a contractor on behalf of a public enti-
8 ty concerning an account holder, including but not limited to "Metro-
9 card" and pass card system computer records concerning commuter railroad
10 and/or transit facility use, which contain information such as, but not
11 limited to, the name and address of the account holder; the date and
12 time of fare card or fare media use; identification of the location or
13 transit station where such fare card or fare media was used; and the
14 statements of account additions and/or deductions prepared for or sent
15 to the account holder.

16 c. "Public entity" shall mean and include any state or local depart-
17 ment, agency, board, bureau, division, commission, public authority,
18 public benefit corporation or office of the state or a political subdivi-
19 vision of the state, or any other entity performing a governmental or
20 proprietary function for the state or any of its political subdivisions.

21 d. "Contractor" shall mean any entity engaged in performing customer
22 service functions, including violations processing, under contract with
23 a public entity.

24 2. Confidentiality of records. Electronic toll information and elec-
25 tronic fare information is confidential information. Notwithstanding the
26 provisions of any other law, such information shall not be open to the
27 public, nor subject to civil or criminal process or discovery, nor
28 subject to disclosure under the freedom of information law, nor used by
29 any court or administrative or adjudicatory body in any action or
30 proceeding therein, and no public entity or employee, officer or agent
31 thereof shall disclose such information, except that such information:

32 a. shall be available for inspection and copying and use by the
33 account holder for so long as such information is maintained by such
34 public entity, employee, officer or agent; and

35 b. (i) shall be furnished when described in a search warrant issued by
36 a court authorized to issue such search warrant pursuant to article six
37 hundred ninety of the criminal procedure law, or a federal court author-
38 ized to issue such search warrant under federal law, where such search
39 warrant states there is reasonable cause to believe such information
40 constitutes evidence of, or tends to demonstrate that, a misdemeanor or
41 felony offense was committed in this state or another state, or that a
42 particular person participated in the commission of a misdemeanor or
43 felony offense in this state or another state, provided, however, that
44 if such offense was against the laws of another state, the court shall
45 only issue a warrant if the conduct comprising such offense would, if
46 occurring in this state, constitute a misdemeanor or felony against the
47 laws of this state; and

48 (ii) shall be furnished in response to a subpoena duces tecum signed
49 by a judge of competent jurisdiction and issued pursuant to article six
50 hundred ten of the criminal procedure law, or a judge or magistrate of a
51 federal court authorized to issue such subpoena duces tecum under feder-
52 al law, where the judge finds, and such subpoena states, there is
53 reasonable cause to believe such information is relevant and material to
54 the prosecution, or the defense, or the investigation by an authorized
55 law enforcement official, of the alleged commission of a misdemeanor or
56 felony in this state or another state, provided, however, that if such

1 offense was against the laws of another state, such judge or magistrate
2 shall only issue such subpoena if the conduct comprising such offense
3 would, if occurring in this state, constitute a misdemeanor or felony in
4 this state; and

5 (iii) shall be furnished in response to a subpoena (1) issued by a
6 member of a police agency as defined in section eight hundred thirty-
7 five of the executive law; (2) where such person or police agency is
8 authorized to issue non-judicial subpoenas pursuant to statute or admin-
9 istrative code of a municipality; and (3) such person finds, and such
10 subpoena states, that such information is relevant and material to an
11 internal investigation or proceeding relating to discipline of a member
12 of said police agency; and

13 (iv) may, if lawfully obtained pursuant to this paragraph or paragraph
14 a of this subdivision, and otherwise admissible, be used in a criminal
15 action or proceeding; and

16 c. may be obtained and, if otherwise admissible, be used in a civil
17 court or other civil administrative or adjudicatory body in any action
18 or proceeding pending therein when such action or proceeding relates
19 directly to the collection of toll or fare revenues and it is alleged:

20 (i) by the provider of such services that tolls or fares properly
21 charged to the account holder remain unpaid; or

22 (ii) by the account holder that tolls or fares were improperly charged
23 to such holder's account; and

24 d. may be used by such public entity or a contractor on behalf of a
25 public entity for communications with the account holder, including
26 monthly statements, announcements and notification of alleged
27 violations; and

28 e. may be used by such public entity or a contractor on behalf of a
29 public entity for customer service center to customer service center
30 communications in connection with the administration of such electronic
31 toll or electronic fare information system; and

32 f. limited to electronic fare information may, upon written request of
33 the board of education of the city of New York identifying a specific
34 student holding a student discount card issued by the metropolitan
35 transportation authority and/or one of its subsidiary corporations, be
36 provided by such metropolitan transportation authority and/or subsidiary
37 corporation to such board of education of the city of New York.

38 3. Information. Nothing herein shall preclude the use of aggregate
39 electronic toll or fare information which does not identify any individ-
40 ual account holder in an action or proceeding involving such public
41 entity, nor preclude the use, sale or distribution of information
42 compiled from electronic toll or fare information, where such compiled
43 information does not identify any individual account holder.

44 4. Notice. Every public entity that collects electronic toll or fare
45 information shall provide regular and conspicuous notice, in writing, to
46 applicants and account holders concerning the provisions of this
47 section, which notice shall also describe the means by which account
48 holders may obtain copies of their individual account records.

49 5. Violations. Any person who knowingly releases or permits the
50 release of electronic toll or electronic fare information that is confi-
51 dential under this section to a person or entity not entitled to receive
52 such information shall be subject to a civil penalty of up to five thou-
53 sand dollars.

54 § 3. This act shall take effect immediately.