

645

2009-2010 Regular Sessions

I N   S E N A T E

January 12, 2009

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Introduced by Sen. LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to establishing the civil liability of vehicle owners for maximum speed limit violations in the town of Newburgh, Orange county

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The vehicle and traffic law is amended by adding a new  
2     section 1180-b to read as follows:  
3     S 1180-B. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH MAXI-  
4     MUM SPEED LIMITS; TOWN OF NEWBURGH. (A) NOTWITHSTANDING ANY OTHER  
5     PROVISION OF LAW, THE TOWN OF NEWBURGH, IN THE COUNTY OF ORANGE, IS  
6     HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND A LOCAL LAW OR ORDI-  
7     NANCE ESTABLISHING A PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF  
8     A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH MAXIMUM  
9     SPEED LIMITS IN SUCH TOWN IN ACCORDANCE WITH THE PROVISIONS OF THIS  
10    SECTION. SUCH DEMONSTRATION PROGRAM SHALL EMPOWER THE TOWN OF NEWBURGH  
11    TO INSTALL AND OPERATE PHOTO RADAR DEVICES WITHIN SUCH TOWN.  
12    (B) UPON ADOPTION OF A LOCAL LAW OR ORDINANCE PURSUANT TO SUBDIVISION  
13    (A) OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE FOR A PENAL-  
14    TY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED OR OPERATED  
15    WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN VIOLATION OF  
16    SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE, AND  
17    SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A PHOTO RADAR  
18    SYSTEM; PROVIDED HOWEVER THAT NO OWNER OF A VEHICLE SHALL BE LIABLE FOR  
19    A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE THE OPERATOR OF SUCH  
20    VEHICLE HAS BEEN CONVICTED OF THE UNDERLYING VIOLATION OF SUBDIVISION  
21    (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.  
22    (C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING  
23    PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION,  
24    "PHOTO RADAR SYSTEM" SHALL MEAN A SPEED CAMERA INSTALLED TO WORK IN

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

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1 CONJUNCTION WITH DOPPLER RADAR AND A COMPUTER MONITORING SYSTEM WHICH  
2 AUTOMATICALLY PRODUCES TWO OR MORE PHOTOGRAPHS, TWO OR MORE MICROPHOTO-  
3 GRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH VEHICLE AT THE TIME  
4 IT IS USED OR OPERATED IN VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN  
5 HUNDRED EIGHTY OF THIS ARTICLE.

6 (D) A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY  
7 THE TOWN OF NEWBURGH IN WHICH THE CHARGED VIOLATION OCCURRED, OR A  
8 FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTO-  
9 GRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A PHOTO RADAR  
10 SYSTEM, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.  
11 ANY PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES  
12 EVIDENCING SUCH A VIOLATION SHALL BE AVAILABLE FOR INSPECTION IN ANY  
13 PROCEEDING TO ADJUDICATE THE LIABILITY FOR SUCH VIOLATION PURSUANT TO A  
14 LOCAL LAW OR ORDINANCE ADOPTED PURSUANT TO THIS SECTION.

15 (E) AN OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (D) OF SECTION  
16 ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO A LOCAL LAW OR ORDI-  
17 NANCE ADOPTED PURSUANT TO THIS SECTION SHALL BE LIABLE FOR MONETARY  
18 PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES TO BE SET  
19 FORTH IN SUCH LOCAL LAW OR ORDINANCE. THE LIABILITY OF THE OWNER PURSU-  
20 ANT TO THIS SECTION SHALL NOT EXCEED ONE HUNDRED DOLLARS FOR EACH  
21 VIOLATION; PROVIDED, HOWEVER, THAT SUCH LOCAL LAW OR ORDINANCE MAY  
22 PROVIDE FOR AN ADDITIONAL PENALTY NOT IN EXCESS OF TWENTY-FIVE DOLLARS  
23 FOR EACH VIOLATION FOR THE FAILURE TO RESPOND TO A NOTICE OF LIABILITY  
24 WITHIN THE PRESCRIBED TIME PERIOD.

25 (F) AN IMPOSITION OF LIABILITY UNDER A LOCAL LAW OR ORDINANCE ADOPTED  
26 PURSUANT TO THIS SECTION SHALL NOT BE DEEMED A CONVICTION AS AN OPERATOR  
27 AND SHALL NOT BE MADE PART OF THE OPERATING RECORD OF THE PERSON UPON  
28 WHOM SUCH LIABILITY IS IMPOSED NOR SHALL IT BE USED FOR INSURANCE  
29 PURPOSES IN THE PROVISION OF MOTOR VEHICLE INSURANCE COVERAGE.

30 (G) 1. A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL TO EACH  
31 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SUBDIVISION  
32 (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS  
33 SECTION. PERSONAL DELIVERY ON THE OWNER SHALL NOT BE REQUIRED. A MANUAL  
34 OR AUTOMATIC RECORD OF MAILING PREPARED IN THE ORDINARY COURSE OF BUSI-  
35 NESS SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.

36 2. A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE  
37 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SUBDIVISION  
38 (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS  
39 SECTION, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH  
40 VIOLATION, THE LOCATION WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND  
41 TIME OF SUCH VIOLATION AND THE IDENTIFICATION NUMBER OF THE CAMERA WHICH  
42 RECORDED THE VIOLATION OR OTHER DOCUMENT LOCATOR NUMBER.

43 3. THE NOTICE OF LIABILITY SHALL CONTAIN INFORMATION ADVISING THE  
44 PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH HE OR SHE MAY CONTEST  
45 THE LIABILITY ALLEGED IN THE NOTICE. SUCH NOTICE OF LIABILITY SHALL ALSO  
46 CONTAIN A WARNING TO ADVISE THE PERSONS CHARGED THAT FAILURE TO CONTEST  
47 IN THE MANNER AND TIME PROVIDED SHALL BE DEEMED AN ADMISSION OF LIABIL-  
48 ITY AND THAT A DEFAULT JUDGMENT MAY BE ENTERED THEREON.

49 4. THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE TOWN OF  
50 NEWBURGH OR BY ANY OTHER ENTITY AUTHORIZED BY SUCH TOWN TO PREPARE AND  
51 MAIL SUCH NOTIFICATION OF VIOLATION.

52 (H) ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION  
53 SHALL BE BY THE COURT HAVING JURISDICTION OVER TRAFFIC INFRACTIONS.

54 (I) IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS  
55 SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO A  
56 LAW ENFORCEMENT AGENCY AS HAVING BEEN STOLEN, IT SHALL BE A VALID

1 DEFENSE TO AN ALLEGATION OF LIABILITY FOR A VIOLATION OF SUBDIVISION (D)  
2 OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS  
3 SECTION THAT THE VEHICLE HAD BEEN REPORTED TO THE POLICE AS STOLEN PRIOR  
4 TO THE TIME THE VIOLATION OCCURRED AND HAD NOT BEEN RECOVERED BY SUCH  
5 TIME. FOR PURPOSES OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION  
6 IT SHALL BE SUFFICIENT THAT A CERTIFIED COPY OF THE POLICE REPORT ON THE  
7 STOLEN VEHICLE BE SENT BY FIRST CLASS MAIL TO THE COURT HAVING JURISDIC-  
8 TION.

9 (J) AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF LIABIL-  
10 ITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL NOT BE  
11 LIABLE FOR THE VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED  
12 EIGHTY OF THIS ARTICLE, PROVIDED THAT HE OR SHE SENDS TO THE COURT  
13 HAVING JURISDICTION A COPY OF THE RENTAL, LEASE OR OTHER SUCH CONTRACT  
14 DOCUMENT COVERING SUCH VEHICLE ON THE DATE OF THE VIOLATION, WITH THE  
15 NAME AND ADDRESS OF THE LESSEE CLEARLY LEGIBLE, WITHIN THIRTY-SEVEN DAYS  
16 AFTER RECEIVING NOTICE FROM THE COURT OF THE DATE AND TIME OF SUCH  
17 VIOLATION, TOGETHER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL  
18 NOTICE OF LIABILITY. FAILURE TO SEND SUCH INFORMATION WITHIN SUCH THIR-  
19 TY-SEVEN DAY TIME PERIOD SHALL RENDER THE OWNER LIABLE FOR THE PENALTY  
20 PRESCRIBED BY THIS SECTION. WHERE THE LESSOR COMPLIES WITH THE  
21 PROVISIONS OF THIS PARAGRAPH, THE LESSEE OF SUCH VEHICLE ON THE DATE OF  
22 SUCH VIOLATION SHALL BE DEEMED TO BE THE OWNER OF SUCH VEHICLE FOR  
23 PURPOSES OF THIS SECTION, SHALL BE SUBJECT TO LIABILITY FOR THE  
24 VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS  
25 ARTICLE PURSUANT TO THIS SECTION AND SHALL BE SENT A NOTICE OF LIABILITY  
26 PURSUANT TO SUBDIVISION (G) OF THIS SECTION.

27 (K) IF THE OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (D) OF SECTION  
28 ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS SECTION WAS NOT  
29 THE OPERATOR OF THE VEHICLE AT THE TIME OF THE VIOLATION, THE OWNER MAY  
30 MAINTAIN AN ACTION FOR INDEMNIFICATION AGAINST THE OPERATOR.

31 (L) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE LIABILITY  
32 OF AN OPERATOR OF A VEHICLE FOR ANY VIOLATION OF SUBDIVISION (D) OF  
33 SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.

34 (M) THE PHOTO RADAR DEVICES INSTALLED AND OPERATED PURSUANT TO THE  
35 DEMONSTRATION PROGRAM, ESTABLISHED UNDER SUBDIVISION (A) OF THIS  
36 SECTION, SHALL BE USED SOLELY FOR THE PURPOSES OF CARRYING OUT  
37 PHOTO-MONITORING FOR SUCH DEMONSTRATION PROGRAM.

38 S 2. This act shall take effect on the one hundred twentieth day after  
39 it shall have become a law.