

STATE OF NEW YORK

8263

IN SENATE

April 24, 2018

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

AN ACT to amend chapter 43 of the laws of 2014, amending the vehicle and traffic law, the public officers law and the general municipal law relating to photo speed violation monitoring systems in school speed zones in the city of New York, in relation to the effectiveness thereof; and the vehicle and traffic law, in relation to establishing photo speed violation monitoring systems on the long island expressway

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

1 Section 1. The opening paragraph of section 12 of chapter 43 of the
2 laws of 2014, amending the vehicle and traffic law, the public officers
3 law and the general municipal law relating to photo speed violation
4 monitoring systems in school speed zones in the city of New York, is
5 amended to read as follows:

6 This act shall take effect on the thirtieth day after it shall have
7 become a law and shall expire [4] 7 years after such effective date when
8 upon such date the provisions of this act shall be deemed repealed; and
9 provided further that any rules necessary for the implementation of this
10 act on its effective date shall be promulgated on or before such effective date, provided that:

11 § 2. Section 1180-c of the vehicle and traffic law, as added by chapter 43 of the laws of 2014, is amended to read as follows:

12 § 1180-c. Owner liability for failure of operator to comply with
13 certain posted maximum speed limits. (a) 1. Notwithstanding any other
14 provision of law, the counties of Nassau and Suffolk are hereby authorized to establish a demonstration program imposing monetary liability on
15 the owner of a vehicle for failure of an operator thereof to comply with
16 posted maximum speed limits on the Long Island expressway and in a
17 school speed zone within the counties (i) when a school speed limit is
18 in effect as provided in paragraphs one and two of subdivision (c) of
19 section eleven hundred eighty of this article or (ii) when other speed
20 limits are in effect as provided in subdivision (b), (d), (f) or (g) of
21 section eleven hundred eighty of this article during the following
22
23
24

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

LBD15314-01-8

1 times: (A) on school days during school hours and one hour before and
2 one hour after the school day, and (B) a period during student activ-
3 ities at the school and up to thirty minutes immediately before and up
4 to thirty minutes immediately after such student activities. Such demon-
5 stration program shall empower the counties to install or deploy photo
6 speed violation monitoring systems on the Long Island expressway and
7 within no more than one school speed zone per school district within
8 each county at any one time and to operate such systems within such
9 zones (iii) when a school speed limit is in effect as provided in para-
10 graphs one and two of subdivision (c) of section eleven hundred eighty
11 of this article or (iv) when other speed limits are in effect as
12 provided in subdivision (b), (d), (f) or (g) of section eleven hundred
13 eighty of this article during the following times: (A) on school days
14 during school hours and one hour before and one hour after the school
15 day, and (B) a period during student activities at the school and up to
16 thirty minutes immediately before and up to thirty minutes immediately
17 after such student activities. In selecting zones along the Long Island
18 expressway and a school speed zone in which to install and operate a
19 photo speed violation monitoring system, the counties shall consider
20 criteria including, but not limited to the speed data, crash history,
21 and the roadway geometry applicable to such zones along the Long Island
22 expressway and school speed zone.

23 2. No photo speed violation monitoring system shall be used on the
24 Long Island expressway and in a school speed zone unless (i) on the day
25 it is to be used it has successfully passed a self-test of its func-
26 tions; and (ii) it has undergone an annual calibration check performed
27 pursuant to paragraph four of this subdivision. The counties may install
28 signs giving notice that a photo speed violation monitoring system is in
29 use to be mounted on advance warning signs notifying motor vehicle oper-
30 ators of such upcoming [~~school~~] speed zone and/or on speed limit signs
31 applicable within such [~~school~~] speed zone, in conformance with stand-
32 ards established in the MUTCD.

33 3. Operators of photo speed violation monitoring systems shall have
34 completed training in the procedures for setting up, testing, and oper-
35 ating such systems. Each such operator shall complete and sign a daily
36 set-up log for each such system that he or she operates that (i) states
37 the date and time when, and the location where, the system was set up
38 that day, and (ii) states that such operator successfully performed, and
39 the system passed, the self-tests of such system before producing a
40 recorded image that day. The counties shall retain each such daily log
41 until the later of the date on which the photo speed violation monitor-
42 ing system to which it applies has been permanently removed from use or
43 the final resolution of all cases involving notices of liability issued
44 based on photographs, microphotographs, video or other recorded images
45 produced by such system.

46 4. Each photo speed violation monitoring system shall undergo an annu-
47 al calibration check performed by an independent calibration laboratory
48 which shall issue a signed certificate of calibration. The counties
49 shall keep each such annual certificate of calibration on file until the
50 final resolution of all cases involving a notice of liability issued
51 during such year which were based on photographs, microphotographs,
52 videotape or other recorded images produced by such photo speed
53 violation monitoring system.

54 5. (i) Such demonstration program shall utilize necessary technologies
55 to ensure, to the extent practicable, that photographs, microphoto-
56 graphs, videotape or other recorded images produced by such photo speed

1 violation monitoring systems shall not include images that identify the
2 driver, the passengers, or the contents of the vehicle. Provided,
3 however, that no notice of liability issued pursuant to this section
4 shall be dismissed solely because such a photograph, microphotograph,
5 videotape or other recorded image allows for the identification of the
6 driver, the passengers, or the contents of vehicles where either county,
7 as applicable, shows that it made reasonable efforts to comply with the
8 provisions of this paragraph in such case.

9 (ii) Photographs, microphotographs, videotape or any other recorded
10 image from a photo speed violation monitoring system shall be for the
11 exclusive use of each such county for the purpose of the adjudication of
12 liability imposed pursuant to this section and of the owner receiving a
13 notice of liability pursuant to this section, and shall be destroyed by
14 each such county upon the final resolution of the notice of liability to
15 which such photographs, microphotographs, videotape or other recorded
16 images relate, or one year following the date of issuance of such notice
17 of liability, whichever is later. Notwithstanding the provisions of any
18 other law, rule or regulation to the contrary, photographs, microphoto-
19 graphs, videotape or any other recorded image from a photo speed
20 violation monitoring system shall not be open to the public, nor subject
21 to civil or criminal process or discovery, nor used by any court or
22 administrative or adjudicatory body in any action or proceeding therein
23 except that which is necessary for the adjudication of a notice of
24 liability issued pursuant to this section, and no public entity or
25 employee, officer or agent thereof shall disclose such information,
26 except that such photographs, microphotographs, videotape or any other
27 recorded images from such systems:

28 (A) shall be available for inspection and copying and use by the motor
29 vehicle owner and operator for so long as such photographs, microphoto-
30 graphs, videotape or other recorded images are required to be maintained
31 or are maintained by such public entity, employee, officer or agent; and

32 (B) (1) shall be furnished when described in a search warrant issued
33 by a court authorized to issue such a search warrant pursuant to article
34 six hundred ninety of the criminal procedure law or a federal court
35 authorized to issue such a search warrant under federal law, where such
36 search warrant states that there is reasonable cause to believe such
37 information constitutes evidence of, or tends to demonstrate that, a
38 misdemeanor or felony offense was committed in this state or another
39 state, or that a particular person participated in the commission of a
40 misdemeanor or felony offense in this state or another state, provided,
41 however, that if such offense was against the laws of another state, the
42 court shall only issue a warrant if the conduct comprising such offense
43 would, if occurring in this state, constitute a misdemeanor or felony
44 against the laws of this state; and

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

1 would, if occurring in this state, constitute a misdemeanor or felony in
2 this state; and

3 (3) may, if lawfully obtained pursuant to this clause and clause (A)
4 of this subparagraph and otherwise admissible, be used in such criminal
5 action or proceeding.

6 (b) If the counties of Nassau and Suffolk establish a demonstration
7 program pursuant to subdivision (a) of this section, the owner of a
8 vehicle shall be liable for a penalty imposed pursuant to this section
9 if such vehicle was used or operated with the permission of the owner,
10 express or implied, on the Long Island expressway or within a school
11 speed zone in violation of subdivision (c) of section eleven hundred
12 eighty of this article or during the times authorized pursuant to subdivi-
13 sion (a) of this section in violation of subdivision (b), (d), (f) or
14 (g) of section eleven hundred eighty of this article, such vehicle was
15 traveling at a speed of more than fifteen miles per hour above the post-
16 ed speed limit in effect on the Long Island expressway or more than ten
17 miles per hour above the posted speed limit in effect within such school
18 speed zone, and such violation is evidenced by information obtained from
19 a photo speed violation monitoring system; provided however that no
20 owner of a vehicle shall be liable for a penalty imposed pursuant to
21 this section where the operator of such vehicle has been convicted of
22 the underlying violation of subdivision (b), (c), (d), (f) or (g) of
23 section eleven hundred eighty of this article.

24 (c) For purposes of this section, the following terms shall have the
25 following meanings:

26 1. "manual on uniform traffic control devices" or "MUTCD" shall mean
27 the manual and specifications for a uniform system of traffic control
28 devices maintained by the commissioner of transportation pursuant to
29 section sixteen hundred eighty of this chapter;

30 2. "owner" shall have the meaning provided in article two-B of this
31 chapter.

32 3. "photo speed violation monitoring system" shall mean a vehicle
33 sensor installed to work in conjunction with a speed measuring device
34 ~~[which]~~ or a handheld LIDAR, light detection and ranging, speed measur-
35 ing device by a police officer; both of which when activated automat-
36 ically produces two or more photographs, two or more microphotographs, a
37 videotape or other recorded images of each vehicle at the time it is
38 used or operated on the Long Island expressway or in a school speed zone
39 in violation of subdivision (b), (c), (d), (f) or (g) of section eleven
40 hundred eighty of this article in accordance with the provisions of this
41 section; and

42 4. "school speed zone" shall mean a distance not to exceed one thou-
43 sand three hundred twenty feet on a highway passing a school building,
44 entrance or exit of a school abutting on the highway.

45 (d) A certificate, sworn to or affirmed by a technician employed by
46 the counties of Nassau or Suffolk as applicable, or a facsimile thereof,
47 based upon inspection of photographs, microphotographs, videotape or
48 other recorded images produced by a photo speed violation monitoring
49 system, shall be prima facie evidence of the facts contained therein.
50 Any photographs, microphotographs, videotape or other recorded images
51 evidencing such a violation shall include at least two date and time
52 stamped images of the front or rear of the motor vehicle that include
53 the same stationary object near the motor vehicle and shall be available
54 for inspection reasonably in advance of and at any proceeding to adjudi-
55 cate the liability for such violation pursuant to this section.

(e) An owner liable for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to a demonstration program established pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be promulgated by the traffic and parking violations agencies of the counties of Nassau and Suffolk. The liability of the owner pursuant to this section shall not exceed fifty dollars for each violation; provided, however, that each such traffic and parking violations agency may provide for an additional penalty not in excess of twenty-five dollars for each violation for the failure to respond to a notice of liability within the prescribed time period.

(f) An imposition of liability under the demonstration program established pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

(g) 1. A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, within fourteen business days if such owner is a resident of this state and within forty-five business days if such owner is a non-resident. Personal delivery on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.

2. A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation, the identification number of the camera which recorded the violation or other document locator number, at least two date and time stamped images of the front or rear of the motor vehicle that include the same stationary object near the motor vehicle, and the certificate charging the liability.

3. The notice of liability shall contain information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the notice. Such notice of liability shall also contain a prominent warning to advise the person charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

4. The notice of liability shall be prepared and mailed by the county of Nassau or Suffolk, as applicable, or by any other entity authorized by such counties to prepare and mail such notice of liability.

(h) Adjudication of the liability imposed upon owners of this section shall be by the court having jurisdiction over traffic infractions.

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle or the number plate or plates of such vehicle was reported to the police department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section that the vehicle or the number plate or plates of such vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this subdivision, it shall be suffi-

1 cient that a certified copy of the police report on the stolen vehicle
2 or number plate or plates of such vehicle be sent by first class mail to
3 the court having jurisdiction in such counties.

4 (j) An owner who is a lessor of a vehicle to which a notice of liabil-
5 ity was issued pursuant to subdivision (g) of this section shall not be
6 liable for the violation of subdivision (b), (c), (d), (f) or (g) of
7 section eleven hundred eighty of this article, provided that he or she
8 sends to the court having jurisdiction a copy of the rental, lease or
9 other such contract document covering such vehicle on the date of the
10 violation, with the name and address of the lessee clearly legible,
11 within thirty-seven days after receiving notice from the court of the
12 date and time of such violation, together with the other information
13 contained in the original notice of liability. Failure to send such
14 information within such thirty-seven day time period shall render the
15 owner liable for the penalty prescribed by this section. Where the
16 lessor complies with the provisions of this paragraph, the lessee of
17 such vehicle on the date of such violation shall be deemed to be the
18 owner of such vehicle for purposes of this section, shall be subject to
19 liability for the violation of subdivision (b), (c), (d), (f) or (g) of
20 section eleven hundred eighty of this article pursuant to this section
21 and shall be sent a notice of liability pursuant to subdivision (g) of
22 this section.

23 (k) 1. If the owner liable for a violation of subdivision (c) or (d)
24 of section eleven hundred eighty of this article pursuant to this
25 section was not the operator of the vehicle at the time of the
26 violation, the owner may maintain an action for indemnification against
27 the operator.

28 2. Notwithstanding any other provision of this section, no owner of a
29 vehicle shall be subject to a monetary fine imposed pursuant to this
30 section if the operator of such vehicle was operating such vehicle with-
31 out the consent of the owner at the time such operator operated such
32 vehicle in violation of subdivision (b), (c), (d), (f) or (g) of section
33 eleven hundred eighty of this article. For purposes of this subdivision
34 there shall be a presumption that the operator of such vehicle was oper-
35 ating such vehicle with the consent of the owner at the time such opera-
36 tor operated such vehicle in violation of subdivision (b), (c), (d), (f)
37 or (g) of section eleven hundred eighty of this article.

38 (l) Nothing in this section shall be construed to limit the liability
39 of an operator of a vehicle for any violation of subdivision (c) or (d)
40 of section eleven hundred eighty of this article.

41 (m) Notwithstanding any law to the contrary, the net proceeds of any
42 penalty after expenses of administration, resulting from a photo speed
43 violation monitoring system used in the course of this program located
44 on a village maintained street or highway within the county of Nassau
45 shall inure to said village.

46 (n) If either county adopts a demonstration program pursuant to this
47 section it shall conduct a study and submit a report on the results of
48 the use of photo devices to the governor, the temporary president of the
49 senate and the speaker of the assembly. Such report shall include:

50 1. the locations where and dates when photo speed violation monitoring
51 systems were used;

52 2. the aggregate number, type and severity of crashes, fatalities,
53 injuries and property damage reported along the Long Island expressway
54 and within all school speed zones within such county, to the extent the
55 information is maintained by the department of motor vehicles of this
56 state;

3. the aggregate number, type and severity of crashes, fatalities, injuries and property damage reported along the Long Island expressway and within school speed zones where photo speed violation monitoring systems were used, to the extent the information is maintained by the department of motor vehicles of this state;

4. the number of violations recorded along the Long Island expressway and within all school speed zones within such county, in the aggregate on a daily, weekly and monthly basis;

5. the number of violations recorded along the Long Island expressway and within each school speed zone where a photo speed violation monitoring system is used, in the aggregate on a daily, weekly and monthly basis;

6. the number of violations recorded along the Long Island expressway and within all school speed zones within such county that were:

(i) more than ten but not more than twenty miles per hour over the posted speed limit;

(ii) more than twenty but not more than thirty miles per hour over the posted speed limit;

(iii) more than thirty but not more than forty miles per hour over the posted speed limit; and

(iv) more than forty miles per hour over the posted speed limit;

7. the number of violations recorded along the Long Island expressway and within each school speed zone where a photo speed violation monitoring system is used that were:

(i) more than ten but not more than twenty miles per hour over the posted speed limit;

(ii) more than twenty but not more than thirty miles per hour over the posted speed limit;

(iii) more than thirty but not more than forty miles per hour over the posted speed limit; and

(iv) more than forty miles per hour over the posted speed limit;

8. the total number of notices of liability issued for violations recorded by such systems;

9. the number of fines and total amount of fines paid after the first notice of liability issued for violations recorded by such systems;

10. the number of violations adjudicated and the results of such adjudications including breakdowns of dispositions made for violations recorded by such systems;

11. the total amount of revenue realized by such county in connection with the program;

12. the expenses incurred by such county in connection with the program; and

13. the quality of the adjudication process and its results.

(o) It shall be a defense to any prosecution for a violation of subdivision (b), (c), (d), (f) or (g) of section eleven hundred eighty of this article pursuant to this section that such photo speed violation monitoring system was malfunctioning at the time of the alleged violation.

§ 3. This act shall take effect immediately; provided, however, that the amendments to section 1180-c of the vehicle and traffic law made by section two of this act shall not affect the expiration of such section and shall be deemed repealed therewith.