

STATE OF NEW YORK

6242

2021-2022 Regular Sessions

IN SENATE

April 19, 2021

Introduced by Sen. MAYER -- 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 authorizing the county of Westchester to establish a noise demonstration program; to amend the vehicle and traffic law and the general municipal law, in relation to adjudications and owner liability for violating maximum allowable vehicle sound levels; to amend the public officers law, in relation to accessing records; and providing for the repeal of such provisions upon expiration thereof

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 387 to read as follows:

3 § 387. Owner liability for failure of operator to comply with maximum
4 allowable vehicle sound levels. (a) 1. Notwithstanding any other
5 provision of law, the county of Westchester is hereby authorized and
6 empowered to adopt and amend a local law or ordinance establishing a
7 demonstration program imposing monetary liability on the owner of a
8 vehicle for failure of an operator thereof to comply with maximum allow-
9 able vehicle sound levels in such county in accordance with subdivision
10 three of section three hundred eighty-six of this article. Such demon-
11 stration program shall empower such county to install and operate noise
12 violation-monitoring systems at no more than five zones within and under
13 the jurisdiction of such county at any one time. Such demonstration
14 program shall be established no later than December thirty-first, two
15 thousand twenty-two.

16 2. Such demonstration program shall utilize necessary technologies to
17 ensure, to the extent practicable, that photographs and/or videos
18 produced by such noise violation-monitoring systems shall not include
19 images that identify the driver, the passengers, or the contents of the
20 vehicle. Provided, however, that no notice of liability issued pursuant

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

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1 to this section shall be dismissed solely because a photograph, photo-
2 graphs, a video or videos allow for the identification of the contents
3 of a vehicle, provided that such county has made a reasonable effort to
4 comply with the provisions of this paragraph.

5 (b) If such local law or ordinance is adopted pursuant to subdivision
6 (a) of this section, the owner of a vehicle shall be liable for a penal-
7 ty imposed pursuant to this section if such vehicle was used or operated
8 with the permission of the owner, express or implied, in violation of
9 subdivision three of section three hundred eighty-six of this article,
10 and such violation is evidenced by information obtained from a noise
11 violation-monitoring system.

12 (c) For purposes of this section, "owner" shall have the meaning
13 provided in article two-B of this chapter. For purposes of this section,
14 "noise violation-monitoring system" shall mean a vehicle noise enforce-
15 ment camera which automatically produces audio of a vehicle and two or
16 more photographs, two or more microphotographs, a videotape, or other
17 recorded images of such vehicle at the time it is used or operated in
18 violation of subdivision three of section three hundred eighty-six of
19 this article.

20 (d) A certificate, sworn to or affirmed by a technician employed by
21 Westchester county in which the charged violation occurred, or a facsim-
22 ile thereof, based upon inspection of the recorded audio, photographs,
23 microphotographs, videotape or other recorded images produced by a noise
24 violation-monitoring system, shall be prima facie evidence of the facts
25 contained therein. Any recorded audio, photographs, microphotographs,
26 videotape or other recorded images evidencing such a violation shall be
27 available for inspection in any proceeding to adjudicate the liability
28 for such violation pursuant to a local law or ordinance adopted pursuant
29 to this section.

30 (e) An owner liable for a violation of subdivision three of section
31 three hundred eighty-six of this article pursuant to a local law or
32 ordinance adopted pursuant to this section shall be liable for monetary
33 penalties in accordance with a schedule of fines and penalties to be set
34 forth in such local law or ordinance. The liability of the owner pursu-
35 ant to this section shall not exceed one hundred fifty dollars for each
36 violation; provided, however, that such local law or ordinance may
37 provide for an additional penalty not in excess of twenty-five dollars
38 for each violation for the failure to respond to a notice of liability
39 within the prescribed time period.

40 (f) 1. A notice of liability shall be sent by first class mail to each
41 person alleged to be liable as an owner for a violation of subdivision
42 three of section three hundred eighty-six of this article pursuant to
43 this section. Personal delivery on the owner shall not be required. A
44 manual or automatic record of mailing prepared in the ordinary course of
45 business shall be prima facie evidence of the facts contained therein.

46 2. A notice of liability shall contain the name and address of the
47 person alleged to be liable as an owner for a violation of subdivision
48 three of section three hundred eighty-six of this article pursuant to
49 this section, the registration number of the vehicle involved in such
50 violation, the location where such violation took place, the date and
51 time of such violation and the identification number of the camera which
52 recorded the violation or other document locator number.

53 3. The notice of liability shall contain information advising the
54 person charged of the manner and the time in which he or she may contest
55 the liability alleged in the notice. Such notice of liability shall also
56 contain a warning to advise the persons charged that failure to contest

1 in the manner and time provided shall be deemed an admission of liability
2 and that a default judgment may be entered thereon.

3 4. The notice of liability shall be prepared and mailed by Westchester
4 county or by any other entity authorized by such county to prepare and
5 mail such notification of violation.

6 (g) Adjudication of the liability imposed upon owners by this section
7 shall be by a traffic violations bureau established pursuant to section
8 three hundred seventy-one-a of the general municipal law where the
9 violation occurred or, if there be none, by the court having jurisdic-
10 tion over traffic infractions.

11 (h) If an owner receives a notice of liability pursuant to this
12 section for any time period during which the vehicle was reported to the
13 police department as having been stolen, it shall be a valid defense to
14 an allegation of liability for a violation of subdivision three of
15 section three hundred eighty-six of this article pursuant to this
16 section that the vehicle had been reported to the police as stolen prior
17 to the time the violation occurred, had not been recovered by such time
18 and such modifications described in subdivision three of section three
19 hundred eighty-six of this article were made after such vehicle was
20 stolen. For purposes of asserting the defense provided by this subdivi-
21 sion it shall be sufficient that a certified copy of the police report
22 on the stolen vehicle be sent by first class mail to the court having
23 jurisdiction.

24 (i) An owner who is a lessor of a vehicle to which a notice of liability
25 was issued pursuant to subdivision (f) of this section shall not be
26 liable for the violation of subdivision three of section three hundred
27 eighty-six of this article provided that he or she sends to the court
28 having jurisdiction a copy of the rental, lease or other such contract
29 document covering such vehicle on the date of the violation, with the
30 name and address of the lessee clearly legible, within thirty-seven days
31 after receiving notice from the court of the date and time of such
32 violation, together with the other information contained in the original
33 notice of liability. Failure to send such information within such thirty-
34 seven day time period shall render the owner liable for the penalty
35 prescribed by this section. Where the lessor complies with the
36 provisions of this subdivision, the lessee of such vehicle on the date
37 of such violation shall be deemed to be the owner of such vehicle for
38 purposes of this section, shall be subject to liability for the
39 violation of subdivision three of section three hundred eighty-six of
40 this article pursuant to this section and shall be sent a notice of
41 liability pursuant to subdivision (f) of this section.

42 (j) If the owner liable for a violation of subdivision three of
43 section three hundred eighty-six of this article pursuant to this
44 section was not the operator of the vehicle at the time of the
45 violation, the owner may maintain an action for indemnification against
46 the operator.

47 (k) Nothing in this section shall be construed to limit the liability
48 of an operator of a vehicle for any violation of subdivision three of
49 section three hundred eighty-six of this article.

50 (l) All fines and penalties collected under this program shall be
51 distributed in accordance with subdivision eleven of section eighteen
52 hundred three of this chapter.

53 (m) The county of Westchester shall submit an annual report detailing
54 the results of the use of such noise violation-monitoring system to the
55 governor, the temporary president of the senate and the speaker of the
56 assembly on or before June thirtieth, two thousand twenty-four and on

1 the same date in each succeeding year in which the demonstration program
2 is operable. Such report shall include, but not be limited to:

3 1. a description of the locations where noise violation-monitoring
4 systems were used;

5 2. the aggregate number, type and severity of accidents reported at
6 intersections where a noise violation-monitoring system is used for the
7 three years preceding the installation of such system, to the extent the
8 information is maintained by the department;

9 3. the aggregate number, type and severity of accidents reported at
10 intersections where a noise violation-monitoring system is used for the
11 reporting year, as well as for each year that the noise violation-moni-
12 toring system has been operational, to the extent the information is
13 maintained by the department;

14 4. the number of events and number of violations recorded at each
15 intersection where a noise violation-monitoring system is used and in
16 the aggregate on a daily, weekly and monthly basis;

17 5. the number of notices of liability issued for violations recorded
18 by such system at each intersection where a noise violation-monitoring
19 system is used;

20 6. the number of fines imposed and total amount of fines paid after
21 first notice of liability;

22 7. the number and percentage of violations adjudicated and results of
23 such adjudications including breakdowns of disposition made for
24 violations recorded by such systems which shall be provided at least
25 annually to such county by the respective courts and bureaus conducting
26 such adjudications;

27 8. the total amount of revenue realized by such county from such adju-
28 dications including a breakdown of revenue realized by such county for
29 each year since deployment of its noise violation-monitoring system;

30 9. expenses incurred by such county in connection with the program;

31 10. quality of the adjudication process and its results which shall be
32 provided at least annually to such county by the respective courts and
33 bureaus conducting such adjudications; and

34 11. the public response to the use of such noise violation-monitoring
35 systems.

36 (n) It shall be a defense to any prosecution for a violation of subdi-
37 vision three of section three hundred eighty-six of this article pursu-
38 ant to a local law or ordinance adopted pursuant to this section that
39 such noise indications were malfunctioning at the time of the alleged
40 violation.

41 (o) The county of Westchester shall post information on the county
42 website and notify local media outlets indicating the zones in which the
43 automated noise violation-monitoring systems have been installed.

44 (p) Law enforcement agencies within the county of Westchester shall
45 install two signs facing opposite directions within two hundred feet, or
46 otherwise consistent with the uniform manual on traffic control devices,
47 where any noise violation-monitoring system is installed, which states
48 "Noise Demonstration Program in Progress".

49 § 2. Section 401 of the vehicle and traffic law is amended by adding a
50 new subdivision 5-b to read as follows:

51 5-b. a. If at the time of application for a registration or renewal
52 thereof there is a certification from a court or administrative tribunal
53 of appropriate jurisdiction that the registrant or his or her represen-
54 tative failed to appear on the return date or any subsequent adjourned
55 date or failed to comply with the rules and regulations of an adminis-
56 trative tribunal following entry of a final decision in response to

1 three or more summonses or other process, issued within an eighteen
2 month period, charging either that the registrant was liable for any
3 violation listed under paragraph a of subdivision five-a of this
4 section, or the registrant was liable for a violation of subdivision
5 three of section three hundred eighty-six of this chapter in accordance
6 with this section, the commissioner or his or her agent shall deny the
7 registration or renewal application until the applicant provides proof
8 from the court or administrative tribunal wherein the charges are pend-
9 ing that an appearance or answer has been made or in the case of an
10 administrative tribunal that he or she has complied with the rules and
11 regulations of said tribunal following entry of a final decision. Where
12 an application is denied pursuant to this section, the commissioner may,
13 in his or her discretion, deny a registration or renewal application to
14 any other person for the same vehicle and may deny a registration or
15 renewal application for any other motor vehicle registered in the name
16 of the applicant where the commissioner has determined that such regis-
17 trant's intent has been to evade the purposes of this subdivision and
18 where the commissioner has reasonable grounds to believe that such
19 registration or renewal will have the effect of defeating the purposes
20 of this subdivision. Such denial shall only remain in effect as long as
21 the summonses remain unanswered, or in the case of an administrative
22 tribunal, the registrant fails to comply with the rules and regulations
23 following entry of a final decision.

24 b. The commissioner may promulgate such regulations as are necessary
25 to effectuate the provisions of this subdivision, including provisions
26 for the recovery of the administrative costs of the program incurred for
27 each municipality. The commissioner may, in his or her discretion,
28 refuse to process a certification received from a court or administra-
29 tive tribunal in any municipality which has failed to comply with the
30 provisions of section five hundred fourteen of this chapter or which
31 does not have an effective program for enforcing suspension and revoca-
32 tion orders issued by the department.

33 § 3. Section 1809 of the vehicle and traffic law is amended by adding
34 a new subdivision 1-a to read as follows:

35 1-a. No mandatory surcharge shall be levied pursuant to this section
36 for a conviction resulting from proceedings in an administrative tribu-
37 nal or court of this state for a violation of subdivision three of
38 section three hundred eighty-six of this chapter in accordance with
39 section three hundred eighty-seven of this chapter.

40 § 4. Section 1809-e of the vehicle and traffic law is amended by
41 adding a new subdivision 1-a to read as follows:

42 1-a. No additional surcharge shall be levied pursuant to this section
43 for a conviction resulting from proceedings in an administrative tribu-
44 nal or court of this state for a violation of subdivision three of
45 section three hundred eighty-six of this chapter in accordance with
46 section three hundred eighty-seven of this chapter.

47 § 5. The general municipal law is amended by adding a new section
48 371-a to read as follows:

49 § 371-a. Jurisdiction and procedure; Westchester noise violation
50 demonstration program. A traffic violations bureau so established may be
51 authorized to dispose of violations of traffic laws, ordinances, rules
52 and regulations when such offenses shall not constitute the traffic
53 infraction known as speeding or a misdemeanor or felony, and, if author-
54 ized by local law or ordinance, or to adjudicate the liability of owners
55 for violations of subdivision three of section three hundred eighty-six
56 of the vehicle and traffic law in accordance with a local law or ordi-

1 nance imposing monetary liability on the owner of a vehicle for failure
2 of an operator thereof to comply with maximum noise requirements through
3 the installation of noise violation-monitoring devices pursuant to
4 section three hundred eighty-seven of the vehicle and traffic law.

5 § 6. Section 1803 of the vehicle and traffic law is amended by adding
6 two new subdivisions 3-a and 11 to read as follows:

7 3-a. All fines, penalties and forfeitures paid to a city, town or
8 village pursuant to the provisions of paragraph a of subdivision one of
9 this section and subdivision eleven of this section shall be credited to
10 the general fund of such city, town or village, unless a different
11 disposition is prescribed by charter, special law, local law or ordi-
12 nance.

13 11. Notwithstanding the provisions of subdivision three of section
14 ninety-nine-a of the state finance law, where the county of Westchester
15 has established a demonstration program imposing monetary liability on
16 the owner of a vehicle for failure of an operator thereof to comply with
17 subdivision three of section three hundred eighty-six of this chapter in
18 accordance with section three hundred eighty-seven of this chapter, any
19 fine or penalty collected by a court, judge, magistrate or other officer
20 for an imposition of liability which occurs within a town or village
21 within such county pursuant to such program shall be paid to the state
22 comptroller within the first ten days of the month following collection.
23 Every such payment shall be accompanied by a statement in such form and
24 detail as the comptroller shall provide. The comptroller shall pay
25 eighty percent of any such fine or penalty imposed for such liability to
26 the county of Westchester, and twenty percent of any such fine or penal-
27 ty to the town or village in which the violation giving rise to the
28 liability occurred.

29 § 7. Subdivision 2 of section 87 of the public officers law is amended
30 by adding a new paragraph (r) to read as follows:

31 (r) are photographs, microphotographs, videotape or other recorded
32 images prepared under authority of section three hundred eighty-seven of
33 the vehicle and traffic law.

34 § 8. The purchase or lease of equipment for a demonstration program
35 established pursuant to section 387 of the vehicle and traffic law shall
36 be subject to the provisions of section 103 of the general municipal
37 law.

38 § 9. This act shall take effect immediately, and shall expire and be
39 deemed repealed September 1, 2025.