S T A T E O F N E W Y O R K

2556

2009-2010 Regular Sessions

I N A S S E M B L Y

January 20, 2009

Introduced by M. of A. GANTT -- read once and referred to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to allowing counties to establish demonstration programs imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications

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

Section 1. Section 1111-a of the vehicle and traffic law, as added by chapter 746 of the laws of 1988, subdivisions (a), (b), (c), (d), (k) and (m) as amended and subdivision (n) as added by chapter 658 of the laws of 2006 and subdivision (e) as amended by chapter 479 of the laws of 1994, is amended to read as follows:

S 1111-a. Owner liability for failure of operator to comply with traffic-control indications. (a) 1. Notwithstanding any other provision of law, each city with a population of one million or more AND COUNTY AS PROVIDED IN SUBDIVISION (O) OF THIS SECTION is hereby authorized and empowered to adopt and amend a local law or ordinance establishing a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications in such city OR COUNTY in accordance with the provisions of this section. Such demonstration program shall empower a city OR COUNTY to install and operate traffic-control signal photo violation-monitoring devices at no more than one hundred intersections within such city at any one time AND AT NO MORE THAN TWENTY-FIVE PERCENT OF INTERSECTIONS WITHIN SUCH COUNTY AT ANY ONE TIME.

2. Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs produced by such traffic-control signal photo violation-monitoring systems shall not include images that identify the driver, the passengers, or the contents of the vehicle. Provided, however, that no notice of liability issued

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

LBD06047-01-9

pursuant to this section shall be dismissed solely because a photograph or photographs allow for the identification of the contents of a vehicle, provided that such city OR COUNTY has made a reasonable effort to comply with the provisions of this paragraph.

(b) In any city OR COUNTY which has adopted a local law or ordinance pursuant to subdivision (a) of this section, the owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of subdivision (d) of section eleven hundred eleven of this article, and such violation is evidenced by information obtained from a traffic-control signal photo violation-monitoring system; provided however that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of subdivision (d) of section eleven hundred eleven of this article.

(c) For purposes of this section, "owner" shall have the meaning provided in article two-B of this chapter. For purposes of this section, "traffic-control signal photo violation-monitoring system" shall mean a [vehicle sensor installed to work in conjunction with a traffic-control signal which automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of subdivision (d) of section eleven hundred eleven of this article] SYSTEM UTILIZING RADAR-BASED DOWN-THE-ROAD SPEED MEASUREMENT METHODS IN WHICH A PHOTOGRAPH IS TAKEN COINCIDENT TO, OR AS NEAR AS POSSIBLE TO, THE LOCATION OF, RECORDED SPEED MEASUREMENTS; PROVIDED HOWEVER, THAT ONLY PHOTOGRAPHS OF THE REAR OF THE VEHICLE SHALL BE TAKEN AND SUCH PHOTOGRAPHS AND SPEED MEASUREMENT SHALL NOT BE UTILIZED FOR SPEED ENFORCEMENT PURPOSES. SUCH DEMONSTRATION PROGRAM SHALL USE SYSTEMS THAT PROVIDE AN AUTOMATED CONCURRENT SECONDARY MEASUREMENT OF VEHICLE SPEED AS VERIFICATION. IN ADDITION, THESE SYSTEMS SHALL BE CAPABLE OF MAKING SEPARATE AND DISTINCT MEASUREMENTS OF MULTIPLE VEHICLES WITHIN THE RANGE OF DETECTION. SUCH DEMONSTRATION PROGRAM SHALL NOT UTILIZE VEHICLE SENSORS OF THE FOLLOWING TYPES: VIDEO, VIRTUAL LOOPS, LASER-BASED, ACROSS-THE-ROAD RADAR, IN-THE-ROAD EMBEDDED OR SURFACE MOUNT OR ADDITIONAL ROAD MARKINGS. SUCH DEMONSTRATION PROGRAM SHALL UTILIZE CORE TECHNOLOGY DATABASE AND APPLICATION PROTOCOLS FOR TICKET-PROCESSING SYSTEMS COMPATIBLE WITH STATE AGENCY SYSTEMS.

(d) A certificate, sworn to or affirmed by a technician employed by the city OR COUNTY in which the charged violation occurred, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic-control signal photo violation-monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to a local law or ordinance adopted pursuant to this section.

(e) An owner liable for a violation of subdivision (d) of section eleven hundred eleven of this article pursuant to a local law or ordinance adopted pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be set forth in such local law or ordinance, except that: (I) in a city which, by local law, has authorized the adjudication of such owner liability by a parking violations bureau, such schedule shall be promulgated by such bureau; (II) IN ANY COUNTY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJU-

DICATION OF SUCH OWNER LIABILITY BY A TRAFFIC AND PARKING VIOLATIONS AGENCY, SUCH SCHEDULE MAY BE PROMULGATED BY THE BOARD OF JUDGES OF THE DISTRICT COURT FOR SUCH COUNTY, PURSUANT TO SUBDIVISION ONE OF SECTION TWENTY-FOUR HUNDRED EIGHT OR SUBDIVISION ONE OF SECTION TWENTY-FOUR HUNDRED ELEVEN OF THE UNIFORM DISTRICT COURT ACT; AND (III) IN ANY COUNTY WHICH, NOTWITHSTANDING ANY LAW TO THE CONTRARY, BY LOCAL LAW, HAS DEVELOPED AN ADJUDICATION PROCESS APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES, WHICH RESULTS IN ALL REVENUE BEING RETAINED BY SUCH COUNTIES AFTER ALL ELIGIBLE SURCHARGES ARE PAID TO THE STATE, SUCH SCHEDULE SHALL BE PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF THE APPROVED PROCESS. The liability of the owner pursuant to this section shall not exceed fifty dollars for each violation; provided, however, that such local law or ordinance 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 a local law or ordinance adopted 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 (d) of section eleven hundred eleven of this article pursuant to this section. 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 (d) of section eleven hundred eleven 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 and the identification number of the camera which recorded the violation or other document locator number.

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 warning to advise the persons 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 city OR COUNTY having jurisdiction over the intersection where the violation occurred, or by any other entity authorized by the city OR COUNTY to prepare and mail such notification of violation.

(h) Adjudication of the liability imposed upon owners by this section shall be by a traffic violations bureau established pursuant to section three hundred seventy of the general municipal law or BY A TRAFFIC AND PARKING VIOLATIONS AGENCY, OR BY A PROCESS CREATED BY LOCAL LAW AND APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES OR, if there be none, by the court having jurisdiction over traffic infractions, except that any city which has established an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations may, by local law, authorize such adjudication by such tribunal.

(i) If an owner receives a notice of liability pursuant to this section for any time period during which the 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 (d) of section eleven hundred eleven of this article pursuant to this section that the 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 sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail to the traffic violations bureau, court having jurisdiction or parking violations bureau.

(j) 1. In a city OR COUNTY where the adjudication of liability imposed upon owners pursuant to this section is by a traffic violations bureau or BY A TRAFFIC AND PARKING VIOLATIONS AGENCY, OR BY A PROCESS CREATED BY LOCAL LAW AND APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES OR a court having jurisdiction, an owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (d) of section eleven hundred eleven of this article, provided that he or she sends to the traffic violations bureau, A TRAFFIC AND PARKING VIOLATIONS AGENCY, OR THROUGH OTHER PROCESS AS CREATED BY LOCAL LAW AND APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES or A court having jurisdiction a copy of the rental, lease or other such contract document covering such vehicle on the date of the violation, with the name and address of the lessee clearly legible, within thirty-seven days after receiving notice from the bureau, TRAFFIC AND PARKING VIOLATIONS AGENCY OR THROUGH OTHER PROCESS AS CREATED BY LOCAL LAW AND APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES or court of the date and time of such violation, together with the other information contained in the original notice of liability. Failure to send such information within such thirty-seven day time period shall render the owner liable for the penalty prescribed by this section. Where the lessor complies with the provisions of this paragraph, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for the violation of subdivision (d) of section eleven hundred eleven of this article pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

2. (i) In a city which, by local law, has authorized the adjudication of liability imposed upon owners by this section by a parking violations bureau, an owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to subdivision (g) of this section shall not be liable for the violation of subdivision (d) of section eleven hundred eleven of this article, provided that:

(A) prior to the violation, the lessor has filed with the bureau in accordance with the provisions of section two hundred thirty-nine of this chapter; and

(B) within thirty-seven days after receiving notice from the bureau of the date and time of a liability, together with the other information contained in the original notice of liability, the lessor submits to the bureau the correct name and address of the lessee of the vehicle identified in the notice of liability at the time of such violation, together with such other additional information contained in the rental, lease or other contract document, as may be reasonably required by the bureau pursuant to regulations that may be promulgated for such purpose.

(ii) Failure to comply with clause (B) of subparagraph (i) of this paragraph shall render the owner liable for the penalty prescribed in this section.

(iii) Where the lessor complies with the provisions of this paragraph, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section, shall be subject to liability for such violation pursuant to this section and shall be sent a notice of liability pursuant to subdivision (g) of this section.

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

2. Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this section if the operator of such vehicle was operating such vehicle without the consent of the owner at the time such operator failed to obey a traffic-control indication. For purposes of this subdivision there shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time such operator failed to obey a traffic-control indication.

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

(m) In any city OR COUNTY which adopts a demonstration program pursuant to subdivision (a) of this section, such city OR COUNTY shall submit an annual report on the results of the use of a traffic-control signal photo violation-monitoring system to the governor, the temporary president of the senate and the speaker of the assembly on or before June first, two thousand seven and on the same date in each succeeding year in which the demonstration program is operable. Such report shall include, but not be limited to:

1. a description of the locations where traffic-control signal photo violation-monitoring systems were used;

2. within SUCH COUNTY OR SUCH CITY OR each borough of such city WITH A POPULATION OVER ONE MILLION, the aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used for the year preceding the installation of such system, to the extent the information is maintained by the department of motor vehicles of this state;

3. within SUCH COUNTY OR SUCH CITY OR each borough of such city WITH A POPULATION OVER ONE MILLION, the aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used, to the extent the information is maintained by the department of motor vehicles of this state;

4. the number of violations recorded at each intersection where a traffic-control signal photo violation-monitoring system is used and in the aggregate on a daily, weekly and monthly basis;

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

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

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

8. the total amount of revenue realized by such city OR COUNTY from such adjudications;

9. expenses incurred by such city OR COUNTY in connection with the program; and

10. quality of the adjudication process and its results.

(n) It shall be a defense to any prosecution for a violation of subdivision (d) of section eleven hundred eleven of this article pursuant to a local law or ordinance adopted pursuant to this section that such traffic-control indications were malfunctioning at the time of the alleged violation.

(O) ANY COUNTY WISHING TO ESTABLISH A DEMONSTRATION PROGRAM PURSUANT TO THE PROVISIONS OF THIS SECTION MAY DO SO BY ADOPTING OR AMENDING A LOCAL LAW OR ORDINANCE AUTHORIZING AND ESTABLISHING SUCH PROGRAM, ACCORDING TO THE FOLLOWING SCHEDULE:

1. EFFECTIVE OCTOBER FIRST, TWO THOUSAND NINE, ANY COUNTY WITH A POPULATION OF ONE MILLION OR MORE SHALL BE ELIGIBLE;

2. EFFECTIVE JANUARY FIRST, TWO THOUSAND TEN, ANY COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE SHALL BE ELIGIBLE; AND

3. EFFECTIVE JULY FIRST, TWO THOUSAND TEN, ANY COUNTY OF ANY POPULATION SHALL BE ELIGIBLE;

NO COUNTY SHALL OPERATE A TRAFFIC CONTROL SIGNAL PHOTO VIOLATION-MONITORING SYSTEM IMPOSING LIABILITY ON THE OWNER OF A VEHICLE EXCEPT AS PROVIDED IN THIS SECTION.

(P) ANY COUNTY ESTABLISHING A DEMONSTRATION PROGRAM PURSUANT TO THE PROVISIONS OF THIS SECTION MAY, UPON PRIOR APPROVAL OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, ESTABLISH ITS OWN PROCESS FOR ADJUDICATION OF LIABILITY IMPOSED UPON OWNERS PURSUANT TO THIS SECTION.

S 2. This act shall take effect immediately; provided, however, the amendments to section 1111-a of the vehicle and traffic law made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.