

2626

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

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

AN ACT to amend the vehicle and traffic law, in relation to civil liability of vehicle owners for maximum speed limit violations 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 1180-b to read as follows:

3 S 1180-B. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH MAXI-  
4 MUM SPEED LIMITS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH  
5 CITY WITH A POPULATION OF ONE MILLION OR MORE 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 SPEED  
9 LIMITS IN SUCH CITY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.  
10 SUCH DEMONSTRATION PROGRAM SHALL EMPOWER A CITY TO INSTALL AND OPERATE  
11 PHOTO RADAR DEVICES WITHIN SUCH CITY.

12 (B) IN ANY CITY WHICH HAS ADOPTED A LOCAL LAW OR ORDINANCE PURSUANT TO  
13 SUBDIVISION (A) OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE  
14 FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED  
15 OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN  
16 VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS  
17 ARTICLE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A  
18 PHOTO RADAR SYSTEM; PROVIDED HOWEVER THAT NO OWNER OF A VEHICLE SHALL BE  
19 LIABLE FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE THE OPERATOR  
20 OF SUCH VEHICLE HAS BEEN CONVICTED OF THE UNDERLYING VIOLATION OF SUBDI-  
21 VISION (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 CITY IN WHICH THE CHARGED VIOLATION OCCURRED, OR A FACSIMILE THERE-  
8 OF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR  
9 OTHER RECORDED IMAGES PRODUCED BY A PHOTO RADAR SYSTEM, SHALL BE PRIMA  
10 FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN. ANY PHOTOGRAPHS, MICRO-  
11 PHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES EVIDENCING SUCH A  
12 VIOLATION SHALL BE AVAILABLE FOR INSPECTION IN ANY PROCEEDING TO ADJUDI-  
13 CATE THE LIABILITY FOR SUCH VIOLATION PURSUANT TO A LOCAL LAW OR ORDI-  
14 NANCE 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, EXCEPT THAT IN A CITY WHICH, BY  
20 LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION OF SUCH OWNER LIABILITY BY A  
21 PARKING VIOLATIONS BUREAU, SUCH SCHEDULE SHALL BE PROMULGATED BY SUCH  
22 BUREAU. THE LIABILITY OF THE OWNER PURSUANT TO THIS SECTION SHALL NOT  
23 EXCEED ONE HUNDRED DOLLARS FOR EACH VIOLATION; PROVIDED, HOWEVER, THAT  
24 SUCH LOCAL LAW OR ORDINANCE MAY PROVIDE FOR AN ADDITIONAL PENALTY NOT IN  
25 EXCESS OF TWENTY-FIVE DOLLARS FOR EACH VIOLATION FOR THE FAILURE TO  
26 RESPOND TO A NOTICE OF LIABILITY WITHIN THE PRESCRIBED TIME PERIOD.

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

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

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

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

51 4. THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE CITY  
52 HAVING JURISDICTION OVER THE INTERSECTION WHERE THE VIOLATION OCCURRED,  
53 OR BY ANY OTHER ENTITY AUTHORIZED BY THE CITY TO PREPARE AND MAIL SUCH  
54 NOTIFICATION OF VIOLATION.

55 (H) ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION  
56 SHALL BE BY A TRAFFIC VIOLATIONS BUREAU ESTABLISHED PURSUANT TO SECTION

1 THREE HUNDRED SEVENTY OF THE GENERAL MUNICIPAL LAW OR, IF THERE BE NONE,  
2 BY THE COURT HAVING JURISDICTION OVER TRAFFIC INFRACTIONS, EXCEPT THAT  
3 ANY CITY WHICH HAS ESTABLISHED AN ADMINISTRATIVE TRIBUNAL TO HEAR AND  
4 DETERMINE COMPLAINTS OF TRAFFIC INFRACTIONS CONSTITUTING PARKING, STAND-  
5 ING OR STOPPING VIOLATIONS MAY, BY LOCAL LAW, AUTHORIZE SUCH ADJUDI-  
6 CATION BY SUCH TRIBUNAL.

7 (I) IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS  
8 SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO THE  
9 POLICE DEPARTMENT AS HAVING BEEN STOLEN, IT SHALL BE A VALID DEFENSE TO  
10 AN ALLEGATION OF LIABILITY FOR A VIOLATION OF SUBDIVISION (D) OF SECTION  
11 ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS SECTION THAT THE  
12 VEHICLE HAD BEEN REPORTED TO THE POLICE AS STOLEN PRIOR TO THE TIME THE  
13 VIOLATION OCCURRED AND HAD NOT BEEN RECOVERED BY SUCH TIME. FOR PURPOSES  
14 OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION IT SHALL BE SUFFI-  
15 CIENT THAT A CERTIFIED COPY OF THE POLICE REPORT ON THE STOLEN VEHICLE  
16 BE SENT BY FIRST CLASS MAIL TO THE TRAFFIC VIOLATIONS BUREAU, COURT  
17 HAVING JURISDICTION OR PARKING VIOLATIONS BUREAU.

18 (J) 1. IN A CITY WHERE THE ADJUDICATION OF LIABILITY IMPOSED UPON  
19 OWNERS PURSUANT TO THIS SECTION IS BY A TRAFFIC VIOLATIONS BUREAU OR A  
20 COURT HAVING JURISDICTION, AN OWNER WHO IS A LESSOR OF A VEHICLE TO  
21 WHICH A NOTICE OF LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF  
22 THIS SECTION SHALL NOT BE LIABLE FOR THE VIOLATION OF SUBDIVISION (D) OF  
23 SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE, PROVIDED THAT HE OR SHE  
24 SENDS TO THE TRAFFIC VIOLATIONS BUREAU OR COURT HAVING JURISDICTION A  
25 COPY OF THE RENTAL, LEASE OR OTHER SUCH CONTRACT DOCUMENT COVERING SUCH  
26 VEHICLE ON THE DATE OF THE VIOLATION, WITH THE NAME AND ADDRESS OF THE  
27 LESSEE CLEARLY LEGIBLE, WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE  
28 FROM THE BUREAU OR COURT OF THE DATE AND TIME OF SUCH VIOLATION, TOGETH-  
29 ER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL NOTICE OF  
30 LIABILITY. FAILURE TO SEND SUCH INFORMATION WITHIN SUCH THIRTY-SEVEN DAY  
31 TIME PERIOD SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED BY  
32 THIS SECTION. WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS  
33 PARAGRAPH, THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION  
34 SHALL BE DEEMED TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS  
35 SECTION, SHALL BE SUBJECT TO LIABILITY FOR THE VIOLATION OF SUBDIVISION  
36 (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS  
37 SECTION AND SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION  
38 (G) OF THIS SECTION.

39 2. (I) IN A CITY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION  
40 OF LIABILITY IMPOSED UPON OWNERS BY THIS SECTION BY A PARKING VIOLATIONS  
41 BUREAU, AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF  
42 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL  
43 NOT BE LIABLE FOR THE VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN  
44 HUNDRED EIGHTY OF THIS ARTICLE, PROVIDED THAT:

45 (A) PRIOR TO THE VIOLATION, THE LESSOR HAS FILED WITH THE BUREAU IN  
46 ACCORDANCE WITH THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-NINE OF  
47 THIS CHAPTER; AND

48 (B) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE FROM THE BUREAU OF  
49 THE DATE AND TIME OF A LIABILITY, TOGETHER WITH THE OTHER INFORMATION  
50 CONTAINED IN THE ORIGINAL NOTICE OF LIABILITY, THE LESSOR SUBMITS TO THE  
51 BUREAU THE CORRECT NAME AND ADDRESS OF THE LESSEE OF THE VEHICLE IDENTI-  
52 FIED IN THE NOTICE OF LIABILITY AT THE TIME OF SUCH VIOLATION, TOGETHER  
53 WITH SUCH OTHER ADDITIONAL INFORMATION CONTAINED IN THE RENTAL, LEASE OR  
54 OTHER CONTRACT DOCUMENT, AS MAY BE REASONABLY REQUIRED BY THE BUREAU  
55 PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

1 (II) FAILURE TO COMPLY WITH CLAUSE (B) OF SUBPARAGRAPH (I) OF THIS  
2 PARAGRAPH SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED IN  
3 THIS SECTION.

4 (III) WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS PARAGRAPH,  
5 THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION SHALL BE DEEMED  
6 TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS SECTION, SHALL BE  
7 SUBJECT TO LIABILITY FOR SUCH VIOLATION PURSUANT TO THIS SECTION AND  
8 SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION (G) OF THIS  
9 SECTION.

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

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

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

21 (N) ANY CITY WHICH ADOPTS A DEMONSTRATION PROGRAM PURSUANT TO SUBDIVI-  
22 SION (A) OF THIS SECTION SHALL SUBMIT A REPORT ON THE RESULTS OF THE USE  
23 OF A PHOTO RADAR SYSTEM TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE  
24 SENATE AND THE SPEAKER OF THE ASSEMBLY BY MARCH FIRST, TWO THOUSAND  
25 THIRTEEN. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

26 1. A DESCRIPTION OF THE LOCATIONS WHERE PHOTO RADAR SYSTEMS WERE USED;

27 2. THE NUMBER OF VIOLATIONS RECORDED AT EACH SUCH LOCATION AND IN THE  
28 AGGREGATE ON A DAILY, WEEKLY AND MONTHLY BASIS;

29 3. THE TOTAL NUMBER OF NOTICES OF LIABILITY ISSUED;

30 4. THE NUMBER OF FINES AND TOTAL AMOUNT OF FINES PAID AFTER FIRST  
31 NOTICE OF LIABILITY;

32 5. THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDI-  
33 CATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE;

34 6. THE TOTAL AMOUNT OF REVENUE REALIZED BY SUCH CITY; AND

35 7. QUALITY OF THE ADJUDICATION PROCESS AND ITS RESULTS.

36 S 2. This act shall take effect on the thirtieth day after it shall  
37 have become a law and shall remain in full force and effect for three  
38 years after such effective date when upon such date the provisions of  
39 this act shall be deemed repealed; provided, however, any such local  
40 laws as may be enacted pursuant to this act shall remain in full force  
41 and effect only until the expiration of three years from such effective  
42 date.