

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

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

AN ACT to amend the vehicle and traffic law, in relation to authorizing the imposition of monetary penalties upon a registered owner of a motor vehicle engaged in excessive hornhonking

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 1106 to read as follows:
3 S 1106. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH ANY
4 PROVISION OF LOCAL LAW REGARDING EXCESSIVE NOISE OCCASIONED BY HORNHONK-
5 ING. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CITY WITH A
6 POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND EMPOWERED TO
7 ADOPT AND AMEND A LOCAL LAW OR ORDINANCE IMPOSING MONETARY LIABILITY ON
8 THE OWNER OF A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH
9 ANY PROVISION OF LOCAL LAW REGARDING EXCESSIVE NOISE OCCASIONED BY HORN-
10 HONKING.
11 (B) IN ANY CITY WHICH HAS ADOPTED A LOCAL LAW OR ORDINANCE PURSUANT TO
12 SUBDIVISION (A) OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE
13 FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED
14 OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN
15 VIOLATION OF ANY PROVISION RELATING THERETO AND SUCH VIOLATION IS
16 EVIDENCED BY INFORMATION OBTAINED BY A POLICE OFFICER ACTIVELY ENGAGED
17 IN TRAFFIC CONTROL AND UNDER CIRCUMSTANCES WHERE SUCH OFFICER ELECTS TO
18 UTILIZE THE PROVISIONS OF THIS SECTION IN LIEU OF PERSONAL SERVICE OF A
19 SUMMONS UPON AN OPERATOR.
20 (C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING
21 PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER.
22 (D) AN OWNER LIABLE FOR A VIOLATION PURSUANT TO A LOCAL LAW OR ORDI-
23 NANCE ADOPTED PURSUANT TO THIS SECTION SHALL BE LIABLE FOR MONETARY

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

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PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES TO BE SET FORTH IN SUCH LOCAL LAW OR ORDINANCE, EXCEPT THAT IN A CITY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION OF SUCH OWNER LIABILITY BY AN ENVIRONMENTAL CONTROL BOARD, SUCH SCHEDULE SHALL BE PROMULGATED BY SUCH BOARD.

(E) 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. 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, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION WHERE SUCH VIOLATION TOOK PLACE, AND THE DATE AND TIME OF SUCH VIOLATION.

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 JUDGEMENT MAY BE ENTERED THEREON.

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

(F) 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 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 SECTION 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, PARKING VIOLATIONS BUREAU OR ENVIRONMENTAL CONTROL BOARD.

(G) IN A CITY WHERE THE ADJUDICATION OF LIABILITY IMPOSED UPON OWNERS PURSUANT TO THIS SECTION IS BY A TRAFFIC VIOLATIONS BUREAU, ENVIRONMENTAL CONTROL BOARD OR A COURT HAVING JURISDICTION, AN OWNER WHO IS A LESSOR PURSUANT TO SUBDIVISION (E) OF THIS SECTION SHALL NOT BE LIABLE, PROVIDED THAT HE OR SHE SENDS TO THE TRAFFIC VIOLATIONS BUREAU, ENVIRONMENTAL CONTROL BOARD OR 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, BOARD 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 SUBDIVISION, 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 AND SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION (E) OF THIS SECTION.

(H) IF THE OWNER LIABLE FOR A VIOLATION 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.

1 (I) A CERTIFICATE, SWORN TO OR AFFIRMED BY A POLICE OFFICER EMPLOYED
2 BY THE CITY IN WHICH THE CHARGED VIOLATION OCCURRED, OR A FACSIMILE
3 THEREOF, BASED UPON SUCH OFFICER'S PERSONAL OBSERVATIONS, SHALL BE PRIMA
4 FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.

5 (J) THE PROVISIONS OF THIS SECTION SHALL BE CONTROLLING INsofar AS
6 THEY ARE INCONSISTENT WITH ANY PROVISION OF LAW RELATING TO SERVICE OF
7 AN APPEARANCE TICKET UPON A PERSON FOR AN ALLEGED VIOLATION OF LAW
8 RELATING TO THE OPERATION OF A MOTOR VEHICLE.

9 S 2. This act shall take effect immediately.