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

3739

2009-2010 Regular Sessions

I N S E N A T E

March 30, 2009

Introduced by Sen. DILAN -- 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 and the administrative code of the city of New York, in relation to a program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in certain counties and cities; to amend chapter 746 of the laws of 1988 amending the vehicle and traffic law, the general municipal law and the public officers law relating to the civil liability of vehicle owners for traffic control signal violations, in relation to the effectiveness of such chapter; to amend local law number 46 of the city of New York for the year 1989 amending the administrative code of the city of New York, relating to civil liability of vehicle owners for traffic control signal violations, in relation to the effectiveness thereof; and to repeal certain provisions of the vehicle and traffic law and the administrative code of the city of New York relating to an owner liability demonstration program

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

Section 1. Subdivisions (a), (b), (d), (e), (g), (h) and (j) of section 1111-a of the vehicle and traffic law, subdivisions (a), (b) and (d) as amended by chapter 658 of the laws of 2006, subdivision (e) as amended by chapter 479 of the laws of 1994 and subdivisions (g), (h) and (j) as added by chapter 746 of the laws of 1988, are amended to read as follows:

(a) 1. Notwithstanding any other provision of law, each city with a population of [one million] NINETY THOUSAND or more [is] OR COUNTY WITH A POPULATION OF NINE HUNDRED THOUSAND OR MORE 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-con-

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

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trol indications in such city OR COUNTY in accordance with the provisions of this section. [Such demonstration program shall empower a city 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.]

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 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.

(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 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, AND IN A COUNTY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION 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. The liability of the owner pursuant to this section shall not exceed [fifty] ONE HUNDRED 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.

(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 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 OR TRAFFIC AND PARKING VIOLATIONS AGENCY established pursuant to section three hundred seventy of the general municipal law or, if there be none, by the court having jurisdiction over traffic infractions, except that any city OR COUNTY which has established an administrative tribunal to hear and determine complaints of traffic infractions constituting parking, standing or stopping violations, OR AN ADMINISTRATIVE TRIBUNAL TO ADJUDICATE THE LIABILITY IMPOSED BY THIS SECTION, may, by local law, authorize such adjudication by such tribunal. WHEN A COUNTY HAS ESTABLISHED A PROGRAM UNDER THIS SECTION, AND WHEN ADJUDICATION IS BY A COURT HAVING JURISDICTION OVER TRAFFIC INFRACTIONS, ALL FINES AND PENALTIES COLLECTED UNDER SUCH PROGRAM SHALL BE MADE TO THE COUNTY TREASURER WITHIN THE FIRST TEN DAYS OF THE MONTH FOLLOWING COLLECTION.

(j) 1. In a city OR A COUNTY where the adjudication of liability imposed upon owners pursuant to this section is by a traffic violations bureau, A TRAFFIC AND PARKING VIOLATIONS AGENCY 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, TRAFFIC AND PARKING VIOLATIONS AGENCY 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 TRAFFIC VIOLATIONS bureau, TRAFFIC AND PARKING VIOLATIONS AGENCY 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 OR A COUNTY 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.

S 2. Subdivision (m) of section 1111-a of the vehicle and traffic law is REPEALED.

S 3. Section 17 of chapter 746 of the laws of 1988 amending the vehicle and traffic law, the general municipal law and the public officers law relating to the civil liability of vehicle owners for traffic control signal violations, as amended by chapter 667 of the laws of 2004, is amended to read as follows:

S 17. This act shall take effect on the thirtieth day after it shall have become a law [and shall remain in full force and effect until December 1, 2009 when upon such date the amendments and provisions made by this act shall be deemed repealed; provided, however, any such local laws as may be enacted pursuant to this act shall remain in full force and effect only until the expiration on December 1, 2009].

S 4. Subdivisions (a), (f) and (n) of section 19-210 of the administrative code of the city of New York, subdivision (a) as amended by chapter 658 of the laws of 2006, subdivision (f) as amended by local law number 29 of the city of New York for the year 1994, and subdivision (n) as amended by local law number 25 of the city of New York for the year 1994, are amended to read as follows:

(a) 1. Notwithstanding any other provision of law, the parking violations bureau is hereby authorized and empowered to establish 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 accordance with the provisions of this section. [The department of transportation, for purposes of implementation of such program, shall be authorized to install and operate traffic-control signal photo violation-monitoring devices at no more than one hundred intersections 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 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 has made a reasonable effort to comply with the provisions of this paragraph.

(f) An owner liable for a violation of subdivision (d) of section eleven hundred eleven of the vehicle and traffic law pursuant to this section shall be liable for monetary penalties in accordance with a schedule of fines and penalties to be promulgated by such bureau. The liability of the owner pursuant to this section shall not exceed [fifty] ONE HUNDRED dollars for each violation; provided however that such bureau 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. Such bureau shall adjudicate liability imposed by this section.

(n) On or before September 1, 1989, and every four months thereafter, until such time as the [demonstration] program authorized in subdivision (a) hereof shall be fully operational, the commissioner of transportation shall submit a written report to the council on the status of said [demonstration] program. Such report shall include, but not be limited to, the locations selected for inclusion in the [demonstration] program and the cost to the city, both individually and collectively, of each location included in such [demonstration] project.

S 5. Subdivision (o) of section 19-210 of the administrative code of the city of New York is REPEALED.

S 6. Section 2 of local law number 46 of the city of New York for the year 1989 amending the administrative code of the city of New York relating to civil liability of vehicle owners for traffic control signal violations, as amended by chapter 667 of the laws of 2004, is amended to read as follows:

S 2. This local law shall take effect immediately [and shall expire on December 1, 2009].

S 7. This act shall take effect immediately.