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

645

2009-2010 Regular Sessions

I N S E N A T E

January 12, 2009

Introduced by Sen. LARKIN -- 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 establishing the civil liability of vehicle owners for maximum speed limit violations in the town of Newburgh, Orange county

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

Section 1. The vehicle and traffic law is amended by adding a new section 1180-b to read as follows:

S 1180-B. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH MAXIMUM SPEED LIMITS; TOWN OF NEWBURGH. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE TOWN OF NEWBURGH, IN THE COUNTY OF ORANGE, IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND A LOCAL LAW OR ORDINANCE ESTABLISHING A PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH MAXIMUM SPEED LIMITS IN SUCH TOWN IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. SUCH DEMONSTRATION PROGRAM SHALL EMPOWER THE TOWN OF NEWBURGH TO INSTALL AND OPERATE PHOTO RADAR DEVICES WITHIN SUCH TOWN.

(B) UPON ADOPTION OF 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 EIGHTY OF THIS ARTICLE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A PHOTO RADAR 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 EIGHTY 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, "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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CONJUNCTION WITH DOPPLER RADAR AND A COMPUTER MONITORING SYSTEM 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 EIGHTY OF THIS ARTICLE.

(D) A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY THE TOWN OF NEWBURGH IN WHICH THE CHARGED VIOLATION OCCURRED, OR A FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A PHOTO RADAR 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 EIGHTY 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. THE LIABILITY OF THE OWNER PURSUANT TO THIS SECTION SHALL NOT EXCEED 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.

(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 EIGHTY 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 EIGHTY 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 TOWN OF NEWBURGH OR BY ANY OTHER ENTITY AUTHORIZED BY SUCH TOWN TO PREPARE AND MAIL SUCH NOTIFICATION OF VIOLATION.

(H) ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION SHALL BE BY THE COURT HAVING JURISDICTION OVER TRAFFIC INFRACTIONS.

(I) IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO A LAW ENFORCEMENT AGENCY 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 EIGHTY 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 COURT HAVING JURISDICTION.

(J) 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 EIGHTY OF THIS ARTICLE, PROVIDED THAT HE OR SHE SENDS TO THE 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 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 EIGHTY OF THIS ARTICLE PURSUANT TO THIS SECTION AND SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION (G) OF THIS SECTION.

(K) IF THE OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY 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.

(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 EIGHTY OF THIS ARTICLE.

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

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.