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

7778

2009-2010 Regular Sessions

I N A S S E M B L Y

April 23, 2009

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

AN ACT to amend the vehicle and traffic law, in relation to the liability of owners of motor vehicles used to overtake or pass a stopped school bus receiving or discharging passengers and authorizing the use of photographic evidence in the prosecution of such traffic infraction; and to amend the penal law, in relation to assault in the third degree and criminally negligent homicide

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 225-a to read as follows:

S 225-A. OWNERSHIP AND OPERATION OF VEHICLES; LIABILITY FOR PASSING OR OVERTAKING STOPPED SCHOOL BUS. 1. DEFINITIONS. WHENEVER USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "OWNER" MEANS ANY PERSON, CORPORATION, PARTNERSHIP, FIRM, AGENCY, ASSOCIATION, LESSOR OR ORGANIZATION WHO AT THE TIME OF THE ISSUANCE OF A NOTICE OF VIOLATION:

(1) IS THE BENEFICIAL OR EQUITABLE OWNER OF A VEHICLE; OR

(2) HAS TITLE TO A VEHICLE; OR

(3) IS THE REGISTRANT OR CO-REGISTRANT OF A VEHICLE WHICH IS REGISTERED WITH THE DEPARTMENT OR THE DEPARTMENT OF MOTOR VEHICLES OF ANY OTHER STATE, TERRITORY, DISTRICT, PROVINCE, NATION OR OTHER JURISDICTION; OR

(4) USES A VEHICLE IN ITS VEHICLE RENTING AND/OR LEASING BUSINESS; OR

(5) IS AN OWNER OF A VEHICLE AS DEFINED BY SECTION ONE HUNDRED TWENTY-EIGHT OF THIS CHAPTER.

B. "LESSOR" MEANS ANY PERSON, CORPORATION, FIRM, PARTNERSHIP, AGENCY, ASSOCIATION OR ORGANIZATION ENGAGED IN THE BUSINESS OF RENTING OR LEASING VEHICLES TO ANY LESSEE OR BAILEE UNDER A RENTAL AGREEMENT, LEASE OR

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

LBD06945-01-9

OTHERWISE, WHEREIN THE SAID LESSEE OR BAILEE HAS THE EXCLUSIVE USE OF SAID VEHICLE FOR ANY PERIOD OF TIME.

C. "LESSEE" MEANS ANY PERSON, CORPORATION, FIRM, PARTNERSHIP, AGENCY, ASSOCIATION OR ORGANIZATION THAT RENTS, BAILS, LEASES OR CONTRACTS FOR THE USE OF ONE OR MORE VEHICLES AND HAS THE EXCLUSIVE USE THEREOF FOR ANY PERIOD OF TIME.

D. "VEHICLE" MEANS A VEHICLE AS DEFINED IN SECTION ONE HUNDRED FIFTY-NINE OF THIS CHAPTER.

E. "OPERATOR" MEANS ANY PERSON, CORPORATION, FIRM, PARTNERSHIP, AGENCY, ASSOCIATION, ORGANIZATION OR LESSEE THAT USES OR OPERATES A VEHICLE WITH OR WITHOUT THE PERMISSION OF THE OWNER, AND AN OWNER WHO OPERATES HIS OR HER OWN VEHICLE.

F. "NOTICE OF VIOLATION" MEANS A NOTICE OF VIOLATION AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TWENTY-SIX OF THIS ARTICLE.

G. "FISCAL YEAR" MEANS A PERIOD OF ONE YEAR COMMENCING ON THE FIRST DAY OF JULY AND TERMINATING ON THE THIRTIETH DAY OF JUNE.

H. "PRIMARY FILING" MEANS THE INITIAL FILING OF REGISTRATION PLATE NUMBERS BY A LESSOR PRIOR TO THE COMMENCEMENT OF EACH FISCAL YEAR.

2. LIABILITY. A. THE OPERATOR OF A VEHICLE SHALL BE LIABLE FOR THE FINES OR PENALTIES IMPOSED PURSUANT TO THIS ARTICLE. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS B AND E OF THIS SUBDIVISION, THE OWNER OF THE VEHICLE, EVEN IF NOT THE OPERATOR THEREOF, SHALL BE JOINTLY AND SEVERALLY LIABLE WITH THE OPERATOR THEREOF FOR ANY VIOLATION OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SEVENTY-FOUR OF THIS CHAPTER, IF SUCH VEHICLE WAS USED OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, BUT IN SUCH CASE THE OWNER MAY RECOVER ANY FINE OR PENALTIES PAID BY HIM OR HER FROM THE OPERATOR.

B. THE LESSOR OF A MOTOR VEHICLE SHALL NOT BE LIABLE FOR FINES OR PENALTIES IMPOSED PURSUANT TO THIS ARTICLE FOR ANY VIOLATION OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SEVENTY-FOUR OF THIS CHAPTER IF:

(1) PRIOR TO THE INFRACTION, THE LESSOR HAS FILED WITH THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION THE REGISTRATION PLATE NUMBER, PLATE TYPE, AND PLACE OF REGISTRATION OF THE VEHICLE TO WHICH THE NOTICE OF VIOLATION WAS ISSUED AND PAID THE REQUIRED FILING FEE PROVIDED IN PARAGRAPH F OF THIS SUBDIVISION AND,

(2) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE FROM THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION OF THE DATE AND TIME OF A VIOLATION, TOGETHER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL NOTICE OF VIOLATION, THE LESSOR SUBMITS TO THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION THE CORRECT NAME AND ADDRESS OF THE LESSEE OF THE VEHICLE IDENTIFIED IN THE NOTICE OF VIOLATION 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 OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

C. IF THE LESSOR HAS COMPLIED WITH SUBPARAGRAPH ONE OF PARAGRAPH B OF THIS SUBDIVISION SUCH LESSOR SHALL NOT BE LIABLE FOR ANY PENALTIES IN EXCESS OF THE SCHEDULED FINE UNLESS SUCH LESSOR FAILS TO APPEAR WITHIN THIRTY-SEVEN DAYS OF ACTUAL RECEIPT OF A NOTICE OF VIOLATION PURSUANT TO PARAGRAPH E OF THIS SUBDIVISION.

D. IF THE LESSOR WHO HAS COMPLIED WITH SUBPARAGRAPH ONE OF PARAGRAPH B OF THIS SUBDIVISION HAS PAID ANY FINE OR PENALTY FOR WHICH HE OR SHE IS LIABLE AND THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION SUBSEQUENTLY COLLECTS FROM THE OPERATOR OR LESSEE THE AMOUNT

OF THE SCHEDULED FINE AND PENALTY OWED BY SUCH PERSON, OR ANY PORTION THEREOF, THE LESSOR SHALL BE ENTITLED TO REIMBURSEMENT FROM THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION OF THE AMOUNT OF THE FINE AND PENALTY PAID BY THE LESSOR, LESS THE COSTS OF COLLECTION INCURRED BY SUCH OFFICE OF THE DEPARTMENT.

E. THE LESSOR SHALL NOT BE LIABLE FOR ANY FINES OR PENALTIES IN CONNECTION WITH A NOTICE OF VIOLATION FOR A VEHICLE WHOSE REGISTRATION PLATE NUMBER IS FILED AND THE FEE THEREFOR PAID PRIOR TO THE TIME OF THE ISSUANCE OF NOTICE OF VIOLATION, UNLESS THE LESSOR SHALL RECEIVE NOTICE FROM THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION OF THE DATE AND TIME OF SUCH VIOLATION, TOGETHER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL NOTICE OF VIOLATION, WITHIN NINETY DAYS AFTER SERVICE OF THE NOTICE OF VIOLATION, IN ACCORDANCE WITH SUBDIVISION ONE OF SECTION TWO HUNDRED TWENTY-SIX OF THIS ARTICLE.

F. THE ANNUAL FEE FOR FILING A REGISTRATION PLATE NUMBER WITH THE DEPARTMENT BY LESSORS UNDER THIS SECTION SHALL BE TWELVE DOLLARS PER FISCAL YEAR. LESSORS SHALL ALSO PROVIDE THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION WITH SUCH OTHER ADDITIONAL INFORMATION IN SUCH FORMAT AS THE COMMISSIONER BY REGULATION MAY REASONABLY REQUIRE. THE REGISTRATION PLATE NUMBER SHALL NOT BE CONSIDERED FILED WITH THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION UNLESS THE ANNUAL FILING FEE PROVIDED FOR IN THIS SUBDIVISION SHALL HAVE BEEN PAID. LESSORS SHALL NOT BE ENTITLED TO A REFUND, REDUCTION, CREDIT OR OTHER CONSIDERATION IN CONNECTION WITH SUCH ANNUAL FILING FEE IN THE EVENT THAT SUCH REGISTRATION PLATE NUMBER IS WITHDRAWN FROM SERVICE, DESTROYED OR SURRENDERED DURING THE FISCAL YEAR FOR WHICH SUCH REGISTRATION PLATE NUMBER SHALL HAVE BEEN FILED. IN THE EVENT THAT A LESSOR FILES WITH THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION REGISTRATION PLATE NUMBERS DURING THE FISCAL YEAR, THE ANNUAL FILING FEE FOR SAME SHALL BE PRORATED ON A MONTHLY BASIS, IN ACCORDANCE WITH A SCHEDULE THAT THE COMMISSIONER SHALL PROMULGATE BY REGULATION FOR SUCH PURPOSE. THE PRIMARY FILING BY EACH LESSOR FOR EACH FISCAL YEAR SHALL BE MADE AT LEAST THIRTY DAYS PRIOR TO THE COMMENCEMENT OF THE FISCAL YEAR.

G. WHERE THE UNITED STATES POSTAL AUTHORITIES RETURN TO THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION A DELINQUENCY NOTICE FORWARDED BY THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION TO A NAME AND ADDRESS OF A LESSEE FURNISHED BY A LESSOR IN ACCORDANCE WITH PROVISIONS OF THIS SECTION, SUCH RETURN NOTICE SHALL BE PRESUMPTIVE EVIDENCE OF THE FURNISHING OF AN INCORRECT NAME AND ADDRESS BY THE LESSOR. THE LESSOR MAY, HOWEVER, CONCLUSIVELY REBUT SUCH PRESUMPTION IF WITHIN SIXTY DAYS AFTER RECEIVING NOTIFICATION FROM THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION OF SUCH RETURNED MAIL NOTICE, THE LESSOR SHALL PROVIDE TO THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION A COPY OF THE RENTAL AGREEMENT OR LEASE AGREEMENT FOR SUCH LESSEE CONTAINING THE NAME AND ADDRESS PREVIOUSLY FURNISHED TO THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION. IN THE EVENT THAT A LESSOR SHALL FAIL TO REBUT THE PRESUMPTION ESTABLISHED BY THIS SUBDIVISION, THE LESSOR SHALL BE LIABLE FOR THE FINES IMPOSED PURSUANT TO THIS ARTICLE AND IN ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

H. THE COMMISSIONER SHALL BY RULES AND REGULATIONS PRESCRIBE THE MANNER AND METHOD OF GIVING NOTICE OF OUTSTANDING VIOLATIONS TO THE LESSEES. ALL NOTICES TO LESSORS UNDER THIS SECTION SHALL BE BY FIRST CLASS MAIL TO THE ADDRESS ON FILE WITH THE OFFICE OF THE DEPARTMENT

SPECIFIED IN SUCH NOTICE OF VIOLATION OR BY SUCH OTHER MEANS AS SHALL BE PROVIDED FOR IN THE RULES AND REGULATIONS OF THE COMMISSIONER.

I. A LESSOR SHALL COOPERATE BY PROVIDING THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION, OR ITS DESIGNATED AGENTS, WITH SUCH OTHER ADDITIONAL INFORMATION AS SHALL BE CONTAINED IN SUCH LESSOR'S RENTAL OR LEASE AGREEMENTS WITH THEIR LESSEES AS SHALL BE AVAILABLE TO THEM.

3. STOLEN VEHICLES. IF ANY OWNER OF A MOTOR VEHICLE RECEIVES A NOTICE OF VIOLATION AS SUCH OWNER FOR A PERIOD DURING WHICH THE DESCRIBED VEHICLE WAS REPORTED TO ANY POLICE DEPARTMENT AS HAVING BEEN STOLEN, IT SHALL BE A VALID DEFENSE TO ANY CHARGE OF A VIOLATION OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SEVENTY-FOUR OF THIS CHAPTER CHARGED PURSUANT TO THIS ARTICLE THAT THE MOTOR 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 THE PURPOSES OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION, IT SHALL BE SUFFICIENT THAT A CERTIFIED COPY OF THE POLICE REPORT OF THE STOLEN VEHICLE BE MAILED TO THE OFFICE OF THE DEPARTMENT SPECIFIED IN SUCH NOTICE OF VIOLATION.

S 2. The section heading and subdivision 1 of section 226 of the vehicle and traffic law, as added by chapter 1074 of the laws of 1969, are amended to read as follows:

Summons; NOTICE OF VIOLATION; answer. 1. Summons. (A) GENERAL. The commissioner shall be authorized to prescribe by regulation the form for the summons and complaint to be used for all traffic violations specified in subdivision one of section two hundred twenty-five of this chapter, and to establish procedures for proper administrative controls over the disposition thereof. Such summons may be the same as the uniform summons provided for in section two hundred seven of this chapter. The chief executive officer of each local police force which is required to use the summons and complaint provided for herein shall prepare or cause to be prepared such records and reports as may be prescribed by the commissioner.

(B) NOTICE OF VIOLATION. WHENEVER PHOTOGRAPHIC EVIDENCE OF OR THE OPERATOR OF A SCHOOL BUS REPORTS A VIOLATION OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SEVENTY-FOUR OF THIS CHAPTER, A SUMMONS MAY BE SERVED BY MAIL UPON THE OWNER OF THE VEHICLE OBSERVED IN SUCH VIOLATION AS SET FORTH IN THE RECORDS OF THE DEPARTMENT PROVIDED, HOWEVER, THAT SUCH SUMMONS IS ACCOMPANIED BY A NOTICE OF VIOLATION REFERRING TO SUCH SUMMONS, BOTH IN FORM AS SHALL BE PRESCRIBED BY THE COMMISSIONER FOR THIS PURPOSE, SUCH VEHICLE IS IDENTIFIED IN SUCH NOTICE OF VIOLATION BOTH BY ITS REGISTRATION PLATE NUMBER AND A DESCRIPTION THEREOF, INCLUDING ITS MAKE, MODEL, BODY TYPE AND COLOR, AND SUCH NOTICE IS ACCOMPANIED BY SAID OFFICER'S CERTIFICATION OF THE EVIDENCE WHICH IS THE BASIS FOR SUCH VIOLATION AUTHORIZING THE MAILING THEREOF. WHEN SUCH SUMMONS AND NOTICE OF VIOLATION ARE SO SERVED BY MAIL PURSUANT TO THIS PARAGRAPH DUPLICATES OR FACSIMILES THEREOF SHALL BE FILED WITH AND RETAINED BY THE OFFICE OF THE DEPARTMENT SPECIFIED ON SUCH NOTICE OF VIOLATION, SHALL BE DEEMED RECORDS KEPT IN THE ORDINARY COURSE OF BUSINESS AND SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN; IN ADDITION, SUCH NOTICE OF VIOLATION AND SUMMONS SERVED BY MAIL AS HEREIN PROVIDED SHALL HAVE THE SAME FORCE AND EFFECT AND THE RECIPIENT THEREOF SHALL BE SUBJECT TO THE SAME PENALTIES FOR DISREGARD THEREOF AS THOUGH THE SAME WERE PERSONALLY SERVED ON THE PERSON CHARGED WITH THE VIOLATION SET FORTH THEREIN, EXCEPT AS MAY OTHERWISE BE SET FORTH IN THIS ARTICLE, AND SHALL HAVE CLEARLY IMPRINTED THEREON IN EASILY VISIBLE BLOCK LETTERS: YOUR FAILURE TO ANSWER THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR

LICENSE OR DRIVING PRIVILEGE PURSUANT TO S 226 OF THE VEHICLE AND TRAFFIC LAW.

S 3. Subdivision 3 and paragraph a of subdivision 4 of section 227 of the vehicle and traffic law, subdivision 3 as amended by chapter 337 of the laws of 1970 and renumbered by chapter 288 of the laws of 1989 and paragraph a of subdivision 4 as amended by section 7 of part J of chapter 62 of the laws of 2003, are amended to read as follows:

3. After due consideration of the evidence and arguments offered in a contested case, the hearing officer shall determine whether the charges have been established. IN THE CASE OF AN OWNER CHARGED AS SUCH PURSUANT TO THIS ARTICLE, IT SHALL BE A COMPLETE DEFENSE TO SUCH CHARGE THAT A VEHICLE ALLEGED TO BE IN VIOLATION WAS OPERATED WITHOUT THE PERMISSION OF SUCH OWNER OR HIS AGENT AND THE ESTABLISHMENT OF LACK OF PERMISSION SHALL RESULT IN AN ORDER DISMISSING SUCH CHARGE AGAINST SUCH OWNER. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established, either in a contested case or in an uncontested case where there is an appearance before a hearing officer, or if an answer admitting the charge otherwise has been received, an appropriate order shall be entered in the department's records.

a. An order entered upon the failure to answer or appear or after the receipt of an answer admitting the charge or where a determination is made that the charge has been established shall be civil in nature, but shall be treated as a conviction for the purposes of this chapter. The commissioner or his designee may include in such order an imposition of any penalty authorized by any provision of this chapter for a conviction of such violation, except that no penalty [therefore] THEREFOR shall include imprisonment, nor, if monetary, exceed the amount of the fine which could have been imposed had the charge been heard by a court. The driver's license or privileges, or, if the charge involves a violation of section three hundred eighty-five or section four hundred one of this chapter by a registrant who was not the operator of the vehicle, the registration of such vehicle or privilege of operation of any motor vehicle owned by such registrant may be suspended pending the payment of any penalty so imposed; HOWEVER, IN THE CASE OF AN OWNER CHARGED AS SUCH PURSUANT TO THIS ARTICLE, HIS OR HER DRIVER'S LICENSE OR PRIVILEGE SHALL NOT BE AFFECTED BY SUCH ORDER OR DETERMINATION OTHER THAN AS SUSPENSION THEREOF FOR FAILURE TO APPEAR OR PAY AS SET FORTH IN THIS ARTICLE, NOR SHALL A CONVICTION HEREUNDER OF SUCH OWNER AS SUCH RESULT IN DEPARTMENTAL ADMINISTRATIVE SANCTIONS AFFECTING HIS OR HER DRIVING LICENSE OR PRIVILEGE. Any suspension issued pursuant to this paragraph shall be subject to the provisions of paragraph (j-1) of subdivision two of section five hundred three of this chapter.

S 4. Section 1174 of the vehicle and traffic law is amended by adding a new subdivision (b-1) to read as follows:

(B-1) THE DRIVER AND/OR OWNER OF A VEHICLE CHARGED WITH THE VIOLATION OF SUBDIVISION (A) OF THIS SECTION, MAY BE PROSECUTED BASED UPON THE OBSERVATIONS OF THE DRIVER OF A SCHOOL BUS OR PHOTOGRAPHIC EVIDENCE.

S 5. Section 120.00 of the penal law is amended to read as follows:

S 120.00 Assault in the third degree.

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he OR SHE causes such injury to such person or to a third person; or

2. He OR SHE recklessly causes physical injury to another person; or

3. With criminal negligence, he OR SHE causes physical injury to another person by means of a deadly weapon or a dangerous instrument[.]; OR

4. HE OR SHE CAUSES PHYSICAL INJURY TO ANOTHER PERSON WHILE OPERATING A MOTOR VEHICLE IN VIOLATION OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SEVENTY-FOUR OF THE VEHICLE AND TRAFFIC LAW.

Assault in the third degree is a class A misdemeanor.

S 6. Section 125.10 of the penal law is amended to read as follows:

S 125.10 Criminally negligent homicide.

A person is guilty of criminally negligent homicide when[, with]:

1. WITH criminal negligence, he OR SHE causes the death of another person[.]; OR

2. HE OR SHE CAUSES THE DEATH OF ANOTHER PERSON WHILE OPERATING A MOTOR VEHICLE IN VIOLATION OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED SEVENTY-FOUR OF THE VEHICLE AND TRAFFIC LAW.

Criminally negligent homicide is a class E felony.

S 7. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.