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

2636

2009-2010 Regular Sessions

I N S E N A T E

February 25, 2009

Introduced by Sen. LANZA -- 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 a demonstration program relating to the installation of roadside and bus mounted high occupancy vehicle and bus lane enforcement cameras on the Staten Island Expressway; 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:

Section 1. The vehicle and traffic law is amended by adding a new section 223-a to read as follows:

S 223-A. HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT CAMERA DEMONSTRATION PROGRAM. 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER IS HEREBY AUTHORIZED AND EMPOWERED TO ESTABLISH A DEMONSTRATION PROGRAM, ON THE STATEN ISLAND EXPRESSWAY, IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE, BETWEEN THE HOURS OF SEVEN O'CLOCK IN THE ANTE MERIDIAN AND SEVEN O'CLOCK IN THE POST MERIDIAN, OF AN OPERATOR THEREOF TO COMPLY WITH APPLICABLE HIGH OCCUPANCY VEHICLE AND BUS LANE PRIORITY LAWS. THE DEPARTMENT OF TRANSPORTATION, FOR PURPOSES OF IMPLEMENTATION OF SUCH PROGRAM, SHALL BE AUTHORIZED TO INSTALL AND OPERATE ROADSIDE AND BUS MOUNTED BUS LANE ENFORCEMENT CAMERAS ON NO MORE THAN ONE HUNDRED BUSES OR ROADSIDE LOCATIONS OPERATED BY THE DEPARTMENT.

2. 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 ANY RULE OR REGULATION RELATING TO USE OF A HIGH OCCUPANCY VEHICLE AND BUS LANE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT CAMERA; 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

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

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THE UNDERLYING VIOLATION OF ANY RULE OR REGULATION ADOPTED BY THE DEPARTMENT OF TRANSPORTATION OR THE COMMISSIONER.

3. FOR PURPOSES OF THIS SECTION, "OWNER" SHALL MEAN ANY PERSON, CORPORATION, PARTNERSHIP, FIRM, AGENCY, ASSOCIATION, LESSOR, OR ORGANIZATION WHO AT THE TIME OF THE ISSUANCE OF A NOTICE OF VIOLATION IN WHICH A VEHICLE IS OPERATED:

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

(B) HAS TITLE TO SUCH VEHICLE; OR

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

(D) USES SUCH VEHICLE IN ITS VEHICLE RENTING AND/OR LEASING BUSINESS; OR

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

4. FOR PURPOSES OF THIS SECTION, "HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT CAMERA" SHALL MEAN A DEVICE INSTALLED ON A BUS OR A ROADSIDE LOCATION 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 ANY RULE OR REGULATION RELATING TO USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES.

5. A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY THE DEPARTMENT OF TRANSPORTATION, OR A FACSIMILE THEREOF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT CAMERA, 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 IMPOSED PURSUANT TO THIS SECTION.

6. AN OWNER LIABLE FOR A VIOLATION OF ANY RULE OR REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLE AND BUS LANES ADOPTED BY THE DEPARTMENT OF TRANSPORTATION OR THE COMMISSIONER SHALL BE LIABLE FOR MONETARY PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES TO BE PROMULGATED BY THE COMMISSIONER. THE LIABILITY OF THE OWNER PURSUANT TO THIS SECTION SHALL NOT EXCEED THE ESTABLISHED FINE FOR EACH VIOLATION; PROVIDED HOWEVER THAT AN ADDITIONAL PENALTY NOT IN EXCESS OF TWENTY-FIVE DOLLARS SHALL BE IMPOSED FOR EACH VIOLATION FOR THE FAILURE TO RESPOND TO A NOTICE OF LIABILITY WITHIN THE PRESCRIBED TIME PERIOD.

7. AN IMPOSITION OF LIABILITY UNDER 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.

8. (A) A NOTICE OF LIABILITY SHALL BE SENT BY THE DEPARTMENT OF MOTOR VEHICLES WITHIN FIFTEEN DAYS OF THE ALLEGED VIOLATION BY FIRST CLASS MAIL TO EACH PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF ANY RULE OR REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES PURSUANT TO THIS SECTION. PERSONAL SERVICE 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.

(B) A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF ANY RULE OR REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES

ADOPTED BY THE DEPARTMENT OF MOTOR VEHICLES 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.

(C) 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.

(D) THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE DEPARTMENT OF MOTOR VEHICLES OR ITS DESIGNEE.

9. 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 OF ANY RULE OR REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES 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, RETURN RECEIPT REQUESTED, TO THE DEPARTMENT OF MOTOR VEHICLES OR ITS DESIGNEE.

10. IF THE OWNER LIABLE FOR A VIOLATION OF ANY RULE OR REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES 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.

11. AN OWNER OF A VEHICLE TO WHICH A NOTICE OF LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION SHALL NOT BE LIABLE IF THE MOTORIST DRIVING OR STOPPING IN A HIGH OCCUPANCY VEHICLE AND BUS LANE WHILE:

(A) YIELDING RIGHT OF WAY TO AN EMERGENCY VEHICLE WITH ACTIVATED WARNING LIGHTS OR SIREN,

(B) AT THE DIRECTION OF LAW ENFORCEMENT OR EMERGENCY SERVICE OFFICIALS OR OTHER GOVERNMENT OFFICIALS AUTHORIZED TO STOP OR DIRECT TRAFFIC, OR

(C) WHEN AVOIDING ROAD OBSTRUCTIONS OR CONSTRUCTION OR OTHER HAZARDS.

12. AN APPEAL OF AN ADJUDICATION OF LIABILITY PURSUANT TO THIS SECTION MAY BE TAKEN IN ACCORDANCE WITH THE APPLICABLE PROVISIONS RELATING TO ADJUDICATION OF TRAFFIC INFRACTIONS IN SUCH CITY.

13. (A) AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION SHALL NOT BE LIABLE FOR THE VIOLATION OF ANY RULE OR REGULATION RELATING TO THE USE OF HIGH OCCUPANCY VEHICLES AND BUS LANES:

(I) IF PRIOR TO THE VIOLATION THE LESSOR HAS FILED WITH THE BUREAU AND PAID THE REQUIRED FILING FEE IN ACCORDANCE WITH THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-NINE OF THIS TITLE; AND

(II) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE 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.

(B) FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SUBDIVISION SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED IN THIS SECTION.

(C) 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 SUCH VIOLATION PURSUANT TO THIS SECTION AND SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION EIGHT OF THIS SECTION.

14. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE LIABILITY OF AN OPERATOR OF A VEHICLE FOR ANY VIOLATION OF ANY RULE OR REGULATION PURSUANT TO THIS SECTION.

15. ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN AND DECEMBER THIRTY-FIRST, TWO THOUSAND ELEVEN THE COMMISSIONER SHALL SUBMIT A WRITTEN REPORT ON THE DEMONSTRATION PROJECT IMPLEMENTATION PURSUANT TO THIS SECTION TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ON THE RESULTS OF SAID DEMONSTRATION PROGRAM. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

(A) A DESCRIPTION OF THE LOCATIONS WHERE HIGH OCCUPANCY VEHICLE AND BUS LANE ENFORCEMENT CAMERAS WERE USED;

(B) THE NUMBER OF VIOLATIONS RECORDED IN THE AGGREGATE ON A DAILY, WEEKLY AND MONTHLY BASIS;

(C) THE TOTAL NUMBER OF NOTICES OF LIABILITY ISSUED;

(D) THE NUMBER OF FINES AND TOTAL AMOUNT OF FINES PAID AFTER FIRST NOTICE OF LIABILITY;

(E) THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDICATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE;

(F) THE TOTAL AMOUNT OF REVENUE REALIZED; AND

(G) THE QUALITY OF THE ADJUDICATION PROCESS AND ITS RESULTS.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law and shall expire and be deemed repealed three years after such effective date; provided that any rules or regulations necessary for the timely implementation of this act are authorized to be made on or before such effective date.