

2834

2009-2010 Regular Sessions

I N S E N A T E

March 4, 2009

Introduced by Sens. STAVISKY, DIAZ, SAMPSON -- 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 civil liability of vehicle owners for maximum speed limit violations 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:

1 Section 1. The vehicle and traffic law is amended by adding a new
2 section 1180-b to read as follows:
3 S 1180-B. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH MAXI-
4 MUM SPEED LIMITS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH
5 CITY WITH A POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND
6 EMPOWERED TO ADOPT AND AMEND A LOCAL LAW OR ORDINANCE ESTABLISHING A
7 DEMONSTRATION PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A
8 VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH MAXIMUM SPEED
9 LIMITS IN SUCH CITY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.
10 SUCH DEMONSTRATION PROGRAM SHALL EMPOWER A CITY TO INSTALL AND OPERATE
11 PHOTO RADAR DEVICES WITHIN SUCH CITY.
12 (B) IN ANY CITY WHICH HAS ADOPTED A LOCAL LAW OR ORDINANCE PURSUANT TO
13 SUBDIVISION (A) OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE
14 FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED
15 OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN
16 VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS
17 ARTICLE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A
18 PHOTO RADAR SYSTEM; PROVIDED HOWEVER THAT NO OWNER OF A VEHICLE SHALL BE
19 LIABLE FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE THE OPERATOR
20 OF SUCH VEHICLE HAS BEEN CONVICTED OF THE UNDERLYING VIOLATION OF SUBDI-
21 VISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.
22 (C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING
23 PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION,

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

LBD03045-01-9

1 "PHOTO RADAR SYSTEM" SHALL MEAN A SPEED CAMERA INSTALLED TO WORK IN
2 CONJUNCTION WITH DOPPLER RADAR AND A COMPUTER MONITORING SYSTEM WHICH
3 AUTOMATICALLY PRODUCES TWO OR MORE PHOTOGRAPHS, TWO OR MORE MICROPHOTO-
4 GRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH VEHICLE AT THE TIME
5 IT IS USED OR OPERATED IN VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN
6 HUNDRED EIGHTY OF THIS ARTICLE.

7 (D) A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY
8 THE CITY IN WHICH THE CHARGED VIOLATION OCCURRED, OR A FACSIMILE THERE-
9 OF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE OR
10 OTHER RECORDED IMAGES PRODUCED BY A PHOTO RADAR SYSTEM, SHALL BE PRIMA
11 FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN. ANY PHOTOGRAPHS, MICRO-
12 PHOTOGRAPHS, VIDEOTAPE OR OTHER RECORDED IMAGES EVIDENCING SUCH A
13 VIOLATION SHALL BE AVAILABLE FOR INSPECTION IN ANY PROCEEDING TO ADJUDI-
14 CATE THE LIABILITY FOR SUCH VIOLATION PURSUANT TO A LOCAL LAW OR ORDI-
15 NANCE ADOPTED PURSUANT TO THIS SECTION.

16 (E) AN OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (D) OF SECTION
17 ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO A LOCAL LAW OR ORDI-
18 NANCE ADOPTED PURSUANT TO THIS SECTION SHALL BE LIABLE FOR MONETARY
19 PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES TO BE SET
20 FORTH IN SUCH LOCAL LAW OR ORDINANCE, EXCEPT THAT IN A CITY WHICH, BY
21 LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION OF SUCH OWNER LIABILITY BY A
22 PARKING VIOLATIONS BUREAU, SUCH SCHEDULE SHALL BE PROMULGATED BY SUCH
23 BUREAU. THE LIABILITY OF THE OWNER PURSUANT TO THIS SECTION SHALL NOT
24 EXCEED ONE HUNDRED DOLLARS FOR EACH VIOLATION; PROVIDED, HOWEVER, THAT
25 SUCH LOCAL LAW OR ORDINANCE MAY PROVIDE FOR AN ADDITIONAL PENALTY NOT IN
26 EXCESS OF TWENTY-FIVE DOLLARS FOR EACH VIOLATION FOR THE FAILURE TO
27 RESPOND TO A NOTICE OF LIABILITY WITHIN THE PRESCRIBED TIME PERIOD.

28 (F) AN IMPOSITION OF LIABILITY UNDER A LOCAL LAW OR ORDINANCE ADOPTED
29 PURSUANT TO THIS SECTION SHALL NOT BE DEEMED A CONVICTION AS AN OPERATOR
30 AND SHALL NOT BE MADE PART OF THE OPERATING RECORD OF THE PERSON UPON
31 WHOM SUCH LIABILITY IS IMPOSED NOR SHALL IT BE USED FOR INSURANCE
32 PURPOSES IN THE PROVISION OF MOTOR VEHICLE INSURANCE COVERAGE.

33 (G) 1. A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL TO EACH
34 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SUBDIVISION
35 (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS
36 SECTION. PERSONAL DELIVERY ON THE OWNER SHALL NOT BE REQUIRED. A MANUAL
37 OR AUTOMATIC RECORD OF MAILING PREPARED IN THE ORDINARY COURSE OF BUSI-
38 NESS SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.

39 2. A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE
40 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF SUBDIVISION
41 (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS
42 SECTION, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH
43 VIOLATION, THE LOCATION WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND
44 TIME OF SUCH VIOLATION AND THE IDENTIFICATION NUMBER OF THE CAMERA WHICH
45 RECORDED THE VIOLATION OR OTHER DOCUMENT LOCATOR NUMBER.

46 3. THE NOTICE OF LIABILITY SHALL CONTAIN INFORMATION ADVISING THE
47 PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH HE OR SHE MAY CONTEST
48 THE LIABILITY ALLEGED IN THE NOTICE. SUCH NOTICE OF LIABILITY SHALL ALSO
49 CONTAIN A WARNING TO ADVISE THE PERSONS CHARGED THAT FAILURE TO CONTEST
50 IN THE MANNER AND TIME PROVIDED SHALL BE DEEMED AN ADMISSION OF LIABIL-
51 ITY AND THAT A DEFAULT JUDGMENT MAY BE ENTERED THEREON.

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

(H) ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION SHALL BE BY A TRAFFIC VIOLATIONS BUREAU 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 WHICH HAS ESTABLISHED AN ADMINISTRATIVE TRIBUNAL TO HEAR AND DETERMINE COMPLAINTS OF TRAFFIC INFRACTIONS CONSTITUTING PARKING, STANDING OR STOPPING VIOLATIONS MAY, BY LOCAL LAW, AUTHORIZE SUCH ADJUDICATION BY SUCH TRIBUNAL.

(I) 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 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 TRAFFIC VIOLATIONS BUREAU, COURT HAVING JURISDICTION OR PARKING VIOLATIONS BUREAU.

(J) 1. IN A CITY WHERE THE ADJUDICATION OF LIABILITY IMPOSED UPON OWNERS PURSUANT TO THIS SECTION IS BY A TRAFFIC VIOLATIONS BUREAU 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 EIGHTY OF THIS ARTICLE, PROVIDED THAT HE OR SHE SENDS TO THE TRAFFIC VIOLATIONS BUREAU 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 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 EIGHTY 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 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 EIGHTY 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

1 OTHER CONTRACT DOCUMENT, AS MAY BE REASONABLY REQUIRED BY THE BUREAU
2 PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

3 (II) FAILURE TO COMPLY WITH CLAUSE (B) OF SUBPARAGRAPH (I) OF THIS
4 PARAGRAPH SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED IN
5 THIS SECTION.

6 (III) WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS PARAGRAPH,
7 THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION SHALL BE DEEMED
8 TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS SECTION, SHALL BE
9 SUBJECT TO LIABILITY FOR SUCH VIOLATION PURSUANT TO THIS SECTION AND
10 SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION (G) OF THIS
11 SECTION.

12 (K) IF THE OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (D) OF SECTION
13 ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS SECTION WAS NOT
14 THE OPERATOR OF THE VEHICLE AT THE TIME OF THE VIOLATION, THE OWNER MAY
15 MAINTAIN AN ACTION FOR INDEMNIFICATION AGAINST THE OPERATOR.

16 (L) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT THE LIABILITY
17 OF AN OPERATOR OF A VEHICLE FOR ANY VIOLATION OF SUBDIVISION (D) OF
18 SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.

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

23 (N) ANY CITY WHICH ADOPTS A DEMONSTRATION PROGRAM PURSUANT TO SUBDIVI-
24 SION (A) OF THIS SECTION SHALL SUBMIT A REPORT ON THE RESULTS OF THE USE
25 OF A PHOTO RADAR SYSTEM TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE
26 SENATE AND THE SPEAKER OF THE ASSEMBLY BY MARCH FIRST, TWO THOUSAND
27 THIRTEEN. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO:

28 1. A DESCRIPTION OF THE LOCATIONS WHERE PHOTO RADAR SYSTEMS WERE USED;

29 2. THE NUMBER OF VIOLATIONS RECORDED AT EACH SUCH LOCATION AND IN THE
30 AGGREGATE ON A DAILY, WEEKLY AND MONTHLY BASIS;

31 3. THE TOTAL NUMBER OF NOTICES OF LIABILITY ISSUED;

32 4. THE NUMBER OF FINES AND TOTAL AMOUNT OF FINES PAID AFTER FIRST
33 NOTICE OF LIABILITY;

34 5. THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDI-
35 CATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE;

36 6. THE TOTAL AMOUNT OF REVENUE REALIZED BY SUCH CITY; AND

37 7. QUALITY OF THE ADJUDICATION PROCESS AND ITS RESULTS.

38 S 2. This act shall take effect on the thirtieth day after it shall
39 have become a law and shall remain in full force and effect for three
40 years after such effective date when upon such date the provisions of
41 this act shall be deemed repealed; provided, however, any such local
42 laws as may be enacted pursuant to this act shall remain in full force
43 and effect only until the expiration of three years from such effective
44 date.