

1188

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

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

AN ACT to amend the vehicle and traffic law, in relation to allowing counties to establish demonstration programs imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications

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

1 Section 1. Section 1111-a of the vehicle and traffic law, as added by
2 chapter 746 of the laws of 1988, subdivisions (a), (b), (c), (d), (k)
3 and (m) as amended and subdivision (n) as added by chapter 658 of the
4 laws of 2006, paragraph 1 of subdivision (a) as amended by chapter 18 of
5 the laws of 2009 and subdivision (e) as amended by chapter 479 of the
6 laws of 1994, is amended to read as follows:
7 S 1111-a. Owner liability for failure of operator to comply with
8 traffic-control indications. (a) 1. Notwithstanding any other provision
9 of law, each city with a population of one million or more AND COUNTY AS
10 PROVIDED IN SUBDIVISION (O) OF THIS SECTION is hereby authorized and
11 empowered to adopt and amend a local law or ordinance establishing a
12 demonstration program imposing monetary liability on the owner of a
13 vehicle for failure of an operator thereof to comply with traffic-control
14 indications in such city OR COUNTY in accordance with the
15 provisions of this section. Such demonstration program shall empower a
16 city OR COUNTY to install and operate traffic-control signal photo
17 violation-monitoring devices at no more than one hundred fifty intersections
18 within such city at any one time AND AT NO MORE THAN
19 TWENTY-FIVE PERCENT OF INTERSECTIONS WITHIN SUCH COUNTY AT ANY ONE TIME.
20 2. Such demonstration program shall utilize necessary technologies to
21 ensure, to the extent practicable, that photographs produced by such
22 traffic-control signal photo violation-monitoring systems shall not

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

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1 include images that identify the driver, the passengers, or the contents
2 of the vehicle. Provided, however, that no notice of liability issued
3 pursuant to this section shall be dismissed solely because a photograph
4 or photographs allow for the identification of the contents of a vehi-
5 cle, provided that such city OR COUNTY has made a reasonable effort to
6 comply with the provisions of this paragraph.

7 (b) In any city OR COUNTY which has adopted a local law or ordinance
8 pursuant to subdivision (a) of this section, the owner of a vehicle
9 shall be liable for a penalty imposed pursuant to this section if such
10 vehicle was used or operated with the permission of the owner, express
11 or implied, in violation of subdivision (d) of section eleven hundred
12 eleven of this article, and such violation is evidenced by information
13 obtained from a traffic-control signal photo violation-monitoring
14 system; provided however that no owner of a vehicle shall be liable for
15 a penalty imposed pursuant to this section where the operator of such
16 vehicle has been convicted of the underlying violation of subdivision
17 (d) of section eleven hundred eleven of this article.

18 (c) For purposes of this section, "owner" shall have the meaning
19 provided in article two-B of this chapter. For purposes of this section,
20 "traffic-control signal photo violation-monitoring system" shall mean a
21 [vehicle sensor installed to work in conjunction with a traffic-control
22 signal which automatically produces two or more photographs, two or more
23 microphotographs, a videotape or other recorded images of each vehicle
24 at the time it is used or operated in violation of subdivision (d) of
25 section eleven hundred eleven of this article] SYSTEM UTILIZING
26 RADAR-BASED DOWN-THE-ROAD SPEED MEASUREMENT METHODS IN WHICH A PHOTO-
27 GRAPH IS TAKEN COINCIDENT TO, OR AS NEAR AS POSSIBLE TO, THE LOCATION
28 OF, RECORDED SPEED MEASUREMENTS; PROVIDED HOWEVER, THAT ONLY PHOTOGRAPHS
29 OF THE REAR OF THE VEHICLE SHALL BE TAKEN AND SUCH PHOTOGRAPHS AND SPEED
30 MEASUREMENT SHALL NOT BE UTILIZED FOR SPEED ENFORCEMENT PURPOSES. SUCH
31 DEMONSTRATION PROGRAM SHALL USE SYSTEMS THAT PROVIDE AN AUTOMATED
32 CONCURRENT SECONDARY MEASUREMENT OF VEHICLE SPEED AS VERIFICATION. IN
33 ADDITION, THESE SYSTEMS SHALL BE CAPABLE OF MAKING SEPARATE AND DISTINCT
34 MEASUREMENTS OF MULTIPLE VEHICLES WITHIN THE RANGE OF DETECTION. SUCH
35 DEMONSTRATION PROGRAM SHALL NOT UTILIZE VEHICLE SENSORS OF THE FOLLOWING
36 TYPES: VIDEO, VIRTUAL LOOPS, LASER-BASED, ACROSS-THE-ROAD RADAR,
37 IN-THE-ROAD EMBEDDED OR SURFACE MOUNT OR ADDITIONAL ROAD MARKINGS. SUCH
38 DEMONSTRATION PROGRAM SHALL UTILIZE CORE TECHNOLOGY DATABASE AND APPLI-
39 CATION PROTOCOLS FOR TICKET-PROCESSING SYSTEMS COMPATIBLE WITH STATE
40 AGENCY SYSTEMS.

41 (d) A certificate, sworn to or affirmed by a technician employed by
42 the city OR COUNTY in which the charged violation occurred, or a facsim-
43 ile thereof, based upon inspection of photographs, microphotographs,
44 videotape or other recorded images produced by a traffic-control signal
45 photo violation-monitoring system, shall be prima facie evidence of the
46 facts contained therein. Any photographs, microphotographs, videotape or
47 other recorded images evidencing such a violation shall be available for
48 inspection in any proceeding to adjudicate the liability for such
49 violation pursuant to a local law or ordinance adopted pursuant to this
50 section.

51 (e) An owner liable for a violation of subdivision (d) of section
52 eleven hundred eleven of this article pursuant to a local law or ordi-
53 nance adopted pursuant to this section shall be liable for monetary
54 penalties in accordance with a schedule of fines and penalties to be set
55 forth in such local law or ordinance, except that: (I) in a city which,
56 by local law, has authorized the adjudication of such owner liability by

1 a parking violations bureau, such schedule shall be promulgated by such
2 bureau; (II) IN ANY COUNTY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJU-
3 DICATION OF SUCH OWNER LIABILITY BY A TRAFFIC AND PARKING VIOLATIONS
4 AGENCY, SUCH SCHEDULE MAY BE PROMULGATED BY THE BOARD OF JUDGES OF THE
5 DISTRICT COURT FOR SUCH COUNTY, PURSUANT TO SUBDIVISION ONE OF SECTION
6 TWENTY-FOUR HUNDRED EIGHT OR SUBDIVISION ONE OF SECTION TWENTY-FOUR
7 HUNDRED ELEVEN OF THE UNIFORM DISTRICT COURT ACT; AND (III) IN ANY COUN-
8 TY WHICH, NOTWITHSTANDING ANY LAW TO THE CONTRARY, BY LOCAL LAW, HAS
9 DEVELOPED AN ADJUDICATION PROCESS APPROVED BY THE DIVISION OF CRIMINAL
10 JUSTICE SERVICES, WHICH RESULTS IN ALL REVENUE BEING RETAINED BY SUCH
11 COUNTIES AFTER ALL ELIGIBLE SURCHARGES ARE PAID TO THE STATE, SUCH SCHE-
12 DULE SHALL BE PROMULGATED IN ACCORDANCE WITH THE PROVISIONS OF THE
13 APPROVED PROCESS. The liability of the owner pursuant to this section
14 shall not exceed fifty dollars for each violation; provided, however,
15 that such local law or ordinance may provide for an additional penalty
16 not in excess of twenty-five dollars for each violation for the failure
17 to respond to a notice of liability within the prescribed time period.

18 (f) An imposition of liability under a local law or ordinance adopted
19 pursuant to this section shall not be deemed a conviction as an operator
20 and shall not be made part of the operating record of the person upon
21 whom such liability is imposed nor shall it be used for insurance
22 purposes in the provision of motor vehicle insurance coverage.

23 (g) 1. A notice of liability shall be sent by first class mail to each
24 person alleged to be liable as an owner for a violation of subdivision
25 (d) of section eleven hundred eleven of this article pursuant to this
26 section. Personal delivery on the owner shall not be required. A manual
27 or automatic record of mailing prepared in the ordinary course of busi-
28 ness shall be prima facie evidence of the facts contained therein.

29 2. A notice of liability shall contain the name and address of the
30 person alleged to be liable as an owner for a violation of subdivision
31 (d) of section eleven hundred eleven of this article pursuant to this
32 section, the registration number of the vehicle involved in such
33 violation, the location where such violation took place, the date and
34 time of such violation and the identification number of the camera which
35 recorded the violation or other document locator number.

36 3. The notice of liability shall contain information advising the
37 person charged of the manner and the time in which he OR SHE may contest
38 the liability alleged in the notice. Such notice of liability shall also
39 contain a warning to advise the persons charged that failure to contest
40 in the manner and time provided shall be deemed an admission of liabil-
41 ity and that a default judgment may be entered thereon.

42 4. The notice of liability shall be prepared and mailed by the city OR
43 COUNTY having jurisdiction over the intersection where the violation
44 occurred, or by any other entity authorized by the city OR COUNTY to
45 prepare and mail such notification of violation.

46 (h) Adjudication of the liability imposed upon owners by this section
47 shall be by a traffic violations bureau established pursuant to section
48 three hundred seventy of the general municipal law or BY A TRAFFIC AND
49 PARKING VIOLATIONS AGENCY, OR BY A PROCESS CREATED BY LOCAL LAW AND
50 APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES OR, if there be
51 none, by the court having jurisdiction over traffic infractions, except
52 that any city which has established an administrative tribunal to hear
53 and determine complaints of traffic infractions constituting parking,
54 standing or stopping violations may, by local law, authorize such adju-
55 dication by such tribunal.

1 (i) If an owner receives a notice of liability pursuant to this
2 section for any time period during which the vehicle was reported to the
3 police department as having been stolen, it shall be a valid defense to
4 an allegation of liability for a violation of subdivision (d) of section
5 eleven hundred eleven of this article pursuant to this section that the
6 vehicle had been reported to the police as stolen prior to the time the
7 violation occurred and had not been recovered by such time. For purposes
8 of asserting the defense provided by this subdivision it shall be suffi-
9 cient that a certified copy of the police report on the stolen vehicle
10 be sent by first class mail to the traffic violations bureau, court
11 having jurisdiction or parking violations bureau.

12 (j) 1. In a city OR COUNTY where the adjudication of liability imposed
13 upon owners pursuant to this section is by a traffic violations bureau
14 or BY A TRAFFIC AND PARKING VIOLATIONS AGENCY, OR BY A PROCESS CREATED
15 BY LOCAL LAW AND APPROVED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES
16 OR a court having jurisdiction, an owner who is a lessor of a vehicle to
17 which a notice of liability was issued pursuant to subdivision (g) of
18 this section shall not be liable for the violation of subdivision (d) of
19 section eleven hundred eleven of this article, provided that he or she
20 sends to the traffic violations bureau, A TRAFFIC AND PARKING VIOLATIONS
21 AGENCY, OR THROUGH OTHER PROCESS AS CREATED BY LOCAL LAW AND APPROVED BY
22 THE DIVISION OF CRIMINAL JUSTICE SERVICES or A court having jurisdiction
23 a copy of the rental, lease or other such contract document covering
24 such vehicle on the date of the violation, with the name and address of
25 the lessee clearly legible, within thirty-seven days after receiving
26 notice from the bureau, TRAFFIC AND PARKING VIOLATIONS AGENCY OR THROUGH
27 OTHER PROCESS AS CREATED BY LOCAL LAW AND APPROVED BY THE DIVISION OF
28 CRIMINAL JUSTICE SERVICES or court of the date and time of such
29 violation, together with the other information contained in the original
30 notice of liability. Failure to send such information within such thir-
31 ty-seven day time period shall render the owner liable for the penalty
32 prescribed by this section. Where the lessor complies with the
33 provisions of this paragraph, the lessee of such vehicle on the date of
34 such violation shall be deemed to be the owner of such vehicle for
35 purposes of this section, shall be subject to liability for the
36 violation of subdivision (d) of section eleven hundred eleven of this
37 article pursuant to this section and shall be sent a notice of liability
38 pursuant to subdivision (g) of this section.

39 2. (i) In a city which, by local law, has authorized the adjudication
40 of liability imposed upon owners by this section by a parking violations
41 bureau, an owner who is a lessor of a vehicle to which a notice of
42 liability was issued pursuant to subdivision (g) of this section shall
43 not be liable for the violation of subdivision (d) of section eleven
44 hundred eleven of this article, provided that:

45 (A) prior to the violation, the lessor has filed with the bureau in
46 accordance with the provisions of section two hundred thirty-nine of
47 this chapter; and

48 (B) within thirty-seven days after receiving notice from the bureau of
49 the date and time of a liability, together with the other information
50 contained in the original notice of liability, the lessor submits to the
51 bureau the correct name and address of the lessee of the vehicle identi-
52 fied in the notice of liability at the time of such violation, together
53 with such other additional information contained in the rental, lease or
54 other contract document, as may be reasonably required by the bureau
55 pursuant to regulations that may be promulgated for such purpose.

1 (ii) Failure to comply with clause (B) of subparagraph (i) of this
2 paragraph shall render the owner liable for the penalty prescribed in
3 this section.

4 (iii) Where the lessor complies with the provisions of this paragraph,
5 the lessee of such vehicle on the date of such violation shall be deemed
6 to be the owner of such vehicle for purposes of this section, shall be
7 subject to liability for such violation pursuant to this section and
8 shall be sent a notice of liability pursuant to subdivision (g) of this
9 section.

10 (k) 1. If the owner liable for a violation of subdivision (d) of
11 section eleven hundred eleven of this article pursuant to this section
12 was not the operator of the vehicle at the time of the violation, the
13 owner may maintain an action for indemnification against the operator.

14 2. Notwithstanding any other provision of this section, no owner of a
15 vehicle shall be subject to a monetary fine imposed pursuant to this
16 section if the operator of such vehicle was operating such vehicle with-
17 out the consent of the owner at the time such operator failed to obey a
18 traffic-control indication. For purposes of this subdivision there shall
19 be a presumption that the operator of such vehicle was operating such
20 vehicle with the consent of the owner at the time such operator failed
21 to obey a traffic-control indication.

22 (l) Nothing in this section shall be construed to limit the liability
23 of an operator of a vehicle for any violation of subdivision (d) of
24 section eleven hundred eleven of this article.

25 (m) In any city OR COUNTY which adopts a demonstration program pursu-
26 ant to subdivision (a) of this section, such city OR COUNTY shall submit
27 an annual report on the results of the use of a traffic-control signal
28 photo violation-monitoring system to the governor, the temporary presi-
29 dent of the senate and the speaker of the assembly on or before June
30 first, two thousand seven and on the same date in each succeeding year
31 in which the demonstration program is operable. Such report shall
32 include, but not be limited to:

33 1. a description of the locations where traffic-control signal photo
34 violation-monitoring systems were used;

35 2. within SUCH COUNTY OR SUCH CITY OR each borough of such city WITH A
36 POPULATION OVER ONE MILLION, the aggregate number, type and severity of
37 accidents reported at intersections where a traffic-control signal photo
38 violation-monitoring system is used for the year preceding the installa-
39 tion of such system, to the extent the information is maintained by the
40 department of motor vehicles of this state;

41 3. within SUCH COUNTY OR SUCH CITY OR each borough of such city WITH A
42 POPULATION OVER ONE MILLION, the aggregate number, type and severity of
43 accidents reported at intersections where a traffic-control signal photo
44 violation-monitoring system is used, to the extent the information is
45 maintained by the department of motor vehicles of this state;

46 4. the number of violations recorded at each intersection where a
47 traffic-control signal photo violation-monitoring system is used and in
48 the aggregate on a daily, weekly and monthly basis;

49 5. the total number of notices of liability issued for violations
50 recorded by such systems;

51 6. the number of fines and total amount of fines paid after first
52 notice of liability issued for violations recorded by such systems;

53 7. the number of violations adjudicated and results of such adjudi-
54 cations including breakdowns of dispositions made for violations
55 recorded by such systems;

1 8. the total amount of revenue realized by such city OR COUNTY from
2 such adjudications;

3 9. expenses incurred by such city OR COUNTY in connection with the
4 program; and

5 10. quality of the adjudication process and its results.

6 (n) It shall be a defense to any prosecution for a violation of subdi-
7 vision (d) of section eleven hundred eleven of this article pursuant to
8 a local law or ordinance adopted pursuant to this section that such
9 traffic-control indications were malfunctioning at the time of the
10 alleged violation.

11 (O) ANY COUNTY WISHING TO ESTABLISH A DEMONSTRATION PROGRAM PURSUANT
12 TO THE PROVISIONS OF THIS SECTION MAY DO SO BY ADOPTING OR AMENDING A
13 LOCAL LAW OR ORDINANCE AUTHORIZING AND ESTABLISHING SUCH PROGRAM,
14 ACCORDING TO THE FOLLOWING SCHEDULE:

15 1. EFFECTIVE OCTOBER FIRST, TWO THOUSAND ELEVEN, ANY COUNTY WITH A
16 POPULATION OF ONE MILLION OR MORE SHALL BE ELIGIBLE;

17 2. EFFECTIVE JANUARY FIRST, TWO THOUSAND TWELVE, ANY COUNTY WITH A
18 POPULATION OF FIVE HUNDRED THOUSAND OR MORE SHALL BE ELIGIBLE; AND

19 3. EFFECTIVE JULY FIRST, TWO THOUSAND TWELVE, ANY COUNTY OF ANY POPU-
20 LATION SHALL BE ELIGIBLE;

21 NO COUNTY SHALL OPERATE A TRAFFIC CONTROL SIGNAL PHOTO VIOLATION-MONI-
22 TORING SYSTEM IMPOSING LIABILITY ON THE OWNER OF A VEHICLE EXCEPT AS
23 PROVIDED IN THIS SECTION.

24 (P) ANY COUNTY ESTABLISHING A DEMONSTRATION PROGRAM PURSUANT TO THE
25 PROVISIONS OF THIS SECTION MAY, UPON PRIOR APPROVAL OF THE DIVISION OF
26 CRIMINAL JUSTICE SERVICES, ESTABLISH ITS OWN PROCESS FOR ADJUDICATION OF
27 LIABILITY IMPOSED UPON OWNERS PURSUANT TO THIS SECTION.

28 S 2. This act shall take effect immediately; provided, however, the
29 amendments to section 1111-a of the vehicle and traffic law made by
30 section one of this act shall not affect the repeal of such section and
31 shall be deemed repealed therewith.