

8533

2011-2012 Regular Sessions

I N A S S E M B L Y

July 13, 2011

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

AN ACT to amend the vehicle and traffic law and the public officers law, in relation to establishing in the city of New York a demonstration program to enforce street cleaning parking rules by means of street cleaning vehicle photo devices

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

1 Section 1. Paragraph f of subdivision 1 of section 239 of the vehicle
2 and traffic law, as amended by section 4 of part II of chapter 59 of the
3 laws of 2010, is amended to read as follows:

4 f. "Notice of violation" means a notice of violation as defined in
5 subdivision nine of section two hundred thirty-seven of this article,
6 but shall not be deemed to include a notice of liability issued pursuant
7 to authorization set forth in section eleven hundred eleven-a of this
8 chapter or sections eleven hundred eleven-b of this chapter as added by
9 sections sixteen of chapters twenty, twenty-one, and twenty-two of the
10 laws of two thousand nine, and shall not be deemed to include a notice
11 of liability issued pursuant to section two thousand nine hundred eight-
12 y-five of the public authorities law and sections sixteen-a, sixteen-b
13 and sixteen-c of chapter seven hundred seventy-four of the laws of nine-
14 teen hundred fifty and shall not be deemed to include a notice of
15 liability issued pursuant to section eleven hundred eleven-c of this
16 chapter AND SHALL NOT BE DEEMED TO INCLUDE A NOTICE OF LIABILITY ISSUED
17 PURSUANT TO SECTION ELEVEN HUNDRED ELEVEN-D OF THIS CHAPTER.

18 S 1-a. Paragraph f of subdivision 1 of section 239 of the vehicle and
19 traffic law, as amended by section 4-a of part II of chapter 59 of the
20 laws of 2010, is amended to read as follows:

21 f. "Notice of violation" means a notice of violation as defined in
22 subdivision nine of section two hundred thirty-seven of this article but
23 shall not be deemed to include a notice of liability issued pursuant to

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

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1 authorization set forth in sections eleven hundred eleven-b of this
2 chapter as added by sections sixteen of chapters twenty, twenty-one, and
3 twenty-two of the laws of two thousand nine and shall not be deemed to
4 include a notice of liability issued pursuant to section eleven hundred
5 eleven-c of this chapter AND SHALL NOT BE DEEMED TO INCLUDE A NOTICE OF
6 LIABILITY ISSUED PURSUANT TO SECTION ELEVEN HUNDRED ELEVEN-D OF THIS
7 CHAPTER.

8 S 1-b. Paragraph f of subdivision 1 of section 239 of the vehicle and
9 traffic law, as amended by section 4-b of part II of chapter 59 of the
10 laws of 2010, is amended to read as follows:

11 f. "Notice of violation" means a notice of violation as defined in
12 subdivision nine of section two hundred thirty-seven of this article and
13 shall not be deemed to include a notice of liability issued pursuant to
14 section eleven hundred eleven-c of this chapter AND SHALL NOT BE DEEMED
15 TO INCLUDE A NOTICE OF LIABILITY ISSUED PURSUANT TO SECTION ELEVEN
16 HUNDRED ELEVEN-D OF THIS CHAPTER.

17 S 1-c. Paragraph f of subdivision 1 of section 239 of the vehicle and
18 traffic law, as added by chapter 180 of the laws of 1980, is amended to
19 read as follows:

20 f. "Notice of violation" means a notice of violation as defined in
21 subdivision nine of section two hundred thirty-seven of this article AND
22 SHALL NOT BE DEEMED TO INCLUDE A NOTICE OF LIABILITY ISSUED PURSUANT TO
23 SECTION ELEVEN HUNDRED ELEVEN-D OF THIS CHAPTER.

24 S 2. Subdivision 4 of section 239 of the vehicle and traffic law, as
25 amended by chapter 379 of the laws of 1992, is amended to read as
26 follows:

27 4. Applicability. The provisions of paragraph b of subdivision two and
28 subdivision three of this section shall not be applicable to determi-
29 nations of owner liability for the failure of an operator to comply with
30 subdivision (d) of section eleven hundred eleven of this chapter and
31 shall not be applicable to determinations of owner liability imposed
32 pursuant to section two thousand nine hundred eighty-five of the public
33 authorities law and sections sixteen-a, sixteen-b and sixteen-c of chap-
34 ter seven hundred seventy-four of the laws of nineteen hundred fifty AND
35 SHALL NOT BE APPLICABLE TO DETERMINATIONS OF OWNER LIABILITY IN ACCORD-
36 ANCE WITH SECTION ELEVEN HUNDRED ELEVEN-D OF THIS CHAPTER FOR VIOLATIONS
37 OF STREET CLEANING PARKING RULES AS DEFINED IN SUCH SECTION.

38 S 2-a. Section 239 of the vehicle and traffic law is amended by adding
39 a new subdivision 4 to read as follows:

40 4. APPLICABILITY. THE PROVISIONS OF PARAGRAPH B OF SUBDIVISION TWO AND
41 SUBDIVISION THREE OF THIS SECTION SHALL NOT BE APPLICABLE TO DETERMI-
42 NATIONS OF OWNER LIABILITY IN ACCORDANCE WITH SECTION ELEVEN HUNDRED
43 ELEVEN-D OF THIS CHAPTER FOR VIOLATIONS OF STREET CLEANING PARKING RULES
44 AS DEFINED IN SUCH SECTION.

45 S 3. The vehicle and traffic law is amended by adding a new section
46 1111-d to read as follows:

47 S 1111-D. OWNER LIABILITY FOR FAILURE TO COMPLY WITH STREET CLEANING
48 PARKING RULES. (A) 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE
49 CITY OF NEW YORK IS HEREBY AUTHORIZED AND EMPOWERED TO ESTABLISH A
50 PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAIL-
51 URE TO COMPLY WITH STREET CLEANING PARKING RULES IN SUCH CITY IN ACCORD-
52 ANCE WITH THE PROVISIONS OF THIS SECTION. THE NEW YORK CITY DEPARTMENT
53 OF SANITATION, FOR PURPOSES OF THE IMPLEMENTATION OF SUCH PROGRAM, SHALL
54 OPERATE STREET CLEANING VEHICLE PHOTO DEVICES ON STREET CLEANING VEHI-
55 CLES ALONG ONE SELECT STREET CLEANING ROUTE IN NO MORE THAN TWENTY-FIVE
56 SANITATION SERVICE DISTRICTS IN SUCH CITY. SUCH STREET CLEANING VEHICLE

1 PHOTO DEVICES SHALL BE ACTIVATED AT LOCATIONS DETERMINED BY SUCH DEPART-
2 MENT.

3 2. THE CITY OF NEW YORK SHALL ADOPT AND ENFORCE MEASURES:

4 (I) TO ENSURE, TO THE EXTENT PRACTICABLE, THAT PHOTOGRAPHS PRODUCED BY
5 SUCH STREET CLEANING VEHICLE PHOTO DEVICES SHALL NOT INCLUDE IMAGES THAT
6 IDENTIFY ANY PERSON OR PERSONS WHO MAY BE OCCUPYING THE VEHICLE, OR THE
7 CONTENTS OF THE VEHICLE. HOWEVER, A NOTICE OF LIABILITY ISSUED PURSUANT
8 TO THIS SECTION SHALL NOT BE DISMISSED SOLELY BECAUSE A PHOTOGRAPH OR
9 PHOTOGRAPHS ALLOW FOR THE IDENTIFICATION OF A PERSON OR PERSONS WHO MAY
10 BE OCCUPYING THE VEHICLE OR THE CONTENTS OF A VEHICLE;

11 (II) TO UPGRADE SIGNAGE AT REGULAR INTERVALS WITHIN SELECT STREET
12 CLEANING ROUTES STATING THAT STREET CLEANING VEHICLE PHOTO DEVICES ARE
13 USED TO ENFORCE STREET CLEANING PARKING RULES ALONG SUCH ROUTES; AND

14 (III) TO PROHIBIT THE USE OR DISSEMINATION OF VEHICLES' LICENSE PLATE
15 INFORMATION AND OTHER INFORMATION AND IMAGES CAPTURED BY STREET CLEANING
16 VEHICLE PHOTO DEVICES EXCEPT: (A) AS REQUIRED TO ESTABLISH LIABILITY
17 UNDER THIS SECTION OR COLLECT PAYMENT OF PENALTIES; (B) AS REQUIRED BY
18 COURT ORDER; OR (C) AS OTHERWISE REQUIRED BY LAW.

19 (B) IF THE CITY OF NEW YORK HAS ESTABLISHED A PROGRAM PURSUANT TO
20 SUBDIVISION (A) OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE
21 FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS
22 PARKED IN VIOLATION OF ANY STREET CLEANING PARKING RULE OF SUCH CITY AND
23 SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A STREET CLEAN-
24 ING VEHICLE PHOTO DEVICE.

25 (C) FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE
26 FOLLOWING MEANINGS:

27 1. "OWNER" SHALL HAVE THE MEANING PROVIDED IN ARTICLE TWO-B OF THIS
28 CHAPTER.

29 2. "SANITATION SERVICE DISTRICT" SHALL MEAN A GEOGRAPHIC AREA THAT
30 LIES WITHIN THE BOUNDARIES OF A SINGLE BOROUGH OF THE CITY OF NEW YORK
31 AND THAT IS COTERMINOUS WITH A COMMUNITY DISTRICT PURSUANT TO CHAPTER
32 SIXTY-NINE OF THE NEW YORK CITY CHARTER.

33 3. "SELECT STREET CLEANING ROUTES" SHALL MEAN STREET CLEANING ROUTES
34 DESIGNATED BY THE NEW YORK CITY DEPARTMENT OF SANITATION THAT INCLUDE
35 UPGRADED SIGNAGE STATING THAT STREET CLEANING VEHICLE PHOTO DEVICES ARE
36 USED TO ENFORCE STREET CLEANING PARKING RULES.

37 4. "STREET CLEANING PARKING RULES" SHALL MEAN THE PROHIBITED PARKING
38 OF ANY VEHICLE ON ONE SIDE OF THE STREET TO ALLOW FOR CLEANING BY THE
39 NEW YORK CITY DEPARTMENT OF SANITATION DURING DESIGNATED TIME PERIODS AS
40 POSTED BY SIGN.

41 5. "STREET CLEANING VEHICLE" SHALL MEAN ANY VEHICLE OPERATED BY THE
42 NEW YORK CITY DEPARTMENT OF SANITATION THAT IS DESIGNED TO WASH DIRT AND
43 GRIME, AND REMOVE LITTER AND DEBRIS, FROM THE STREET SURFACE.

44 6. "STREET CLEANING VEHICLE PHOTO DEVICE" SHALL MEAN A DEVICE THAT IS
45 MOUNTED ON A STREET CLEANING VEHICLE, IS CAPABLE OF OPERATING INDEPEND-
46 ENTLY OF AN ENFORCEMENT OFFICER AND PRODUCES ONE OR MORE IMAGES OF EACH
47 VEHICLE AT THE TIME IT IS IN VIOLATION OF STREET CLEANING PARKING RULES.

48 (D) A CERTIFICATE, SWORN TO OR AFFIRMED BY A TECHNICIAN EMPLOYED BY
49 THE CITY IN WHICH THE CHARGED VIOLATION OCCURRED, OR A FACSIMILE THERE-
50 OF, BASED UPON INSPECTION OF PHOTOGRAPHS, MICROPHOTOGRAPHS, DIGITAL TAPE
51 OR OTHER RECORDED IMAGES PRODUCED BY A STREET CLEANING VEHICLE PHOTO
52 DEVICE, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN.
53 ANY PHOTOGRAPHS, MICROPHOTOGRAPHS, DIGITAL TAPE OR OTHER RECORDED IMAGES
54 EVIDENCING SUCH A VIOLATION SHALL BE AVAILABLE FOR INSPECTION IN ANY
55 PROCEEDING TO ADJUDICATE THE LIABILITY FOR SUCH VIOLATION PURSUANT TO
56 THIS SECTION.

1 (E) AN OWNER LIABLE FOR A VIOLATION OF A STREET CLEANING PARKING RULE
2 IMPOSED ON ANY ROUTE SHALL BE LIABLE FOR MONETARY PENALTIES IN ACCORD-
3 ANCE WITH A SCHEDULE OF FINES AND PENALTIES PROMULGATED BY THE PARKING
4 VIOLATIONS BUREAU OF THE CITY OF NEW YORK; PROVIDED, HOWEVER, THAT THE
5 MONETARY PENALTY FOR VIOLATING A STREET CLEANING PARKING RULE SHALL NOT
6 EXCEED SIXTY-FIVE DOLLARS; PROVIDED, FURTHER, THAT AN OWNER SHALL BE
7 LIABLE FOR AN ADDITIONAL PENALTY NOT TO EXCEED TWENTY-FIVE DOLLARS FOR
8 EACH VIOLATION FOR THE FAILURE TO RESPOND TO A NOTICE OF LIABILITY WITH-
9 IN THE PRESCRIBED TIME PERIOD.

10 (F) 1. A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL TO EACH
11 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF A STREET
12 CLEANING PARKING RULE. PERSONAL DELIVERY ON THE OWNER SHALL NOT BE
13 REQUIRED. A MANUAL OR AUTOMATIC RECORD OF MAILING PREPARED IN THE ORDI-
14 NARY COURSE OF BUSINESS SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS
15 CONTAINED THEREIN.

16 2. A NOTICE OF LIABILITY SHALL CONTAIN THE NAME AND ADDRESS OF THE
17 PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR VIOLATION OF A STREET CLEAN-
18 ING PARKING RULE, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN
19 SUCH VIOLATION, THE LOCATION WHERE SUCH VIOLATION TOOK PLACE INCLUDING
20 THE STREET OR CROSS STREETS, ONE OR MORE IMAGES IDENTIFYING THE
21 VIOLATION, THE DATE AND TIME OF SUCH VIOLATION AND THE IDENTIFICATION
22 NUMBER OF THE STREET CLEANING VEHICLE PHOTO DEVICE THAT RECORDED THE
23 VIOLATION OR OTHER DOCUMENT LOCATOR NUMBER.

24 3. THE NOTICE OF LIABILITY SHALL CONTAIN INFORMATION ADVISING THE
25 PERSON CHARGED OF THE MANNER AND THE TIME IN WHICH HE OR SHE MAY CONTEST
26 THE LIABILITY ALLEGED IN THE NOTICE. SUCH NOTICE OF LIABILITY SHALL ALSO
27 CONTAIN A WARNING TO ADVISE THE PERSON CHARGED THAT FAILURE TO CONTEST
28 IN THE MANNER AND TIME PROVIDED SHALL BE DEEMED AN ADMISSION OF LIABIL-
29 ITY AND THAT A DEFAULT JUDGMENT MAY BE ENTERED THEREON.

30 4. THE NOTICE OF LIABILITY SHALL BE PREPARED AND MAILED BY THE AGENCY
31 OR AGENCIES DESIGNATED BY THE CITY OF NEW YORK, OR ANY OTHER ENTITY
32 AUTHORIZED BY SUCH CITY TO PREPARE AND MAIL SUCH NOTIFICATION OF
33 VIOLATION.

34 5. ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION
35 SHALL BE BY THE NEW YORK CITY PARKING VIOLATIONS BUREAU.

36 (G) IF AN OWNER OF A VEHICLE RECEIVES A NOTICE OF LIABILITY PURSUANT
37 TO THIS SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS
38 REPORTED TO THE POLICE DEPARTMENT AS HAVING BEEN STOLEN, IT SHALL BE A
39 VALID DEFENSE TO AN ALLEGATION OF LIABILITY FOR VIOLATION OF A STREET
40 CLEANING PARKING RULE OF SUCH CITY, THAT THE VEHICLE HAD BEEN REPORTED
41 TO THE POLICE AS STOLEN PRIOR TO THE TIME THE VIOLATION OCCURRED AND HAD
42 NOT BEEN RECOVERED BY SUCH TIME. FOR PURPOSES OF ASSERTING THE DEFENSE
43 PROVIDED BY THIS SUBDIVISION IT SHALL BE SUFFICIENT THAT A CERTIFIED
44 COPY OF THE POLICE REPORT ON THE STOLEN VEHICLE BE SENT BY FIRST CLASS
45 MAIL TO THE PARKING VIOLATIONS BUREAU.

46 (H) 1. AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF
47 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (F) OF THIS SECTION SHALL
48 NOT BE LIABLE FOR THE VIOLATION OF THE STREET CLEANING PARKING RULE,
49 PROVIDED THAT:

50 (I) PRIOR TO THE VIOLATION, THE LESSOR HAS FILED WITH SUCH PARKING
51 VIOLATIONS BUREAU IN ACCORDANCE WITH THE PROVISIONS OF SECTION TWO
52 HUNDRED THIRTY-NINE OF THIS CHAPTER; AND

53 (II) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE FROM SUCH BUREAU
54 OF THE DATE AND TIME OF SUCH LIABILITY, TOGETHER WITH THE OTHER INFORMA-
55 TION CONTAINED IN THE ORIGINAL NOTICE OF LIABILITY, THE LESSOR SUBMITS
56 TO SUCH BUREAU THE CORRECT NAME AND ADDRESS OF THE LESSEE OF THE VEHICLE

1 IDENTIFIED IN THE NOTICE OF LIABILITY AT THE TIME OF SUCH VIOLATION,
2 TOGETHER WITH SUCH OTHER ADDITIONAL INFORMATION CONTAINED IN THE RENTAL,
3 LEASE OR OTHER CONTRACT DOCUMENT, AS MAY BE REASONABLY REQUIRED BY SUCH
4 BUREAU PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

5 2. FAILURE TO COMPLY WITH SUBPARAGRAPH (II) OF PARAGRAPH ONE OF THIS
6 SUBDIVISION SHALL RENDER THE LESSOR LIABLE FOR THE PENALTY PRESCRIBED IN
7 THIS SECTION.

8 3. WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF PARAGRAPH ONE OF
9 THIS SUBDIVISION, THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH
10 VIOLATION SHALL BE DEEMED TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES
11 OF THIS SECTION, SHALL BE SUBJECT TO LIABILITY FOR SUCH VIOLATION PURSU-
12 ANT TO THIS SECTION, AND SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO
13 SUBDIVISION (F) OF THIS SECTION.

14 S 4. Subdivision 2 of section 87 of the public officers law is amended
15 by adding a new paragraph (m) to read as follows:

16 (M) ARE PHOTOGRAPHS, MICROPHOTOGRAPHS, DIGITAL TAPE OR OTHER RECORDED
17 IMAGES PRODUCED BY A STREET CLEANING VEHICLE PHOTO DEVICE PREPARED UNDER
18 AUTHORITY OF SECTION ELEVEN HUNDRED ELEVEN-D OF THE VEHICLE AND TRAFFIC
19 LAW.

20 S 5. This act shall take effect on the one hundred eightieth day after
21 it shall have become a law; provided that:

22 (a) the amendments to paragraph f of subdivision 1 of section 239 of
23 the vehicle and traffic law made by section one of this act shall not
24 affect the expiration of such paragraph and shall be deemed to expire
25 therewith, when upon such date the provisions of section one-a of this
26 act shall take effect, provided, further, that the amendments to para-
27 graph f of subdivision 1 of section 239 of the vehicle and traffic law
28 made by section one-a of this act shall not affect the expiration of
29 such paragraph and shall be deemed to expire therewith, when upon such
30 date the provisions of section one-b of this act shall take effect,
31 provided, further, that the amendments to paragraph f of subdivision 1
32 of section 239 of the vehicle and traffic law made by section one-b of
33 this act shall not affect the expiration of such paragraph and shall be
34 deemed to expire therewith, when upon such date the provisions of
35 section one-c of this act shall take effect; and

36 (b) the amendments to subdivision 4 of section 239 of the vehicle and
37 traffic law made by section two of this act shall not affect the repeal
38 of such subdivision and shall be deemed to be repealed therewith, when
39 upon such date the provisions of section two-a of this act shall take
40 effect.