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

5536

2011-2012 Regular Sessions

I N S E N A T E

May 31, 2011

Introduced by COMMITTEE ON RULES -- 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 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:

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

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

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

f. "Notice of violation" means a notice of violation as defined in subdivision nine of section two hundred thirty-seven of this article but 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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authorization set forth in sections eleven hundred eleven-b of this chapter as added by sections sixteen of chapters twenty, twenty-one, and twenty-two of the laws of two thousand nine and shall not be deemed to include a notice of liability issued pursuant to section eleven hundred eleven-c of this chapter AND SHALL NOT BE DEEMED TO INCLUDE A NOTICE OF LIABILITY ISSUED PURSUANT TO SECTION ELEVEN HUNDRED ELEVEN-D OF THIS CHAPTER.

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

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

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

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

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

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

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

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

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

S 1111-D. OWNER LIABILITY FOR FAILURE TO COMPLY WITH STREET CLEANING PARKING RULES. (A) 1. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE CITY OF NEW YORK IS HEREBY AUTHORIZED AND EMPOWERED TO ESTABLISH A PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE TO COMPLY WITH STREET CLEANING PARKING RULES IN SUCH CITY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. THE NEW YORK CITY DEPARTMENT OF SANITATION, FOR PURPOSES OF THE IMPLEMENTATION OF SUCH PROGRAM, SHALL OPERATE STREET CLEANING VEHICLE PHOTO DEVICES ON STREET CLEANING VEHICLES ALONG ONE SELECT STREET CLEANING ROUTE IN NO MORE THAN TWENTY-FIVE SANITATION SERVICE DISTRICTS IN SUCH CITY. SUCH STREET CLEANING VEHICLE

PHOTO DEVICES SHALL BE ACTIVATED AT LOCATIONS DETERMINED BY SUCH DEPARTMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) 1. A NOTICE OF LIABILITY SHALL BE SENT BY FIRST CLASS MAIL TO EACH PERSON ALLEGED TO BE LIABLE AS AN OWNER FOR A VIOLATION OF A STREET CLEANING PARKING RULE. PERSONAL DELIVERY 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.

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

3. 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 PERSON 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.

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

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

(G) IF AN OWNER OF A VEHICLE 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 VIOLATION OF A STREET CLEANING PARKING RULE OF SUCH CITY, 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 PARKING VIOLATIONS BUREAU.

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

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

(II) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE FROM SUCH BUREAU OF THE DATE AND TIME OF SUCH LIABILITY, TOGETHER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL NOTICE OF LIABILITY, THE LESSOR SUBMITS TO SUCH 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 SUCH BUREAU PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

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

3. WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF PARAGRAPH ONE 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 (F) OF THIS SECTION.

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

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

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

(a) the amendments to paragraph f of subdivision 1 of section 239 of the vehicle and traffic law made by section one of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith, when upon such date the provisions of section one-a of this act shall take effect, provided, further, that the amendments to paragraph f of subdivision 1 of section 239 of the vehicle and traffic law made by section one-a of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith, when upon such date the provisions of section one-b of this act shall take effect, provided, further, that the amendments to paragraph f of subdivision 1 of section 239 of the vehicle and traffic law made by section one-b of this act shall not affect the expiration of such paragraph and shall be deemed to expire therewith, when upon such date the provisions of section one-c of this act shall take effect; and

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