

7856

I N S E N A T E

October 12, 2012

Introduced by Sen. SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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 THE CITY OF NEW YORK TO INSTALL
11 AND OPERATE A PHOTO RADAR DEVICE ON MCGUINNESS BOULEVARD IN THE BOROUGH
12 OF BROOKLYN WITHIN SUCH CITY.
13 (B) IN ANY CITY WHICH HAS ADOPTED A LOCAL LAW OR ORDINANCE PURSUANT TO
14 SUBDIVISION (A) OF THIS SECTION, THE OWNER OF A VEHICLE SHALL BE LIABLE
15 FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION IF SUCH VEHICLE WAS USED
16 OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN
17 VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS
18 ARTICLE, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A
19 PHOTO RADAR SYSTEM; PROVIDED HOWEVER THAT NO OWNER OF A VEHICLE SHALL BE
20 LIABLE FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE THE OPERATOR
21 OF SUCH VEHICLE HAS BEEN CONVICTED OF THE UNDERLYING VIOLATION OF SUBDI-
22 VISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE.
23 (C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING
24 PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION,
25 "PHOTO RADAR SYSTEM" SHALL MEAN A SPEED CAMERA INSTALLED TO WORK IN
26 CONJUNCTION WITH DOPPLER RADAR AND A COMPUTER MONITORING SYSTEM WHICH
27 AUTOMATICALLY PRODUCES TWO OR MORE PHOTOGRAPHS, TWO OR MORE MICROPHOTO-

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

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1 GRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH VEHICLE AT THE TIME
2 IT IS USED OR OPERATED IN VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN
3 HUNDRED EIGHTY OF THIS ARTICLE.

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

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

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

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

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

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

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

53 (H) ADJUDICATION OF THE LIABILITY IMPOSED UPON OWNERS BY THIS SECTION
54 SHALL BE BY A TRAFFIC VIOLATIONS BUREAU ESTABLISHED PURSUANT TO SECTION
55 THREE HUNDRED SEVENTY OF THE GENERAL MUNICIPAL LAW OR, IF THERE BE NONE,
56 BY THE COURT HAVING JURISDICTION OVER TRAFFIC INFRACTIONS, EXCEPT THAT

1 ANY CITY WHICH HAS ESTABLISHED AN ADMINISTRATIVE TRIBUNAL TO HEAR AND
2 DETERMINE COMPLAINTS OF TRAFFIC INFRACTIONS CONSTITUTING PARKING, STAND-
3 ING OR STOPPING VIOLATIONS MAY, BY LOCAL LAW, AUTHORIZE SUCH ADJUDI-
4 CATION BY SUCH TRIBUNAL.

5 (I) IF AN OWNER RECEIVES A NOTICE OF LIABILITY PURSUANT TO THIS
6 SECTION FOR ANY TIME PERIOD DURING WHICH THE VEHICLE WAS REPORTED TO THE
7 POLICE DEPARTMENT AS HAVING BEEN STOLEN, IT SHALL BE A VALID DEFENSE TO
8 AN ALLEGATION OF LIABILITY FOR A VIOLATION OF SUBDIVISION (D) OF SECTION
9 ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS SECTION THAT THE
10 VEHICLE HAD BEEN REPORTED TO THE POLICE AS STOLEN PRIOR TO THE TIME THE
11 VIOLATION OCCURRED AND HAD NOT BEEN RECOVERED BY SUCH TIME. FOR PURPOSES
12 OF ASSERTING THE DEFENSE PROVIDED BY THIS SUBDIVISION IT SHALL BE SUFFI-
13 CIENT THAT A CERTIFIED COPY OF THE POLICE REPORT ON THE STOLEN VEHICLE
14 BE SENT BY FIRST CLASS MAIL TO THE TRAFFIC VIOLATIONS BUREAU, COURT
15 HAVING JURISDICTION OR PARKING VIOLATIONS BUREAU.

16 (J) 1. IN A CITY WHERE THE ADJUDICATION OF LIABILITY IMPOSED UPON
17 OWNERS PURSUANT TO THIS SECTION IS BY A TRAFFIC VIOLATIONS BUREAU OR A
18 COURT HAVING JURISDICTION, AN OWNER WHO IS A LESSOR OF A VEHICLE TO
19 WHICH A NOTICE OF LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF
20 THIS SECTION SHALL NOT BE LIABLE FOR THE VIOLATION OF SUBDIVISION (D) OF
21 SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE, PROVIDED THAT HE OR SHE
22 SENDS TO THE TRAFFIC VIOLATIONS BUREAU OR COURT HAVING JURISDICTION A
23 COPY OF THE RENTAL, LEASE OR OTHER SUCH CONTRACT DOCUMENT COVERING SUCH
24 VEHICLE ON THE DATE OF THE VIOLATION, WITH THE NAME AND ADDRESS OF THE
25 LESSEE CLEARLY LEGIBLE, WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE
26 FROM THE BUREAU OR COURT OF THE DATE AND TIME OF SUCH VIOLATION, TOGETH-
27 ER WITH THE OTHER INFORMATION CONTAINED IN THE ORIGINAL NOTICE OF
28 LIABILITY. FAILURE TO SEND SUCH INFORMATION WITHIN SUCH THIRTY-SEVEN DAY
29 TIME PERIOD SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED BY
30 THIS SECTION. WHERE THE LESSOR COMPLIES WITH THE PROVISIONS OF THIS
31 PARAGRAPH, THE LESSEE OF SUCH VEHICLE ON THE DATE OF SUCH VIOLATION
32 SHALL BE DEEMED TO BE THE OWNER OF SUCH VEHICLE FOR PURPOSES OF THIS
33 SECTION, SHALL BE SUBJECT TO LIABILITY FOR THE VIOLATION OF SUBDIVISION
34 (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE PURSUANT TO THIS
35 SECTION AND SHALL BE SENT A NOTICE OF LIABILITY PURSUANT TO SUBDIVISION
36 (G) OF THIS SECTION.

37 2. (I) IN A CITY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION
38 OF LIABILITY IMPOSED UPON OWNERS BY THIS SECTION BY A PARKING VIOLATIONS
39 BUREAU, AN OWNER WHO IS A LESSOR OF A VEHICLE TO WHICH A NOTICE OF
40 LIABILITY WAS ISSUED PURSUANT TO SUBDIVISION (G) OF THIS SECTION SHALL
41 NOT BE LIABLE FOR THE VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN
42 HUNDRED EIGHTY OF THIS ARTICLE, PROVIDED THAT:

43 (A) PRIOR TO THE VIOLATION, THE LESSOR HAS FILED WITH THE BUREAU IN
44 ACCORDANCE WITH THE PROVISIONS OF SECTION TWO HUNDRED THIRTY-NINE OF
45 THIS CHAPTER; AND

46 (B) WITHIN THIRTY-SEVEN DAYS AFTER RECEIVING NOTICE FROM THE BUREAU OF
47 THE DATE AND TIME OF A LIABILITY, TOGETHER WITH THE OTHER INFORMATION
48 CONTAINED IN THE ORIGINAL NOTICE OF LIABILITY, THE LESSOR SUBMITS TO THE
49 BUREAU THE CORRECT NAME AND ADDRESS OF THE LESSEE OF THE VEHICLE IDENTI-
50 FIED IN THE NOTICE OF LIABILITY AT THE TIME OF SUCH VIOLATION, TOGETHER
51 WITH SUCH OTHER ADDITIONAL INFORMATION CONTAINED IN THE RENTAL, LEASE OR
52 OTHER CONTRACT DOCUMENT, AS MAY BE REASONABLY REQUIRED BY THE BUREAU
53 PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

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

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

(K) IF THE OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (D) OF SECTION ELEVEN HUNDRED EIGHTY OF THIS ARTICLE 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.

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

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

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

1. A DESCRIPTION OF THE LOCATIONS WHERE PHOTO RADAR SYSTEMS WERE USED;
2. THE NUMBER OF VIOLATIONS RECORDED AT EACH SUCH LOCATION AND IN THE AGGREGATE ON A DAILY, WEEKLY AND MONTHLY BASIS;
3. THE TOTAL NUMBER OF NOTICES OF LIABILITY ISSUED;
4. THE NUMBER OF FINES AND TOTAL AMOUNT OF FINES PAID AFTER FIRST NOTICE OF LIABILITY;
5. THE NUMBER OF VIOLATIONS ADJUDICATED AND RESULTS OF SUCH ADJUDICATIONS INCLUDING BREAKDOWNS OF DISPOSITIONS MADE;
6. THE TOTAL AMOUNT OF REVENUE REALIZED BY SUCH CITY; AND
7. QUALITY OF THE ADJUDICATION PROCESS AND ITS RESULTS.

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