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

875

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. SQUADRON -- 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 truck weight photo-monitoring systems in cities with a population of one million or more

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

Section 1. The vehicle and traffic law is amended by adding a new section 1642-a to read as follows:

S 1642-A. OWNER LIABILITY FOR FAILURE OF OPERATOR TO COMPLY WITH NO-THRU TRUCK INDICATIONS. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, EACH CITY WITH A POPULATION OF ONE MILLION OR MORE IS HEREBY AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND A LOCAL LAW OR ORDINANCE ESTABLISHING A DEMONSTRATION PROGRAM IMPOSING MONETARY LIABILITY ON THE OWNER OF A VEHICLE FOR FAILURE OF AN OPERATOR THEREOF TO COMPLY WITH NO-THRU TRUCK INDICATIONS IN SUCH CITY IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION. SUCH DEMONSTRATION PROGRAM SHALL EMPOWER A CITY TO INSTALL AND OPERATE TRUCK WEIGHT PHOTO-MONITORING DEVICES AT NO MORE THAN FIFTY INTERSECTIONS WITHIN SUCH CITY AT ANY ONE TIME.

(B) IN ANY CITY WHICH HAS ADOPTED A LOCAL LAW OR ORDINANCE 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 USED OR OPERATED WITH THE PERMISSION OF THE OWNER, EXPRESS OR IMPLIED, IN VIOLATION OF DRIVING THROUGH A PROHIBITED NO-TRUCK ZONE DESIGNATED PURSUANT TO SUBDIVISION (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER, AND SUCH VIOLATION IS EVIDENCED BY INFORMATION OBTAINED FROM A TRUCK WEIGHT VIOLATION-MONITORING SYSTEM; PROVIDED HOWEVER THAT NO OWNER OF A VEHICLE SHALL BE LIABLE FOR A PENALTY IMPOSED PURSUANT TO THIS SECTION WHERE THE OPERATOR OF SUCH VEHICLE HAS BEEN CONVICTED OF THE UNDERLYING

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

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VIOLATION OF SUBDIVISION (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER.

(C) FOR PURPOSES OF THIS SECTION, "OWNER" SHALL HAVE THE MEANING PROVIDED IN ARTICLE TWO-B OF THIS CHAPTER. FOR PURPOSES OF THIS SECTION, "TRUCK WEIGHT VIOLATION-MONITORING SYSTEM" SHALL MEAN A VEHICLE SENSOR INSTALLED TO WORK IN CONJUNCTION WITH A VEHICLE SCALE WHICH AUTOMATICALLY PRODUCES TWO OR MORE PHOTOGRAPHS, TWO OR MORE MICROPHOTOGRAPHS, A VIDEOTAPE OR OTHER RECORDED IMAGES OF EACH VEHICLE AT THE TIME IT IS USED OR OPERATED IN VIOLATION OF SUBDIVISION (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER.

(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, VIDEOTAPE OR OTHER RECORDED IMAGES PRODUCED BY A TRUCK WEIGHT VIOLATION-MONITORING SYSTEM, SHALL BE PRIMA FACIE EVIDENCE OF THE FACTS CONTAINED THEREIN. ANY PHOTOGRAPHS, MICROPHOTOGRAPHS, VIDEOTAPE 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 A LOCAL LAW OR ORDINANCE ADOPTED PURSUANT TO THIS SECTION.

(E) AN OWNER LIABLE FOR A VIOLATION OF SUBDIVISION (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER PURSUANT TO A LOCAL LAW OR ORDINANCE ADOPTED PURSUANT TO THIS SECTION SHALL BE LIABLE FOR MONETARY PENALTIES IN ACCORDANCE WITH A SCHEDULE OF FINES AND PENALTIES TO BE SET FORTH IN SUCH LOCAL LAW OR ORDINANCE, EXCEPT THAT IN A CITY WHICH, BY LOCAL LAW, HAS AUTHORIZED THE ADJUDICATION OF SUCH OWNER LIABILITY BY A PARKING VIOLATIONS BUREAU, SUCH SCHEDULE SHALL BE PROMULGATED BY SUCH BUREAU. THE LIABILITY OF THE OWNER PURSUANT TO THIS SECTION SHALL NOT EXCEED FIFTY DOLLARS FOR EACH VIOLATION; PROVIDED, HOWEVER, THAT SUCH LOCAL LAW OR ORDINANCE MAY PROVIDE FOR AN ADDITIONAL PENALTY NOT IN EXCESS OF TWENTY-FIVE DOLLARS FOR EACH VIOLATION FOR THE FAILURE TO RESPOND TO A NOTICE OF LIABILITY WITHIN THE PRESCRIBED TIME PERIOD.

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

(G) 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 SUBDIVISION (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER PURSUANT TO THIS SECTION. 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 A VIOLATION OF SUBDIVISION (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER PURSUANT TO THIS SECTION, THE REGISTRATION NUMBER OF THE VEHICLE INVOLVED IN SUCH VIOLATION, THE LOCATION WHERE SUCH VIOLATION TOOK PLACE, THE DATE AND TIME OF SUCH VIOLATION AND THE IDENTIFICATION NUMBER OF THE CAMERA WHICH 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 PERSONS 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 CITY HAVING JURISDICTION OVER THE INTERSECTION WHERE THE VIOLATION OCCURRED, OR BY ANY OTHER ENTITY AUTHORIZED BY THE CITY TO PREPARE AND MAIL SUCH 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 (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER 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; OR THAT THE VEHICLE WAS MAKING A LEGITIMATE DELIVERY WITHIN THE AREA. FOR PURPOSES OF ASSERTING THE DEFENSES PROVIDED BY THIS SUBDIVISION IT SHALL BE SUFFICIENT THAT A CERTIFIED COPY OF THE POLICE REPORT ON THE STOLEN VEHICLE OR A COPY OF AN INVOICE OR SOME OTHER PROOF OF DELIVERY 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 (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER, 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 (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER 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 (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER, 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 OTHER CONTRACT DOCUMENT, AS MAY BE REASONABLY REQUIRED BY THE BUREAU PURSUANT TO REGULATIONS THAT MAY BE PROMULGATED FOR SUCH PURPOSE.

(II) FAILURE TO COMPLY WITH CLAUSE (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL RENDER THE OWNER LIABLE FOR THE PENALTY PRESCRIBED IN 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 (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER 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 (F) OF SECTION EIGHTEEN HUNDRED OF THIS CHAPTER.

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

1. A DESCRIPTION OF THE LOCATIONS WHERE TRUCK WEIGHT PHOTO-MONITORING SYSTEMS WERE USED;

2. THE NUMBER OF VIOLATIONS RECORDED AT EACH INTERSECTION 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 one hundred eightieth day after it shall have become a law. Effective immediately the addition, amendment, and/or repeal of any rule or regulation necessary for the timely implementation of this act on its effective date is hereby authorized to be made on or before such effective date.